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Regulation on Working Conditions

2021

Department of Labour

Ministry of Labour and Human Resources

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FOREWORD

The Ministry of Labour and Human Resources is pleased to bring out the fourth edition of the fifteen Regulations as empowered by the Section 234 of the Labour and Employment Act of Bhutan 2007. This Regulation pertaining to employment conditions is necessary to implement the provisions of the Act effectively.

The Regulations is the outcome of the tripartite dialogues among the Royal Government, Employers and Employees across the country. As such, every provision of the Regulation enjoys the consensus of all parties in the labour market and is legally enforceable.

The main thrust of the revision efforts had been to incorporate and adopt international best practices in labour administration as well as updating them in line with the changes in relevant national laws. With the implementation of this Regulation, all the provisions of the Labour and Employment Act of Bhutan 2007 will be in full enforcement.

The Regulation should benefit both the employers and employees. More importantly, they are expected to enhance the employment conditions to a new height, especially in the private and corporate sectors, ultimately realizing the national vision of productive, harmonious and happy working relationships between the employers and employees.

May there be a fair and just labour administration system, and may the Bhutanese people enjoy the full benefits of such an enlightened system.

(Ugyen Dorji)
Minister

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Introduction

Working conditions are at the core of paid work and employment relationships. This Regulation cover a broad range of topics and issues, from working time (hours of work, rest periods, and work schedules) to remuneration, as well as the physical conditions and mental demands that exist in the workplace.

The Department of Labour, Ministry of Labour and Human Resources, in accordance with Labour and Employment 2007, is entrusted to monitor trends and developments regarding working time, work organisation, and work-life balance of the employers and employees of the private and the corporate world in the country and analyses key and emerging issues. In addition the Ministry seeks to collaborate with the employers and employees and academic institutions to obtain the state-of-the-art knowledge needed to support workers and employers in developing and implementing balanced working time arrangements that can protect workers' health, benefit their well-being and work-life balance, and promote sustainable enterprises as well.

CHAPTER 1: PRELIMINARY

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act of Bhutan 2007 hereby promulgates this regulation which applies to all workplaces falling within the coverage of the Act.

Preliminary

1. This regulation shall be called Regulation on Working Conditions, 2021.
2. This regulation contains legal requirements that must be met by all workplaces within the coverage of the Labour and Employment Act, 2007 that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation shall come into force with effect from November 11, 2009

Purpose

4. The purpose of this Regulation is to establish standards of conduct for the operation of the establishments in Bhutan and to Protect a worker from unfair treatment and to ensure quality service to employer in accordance to Labour and Employment Act 2007.

Scope

This regulation shall apply to all workplaces, employees and employers falling within the scope of the Labour and Employment Act, 2007.

CHAPTER 2: ACCEPTABLE FORMS OF CHILD LABOUR

Prohibited forms of child labour

5. In addition to the work activities identified in **Section 9** of the Act, employment of children between the ages of 13 to 17 years in the following occupations, jobs, tasks and situations is prohibited.
- (1) Mining or quarrying
 - (2) Confined spaces
 - (3) Heavy labouring and lifting
 - (4) Manufacturing processes using toxic materials and substances.
 - (5) Slaughterhouses
 - (6) Cement manufacturing
 - (7) Construction except minor and light construction works at non-risky and non-dangerous construction sites
 - (8) Logging
 - (9) Gas and electricity supply
 - (10) Sanitary services
 - (11) Transport
 - (12) Bars
 - (13) Discotheques
 - (14) Drayangs
 - (15) Scrap yards
 - (16) Carpet weaving

6. A person who employs children in any occupation or job indicated in **Section 5** of this chapter is liable for the same penalty as for the contravention of **Section 9** of the Act.

Acceptable work for Children

7. Children are permitted to be employed in the occupations, jobs and activities not listed under **Section 9** of the Act and **Section 5** of this chapter. The work however, must not take place in an environment that is likely to harm the health, safety or morals of the children and must not affect their attendance at school, vocational orientation and training programs.
8. Children may be employed to perform work that is supervised by their schools or parents to complement the children's education, training and work experience. However, the work shall not affect the health, safety, personal and social development, education and training of the children.
9. Any contravention of this chapter shall be an offence and the penalty shall be same as **Section 9** of the Act.
10. An employer shall notify and obtain prior approval from the Chief Labour Administrator for the employment of children below 18 years of age.

Working Conditions

11. The employment of children aged 13 to 17 years between the hours of 10.00 p.m. and 08.00 a.m. is forbidden.
12. Overtime work for children aged 13 to 17 years is forbidden.
13. The hours of work for children employed on a full-time basis shall not exceed the hours of work of a full-time adult worker.

14. Wages paid to employed children between the ages of 13 and 17 years shall not be below the minimum rates as set from time to time by the Ministry of Labour and Human Resources.
15. Wages paid to employed children between the ages of 13 and 17 years shall be the same as those paid to adults doing the same work on the principle of equal pay for equal value of work.
16. Where the nature of the work is such that a child between the ages of 13 and 17 years is not able to produce the same output per unit of time as an adult worker engaged in the same work, the employer may seek the approval of the Chief Labour Administrator to pay a lower wage.
17. Children between the ages of 13 and 17 years employed on a full-time basis shall be entitled to the same holidays, leave, and other entitlements prescribed by law as applied to adult workers.
18. An employer who contravenes **sections 11 to 17** of this regulation commits an offence punishable by a fine of a minimum of 90 times and a maximum of 360 times the Daily National Minimum Wage.

Proof of Age

19. Where a question arises as to the actual age of a child in employment, a labour inspector may refer the child to a medical practitioner for determination in writing as to the age of the child or refer to any of the documents such as the Citizenship Identity Card, Birth Certificate, School Leaving Certificate, Health Card etc. issued by relevant authorities.

Deeming employment

20. A child is deemed to be employed if a person permits the child to:
- (1) Work as a domestic servant in a home which is not the home of the child's immediate family; or
 - (2) Participate or assist in a business, trade, calling or occupation carried on for profit that is not owned by the child's immediate family.
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CHAPTER 3: SEXUAL HARASSMENT

21. Sexual harassment in the workplace or during recruitment includes:
 - (1) An unwelcome sexual advance or an unwelcome request for sexual favours by one person to another,
 - (2) Any other unwelcome physical, verbal, or visual conduct of a sexual nature by one person to another.
22. Conduct of a sexual nature includes:
 - (1) Subjecting a person to any act of physical intimacy including but not limited to assault, impeding or blocking movements, inappropriate touching of a person or a person's clothing, kissing, hugging, patting or stroking;
 - (2) Making any oral or written remark or statement or question with sexual connotations to a person or about a person in his or her presence, including vulgar language, degrading comments, sexual jokes and innuendo, comments about clothing, personal behaviour, or a person's body, requesting sexual favours, repeatedly asking a person out, telling rumours about a person's personal or sexual life, or threatening a person;
 - (3) Making any gesture or action of a sexual nature in a person's presence including looking up and down a person's body, making facial expressions of a sexual nature, or following a person, and displaying visual material of a sexual nature including posters, drawings, pictures, photographs, e-mails, or screensavers.
23. The conduct must be unwelcome, based on sex and sufficiently pervasive to alter the conditions of the victim's employment and create an abusive working environment.

24. Conduct is not sexual harassment if it is welcome. The victim of the harassment should indicate that the conduct is unwelcome by communicating verbally or in writing to the harasser that the conduct makes the victim uncomfortable and that the victim wants it to stop.
25. Conduct that is not pervasive and does not materially alter the victim's recruitment outcome, employment conditions and working environment does not limit, however, the right of the victim to lodge a complaint against the harasser, both within the workplace and to the Ministry of Labour and Human Resources.
26. The victim of sexual harassment does not have to be the person harassed but could be another person affected by the offensive conduct.
27. The harasser as well as the victim may be a man or a woman and the victim does not have to be of the opposite sex.
28. The harasser can be the victim's supervisor, a non-employee agent of the employer, a co-worker, a supervisor in another area, or the employer.
29. Psychological harm, injury or damage to the victim does not have to be established for conduct to constitute sexual harassment.

Prevention

30. To prevent the incidence of sexual harassment in workplaces and during recruitment within the coverage of the Act, every enterprise shall prepare and implement a Sexual Harassment Policy and prepare a written complaint procedure to advise victims of the steps they should take to lodge a formal complaint against a harasser.

Sexual Harassment Policy

31. A sexual harassment policy should include the following:
- (1) A statement from the employer that he/she does not condone sexual harassment in any form.
 - (2) A commitment from the employer to the prevention and eradication of sexual harassment.
 - (3) A definition of sexual harassment.
 - (4) Examples of behaviour that constitute sexual harassment.
 - (5) A statement reminding all employees whether worker, supervisor or manager of the seriousness of sexual harassment charges.
 - (6) An explanation of the penalties to be imposed by the employer for substantiated sexual harassment conduct, including verbal and written warnings, transfer of post, suspension, termination of employment, and the possibility of damages owed to the victim.
 - (7) A commitment from the employer to ensuring that all sexual harassment complaints and personnel actions are kept confidential.
 - (8) A commitment from the employer to protect the person lodging a complaint of sexual harassment from retaliation from the harasser or others.
 - (9) A commitment to preparing and implementing an internal grievance procedure that includes special arrangements for sexual harassment complaints.
 - (10) A commitment that a victim will not be required to address complaints through a supervisor who is involved in, condones, or ignores sexual harassment.
 - (11) A commitment to the enforcement of the policy through action that is taken quickly, consistently and
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aggressively and through investigations which are prompt, thorough and documented in detail.

- (12) A statement that the victim will not be worse off as a result of any remedial action taken. A transfer of the victim, for example to avoid interaction between the victim and the harasser, is unacceptable unless agreed to by the victim.
- (13) An indication that all newly recruited staff will be provided with a copy of the sexual harassment policy.
- (14) A commitment to the training of all employees to improve their knowledge and understanding of sexual harassment issues.
- (15) Communicate the policy widely throughout the workplace.

Sexual Harassment Complaint Procedure: Internal

32. Employers required to prepare and implement a sexual harassment policy shall also prepare and implement an internal complaint procedure for sexual harassment. This may be part of a general grievance procedure provided confidentiality and speed of action are assured, and that the victim is not required to lodge the complaint through a supervisor who is involved in or condones or ignores sexual harassment.
33. The victim of sexual harassment shall make a complaint in writing identifying the alleged harasser or harassers, describing the incident or incidents including places, times and dates, naming any witnesses, signing the complaint and bring it to the attention of the person designated in the procedure.

34. Receipt of the victim's written complaint shall be acknowledged within 2 days and an investigation into the complaint must commence within 5 days. The outcome of the investigation shall be communicated to the victim within 10 days from the commencement of the investigation.
35. If the victim is not satisfied with the outcome of the internal complaint procedure the victim is entitled to lodge a complaint with the Chief Labour Administrator, Ministry of Labour and Human Resources.
36. A victim is encouraged to exhaust the internal complaints procedure before initiating the external procedure, but is not obliged to do so. A victim may choose to by-pass the internal procedure in its entirety and immediately lodge a complaint with the Chief Labour Administrator.

Sexual Harassment Complaints Procedure: External

37. A victim dissatisfied with the outcome of the internal complaint procedure or who chooses to by-pass that procedure may lodge a sexual harassment complaint with the Chief Labour Administrator, Ministry of Labour and Human Resources.
38. The victim shall lodge a complaint in writing identifying the employer, identifying the alleged harasser or harassers, describing the incident or incidents including places, times and dates, naming any witnesses, and sign the complaint.
39. Receipt of the victim's complaint shall be acknowledged by the Chief Labour Administrator immediately.
40. The Chief Labour Administrator shall notify the employer of the complaint within 7 working days from the receipt of the complaint from the victim indicating the name of the complainant, the name of the alleged harasser or harassers,

and the details of the harassment, including any witnesses. The employer shall be directed to investigate the complaint and provide a response including specific action taken to the Chief Labour Administrator within 7 working days of receipt of the notification from the Chief Labour Administrator.

41. The employer shall take all reasonable steps to keep as confidential the information provided by the complainant, consistent with the need to disclose necessary information for the effective conduct of an investigation.
42. The Chief Labour Administrator shall decide the action to be taken as a result of the employer's investigation and report. The Chief Labour Administrator may decide that based on the employer's investigation and action that no further action is required and communicate this decision to the complainant. Alternatively, the Chief Labour Administrator may decide that further investigation is required.
43. If further investigation is required, the Chief Labour Administrator shall appoint a person to investigate the complaint. Such person may be a labour relations officer, but may also be any person with a reputation for impartiality and fairness and with sufficient knowledge and skills to conduct a thorough and independent investigation. The person appointed to investigate shall submit a written report to the Chief Labour Administrator within 7 working days from the date of appointment, indicating whether mediation is a possible means to resolve the issue.
44. If the Chief Labour Administrator decides that mediation may possibly resolve the issue, the Chief Labour Administrator shall appoint a mediator to bring the alleged harasser, employer and victim to a conference in an attempt to resolve the issue. Once appointed, the mediator shall take steps to resolve the issue as quickly as possible and shall report to the

Chief Labour Administrator on the outcome of the mediation process within 7 working days of his or her appointment.

45. If mediation does not resolve the case, the Chief Labour Administrator shall take steps to place the case before a court of law in Bhutan as soon as reasonably possible.
46. If the Chief Labour Administrator decides that mediation will not help resolve the issue, the Chief Labour Administrator shall take steps to place the case before a court of law in Bhutan within 10 working days.

Penalties

47. In addition to the penalties against a harasser or his or her employer as indicated in **Section 20** of the Act, the victim of sexual harassment shall be entitled to damages at the rate of the National Minimum Wage to a maximum of 3000 days in accordance to the severity of the offence.

Liability of an Employer

48. The employer of a person found to be guilty of sexual harassment may be legally liable to the victim if the employer knew or reasonably should have known of the harassment and failed to take action. Employers who have prepared and conscientiously implemented a sexual harassment policy, have taken positive steps to educate and inform their employees on sexual harassment and its consequences, and who have clear internal procedures for handling sexual harassment complaints, shall not normally be liable to the victim.

CHAPTER 4: LABOUR INSPECTION

49. This chapter applies to all workplaces liable for inspection under the Act. The scope does not extend to the inspection of working conditions and the working environment of the nation's uniformed services but does extend to institutions and agencies, including the civil service, to the extent that the laws of such institutions and agencies do not already cover any matter included in the Act.
50. The Department of Labour shall maintain a record of all work places including private dwellings liable for inspection.
51. All enterprises entered in this register shall be liable for routine, follow-up and special inspection, as appropriate, by labour inspectors appointed under the Act.
52. This register shall be prepared and maintained by the Department based on the records and documents of other government agencies, the reports of labour inspectors, as well as the mapping exercises undertaken by inspectors from time to time.
53. The register shall include all the necessary details required.
54. The record of work places shall be up-dated regularly based on the inspection reports.
55. Labour inspectors of the Department of Labour appointed under the Act with prior authority of the Chief Labour Administrator, and in accordance with their powers under sections 27 to 29 of the Act, have authority to enter workplaces at reasonable times to examine wage records, investigate complaints and interview employees and employers to ensure that minimum wage orders are enforced.

Types of Inspections

56. Labour inspectors as defined under the Act, are empowered to undertake three types of inspection visits, as follows:
- (1) Routine Inspection is aimed to anticipate and prevent problems by informing workers and employers on both the content of the Act and its Regulations advising them on compliance with the same and if necessary, securing compliance through enforcement. Routine visits normally cover the full range of matters to be inspected.
 - (2) Follow-up Inspection focuses on problems and contraventions of the law as identified in previous routine visits, to determine the extent to which the enterprise has responded to the outcome of the earlier routine visit.
 - (3) Special Inspection is unplanned and is based on complaints and specific issues constituting a priority matter as determined by the Department of Labour.

Announced and Unannounced Inspections

57. Labour inspectors are empowered to undertake both announced and unannounced inspections
58. An announced inspection requires the inspector to notify the enterprise in advance of an intended visit and make a firm appointment. For an announced inspection the inspector shall give a minimum of 2 working days' notice to the enterprise.
59. An unannounced inspection requires no advance notification to the enterprise and permits the inspector to enter the enterprise, at any reasonable time.

60. The Department of Labour on a case-by-case basis shall decide on whether an inspection should be announced or unannounced.

Inspection Work Plans

61. The Department of Labour shall prepare an annual work plan of routine inspection visits identifying priority sectors and locations to be targeted, specific workplaces to be visited, and indicating the labour inspectors who will undertake each visit.
62. The annual inspection work plan shall be approved by the Chief Labour Administrator.

Entry at Work Place

63. As per **Section 27** of the Act, the Labour Inspectors are empowered to enter at reasonable times during regular working hours and after 5.00 P.M until closing time for those workplaces whose working hours include night time hours.

Report

64. The labour inspector shall prepare a written report on each inspection visit, the format and content of which shall be determined by the Department of Labour.
65. The content of inspection reports shall be treated as confidential unless:
 - (1) The inspector is required to divulge this information by a court of law; or
 - (2) The inspector is required to divulge this information as part of his or her work as a labour inspector.

Inspection Process

66. When a Labour Inspector enters a workplace for an inspection visit, he/she shall take all reasonable steps to notify:
 - (1) The employer or employer's representative;
 - (2) The health and safety representative, if any, at the workplace; and
 - (3) One member of the workers' association, if any, at the workplace of his or her entry.
67. The Labour Inspector shall provide proof of identity at the commencement of each inspection visit.
68. The Labour Inspector shall explain the purpose of the inspection to the employer and employees or their representatives.
69. The Labour Inspector shall interview workers, if required, but in such a way to cause minimal disruption to the work flow and production process of the enterprise.
70. The Labour Inspector shall conduct an exit meeting prior to leaving the workplace with the employer and employees or their representatives to notify them of:
 - (1) The main outcomes of the inspection visit;
 - (2) The priority areas where improvements are required;
 - (3) The specific action to be taken to ensure compliance with the Act and its Regulations.

Improvement Notices

71. As per **Section 40** of the Act, a Labour Inspector may issue an Improvement Notice to an employer where there is a contravention of the Act. The Improvement Notice may be issued on the spot during the inspection visit or within 5 working days after the inspection.

72. At the time of issuing the Improvement Notice, the Labour Inspector shall take specific steps to bring to the notice of the employer or employer's representative the content of the Improvement Notice concerning appeals and penalties.
73. The Labour Inspector may issue more than one Improvement Notice to an enterprise during or as a result of a single inspection visit.
74. On the expiry of the number of days specified in the Improvement Notice, the Labour Inspector shall conduct a follow-up inspection to verify whether the Improvement Notice has been acted upon. If the required improvements have not been complied with, the Labour Inspector shall impose penalty for each contravention as per the Act and its Regulations.

Prohibition Notices

75. As per the **Section 43** of the Act, the Labour Inspector may issue a Prohibition Notice to stop an immediate risk emanating from within the workplace to the safety or health of any person. The Prohibition Notice may be issued on the spot during the inspection within 5 working days.
76. At the time of issuing the Prohibition Notice, the Labour Inspector shall take specific steps to bring to the notice of the employer or employer's representative the content of the Prohibition Notice concerning appeals and penalties.
77. An Labour Inspector may issue more than one Prohibition Notice to an enterprise during or as a result of a single inspection visit if he/she is of the opinion that there is more than one activity involving or likely to involve an immediate risk to the safety or health of any person.

78. The Labour Inspector may issue a Prohibition Notice for the entire enterprise if he/she is of the opinion that the safety and health of a significant number, a majority, or all persons within that enterprise or workplace and its immediate environment are at immediate risk.
79. If a prohibition notice is issued, it shall remain in force:
- (1) Until the Labour Inspector certifies in writing that the matters which give or will give rise to the risk are remedied; or
 - (2) After an appeal under **Section 47** of the Act has been decided.

Annual Report

80. The Department of Labour shall prepare and disseminate an annual report on the work of inspection services and include, as far as possible, the following:
- (1) A list of the laws and regulations relating to labour inspection work;
 - (2) The number of inspectors, including the number of female inspectors, and their location;
 - (3) Statistics on the number of workplaces liable for inspection by sector or industry, including numbers employed;
 - (4) Number and type of inspection visits;
 - (5) The number of Improvement and Prohibition Notices issued;
 - (6) The number of convictions for contraventions and the penalties imposed;
 - (7) The number of complaints from workers;

- (8) Statistics of accidents and deaths at work or arising out of work, including causes;
- (9) Statistics of notified occupational diseases, classified by industry, occupation, and causes;
- (10) Statistics of workers' compensation;
- (11) Achievements and shortcomings of the labour inspection system.

CHAPTER 5: RECRUITMENT AND SELECTION REGULATION

Application and Repeal

81. This Regulation shall apply to all matters relating to recruitment and selection procedures of Bhutanese workers for employment that must be met by all workplaces within the coverage of the Act that come under the inspectorial jurisdiction of the Department of Labour, MoLHR.

Purpose and Objectives

82. The purpose of the Chapter is to:
- (1) Establish a uniform framework and system for a transparent and effective recruitment and selection process for employment;
 - (2) Ensure as far as possible, that the best qualified candidates with the right aptitude for the right job are recruited through a transparent, open, fair and merit-based recruitment and selection process that is free of any discrimination, bias and/or prejudice; and
 - (3) Attract and retain the best qualified individuals in all areas of employment.
83. Notwithstanding the **Section 82 (2)**, the following conditions do not tantamount to discrimination where:
- (1) In a sole proprietorship, a member of the employer's immediate family is considered for the particular job;
 - (2) A distinction, exclusion or preference is made by the employer in respect of a particular job based on the inherent requirement of that job; or

- (3) Special assistance or protection is provided to a person having any special requirement relating to sex, age, disability or family responsibilities.

The Need of the Position Review

84. Prior to commencement of the recruitment process, the need for the position review shall be conducted taking into account the following factors:
 - (1) The staffing pattern and the current and future human resource strength required for the enterprise;
 - (2) Budget/funding;
 - (3) Qualifications and other eligibility criteria;
 - (4) Skill levels;
 - (5) How the needs for the position might best be met; and
 - (6) Type of employment that is to be offered, whether fulltime, part time, fixed term, contract, secondment.

Eligibility

85. A candidate shall:
 - (1) Meet all eligibility criteria as specified by the job description; and
 - (2) Have attained 18 years of age on the date of appointment except in occupations prescribed in the Regulation on Acceptable Forms of Child Labour.

Disqualification

86. A candidate shall not be eligible for employment if he/she has:
- (1) Been previously selected but has intentionally dishonoured the selection/appointment for the particular job;
 - (2) Been certified medically unfit for employment by a competent medical practitioner in Bhutan;
 - (3) Intentionally provided false information in the application for employment or used fraudulent practices in the recruitment examination and other selection processes;
 - (4) Furnished fake/ forged testimonials;
 - (5) Failed to furnish testimonials; and
 - (6) Failed to produce No Objection Certificate (NOC) from current employer, if employed and required by the new employer.

Appointment of Selection Committee

87. A Selection Committee shall be formed comprising of a minimum of 3 members, from relevant sectors who may have one or more of the following attributes:
- (1) Has an understanding of the skills and attributes required for the position;
 - (2) Is a person with expertise in the occupation and position to be filled; and
 - (3) At least one member having adequate HR knowledge.

Role of Selection Committee

88. The role of the Selection Committee shall be:
- (1) To assess the candidates based on the set criteria;
-

- (2) To provide each candidate with a fair and equal opportunity to compete during the selection process; and
- (3) Select the candidates who meet the selection criteria in a transparent and unbiased manner.

Duties of the Selection Committee

89. A member(s) of the Selection Committee shall:
 - (1) Declare conflict of interest prior to the commencement of the selection process and withdraw himself /herself from the selection process in which case the management shall appoint a suitable substitute(s);
 - (2) Interview all shortlisted candidates;
 - (3) Maintain consistency and exercise fair treatment for all candidates;
 - (4) Ensure that each interviewer has an interview form for each applicant, that includes the interviewer's name, date, name of the applicant and the position being filled;
 - (5) Recommend to the management a list of candidates in order of merit for appointment to the vacant position; and
 - (6) In case of a tie, the Selection Committee may conduct further assessment.
90. For applicants with disabilities, the Selection Committee shall ensure:
 - (1) To interview all applicants with disabilities who meet the essential criteria in the personal specification for a job vacancy and consider them on their ability. Job applicants may however be asked to declare a disability in their application;

- (2) That persons with disabilities are given the right conditions to do tests or any other selection processes;
- (3) To concentrate on abilities to do the job during the interview and only ask about their disability if it has a bearing on the person's ability to work; and
- (4) To consider modifications of job qualification requirements of a person who could not achieve it due to disability but otherwise would perform the job well.

Advertising

91. Every vacancy shall be advertised irrespective of positions through media for transparency.
92. After advertisement the applicant shall have minimum of 5 working days for submission of application.
93. The Advertisement shall not be discriminatory in any form.

Short-Listing Procedure

94. The HRO shall short-list based on the shortlisting criteria within 5 working days. The HRO shall ensure that:
 - (1) The shortlisted candidates meet the selection criteria;
 - (2) No new criterion is introduced to assess the candidates at this stage; and
 - (3) The process remains free of discrimination.
95. Short-listed candidates must be given minimum of 5 working days' notice for the Selection interview.

Selection Records

96. The agency/employer shall ensure that all documents pertaining to recruitment and selection are stored securely and confidentially.

Contract of Employment

97. If a candidate accepts an offer, a Contract of Employment shall be executed between the employer and the new recruit within 2 working days after serving the 'Letter of Acceptance'. The agency shall ensure that the new recruit understands and fully consents to the terms and conditions of the agreement. The employment is confirmed once the Contract of Employment is endorsed by both the employer and the new recruit subject, however to the conditions that the agreement is free from any threat, coercion or undue influence.

Recruitment of Persons with Disabilities

98. An applicant with disabilities is qualified for a position if he or she meets the skills, experience, education, and other requirements of the vacant position that he or she holds or seeks. The person must also be able to perform the essential functions of the position either with or without reasonable accommodation. Job requirements that screen out or tend to screen out people with disabilities are legitimate only if they are job related and consistent with business.

Grievance Procedure

99. Any grievance concerning a person under this Regulation shall be acted upon by the concerned agency who shall apply their internal grievance procedure. Any unresolved matter,

except the ones with criminal nature shall be forwarded to the Chief Labour Administrator, MoLHR for resolution.

Penalty

100. A person or an agency who contravenes any of the provisions of this Chapter shall be liable to a penalty not less than 90 days and not more than 360 days of the Daily National Minimum Wage Rate per contravention.

CHAPTER 6: TRAINING

Categories of Training Programmes

101. The categories of Training Programmes shall be as follows:

- (1) Training of six months or less shall be considered as Short-Term Training (STT); and
- (2) Training above six months are defined as Long – Term Training (LTT).

Short Term Training

Eligibility for STT

102. An employee shall be eligible for STT when he/she:

- (3) Has served a minimum of one year (including probation); and
- (4) Has served a minimum of six months after either a short-term or long-term training to avail the next short-term training.

Obligation of an employee on STT

103. An employee on STT shall:

- (1) Report to work immediately upon completion of the training;
- (2) Produce a course completion certificate if any, at the time of re-joining the company;
- (3) Not discontinue the programme for any reason other than ill health. Discontinuation on ill health shall be supported with a proper medical certificate and should

be approved by the company prior to his discontinuation. In the event that he/she discontinues the training for reasons other than ill health, he/she shall refund the expenditure incurred by the enterprise for the training provided;

- (4) Upon joining the office, the employee shall share his learning, achievements, challenges and other experiences and make a presentation to the company, if required; and
- (5) Serve the enterprise for 6 months however, in the event that the employee resigns before completing the obligation period, he/she shall refund the expenditure incurred by the enterprise for the training provided.

Long Term Training

Eligibility for LTT

104. An employee shall be eligible for LTT when he/she:
 - (1) Has rendered a minimum of three years (including probation) of continuous and satisfactory service with the enterprise at the time of application; and
 - (2) Has served a minimum of one year after a long-term training to avail the next long-term training.

Obligation of an employee nominated for LTT

105. An employee on studies shall:
 - (1) Adhere to the undertaking signed between the employer and the employee;
 - (2) Complete the training within the approved duration prescribed in the **undertaking**; and

- (3) Not change from the training/degree specified in the undertaking or change the Institute/University without prior written approval of the employer.

Post-Training Obligation

106. The employee after completion of LTT shall not avail any other form of leave before completing the reporting requirements.
107. The employee after availing LTT shall be liable as follows:
 - (1) Service obligation:

An employee after availing LTT shall be liable to serve twice the duration of the LTT. In the event, the employee is not able to fulfil the service obligation, he/she shall be liable to pay the corresponding financial obligation;
 - (2) Financial Obligation:

In the event, the employee does not fulfil his service obligation, he/she shall refund the Tuition fee, Stipend/DSA, TA/DA, mileage and any other expenses incurred by the funding agency/enterprise.
108. The employee or the guarantor of employee shall pay the financial obligation within 90 days from the date the office order is issued, failing which legal actions shall be initiated by the enterprise.
109. The financial obligation shall be levied if the employee:
 - (1) Fails to return to the company on completion of the training;

- (2) Voluntarily resigns without completion of the service obligation; and
 - (3) Fails to complete the course or withdrew/discontinued for reasons other than ill-health.
110. In case of demise of an employee during the study period or before completing the service obligation, the financial obligation shall be treated null and void.

CHAPTER 7: WORKERS' COMPENSATION

Employer's Duty to Employees

111. An employer shall insure his or her employee with an authorized insurer to ensure that all types and levels of compensation prescribed in this regulation are covered by an insurance policy, which binds the insurer to make such payments to the insured in accordance with the terms and conditions of the insurance policy.
112. The agreed premium shall be paid by the employer and shall not be deducted from the employee's wage/salary.
113. In the event an employer fails to pay the premium on time and the insurer is not liable for the Compensation, the employer shall pay all compensations liable under this Chapter.
114. An employer or the Insurer shall compensate an employee for injuries, diseases or death arising from the workplace or related to the activities of that workplace. A 'work related' injury, disease or death occurs when an employee is:
 - (1) At any place for the purpose of working for his or her employer;
 - (2) Having a break from work at the workplace for a meal or rest period;
 - (3) In a vehicle provided by the employer to transport employees to and from work;
 - (4) Traveling to or from treatment for a previous work-related injury or disease.

Compensation Payments

Emergency Care

115. The employer or the insurer shall compensate an injured employee or one suffering from an occupational disease for all expenses related to emergency care including ambulance services and related expenses, to the extent such services are not provided free of charge by the Royal Government's health services.

Medical Care and Surgery

116. The employer or the insurer shall compensate an injured employee or one suffering from an occupational disease for all medical and nursing care and all other forms of treatment, in the event such services are not provided free of charge by the Royal Government's health services.

Loss of Earnings

117. The employer or the insurer shall compensate an injured employee or one suffering from an occupational disease for loss of earnings to the amount of 70% of the employee's last monthly basic wage, before the deduction of income tax, but excluding overtime payments, allowances and other benefits.
118. The employer or the Insurer shall continue to pay for loss of earnings until the employee is able to return to work, not necessarily to the same job as before the injury or disease, or for a period of 5 years, or for a period of less than 5 years if the Royal Government takes over responsibility for the employee under its social security arrangements.
119. An employee receiving loss of earnings compensation shall prove his or her identity and continued incapacity to his or her

employer and the employer's insurer by forwarding a declaration every 3 months confirmed in writing by an authorized medical practitioner attesting to the employee's incapacity and inability to undertake work of any kind.

120. If after a period of 5 years the employee is still unable to return to work of any kind the employer or the insurer shall make a lump sum payment equivalent to 360 days of the National Minimum Wage and cease to make payments for loss of earnings.

Disabled Employees

121. An employee who is disabled as a result of injury or disease in addition to being compensated for loss of earnings as provided in sections 118 and 119 of this chapter shall be compensated by the employer or the insurer, for the cost of rehabilitation and re-training services. This shall enable the disabled employee to return to work, not necessarily to the same job, as soon as possible, in the event such services are not provided free of charge by the Royal Government's health services.
122. An employer or the insurer shall meet the cost of any assistive devices to improve the mobility or ability of the disabled employee to work and facilitate his or her return to work if such devices are not provided by the Royal Government.
123. The employer or the insurer shall meet the cost of any adaptations to the workplace or individual workstation to facilitate the return of the disabled worker to the workplace and to enable him or her to undertake productive work.

Support Services

124. The employer or the insurer shall compensate an injured employee or one suffering from an occupational disease for the cost of domestic help and child care services determined necessary by an authorized medical practitioner to assist the employee during the period of recuperation or rehabilitation for a period up to a maximum of 5 years.

Death

125. The employer or the insurer shall pay a lump sum amount to the dependents of an employee who dies as a result of a work-related injury or disease, such amount to be a minimum equivalent to 1080 days of the National Minimum Wage.

126. In addition, the employer or the insurer shall compensate the dependents of an employee who dies as a result of a work-related injury or disease for loss of earnings equivalent to 70% of the employee's last month's basic wage/pay for a period of 1 year from the date of death.

Exceptions to Employer's Liability to Compensate

127. An employer or the insurer shall not be liable for compensation in the following circumstances where:

- (1) The work accident and related injury/occupational disease is the result of the wilful disobedience of an employee to an order or directive expressly framed for ensuring the safety of the employee;
- (2) The work accident and related injury/occupational disease is due to the wilful removal or disregard by the employee to any safety guard or other device or notice that is known by the employee to be provided for the purpose of securing the safety of that employee;

- (3) The accident and related injury is the result of an employee being under the influence of alcohol, drugs or other intoxicating substances, such that the ability of the employee to perform job tasks to the required standard is impaired. An employer must however, take all reasonable measures to ensure that no employee under the influence of alcohol or any other psychotropic substance is admitted to work or to the work premises.
 - (4) The injury or death of the employee occurs in the employee's nonworking time and such injury or death is unrelated to the employee's work or work environment.
 - (5) An occupational disease relates to a medical condition that existed prior to the commencement of the employment contract and has not been exacerbated by the nature of the work required under the current employment situation. An employer must however, ensure that such medical condition existing prior to admission to employment is noted in the medical fitness certificate.
128. Where the injury, disease or death is partly but not wholly due to the act or failure to act of an employee, the employer may be liable to pay part rather than full compensation, as decided by the court.

Reporting an Injury or Death

129. The employee, representative of the employee or employer shall immediately notify the Chief Labour Administrator of an injury or death.
130. On receipt of information concerning the injury or death of an employee, the employer shall submit a detailed report in writing to the Chief Labour Administrator within 5 days of that injury or death. An employer who fails to provide such

notification within the stated time period shall be liable for a fine of up to 360 times the National Minimum Wage.

131. In the event of the death of an employee, the employer shall also notify the nearest police station of that death as provided in **Section 155** of the Act.

Claims

132. If an employee has been insured the employer as the insured party shall lodge a claim with the insurer for injury, disease or death as soon as possible after being notified of that injury, disease or death, and in any case not later than 14 calendar days after receiving the notification.

Retaliation

133. An employer shall not retaliate against an employee reporting or lodging a claim for an accident or disease by discriminating against that employee as provided in **Sections 11 to 14** of the Act.

Fraudulent Claims

134. An employee who makes a fraudulent claim for an injury or disease shall be liable to answer a charge of gross misconduct as provided in the Act leading to possible summary dismissal and a maximum fine of up to 360 days of National Minimum Wage.

CHAPTER 8: PROVIDENT FUND

Participation in the Provident Fund Scheme

135. An employee who has completed the probation period as indicated in the contract of employment shall be entitled to participate in the provident fund scheme.
136. The contributions of both the employer and employee shall commence from the first pay period after the completion of the probation period.

Contributions

137. The employer and employee shall each contribute minimum of 5% of an employee's monthly basic wage to the credit of an employee's provident fund account.
138. The employee provident fund account shall be segregated from other assets of the enterprise and an assured account maintained with an authorized financial institution as determined by the Ministry of Labour and Human Resources.
139. For the purpose of this regulation monthly basic wage means the wage paid to an employee before the deduction of income tax but excluding overtime, allowances and other benefits.

Individual Accounts

140. The authorized financial institution shall maintain a provident fund account for each individual employee and provide an employee with information on the current status of his or her account on an annual basis or at any time on request of the employee.

Interest and Earnings

141. Interest earned on the overall provident fund account shall be credited to an employee's individual account as per norms of the authorized financial institution.
142. Funds held in a provident fund account shall be guaranteed by the authorized financial institution at all times.

Portability of PF Scheme

143. To promote continuity and convenience the PF fund service provider shall allow transfer of contributory deposits, benefits and associated rights from one employment to another or between service providers.

Entitlements

144. On severance of employment other than termination for gross misconduct, an employee shall be entitled to receive the full amount, including interest, credited to his or her individual provident fund account.
145. If a contract of employment is transferred from one employer to another with the consent of the employee, any rights the employee has against the transferring employer are preserved against the new employer.
146. An employee **with a minimum of 5 years continuous contribution to the provident** shall be entitled to receive the full amount, including interest, credited to his or her individual account upon:
 - (1) retires on the basis of age; or
 - (2) voluntarily resigns with the consent of the employer; or
 - (3) is retrenched; or

- (4) is declared redundant; or
- (5) Becomes disabled and unable to work, irrespective of whether the disability arises from work or not.

Less than 5 years' service

147. An employee with less than 5 years' participation in the provident fund scheme irrespective of the actual period of participation shall be entitled to receive the amount of his or her provident fund contributions plus interest credited on those contributions but shall not be entitled to receive any portion of the employer's contribution over that period. The employer shall have the right to claim from the financial institution for his portion of the contribution with interest accrued.

Gross Misconduct

148. An employee who has been dismissed on the grounds of gross misconduct after all procedures required by **Section 87** of the Act, have been complied with shall be entitled to receive the amount of his or her provident fund contributions plus interest credited on those contributions but shall not be entitled to receive any portion of the employer's contribution up to the date of dismissal.

Death

149. The nominee of an employee whose employment is terminated by death, irrespective of whether the death arises from work or not, shall be entitled to receive the full amount standing to the credit of the deceased employee's provident fund account.

Withdrawals from an Individual's Account

150. After 5 years of continuous contribution to the fund an individual employee is entitled to withdraw up to half the amount in his or her account but shall not be permitted to make further withdrawals until a further 5 years period has elapsed.

Payments

151. Provident fund payments to entitled employees shall be made in cash or by transfer to the employee's bank account within 15 working days from the date on which the employee became entitled to receive payment.

Records

152. An employer shall keep records of all receipts, dates and amounts of contribution to the Provident fund accounts for all employees to enable labour inspectors to verify those employees entitled to participate in the fund and the amount of their entitlements.

Penalties

153. An employer who fails to make the required contributions to the fund of an employee in accordance with the provisions of this Regulation shall be liable for a penalty of 90 times the Daily National Minimum Wage.
154. An employer who fails to deposit the required contributions or the employees' contributions by the fifteenth day of the day of payment of salary/wage shall pay a penalty interest of 24% per annum of the total contribution to the employees account for every day delayed.

155. An employer who fails to establish individual and identifiable provident fund accounts in an authorized financial institution, or who diverts the contributions or part thereof for purposes unrelated to the fund's purpose shall be liable for a penalty of 90 times of the Daily National Minimum Wage.
156. An employer who fails to keep the required records shall be liable for a penalty by a fine of 90 times the National Minimum Wage.
157. An employer who fails to pay the full Provident Fund amount to an employee in accordance with the provisions of this Chapter shall be liable for a penalty of 90 times the Daily National Minimum Wage. In the event of noncompliance to this, the employer shall be liable for an offence as per Section 102 of the Act. In addition, the employer shall be liable to compensate the employee for the full amount of his or her entitlement.

CHAPTER 9: GRATUITY

158. The gratuity scheme indicated in this regulation is a ‘defined benefit scheme’ or one that operates without contribution from employees whereby they receive payments on separation from employment based on the work history of the employee.

Employee’s Entitlement

159. An employee shall be entitled to a gratuity payment on completion of minimum of 10 years of continuous employment.

160. Gratuity shall be paid by the employer without any contribution from employees.

161. The employer shall operate a defined gratuity scheme in an authorized financial institution.

162. If a contract of employment is transferred from one employer to another with the consent of the employee, any rights the employee has against the transferring employer are preserved against the new employer. Such a transfer shall not affect the employee’s right to claim continuous employment.

163. Such gratuity payment shall be paid in cash or transferred to the employee’s bank account within 15 working days from the employee’s actual retirement or separation from date.

164. The gratuity payment shall not be paid to an employee who has:

- (1) Not completed the years of continuous employment as prescribed in an enterprise’s Internal Service Rules.
- (2) Been dismissed on the grounds of gross misconduct after all procedures required by **Section 87** of the Act have been complied with.

165. The gratuity payment shall be paid to the employee on separation from service on:
- (1) Retirement on the basis of age;
 - (2) Voluntary resignation with the consent of the employer
 - c) Retrenchment;
 - (3) Being declared redundant; and
 - (4) Becoming disabled and unable to work, irrespective of whether the disability arises from work or not.
166. A gratuity shall be paid to the dependents of an employee whose employment is terminated by death, irrespective of whether the death arises from work or not.

Calculation of Benefit

167. The gratuity payable to an employee shall be based on the last basic pay/wage paid to the employee of his or her employment, unless the employer and employee agree to a more advantageous arrangement for the employee, as stated in the contract of employment. However, should the basic pay/wage paid to the employee in the last month of his/her employment be less than the pay/wage paid to him/her earlier, the gratuity shall be calculated based on the average monthly basic pay/wage paid to him/her during his/her employment with the employer.
168. The payment of gratuity shall be calculated from November 11, 2009 onwards.

Advances Against Gratuity Payment

169. An employee shall not be entitled to receive any advance payment against an accrued gratuity entitlement.

Records

170. An employer shall keep records of duration of service for all employees to enable the Labour Inspectors to verify those employees entitled to gratuity payments.

Penalty

171. An employer who contravenes **Section 170** of this chapter shall be liable to pay a fine of 90 times the Daily National Minimum Wage.
172. An employer who fails to pay the gratuity to an employee in accordance with the provisions of this Regulation shall be liable for a penalty of 90 times the Daily National Minimum Wage. In the event of noncompliance with this the employer shall be liable for an offence as per the **Section 102** of the Act. In addition, the employer shall be liable to compensate the employee to the full amount of his or her entitlement.

CHAPTER 10: HOURS OF WORK

Hours of Work

173. The standard working hours must not exceed 8 hours per day and 48 hours per week, except where workers have agreed to perform overtime work.

Overtime

174. An employee below supervisory level shall be entitled to overtime payments, as provided in **Section 124** of the Act.
175. Hours worked additional to 8 hours per day and 48 hours per week are overtime hours and must not exceed 2 hours per day or 12 hours per week except for those who work on fixed shifts. Such shift workers may perform the entire shift provided no other arrangements can be made. However, no worker shall be required to perform more than one overtime night shift in a week.
176. An employer shall pay a worker performing overtime work at a minimum of the employee normal rate of pay. A rate of overtime pay above the minimum rate can apply if agreed by workers and the employer and included in the Internal Service Rules (ISR) of that workplace.
177. If an employee below the supervisory level is required by the employer to perform work between the hours of 10.00 pm and 8.00 am in the following morning beside his/her normal day shift the employer shall pay an additional 50% of the worker's normal rate of pay for the number of overtime hours worked.

178. All overtime work is voluntary and an employee shall not be penalized by the employer for refusal to perform overtime work.
179. An employer must keep and maintain a record of all normal and overtime hours worked by all employees, including the rates of pay for overtime hours performed, and make this record available to a labour inspector if so requested.
180. An employer requiring an employee to work for more than 2 hours of overtime in a day or 12 hours in a week shall seek prior approval from the Chief Labour Administrator.

Rest Periods and Breaks

181. An employee shall be entitled to a rest break of 10 minutes after 2 hours of work from the time of commencement of each day's work. This rest break shall not be included as part of the employee's working hours. An Employee with the agreement of their employer may choose to forego this rest break and add it to their meal break, or forego it completely to enable an earlier finish time.
182. An employee shall be entitled to a meal break of 30 minutes after 4 hours of work, but the meal break shall not be included as part of the employee's working hours.
183. The actual duration and timing of rest and meal breaks can be varied by agreement between the employer and employees but shall not be less than 30 minutes per 8-hour period.
184. An employee working less than 2 hours per day is not entitled to a rest break.
185. An employee working less than 4 hours per day is not entitled to a meal break.

Daily and Weekly Rest Periods

186. An employee shall have a daily rest period of a minimum of 12 consecutive hours.
187. An employee shall have a weekly rest period of 24 consecutive hours except that performing overtime night shift under **Section 175** of this chapter.

Penalties

188. An employer who contravenes **Section 173 to 187** of this chapter shall be liable for a penalty of 90 times the Daily National Minimum Wage.

CHAPTER 11: LEAVE

189. The ISR/contract of employment between an employer and an employee may include other leave entitlements and arrangements that are more advantageous to the employee than those contained in this regulation.

Annual Leave

190. An employee who works for an employer for 6 or more months of continuous employment shall be entitled to paid annual leave.
191. Annual leave shall accrue at the minimum rate of 1.5 days per month, or minimum of 18 working days per year, such accrual to commence after the employee has completed 6 months of service, but leave shall not be taken until a minimum of 12 months of continuous employment has been completed.
192. Annual leave shall be paid at the employee's normal rate of pay, before tax but excluding allowances, that was paid to the employee in his or her most recent pay period.
193. A part-time employee who is entitled to paid annual leave shall be paid at the part-time employee's normal rate of pay that was paid to the part-time employee in his or her most recent pay period.
194. Annual leave does not include a public holiday that falls during the leave period.
195. Employees entitled to annual leave shall be entitled to encash their leave.
196. Unused annual leave shall accumulate for 3 years, or longer if agreed between the employee and the employer, following

which period the unused portion of leave is forfeited by the employer.

197. On termination of employment, including summary dismissal or redundancy, employees with accrued entitlements to paid annual leave shall be paid their entitlement at the normal rate of pay that was paid to the employee in his or her most recent pay period.

Notification to employer

198. An employee and employer shall agree when the employee is to take a period or periods of annual leave. If the employee and the employer cannot agree when the employee is to take annual leave, the employer has the right to decide and, in such cases, shall give the employee 14 calendar days written notice of the starting date of the leave.
199. An employee shall be entitled to take annual leave for part of a working day.

Payment for annual leave

200. The employer shall pay to the employee for the unavailed annual leave unless otherwise agreed.

Records

201. The employer shall maintain a register, either manual or electronic, of annual leave entitlements and annual leave taken by all employees.

Sick leave

202. An employee who works for an employer for 6 or more months of continuous employment shall be entitled to be paid sick leave.
203. For a full-time employee sick leave shall accrue at the minimum rate of 5 working days per year, such accrual to commence after the employee has completed 6 months of service.
204. Sick leave shall be paid at the employee's normal rate of pay that was paid to the employee in his or her most recent pay period.
205. A part-time employee who is entitled to pay sick leave shall be paid at the part time employee's normal rate of pay that was paid to the part-time employee in his or her most recent pay period.

Notification to employer

206. An employee taking or seeking to take sick leave shall notify the employer in advance of any sickness that will cause the employee to be absent from work and the approximate period of absence or, if this is not possible in times of emergency, notify the employer as promptly as possible personally or through another person of the absence and the approximate period of such absence.
207. The failure of an employee to provide advance or prompt notice of intended sick leave may, at the discretion of the employer, cause the employee to lose that sick leave entitlement.
208. If the employer so requests, the employee shall give evidence of the nature of the sickness, such evidence to include a signed certificate from a registered medical practitioner in Bhutan

indicating the employee is sick and unfit for work. The failure of an employee to provide the evidence requested may, at the discretion of the employer, cause the employee to lose that sick leave entitlement.

Other entitlements

209. An employee shall be entitled to take sick leave for part of a working day.
210. An employee who has used his or her sick leave entitlements but is unable to return to work due to sickness may, at the discretion of the employer, draw on his or her unused casual or annual leave entitlements.
211. An employee shall not be entitled to encash unused sick leave entitlements.
212. Unused sick leave shall accumulate for 5 years, or longer if agreed between the employee and the employer, following which period the unused portion of leave is forfeited by the employee.

Records

213. The employer shall maintain a register, either manual or electronic, of sick leave entitlements and sick leave taken by all employees.

Casual leave

214. An employee who works for an employer for 6 or more months of continuous employment shall be entitled to paid casual leave.

215. An employee shall be entitled to take casual leave for family related matters including the employee's marriage, marriage of brothers, sisters or children, bereavements of immediate family members, and care of immediate family members in times of sickness and in such other circumstances as agreed with the employer.
216. For a full-time employee casual leave shall accrue at the minimum rate of 5 working days per year, from the commencement of the employment period, such accrual to commence after the employee has completed 6 months of service.
217. Casual leave shall be paid at the employee's normal rate of pay that was paid to the employee in his or her most recent pay period.
218. A part-time employee who is entitled to paid casual leave shall be paid at the part-time employee's normal rate of pay that was paid to the part-time employee in his or her most recent pay period.

Notification to employer

219. An employee taking or seeking to take casual leave shall notify the employer in advance or, if this is not possible, notify the employer as promptly as possible personally or through another person of the absence on casual leave, the reason for casual leave, and the approximate period of such absence.

Other entitlements

220. An employee shall be entitled to take casual leave for part of a working day.

221. An employee who has used his or her casual leave entitlements but requires additional casual leave may, at the discretion of the employer, draw on his or her unused annual leave entitlements.
222. An employee shall not be entitled to encash unused casual leave entitlements.
223. Unused casual leave entitlements shall be merged with the annual leave

Records

224. The employer shall maintain a register, either manual or electronic, of casual leave entitlements and casual leave taken by all employees.

Maternity leave

225. A pregnant full time female employee who works for an employer for 12 or more months continuously under a contract of employment shall be entitled to a minimum of 8 weeks maternity leave with pay, such leave to be for an unbroken period of time with pay based on her normal rate of pay in her most recent pay period.
226. A pregnant part time female employee who works for an employer for 12 or more months continuously under a contract of employment shall be entitled to a minimum of 8 weeks maternity leave with pay, such leave to be for an unbroken period of time with pay based on her average normal rate of pay over the previous three-month period.
227. The employee shall decide when the maternity leave period shall commence and shall take all reasonable steps to notify

the employer as far as possible in advance of that commencement date.

228. An employee shall be entitled to take a maximum of 3 periods of maternity leave during her service with an employer.
229. An employee on maternity leave shall be entitled to use any unused annual or sick leave entitlements to extend the period of paid leave.
230. An employee on maternity leave, with the agreement of her employer, shall be entitled to take unpaid leave to extend the leave period for such time as agreed with her employer.

Procedure for taking and returning from maternity leave

231. An employee wishing to take maternity leave shall give the employer at least 8 weeks' written notice of her intention to take the leave and a medical certificate confirming that she is pregnant and the expected date of birth shall be furnished to the employer.
232. The employee shall give 2 weeks' written notice to the employer of the date she intends to return to work.

Leave for pregnancy-related illness or termination

233. If the employee's pregnancy terminates before the expected date of birth, other than by the birth of a living child, she is entitled to:
 - (1) paid sick, casual or annual leave for as long as the employee's accumulated sick leave entitlements allow; and
 - (2) unpaid leave for as long as a certified medical practitioner certifies it to be necessary.

Work on return from leave

234. On return from maternity leave, the employer shall place the returning employee in the same or a materially similar position to the position held by the employee immediately before starting the leave, and in every case at a rate of pay not less than that was received during the last pay period before the commencement of the maternity leave period.

Records

235. The employer shall maintain a register, either manual or electronic, of maternity leave taken by all employees.

Paternity leave

236. A male employee who works for an employer for 12 or more months of continuous employment and whose legal wife, gives birth shall be entitled to paid paternity leave.
237. A full-time male employee shall be entitled to minimum of 5 working days paternity leave with pay based on the employee's normal rate of pay that was paid to the employee in his most recent pay period.
238. A part time male employee shall be entitled to 5 working days of paternity leave with pay based on his average wage that was paid to him over the previous 3-month period.
239. Unless otherwise agreed with the employer, the employee shall take his paternity leave within 2 weeks of the birth of the child.
240. An employee shall be entitled to take a maximum of 3 periods of paternity leave during his service with an employer.

241. An entitled employee who fails to take paternity leave shall not be entitled to encash it and forfeits the leave entitlement.

Records

242. The employer shall maintain a register, either manual or electronic, of paternity leave taken by all employees.

Unpaid leave

243. Except as provided in **Section 232** of this chapter, or as indicated in a written contract of employment or internal service rules, an employee shall be granted unpaid leave at the sole discretion of his or her employer.

Penalties

244. A person who contravenes any sections of this chapter shall pay fine, for each contravention as follows:

- (1) First offence: Thirty (30) times the National Minimum Wage.
- (2) Second offence: Ninety (90) times the Daily National Minimum Wage
- (3) Third offence: Three hundred and sixty (360) times the Daily National Minimum Wage.
- (4) After third offence, the enterprise may be subject to cancelation of the business licence

CHAPTER 12: NATIONAL MINIMUM WAGES

Fixing the National Minimum Wage

245. The Minister may fix or adjust the National Minimum Wage through executive order in consultation with the government, employers and employees, which shall come to effect from:
- (1) 90 calendar days after the making of the order;
 - (2) A date fixed by the Minister in the order but not earlier than the date of the order.
246. Every minimum wage shall be expressed in a daily rate and a monthly rate and, by calculation, at an hourly rate based on the normal daily working hours, excluding overtime.
247. A minimum wage may be set to reflect differences between:
- (1) Zones, regions or geographic locations in the country;
 - (2) Sectors or industries in the country;
 - (3) Occupations; and
 - (4) Employees of different work status including those under 18 years of age, trainees, disabled workers, and workers on probation.

Consultation

248. The Chief Labour Administrator shall chair the National Minimum Wage Committee comprised of 8 to 10 members, appointed by the Ministry. The committee shall advise the Ministry on the level of minimum wage.
249. The National Minimum Wage Committee shall be comprised as follows:
- (1) Chief Labour Administrator as chairperson;

- (2) Two members from the Royal Government;
 - (3) One representative of employers from the private sector;
 - (4) One representative of employers from the corporate sector;
 - (5) One representative of employees from the private sector;
 - (6) One representative of employees from the corporate sector;
 - (7) The Head of the Department of Labour as the Member Secretary; and
 - (8) Two experts in relevant fields.
250. The National Minimum Wage Committee shall meet as and when required but not less than once a year.

Criteria for Wage Fixing

251. The National Minimum Wage Committee shall take into account the following factors when providing advice to the Minister about a minimum wage or wages:
- (1) The needs of employees;
 - (2) The productivity of employees;
 - (3) The capacity of employers to pay;
 - (4) The general economic environment in which the country is operating, including the competitiveness of business;
 - (5) The general level of wages in the country;
 - (6) Social security benefits; and
 - (7) The cost of living in the country, including variations as between different locations, zones and regions.

Duration

252. Once fixed by the Minister, the National Minimum Wage or wages shall remain in force until revised.

Adjusting the National Minimum Wage

253. In consultation with the National Minimum Wage Committee the Minister may adjust the minimum wage or wages from time to time.

254. After one year of fixing the initial National Minimum Wage or wages, and on a periodic basis thereafter, the National Minimum Wage Committee shall meet to advise the Minister on the need to revise the NMW.

255. In advising the Minister on adjustments to the National Minimum Wage or wages, the National Minimum Wage Committee shall take into account the same factors as in fixing the initial minimum wage or wages as set out in **Section 250** of this chapter.

Compliance and Enforcement

256. An employer shall not pay an employee less than the National Minimum Wage set or adjusted by order of the Minister.

257. An employer who contravenes **Section 255** of this chapter shall pay fine for each contravention as follows:

(1) **First offence: Thirty (30) times the National Minimum Wage.**

(2) **Second offence: Ninety (90) times the Daily National Minimum Wage.**

(3) **Third offence: Three hundred and sixty (360) times the Daily National Minimum Wage.**

- (4) After the third offence, the enterprise may be subject to cancelation of their business licence.

CHAPTER 13: WORKERS' ASSOCIATIONS

Functions of a Workers' Association

258. A workers' association shall represent the members of that association in any matter affecting their rights and interests arising out of their employment at the enterprise including both their working conditions and the working environment.
259. A workers' association shall be entitled to prepare and serve claims on the employer and negotiate a collective bargaining agreement with the employer relating to the terms and conditions of employment including those relating to occupational safety and health.
260. A workers' association shall be entitled to represent an individual worker in any work-related complaint against the employer, participate in an enterprise grievance procedure where so requested by a worker, represent a worker in any case of a sexual harassment complaint lodged by a worker, and be represented on an enterprise safety and health committee where one exists.
261. If a workers' association has been formed to represent the workers at an enterprise, no person or committee other than the workers' association or its duly appointed representative may act or purport to act for the workers in negotiating a collective bargaining agreement.

Formation

262. The workers of an enterprise with 12 or more employees engaged under a contract of employment for a period of 1 year or more shall be entitled to form a workers' association if they

so choose after a minimum 5 continuous years of commercial operation by the enterprise.

263. Workers shall be free to join or not join a workers' association according to their individual choice. An employer shall not take any action to influence the decision of a worker to join or not to join a workers' association.
264. A minimum of 7 workers over the age of 18 years shall be required to form a workers' association.
265. No employee in a managerial or supervisory position in the enterprise shall be entitled to join a workers' association or hold office in that association.
266. The employer shall not interfere in the organization or activities of the workers' association.
267. A workers' association shall not represent the interests of a managerial or supervisory employee.
268. There shall be no more than one workers' association for each enterprise.

Procedure for Formation

269. The formation of a workers' association shall be in accordance with the following procedures:
 - (1) A labour relations officer of the Department of Labour shall meet with a minimum of 75% of the workers of an enterprise to explain the purpose, role and functions of a workers' association. The labour relations officer shall explain the legal rights and obligations of a workers' association, once formed.
 - (2) The meeting shall decide whether or not to form a workers' association, without interference or influence

of the employer, any managerial or supervisory employee, or an officer of the Department of Labour.

- (3) The decision to form a workers' association shall be taken by a majority vote of those workers present at the meeting.
- (4) If the meeting decides to form a workers' association the meeting shall by a majority vote appoint a chairperson to oversee the conduct of the meeting and any subsequent meetings concerning the formation of a workers' association, assisted, as required, by a labour relations officer.
- (5) The labour relations officer shall provide a sample constitution of a workers' association to the chairperson for discussion at meetings of workers to assist them in deciding whether or not to proceed to the formation of a workers' association. The labour relations officer shall be available to explain the nature and importance of a constitution and explain, as necessary, the role and functions of various officer bearers.
- (6) If the meeting decides to form a workers' association, all workers who join the association shall be entitled to vote in the election of the association's office bearers.

Registration

270. A workers' association shall have no status and shall not be permitted to operate until it has had its registration application approved by the Chief Labour Administrator.
271. The workers' association shall apply for registration to the Chief Labour Administrator within 30 calendar days of its formation.
272. The application for registration shall comprise the following:

- (1) Application letter in the form required by the Department of Labour as shown in **Annexure 1**;
- (2) Name of the workers' association;
- (3) Number and names of members;
- (4) Address of the workers' association;
- (5) Name of the enterprise in which the association is formed;
- (6) Details of each office bearer including name, position held in the workers' association, date of birth, sex, highest level of education, job title in the enterprise;
- (7) Copy of the constitution or charter of the association setting out its purpose, objectives, operational procedures and rules; and
- (8) Minutes of the meeting establishing the workers' association including the names of those present and the resolutions passed by that meeting.

273. The Chief Labour Administrator shall within a period of 15 calendar days from receipt of the registration application notify in writing the workers' association of the outcome of its application.

274. If the registration application is approved, the Chief Labour Administrator shall indicate to the workers association the date of its effective registration, which shall in normal circumstances be the date of approval of the application by the Chief Labour Administrator.

275. If the registration application is approved, the Chief Labour Administrator shall notify the enterprise in which that association exists of the registration and its effective date and shall draw the attention of the enterprise to its obligations under the law concerning workers' associations.

276. If the registration application is not approved, the Chief Labour Administrator shall notify the workers association in writing, including the reasons for the non-approval of the registration application.
277. The non-approval by the Chief Labour Administrator of a registration application shall not be a barrier to that workers' association making a further application for registration at a later date.
278. The registration of a workers' association shall be effective for a period of 3 years after which time it shall be eligible to apply for renewal of registration.
279. An application for renewal of registration shall be in the form prescribed by the Department of Labour, as shown in **Annexure 2**.
280. If an application for registration or renewal of registration is not approved by the Chief Labour Administrator, the applicant shall be entitled to lodge an appeal with the Minister of Labour and Human Resources within 30 calendar days of the receipt of the non-approval by the Chief Labour Administrator. The Minister shall make a decision on the appeal within 15 calendar days and notify the applicant in writing.

Effect of Registration

281. Once a workers' association has received a notice of registration from the Chief Labour Administrator the workers' association shall:
 - (1) Have an existence distinct and separate from its members;
 - (2) Be able to operate in its own name;

- (3) Be able to open and operate a bank account in its own name;
- (4) Be able to collect subscriptions from its members;
- (5) Be able to make disbursements from its bank account;
- (6) Be able to take legal action in its own name;
- (7) Be liable to have legal action taken against it;
- (8) Be required to submit an annual report and financial statements to its members and the Chief Labour Administrator;
- (9) Be able to request the employer to operate a ‘check off’ system whereby the employer deducts member subscriptions from each member’s monthly pay and transfers this amount to the credit of the association’s bank account at the end of each month;
- (10) Be able to prepare and serve claims on the employer for future benefits;
- (11) Be able to negotiate and enter into a collective bargaining agreement with the employer;
- (12) Be able to participate in the enterprise grievance procedure;
- (13) Be able to participate in the enterprise sexual harassment procedure;
- (14) Be able to assist in the settlement of complaints within the enterprise; and
- (15) Be able to participate in a safety and health committee within the enterprise.

Deregistration

282. In the event of a workers’ association ceasing to function within the enterprise, the association through its office bearers shall notify the Chief Labour Administrator of its dissolution,

and indicating the arrangements to be made for meeting any financial liabilities of the association, and or the arrangements for the disbursement of any credit balances held in its bank account.

283. If the Chief Labour Administrator is satisfied that dissolution of the association meets all financial requirements and obligations, the Chief Labour Administrator shall notify the association in writing that it has been deregistered and ceases to operate, and shall also notify the enterprise in which the association was formed.
284. The Chief Labour Administrator shall be empowered to initiate the dissolution of a workers' association if there is evidence that the workers' association has operated in breach of the Act or its Regulations, or operated in breach of its own constitution or charter, or a majority of workers in the enterprise lodge a complaint in writing to the Chief Labour Administrator concerning the association's functions, activities or operations.

Workers' Association Committee

285. A workers' association once formed shall elect a committee as the elected officer bearers of that association, in accordance with the procedures as indicated in the constitution or charter of that association.
286. The workers of an enterprise may at any time request the Chief Labour Administrator to assist with the election of a workers' association committee, and the Chief Labour Administrator shall direct a labour relations officer to attend and provide assistance as soon as possible.
287. The workers' association committee shall meet at any time it considers necessary and conduct its meetings according to the

procedures established in the charter or constitution of its workers' association.

288. The chairperson of the committee shall ensure that accurate records are kept of the meetings and the decisions of the committee.
289. The chairperson shall make all records of the committee's meetings available to any member of the workers' association.

Labour Dispute Relating to a Workers' Association

290. In the event of the majority of workers in an enterprise lodging a complaint concerning the functions, activities or operations of the workers' association of that enterprise, that complaint shall in the first instance be treated as a grievance within the enterprise and resolved, if possible, through the application of the enterprise's grievance procedure.
291. If the complaint by workers is not resolved through the application of the enterprise's grievance procedure, the complainant shall notify the Chief Labour Administrator of the existence of a labour dispute, and the dispute resolution procedures as provided in the Labour and Employment Act, 2007 shall be applied.
292. During the hearing of the complaint, application of the grievance procedure and the dispute resolution procedure respectively, the workers' association shall continue to exist and the workers lodging the complaint against its functions, activities or operations shall not be permitted in any circumstances to form or attempt to form an alternative workers' association.

Protection of Association Members and Office Bearers

293. Workers' association committee members, office bearers, and rank and file members shall be protected against any acts that prejudice their continued employment in the enterprise or that discriminates against them, including dismissal, transfer, non-promotion, or demotion, based on their status in or membership of a workers' association, or based on their activities in a workers' association, in so far as such representatives and members operate within existing laws, the ISR, custom and practice, or collective agreement.
294. The protection referred to in **Section 293** shall include candidates for election as office bearers or committee members in a workers' association as well as former office bearers or committee members of a workers' association.

Rights of Workers' Association and its Committee

295. No person shall obstruct a workers' association or prevent the association from forming, meeting, raising a grievance or becoming involved in a labour dispute, negotiating or otherwise advancing or protecting the rights or interests of workers at the enterprise, or performing any of its other functions under the Act or its Regulations.
296. An employer shall provide the workers intending to form a workers' association reasonable facilities and time off with pay based on each member's normal rate of pay to enable them to meet together during working hours at the enterprise, provided that the ordinary conduct of the employer's business is not unduly interfered with.
297. The committee of a workers' association shall be entitled to paid time off at the normal rate of pay and without loss of other benefits to attend meetings and training activities associated with the work of the association, subject to the

approval of the employer or the employers' representative, but with such approval not being unreasonably withheld.

298. The committee of the workers association shall be provided with facilities in the workplace to enable it to carry out its functions promptly and efficiently, but the provision of such facilities shall not impair the efficient operation of the workplace.
299. The members of the committee of the workers' association shall:
- (1) Have access to all parts of the workplace necessary for the efficient conduct of its operations;
 - (2) Be permitted to post notices in the workplace in such places as agreed with management;
 - (3) Be permitted to distribute information, news sheets, and pamphlets provided such distribution does not prejudice the operations of the enterprise or its tidiness;
 - (4) Have reasonable access to information, including the names and positions of all workers within the workplace, for the effective operation of its functions, subject to the approval of the employer; and
 - (5) Have reasonable access to information to assist in preparing claims against the employer as part of the collective bargaining process.

Subscriptions

300. The workers' association at the time of its formation shall decide the monthly subscription fee of its members, either as a fixed sum or as a percentage of a worker's salary.
301. The agreed subscription fee shall not be changed other than by a majority vote of members at an association meeting to which all members have been invited.

302. The workers' association shall decide at the time of its formation by majority vote whether to request the employer to deduct the subscription fee from each worker's monthly pay as part of a check off system. An employer shall not be obliged to agree to such a request.

Reporting Obligations

303. The committee of a workers' association shall prepare an annual report and financial statements for presentation to an annual meeting of the workers' association to which all members shall be invited to attend. The report and statements are to be prepared in accordance with the provisions of the association's constitution or charter.

304. A copy of the annual report and financial statements, together with any accompanying resolutions made at the annual meeting of the workers' association, shall be lodged with the Chief Labour Administrator within 30 calendar days of the date of that annual meeting.

Collective Bargaining

305. A workers' association through its committee shall be entitled to prepare and serve claims on the employer directed to maintaining and improving the terms and conditions of employment and the working environment of its members.

306. The employer shall within a period of 30 days from the receipt of such claims meet with the designated representatives of the workers' association to discuss such claims.

307. The workers' association and the employer through a process of negotiation shall make all reasonable efforts to reach a mutually acceptable agreement within a reasonable period of time.

308. If the workers' association and the employer reach an agreement, it shall be made in writing, dated and be known as a collective bargaining agreement.
309. If the workers' association or its committee negotiates a collective bargaining agreement with an employer, this agreement shall be referred to a meeting of the workers' association to which all members, have been invited. If more than fifty per cent of the members present at the meeting approve the agreement, the agreement shall become binding on the employer and the workers, subject to the endorsement of the Chief Labour Administrator.
310. The collective bargaining agreement shall be submitted to the Chief Labour Administrator within 7 calendar days of its approval by the members of the association with a view to advising the parties whether the agreement complies with the Act and its regulations.
311. The Chief Labour Administrator shall advise the parties within 7 calendar days whether or not the agreement complies with the law and regulations. If the agreement so complies, the workers and the employer shall then proceed to implement the agreement. If the agreement does not comply, the workers and employer shall meet with a view to renegotiate the agreement.
312. A collective bargaining agreement negotiated in terms of this regulation shall not be affected by:
- (1) A change in membership of the management or ownership of the employer; or
 - (2) A change in membership of the workers' association committee or the workers concerned; or
 - (3) A transfer of the undertaking or enterprise in which the workers concerned are employed.

CHAPTER 14: GRIEVANCE PROCEDURE

313. A grievance procedure shall normally relate to the existing rights of workers under the Act and its Regulations, a written contract of employment, the ISR, a collective bargaining agreement between workers and their employer, and rules established by custom and practice.
314. A grievance procedure shall apply to future benefits and rights only to the extent such benefits and rights are not covered by a collective bargaining arrangement between a workers' association or a group of employees, and their employer.
315. A grievance procedure shall be distinguished from a disciplinary procedure. A disciplinary procedure shall normally be included in the ISR of the enterprise, and aims to redress breaches of enterprise rules by workers by stipulating the range of possible actions to be taken by management against any workers found after due enquiry to be in breach of such rules.
316. Employers with a grievance against a worker or workers shall first exhaust the disciplinary procedure as included in the ISR, before making use of the grievance procedure within the enterprise.

Preparation

317. A grievance procedure shall be prepared in consultation with the workers' association or employees' representatives of the enterprise.
318. A grievance procedure shall be agreed and signed by the employer and representatives of the workers' association or employees' representatives of an enterprise.

319. The grievance procedure shall be written in simple language and brought to the notice of all employees within the enterprise.
320. The grievance procedure shall be periodically reviewed by the employer and the workers' association or employees' representatives.

Rights and Obligations

321. The employer shall not retaliate in any form whatsoever against an employee who lodges a complaint under the grievance procedure.
322. Any employee who lodges a frivolous or mischievous complaint under a grievance procedure shall be subject to the disciplinary provisions of the ISR of the enterprise or the provisions for misconduct as provided under the Act.
323. An employee lodging a complaint under a grievance procedure shall be entitled to have a representative of the workers' association to assist him or her or, if no such association exists, shall be entitled to seek the assistance of another employee in the enterprise or another person outside the enterprise.
324. An employee lodging a complaint under a grievance procedure shall be entitled to have time off during working hours, such time off to be paid at the same rate as if the employee was working.
325. An employee lodging a complaint under a grievance procedure and the employer shall both respect the time limits set under the procedure and shall make every effort to resolve the complaint within the stipulated time.
326. An employee lodging a complaint under a grievance procedure and the employer shall both do their utmost to

resolve the complaint within the enterprise before notifying the complaint to the Chief Labour Administrator.

327. An employee lodging a complaint under a grievance procedure and the employer shall use the grievance procedure with a clear understanding that this in no way limits, reduces or compromises their rights under the Laws of Bhutan.

Procedural Steps

328. The grievance procedure shall comprise of a number of clearly defined steps which shall be decided by the enterprise in consultation with the workers' association or employees' representatives in accordance with its size and production processes.
329. Each step shall indicate what the complainant shall do, who shall receive the complaint, and the time period in which the complaint shall be dealt with.
330. The employer shall make clear to all employees the name and position of each employee's immediate supervisor to ensure that a complainant knows who to contact in the event of a complaint. If the complaint is against the employee's immediate supervisor, the employee shall have the right to lodge the complaint to any of the managers/supervisors deemed appropriate by him/her.
331. The employer shall take steps to ensure that all supervisors and managers identified at various steps in the grievance procedure are aware of their role and obligations under the procedure.
332. The supervisor or manager at each step in the procedure shall keep a written record of proceedings and make this record available to the complainant for verification and agreement.

333. The enterprise shall compile a list of third-party facilitators to be contacted and used at the last step in the procedure should the complaint not be resolved at an earlier step.
334. If grievance remains unresolved following an attempt to settle it by applying the workplace grievance procedure at workplace, the party or the parties who initiated the grievance shall submit in writing to the CLA within 15 working days.
335. A sample grievance procedure shall be made available by the Department of Labour to any enterprise seeking guidance in the preparation of such a procedure.

CHAPTER 15: INTERNAL SERVICE RULES

Preparation

336. Every licenced enterprise having employer and employee relations shall have an Internal Service Rules (ISR).
337. The ISR shall be prepared and signed by the employer in consultation with representatives of the employees.
338. The signed copy of the ISR shall be submitted to the Chief Labour Administrator for review and endorsement.
339. In the event of amendment in the Act and its Regulations, the enterprise shall be required to make the necessary changes in consultation with employee's representatives and submit them to the Chief Labour Administrator for verification and endorsement.
340. The Chief Labour Administrator shall notify the enterprise of approval or non-approval of the ISR within 21 calendar days from the date of submission.
341. The ISR approved by the Chief Labour Administrator shall take effect from the date of approval and shall have no retrospective application.
342. The ISR shall be enforceable only upon endorsement by the Chief Labour Administrator.
343. The ISR not approved by the Chief Labour Administrator shall be returned to the enterprise within 21 calendar days of the receipt, indicating the reasons for non-approval and re-directing the enterprise to rectify shortcomings and re-submit within 14 calendar days.

Content

344. The ISR shall comply with the minimum standards set out in the Act and its Regulations.
345. The ISR may contain terms and conditions that exceed the minimum standards of the Act and its regulations, but any terms and conditions that are less than those minimum standards shall be null and void and of no legal effect.
346. The ISR shall make specific reference but not necessarily be confined to the following:
 - (1) Non-discrimination
 - (2) Sexual harassment
 - (3) Child labour
 - (4) Employment of foreigners
 - (5) Recruitment procedures
 - (6) Written contracts of employment
 - (7) Probation
 - (8) Salary Structure
 - (9) Payment of wages
 - (10) Overtime rates
 - (11) Wage advances
 - (12) Allowances
 - (13) Bonuses, service charges
 - (14) Loans and advances to employees
 - (15) Gratuities
 - (16) Compensation for injury, disability or death due to work accidents or occupational diseases
 - (17) Provident fund
 - (18) Redundancy payments
 - (19) Working hours and breaks

- (20) Commencement and finishing times of work
- (21) Public holidays
- (22) Annual leave
- (23) Casual leave
- (24) Sick leave
- (25) Special leave
- (26) Maternity leave
- (27) Paternity leave
- (28) Leave encashment
- (29) Promotion system
- (30) Increment
- (31) Night work
- (32) Disciplinary procedures
- (33) Summary dismissal
- (34) OHS policy, rules and implementation
- (35) Accidents and incidents
- (36) OHS representatives
- (37) Consultation with employees
- (38) Training
- (39) Information for employees
- (40) Grievance procedures
- (41) Workers' Association

Dissemination

347. The ISR once approved shall be displayed in one or more prominent locations in the workplace in a language understood by workers.

348. New employees shall be provided with a copy of the ISR or have them brought to their notice by other means including reference to notice boards or other means of display.
349. An enterprise must reasonably ensure that the contents of the ISR are explained and comprehended by illiterate workers of the enterprise if any.

Review

350. The ISR shall be reviewed by the employer and the workers' association or employees periodically.
351. The amendment of the ISR shall be framed in consultation with all the employees. Endorsement of the same shall be subject to submission of a signed agreement by all the employees.

Model ISR

352. The Department of Labour shall on request provide enterprises with a sample template and guidelines for the preparation of the ISR and provide advice as required to assist in their preparation and implementation.

Penalty

353. An employer who fails to frame and endorse the ISR by the MoLHR shall be liable to pay a fine of 90 times the Daily National Minimum Wage.

CHAPTER 16: FOREIGN WORKERS RECRUITMENT AGENTS (FWRA)

Registration and De-registration of the FWRA

354. An applicant for the operation of a FWRA shall:
- (1) Register with the MoLHR; and
 - (2) Obtain the business licence from the Ministry of Economic Affairs (MoEA).
355. An applicant for the FWRA shall fulfil the following conditions before registration:
- (1) Submit a written proposal to the MoLHR;
 - (2) Undertake an interview or selection process; and
 - (3) Successfully complete the interview or selection process to carry out the operation of a FWRA.
356. The Ministry shall notify the result of the interview or selection process to the applicant.
357. An applicant for the FWRA shall have a right to appeal to the MoLHR within 15 working days of receiving the notice of the result.
358. The MoLHR shall take a decision and communicate to the applicant within 15 working days from the date of appeal.
359. The approved FWRA shall sign a record of understanding (Annexure I) with the Chief Labour Administrator.
360. The approved FWRA shall sign a Record of Understanding with the MoLHR.
361. The approved FWRA shall receive a Certificate of Registration, signed and issued by the Chief Labour Administrator within 30 working days of signing the record of understanding.

362. The Certificate of Registration shall be renewed after two years from the date of issue.
363. The MoLHR shall determine the renewal of the Certificate of Registration based on the periodic report and recommendations of the Regional Offices.
364. The Certificate of Registration shall not be renewed if the FWRA has breached any relevant Acts and/or Regulations.
365. Upon obtaining the certificate of registration from the MoLHR, the applicant must fulfil the conditions as required under the relevant Regulations of the MoEA for obtaining the business licence.
366. A copy of the business licence must be submitted to the MoLHR to activate the user account for the FWRA in the Labour Net System.
367. A person who operates as a FWRA without a license shall be liable to pay a fine of 1080 days times the National Minimum Wage.

Registration, Renewal Fees and Service Charge

368. A FWRA shall pay a registration and renewal fees as decided by the MoLHR, at the time of the issuance of the certificate of registration.
369. The FWRA may charge the employer, a maximum of 20% of the first month's basic wage of the foreign worker as a service charge.
370. The employer shall bear the cost-of-service charge, work permit fees, transportation and medical check-ups and not recover the same from the foreign worker.
371. The FWRA shall maintain a record of fees collected from an employer.

372. A record of fees shall be:

- (1) Included in a monthly report to be submitted to the Ministry's Regional Office; and
- (2) Made available to the Regional Office and MoLHR on demand.

Office of the FWRA

373. A FWRA shall employ only Bhutanese workers.

374. The FWRA shall employ at least a Manager, a Computer Operator and a Labour Coordinator.

375. The employees hired under **Section 374** of this chapter shall perform the following functions related to foreign workers:

- (1) Screen;
- (2) Recruit;
- (3) Manage;
- (4) Repatriate; and
- (5) Any other functions related to a foreign worker.

376. The office of a FWRA shall at least have basic office equipment with internet and communication facilities.

Premises

377. The minimum Office space shall be at least 25 sq/m.

378. The FWRA shall not share the Office space for other purpose.

379. The FWRA shall not operate from their residence.

380. The premises of the Office of the FWRA shall be easily accessible to the employer, foreign worker and labour inspector.

381. The FWRA shall notify the Regional Office of:
- (1) Any change in the location of the Office of the FWRA within 7 working days;
 - (2) Any change in contact details; and
 - (3) The closure of their business to cancel their user accounts within 7 working days.
382. The FWRA who fails to comply with **Sections 377 to 381** of this chapter shall be liable to pay a fine of 90 days times the Daily National Minimum Wage.

Contract of Agreement between a FWRA and the Employer

383. An employer shall make a written authorization request to the FWRA mentioning the exact number of foreign worker(s) required.
384. On the receipt of the written authorization request from the employer, the FWRA shall enter into a contract with the employer.
385. The FWRA shall retain a copy of the contract and make it available to the Regional office/MoLHR on demand.
386. The FWRA who applies for the recruitment of foreign workers shall abide by the Guidelines for Licensing of FWRA issued by the MoLHR from time to time.

Procedure for the Approval of a Foreign Worker

387. The FWRA shall process for the approval of the foreign worker on receipt of a job offer from the employer as follows:
- (1) Apply to the MoLHR online on behalf of the employer;

- (2) Submit the following documents of the foreign worker to the concerned Regional Immigration Office after the approval of the Ministry:
 - (i) Form 'B(II)' issued by the Department of Immigration;
 - (ii) Medical fitness certificate; and
 - (iii) Identification document.
- (3) Obtain work permit for the foreign worker;
- (4) Transport the foreign worker to the workplace and hand over to the employer; and
- (5) Renew the work permit of the foreign worker 15 days before the expiry of the work permit after obtaining authorisation from the employer.

Responsibilities of a FWRA

388. A registered and licensed FWRA shall:

- (1) Maintain and be accountable for the user account in the Labour Net System;
- (2) Abide by the Licensing Rules and Regulations;
- (3) Abide by the Handbook on Recruitment and Employment of Foreign Workers in Bhutan;
- (4) Use the EM (employer number) of the clients and not the user account while applying online and mention employers contact details;
- (5) Ensure that the foreign worker recruited and placed by them is not exploited and abused by the employer;
- (6) Ensure that the foreign worker is paid the wage agreed in the contract of employment by the first week of the following month;

- (7) Ensure that the foreign worker is in possession of their work permit at all times; and
 - (8) Ensure that the foreign worker is repatriated following proper procedures after the completion of the work.
389. The FWRA shall not recruit a foreign worker:
- (1) With undesirable antecedent likely to cause harm to the country; or
 - (2) With adverse record and having absconded from the country.

Maintenance of Record

390. The FWRA shall maintain a record of foreign workers recruited and placed by them.

Submission of Report

391. The FWRA shall submit a monthly report to the Regional Office/MoLHR.

Inspection and Monitoring by Labour Officers

392. A labour inspector shall assess the compliance of the FWRA with the Act and its Regulations in regard to:
- (3) The contract between the FWRA and the employer; and
 - (4) The information and reporting requirement of the FWRA.

Penalty

393. A person who operates as a FWRA without a licence shall be liable to pay a fine of 1080 times the Daily National Minimum Wage.
394. The FWRA who contravenes the **Section 369** of this chapter shall be liable for the following:
- (1) First time offender: Pay a fine of 90 times the Daily National Minimum Wage and refund the client with 24% per annum interest for the excess amount collected.
 - (2) Repeat offences shall lead to suspension of the certificate of registration for 5 years.
395. The FWRA who contravenes **sections 373 to 376** of this chapter shall be liable to pay a fine of 90 times the Daily National Minimum Wage.
396. The FWRA who fails to comply with **sections 387 and 388** of this chapter shall be liable to pay a fine of 90 days times the National Minimum Wage.
397. The FWRA who contravenes the **Section 389** shall be dealt as per the Immigration Act of the Kingdom of Bhutan.
398. The FWRA who contravenes the **Section 391** shall be liable for penalty of 90 times the Daily National Minimum Wage.

CHAPTER 17: RECRUITMENT AND MANAGEMENT OF FOREIGN WORKER

Approval of Work Permits for Foreign Workers

399. The services of foreign workers shall be governed by the Act and its Regulations, and other relevant laws of the country.
400. Foreign workers shall be permitted for occupations against which Bhutanese are not available.
401. Foreign workers shall not be allowed in closed occupations, the list of which shall be revised by the MoLHR from time to time.
402. Foreign workers can be recruited only after obtaining approval for work permits from the MoLHR. The duration of the work permit shall be approved for a maximum period of one year at a time.
403. The number of foreign workers for various sectors shall be decided by the MoLHR from time to time based on the labour market situations.
404. The total number of foreign workers in the country shall be as per the ceiling prescribed by the Government from time to time.
405. Foreign workers shall be permitted to work only at approved work sites.
406. Upon receiving approval for the work permits of the foreign workers, the employer/ FWRA shall initiate the recruitment process.

407. The work permit cards for the foreign workers shall be issued by the competent authority identified by the government.
408. All costs related to processing the work permit shall be borne by the employer.

Entry and Exit of Foreign Worker

409. The FWRA/employer shall ensure that all foreign workers enter and exit the country on completion of all the immigration formalities as prescribed in the Immigration Rules and Regulations.
410. In the event that a foreign worker absconds from the country, the employer must report this to the MoLHR.

Responsibilities of the Employer and the FWRA

411. The employer/FWRA shall:
 - (1) Strictly follow the procedures for recruitment as prescribed in the “Handbook on Recruitment and Employment of Foreign Workers in Bhutan”;
 - (2) Employ foreign workers who are above 18 years of age;
 - (3) Ensure that only those foreign workers are recruited who have no criminal records and also who have earlier left Bhutan after completing the immigration formalities and with permission of the employer;
 - (4) Be fully responsible for the screening, recruiting, managing and repatriating of their foreign workers;
 - (5) Ensure that foreign workers recruited and placed by them are not exploited and abused;
 - (6) Ensure that foreign workers are employed only by the designated employer;

- (7) Ensure that foreign workers are in possession of work permits at all times;
- (8) Ensure that foreign workers work in approved work sites only.
- (9) The employer shall bear the cost of processing work permit cards for the foreign workers;
- (10) Ensure that in the event of sickness/death of a foreign worker, all necessary supports and arrangements are provided;
- (11) Ensure proper accommodations are provided to the foreign workers who are required to stay at the worksite;
- (12) Be responsible for looking after the welfare of the foreign workers as per the Act and its Regulations; and
- (13) Provide proper care and guidance to the foreign workers during their tenure in Bhutan.

412. The employer/FWRA shall not:

- (1) Employ a foreigner unless the employer has an approved work permit from the MoLHR;
- (2) Knowingly assist a person to employ a foreigner without work permit;
- (3) Permit the foreigner to work for another person without the approval of the MoLHR;
- (4) Terminate the contract of employment of an employee who is a citizen or resident of the Kingdom of Bhutan for the purpose of employing a foreigner;
- (5) Terminate the contract of employment of a citizen or resident of the Kingdom of Bhutan unless he or she has first terminated the contracts of all foreign workers employed by him or her who are working in a similar capacity;

- (6) Recruit foreign workers who have undesirable antecedents and likely to cause harm to Bhutan and her people; and
- (7) Recruit foreign workers who have absconded from the country previously and have criminal records.

Code of Conduct and Ethics

413. A foreign worker shall:

- (1) Respect the values, tradition, culture and law of the country;
- (2) Respect the systems, policies, rules and procedures of the country;
- (3) Declare medical conditions during the medical screening;
- (4) Demonstrate exemplary behaviour at all times that are congenial to the decorum of the Bhutanese society;
- (5) Be honest and sincere in his/her duty;
- (6) Possess a valid work permit card during his/her employment period in Bhutan;
- (7) Work for only his/her employer; and
- (8) Refrain from visiting places restricted for entry by foreigners without specific permits.

414. A foreign worker shall not:

- (1) Engage in politics, proselytization, corrupt practices and illegal activities;
- (2) Engage in anti-government activities, terrorism and such other actions that would undermine the peace, security and sovereignty of the country;

- (3) Criticize the system of government and its policies and programs through speech or in writing while in Bhutan and after repatriation;
- (4) Pose any danger to the socio-economic and political stability of the country;
- (5) Seek to enter into arrangements with a Bhutanese citizen that will result in a prolonged stay in Bhutan; and
- (6) Leave the job and country without completing the exit formalities.

CHAPTER 18: DEFINITIONS

The following words, phrases and acronym are defined for the purpose of this regulation unless the context indicates otherwise.

Accident means any unintended or unforeseen event or mishap arising from work activity that results in death or injury to an employee.

Act means the Labour and Employment Act, 2007 and includes any other regulations issued under the Act.

Applicant includes a person who makes a formal application to the Ministry of Labour and Human Resources to operate as a FWRA.

Business Licence refers to a licence issued to the FWRA by the Ministry of Economic Affairs.

Chief Labour Administrator means for the purpose of this Act, the Head of the Secretariat of the Ministry of Labour and Human Resources or an officer of the Royal Civil Service recruited, selected and appointed under the Bhutan Civil Service Rules to exercise the functions and powers in sections 22 to 24 of this Act.

Continuous employment means employment under an unbroken contract of employment, whether full or part time work.

Contract of employment means an agreement, whether oral or in writing, expressed or implied to employ or to serve as an employee for payment and includes a contract of training.

Death means the end of life, the permanent cessation of all bodily functions.

Department of Immigration means the Department of Immigration under the Ministry of Home and Cultural Affairs in the Royal Government of Bhutan.

Department of Labour means the Department of Labour under the Ministry of Labour and Human Resources.

Dependant means a member of the family of an employee who was wholly or partly dependent on the employee's earnings at the time of the employee's death, and includes legal spouse, child or parent.

Disability means the inability to perform a range of tasks to a reasonable standard considered normal for a particular job or work activity due to some physical, mental or sensory impairment. The degrees of disability are assessed in relation to a job or work activity rather than the extent of physical, mental or sensory impairment.

Discrimination means if a person is treated less favourably, either directly or indirectly, on the basis of race, colour, sex, marital status, pregnancy, religion, political opinion, social origin or involvement in a workers' association or as an occupational health and safety representative.

Employee means a person employed under a contract of employment.

Employer means a person who employs one or more other persons under a contract of employment.

Enterprise means the business of an employer comprising of one or more workplaces.

Foreign worker means a foreigner recruited by the FWRA/ employer from country other than Bhutan to work for the employer.

Foreigner means a person who is not a citizen or resident of the Kingdom of Bhutan, or who is living in the Kingdom and is married to a Bhutanese citizen.

FWRA refers to Foreign workers' recruitment agent which means an agent who is registered with the Ministry of Labour and Human Resources and obtained a business licence from the Ministry of Economic Affairs to operate as a FWRA and includes the branch office of the FWRA.

Grievance means a complaint by one or more workers, a workers' association, or an employer, relating to any matter concerning working conditions or the working environment arising at work or out of the workplace, as covered by the Act.

ISR refers to Internal Service Rules.

Identification document means documents such as passport, voter's card or identity card.

Immediately means within 12 hours of any accidents or dangerous occurrence occurs at workplace.

Injury means any physical, mental, or emotional deprivation or damage to a person resulting from an accident or exposure to risk over a period of time as, for example, with hearing loss.

Insurer means Insurance Company in Bhutan with which a worker is insured and to which the monthly or annual premium is paid.

Job consists of a set of specific tasks, both mental and physical, that are undertaken in order to produce something or provide a service.

Labour dispute means an actual, threatened or probable dispute notified under section 193 involving any employer, one or more employees or a workers' association about any other matter affected by this Act.

Labour Inspector means an officer of the Royal Civil Service recruited, selected and appointed under the Bhutan Civil Service Rules to exercise the functions and powers in sections 26 to 29 of this Act.

Minister refers Minister for Labour and Human Resources.

Ministry refers to the Ministry of Labour and Human Resources.

MoLHR means Ministry of Labour and Human Resources

National Minimum Wage is a time-based wage that applies to unskilled adult workers or adult workers of different qualifications and skills and workers under 18 years of age entering work for the first time, set at a level that provides sufficient purchasing power to enable an employee to enjoy a basic standard of living. The National

Minimum Wage is set at a daily and monthly rate, and can be calculated at an hourly rate in accordance with the normal daily working hours, excluding overtime.

Night work means work between the hours of 10 o'clock at night and 8 o'clock the following morning.

Normal rate of pay means the rate of pay for a specific unit of work or time and excludes allowances, bonuses, overtime payment and other benefits.

Occupation is a group of jobs that are reasonably similar with regard to the tasks performed, and the knowledge, skills and abilities required for the successful performance of those tasks.

Occupational disease means any illness or sickness or ailment contracted as a result of an exposure to risk factors arising from work activity.

Overtime pay means pay earned for performing overtime according to section 124 of this Act.

Regional Office refers to the Regional Employment and Labour Office of the Ministry of Labour and Human Resources.

Supervisor means an employee who shall be responsible not only for his/her own work, but also for the work and actions of other employees.

Temporary Partial Disability means a condition where an injured employee's capacity is impaired for a time, but he or she is able to

continue working at reduced efficient or temporarily cannot perform his or her normal task, but is expected to fully recover.

Total permanent disabilities means that because of injury due to work accident or occupational diseases an employee is unable to work in his or her occupation for which he or she is suited by training, education or experiences and will be unable to perform any task throughout his or her lifetime or he or she will not recover or that in all possibility will continue indefinitely, e.g. loss of both eyes, arms or legs.

Wages means remuneration or earnings that can be expressed in terms of money and payable by an employer to an employee by virtue of a contract of employment.

Worker means an employee who is not a managerial or supervisory employee at a workplace.

Workers' Association refers to a group of 7 or more workers formed to protect and further the interests of its members concerning their terms and conditions of employment and the working environment in which they operate.

Workplace means any place, whether a building or structure, open space, home, office or factory, where an employee works.

ANNEXURES

Annexure 1 - Application for the Registration of a Workers' Association under the Labour and Employment Act of Bhutan 2007.

To: Chief Labour Administrator

Ministry of Labour and Human Resources

THIMPHU

Sir,

Sub: Registration of Workers' Association

On behalf of the _____ Workers' Association formed at a meeting held at _____ on _____ at which it was resolved by those present that this workers' association be formed, we the undersigned office bearers of the association hereby apply for the registration of the association under the Labour and Employment Act 2007, and its related Regulations.

We hereby declare that the association has no managerial or supervisory employees as members, that the association shall not represent the interests of such employees, and that the association has been formed without any influence whatsoever from the employer or managers of the enterprise.

We herewith attach the necessary documentation required by law in support of registration application and look forward to your advice in due course on the outcome.

Yours sincerely,

President

Vice President

Secretary

Treasurer

Annexure 2 - Application for the renewal of registration of a Worker's Association under the Labour and Employment Act, 2007

To: Chief Labour Administrator

Ministry of labour and Human Resources

THIMPHU

Sir,

Sub: Renewal of Registration of Worker's Association

On behalf of the _____ Worker's Association that was formed on _____ and registered under the Labour and Employment Act, 2007 and its related Regulations and approved by you on _____ expires on _____, we the undersigned office bearers of the association hereby apply for renewal of the registration of the association.

We, once again declare that the association has no managerial or supervisory employees as members, that the association shall not represent the interests of such employees, and that the association has been formed without any influence whatsoever from the employer or managers of the enterprise.

We herewith attach the necessary documentation required by the law in support of registration/renewal application and look forward to your advice in due course on the outcome.

Yours sincerely

President

Vice President

Secretary

Treasurer