



Regulations on Working Conditions 2012

Ministry of Labour and Human Resources

Department of Labour

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Ministry Of Labour and Human Resources

'Building Quality Workforce for Productive Employment'



September 20, 2012.

Foreword

The Ministry of Labour and Human Resources is pleased to bring out the second edition of the fifteen Regulations as empowered by section 234 of the Labour and Employment Act, 2007. These Regulations pertaining to employment conditions are necessary to implement the provisions of the Labour and Employment Act effectively.

The Regulations are the outcomes of the tripartite dialogues among the Royal Government, Employers and Employees across the country. As such, every provision of the Regulations 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 the fifteen Regulations, all the provisions of the Labour and Employment Act, 2007 will be in full enforcement.

The Regulations 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.

(Dorji Wangdi)

Minister

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REGULATION:

ACCEPTABLE FORMS OF CHILD LABOUR

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning acceptable forms of child labour and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Acceptable Forms of Child Labour Regulation, 2009*.
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 indicate the forms of acceptable child labour and the occupations in which children between the ages of 13 to 17 years can legally be employed.

Scope

5. This regulation protects children as defined in the Labour and Employment Act, 2007 from employment that is considered dangerous to their safety, health and moral well-being, indicates the occupations and employment arrangements considered acceptable for children, and indicates the working conditions that shall apply to acceptable occupations for children.

6. This regulation shall apply to all workplaces, employees and employers falling within the scope of the Labour and Employment Act, 2007.
7. This regulation applies exclusively to children aged 13 to 17 years. The employment of children under 13 years in an employer-employee relation is prohibited and such children are excluded from the scope of this regulation.

Chapter 2

Prohibited forms of child labour

8. The employment of children in occupations and jobs that are covered by section 9 of the Labour and Employment Act, 2007 is prohibited. For the purpose of this section ***an 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. A job consists of a set of specific tasks, both mental and physical, that are undertaken in order to produce something or provide a service.***
9. 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.
 - a. Mining or quarrying
 - b. Confined spaces
 - c. Heavy laboring and lifting
 - d. Manufacturing processes using toxic materials and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos
 - e. Slaughterhouses
 - f. Cement manufacturing
 - g. Construction except minor and light construction works at non-risky and non-dangerous construction sites
 - h. Logging
 - i. Gas and electricity supply
 - j. Sanitary services
 - k. Transport, except those who are 15 years and above.

- l. Bars
 - m. Discotheques
 - n. Drayangs
 - o. Scrap yards
 - p. Carpet weaving
10. A person who employs children in any occupation or job indicated in Sections 8 and 9 of this Regulation is liable for the same penalty as for the contravention of Section 9 of the Act.

Chapter 3

Acceptable work for children

11. Children are permitted to be employed in the occupations, jobs and activities not listed under Section 9 of the Act and Section 9 of this Regulation provided the work does not take place in an environment that is likely to harm the health, safety or morals of the children and does not prejudice their attendance at school, vocational orientation and training programs.
12. Children may be employed to perform work that is supervised by their schools to complement the children's education and training or to assist the children's choice of vocation through work experience provided that the work is not likely to prejudice the health or safety, personal or social development or education or training of the children, and the children are under the supervision of their parents or guardians or teachers.
13. A person who employs children in any occupation or stipulated in sections 9, and 12 of this commits an offence and the penalty shall be same as for the contravention of Section 9 of the Act.
14. The employment of children below 18 years of age shall be notified to the Chief Labour Administrator by the employer.

Chapter 4

Working Conditions

15. Children may be employed on a full-time basis but employers are encouraged to have employment arrangements that do not prejudice the attendance of children at school, vocational orientation, and training programs.
16. The employment of children aged 13 to 17 years between the hours of 10.00 p.m. and 08.00 a.m. is forbidden.
17. Overtime work for children aged 13 to 17 years is forbidden.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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 apply to adult workers.

Chapter 5

Penalties

23. An employer who contravenes Sections 15 to 22 of this regulation commits an offence punishable by fine of a minimum of 90 times and a maximum of 360 times the National Minimum Wage.

Labour Inspection

24. Labour inspectors appointed under the Labour and Employment Act, 2007 are empowered to enter workplaces to undertake inspection of activities related to the employment of children to ensure compliance with this regulation.

Proof of age

25. 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

26. **If a person causes or permits a child to-**
 - a. work as a domestic servant in a home which is not the home of the child's immediate family; or
 - b. participate or assist in a business, trade, calling or occupation carried on for profit that is not owned by the child's immediate family.

The person is deemed to have employed the child whether or not the child receives payment or other reward for his or her participation or assistance.

REGULATION: SEXUAL HARASSMENT

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning sexual harassment and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

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

Purpose

4. The purpose of this regulation is to prohibit the incidence of sexual harassment in workplaces and during recruitment falling within the coverage of the Labour and Employment Act, 2007 and inform sexual harassment victims of the procedural arrangements to be followed in lodging complaints to the Ministry of Labour and Human Resources.

Scope

5. This regulation shall apply to all workplaces, employees and employers falling within the scope of the Labour and Employment Act, 2007.
6. This regulation provides for different arrangements for dealing with sexual harassment, distinguished by the size of the workplace or enterprise.

Chapter 2

Definition

7. Sexual harassment in the workplace or during recruitment includes
 - a. an unwelcome sexual advance or an unwelcome request for sexual favors by one person to another,
 - b. any other unwelcome physical, verbal, or visual conduct of a sexual nature by one person to another.
8. Conduct of a sexual nature includes
 - a. 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,
 - b. 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 behavior, or a person's body, requesting sexual favours, repeatedly asking a person out, telling rumors about a person's personal or sexual life, or threatening a person,
 - c. 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 .
9. 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.
10. Conduct is not sexual harassment if it is welcome. The victim of the harassment should indicate that 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.

11. 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.
12. The victim of sexual harassment does not have to be the person harassed but could be another person affected by the offensive conduct.
13. 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.
14. 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.
15. Psychological harm, injury or damage to the victim does not have to be established for conduct to constitute sexual harassment.

Chapter 3

Prevention

Employers can minimize their possible liability under sexual harassment cases by taking positive steps to prevent sexual harassment from arising and act quickly to address sexual harassment that has occurred.

16. Employers of companies registered under the Companies Act of Kingdom of Bhutan, 2000 and enterprises with a capital input in excess of 1 million ngultrum shall prepare and implement a Sexual Harassment Policy and prepare a written complaints procedure to advise victims of the steps they should take to lodge a formal complaint against a harasser.
17. All other enterprises though not mandatorily required to prepare and implement a sexual harassment policy, are nonetheless expected to take steps to inform all employees of the nature of sexual harassment, the implications of harassment to the harasser and the employer, and a complaint procedure for victims to follow.

Sexual Harassment Policy

18. A sexual harassment policy should include the following.
 - a. A statement from the employer that it does not condone sexual harassment in any form.
 - b. A commitment from the employer to the prevention and eradication of sexual harassment.
 - c. A definition of sexual harassment.
 - d. Examples of behavior that constitute sexual harassment.
 - e. A statement reminding all employees whether worker, supervisor or manager of the seriousness of sexual harassment charges.
 - f. An explanation of the penalties to be imposed by the employer for substantiated sexual harassment conduct, including verbal warnings, written warnings, transfer, suspension, termination of employment, and the possibility of damages to the victim.
 - g. A commitment to ensuring that all sexual harassment complaints and personnel actions are kept confidential.
 - h. A commitment from the employer to protect the person lodging a complaint of sexual harassment from retaliation from the harasser or others.
 - i. A commitment to preparing and implementing an internal grievance procedure that includes special arrangements for sexual harassment complaints.
 - j. A commitment that a victim will not be required to address complaints through a supervisor who is involved in, condones, or ignores sexual harassment.
 - k. A commitment to the enforcement of the policy through action that is taken quickly, consistently and aggressively and through investigations which are prompt, thorough and documented in detail.
 - l. 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 by the victim.
 - m. An indication that all newly recruited staff will be provided with a copy of the sexual harassment policy.
 - n. A commitment to the training of all employees to improve their knowledge and understanding of sexual harassment issues.
 - o. Communicate the policy widely throughout the workplace.

Sexual Harassment Complaint Procedure: Internal

19. Employers required to prepare and implement a sexual harassment policy shall also prepare and implement an internal complaints 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.
20. 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.
21. 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.
22. If the victim is not satisfied with the outcome of the internal complaints procedure the victim is entitled to lodge a complaint with the Chief Labour Administrator, Ministry of Labour and Human Resources.
23. 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 proceed immediately to lodge a complaint to the Chief Labour Administrator.

Chapter 4

Sexual Harassment Complaints Procedure: External

24. A victim dissatisfied with the outcome of the Internal Complaints 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.

25. 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.
26. Receipt of the victim's complaint shall be acknowledged by the Chief Labour Administrator immediately of its receipt.
27. 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, if any, to the Chief Labour Administrator within 7 working days of receipt of the notification from the Chief Labour Administrator.
28. 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.
29. 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.
30. 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 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 report to the Chief Labour Administrator within 7 working days from the date of appointment, with such report indicating whether mediation is a possible means to resolve the issue.

31. 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.
32. 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.
33. 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.

Chapter 5

Penalties

34. 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

35. 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.

REGULATION: LEAVE

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007, hereby promulgates the following regulation concerning leave and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Leave Regulation, 2009*.
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 minimum standards for annual leave, sick leave, casual leave, maternity and paternity leave in accordance with Chapter VII of the Labour and Employment Act, 2007.

Scope

5. This regulation shall apply to all workplaces, employees and employers falling within the scope of the Labour and Employment Act, 2007.
6. This regulation provides entitlements to employees for different categories of leave as contained in section 106 of the Act, namely, annual leave, sick leave, casual leave, maternity and paternity leave, and the conditions and pay arrangements that apply to each category of leave.

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

Chapter 2

Annual leave

8. An employee who works for an employer for 6 or more months of continuous employment shall be entitled to paid annual leave.
9. 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.
10. 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.
11. 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.
12. Annual leave does not include a public holiday that falls during the leave period.
13. Employees entitled to annual leave shall be entitled to encash their leave.
14. 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.
15. 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

16. 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.
17. An employee shall be entitled to take annual leave for part of a working day.

Payment for annual leave

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

Records

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

Chapter 3

Sick leave

20. An employee who works for an employer for 6 or more months of continuous employment shall be entitled to be paid sick leave.
21. 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.
22. 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.
23. 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

24. 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.
25. 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.
26. 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

27. An employee shall be entitled to take sick leave for part of a working day.
28. 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.
29. An employee shall not be entitled to encash unused sick leave entitlements.
30. 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

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

Chapter 4

Casual leave

32. An employee who works for an employer for 6 or more months of continuous employment shall be entitled to paid casual leave.
33. 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.
34. 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.
35. 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.
36. 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

40. 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

41. An employee shall be entitled to take casual leave for part of a working day.
42. 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.

43. An employee shall not be entitled to encash unused casual leave entitlements.
44. Unused casual leave entitlements shall be merged with the annual leave

Records

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

Chapter 5

Maternity leave

46. 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.
47. 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.
48. 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.
49. An employee shall be entitled to take a maximum of 3 periods of maternity leave during her service with an employer.
50. An employee on maternity leave shall be entitled to use any unused annual or sick leave entitlements to extend the period of paid leave.
51. 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

52. 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.
53. 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

54. 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:
 - a. paid sick, casual or annual leave for as long as the employee's accumulated sick leave entitlements allow; and
 - b. unpaid leave for as long as a certified medical practitioner certifies it to be necessary.

Work on return from leave

55. 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

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

Chapter 6

Paternity leave

57. 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.

58. 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.
59. 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.
60. Unless otherwise agreed with the employer, the employee shall take his paternity leave within 2 weeks of the birth of the child.
61. An employee shall be entitled to take a maximum of 3 periods of paternity leave during his service with an employer.
62. An entitled employee who fails to take paternity leave shall not be entitled to encash it and forfeits the leave entitlement.

Records

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

Chapter 7

Unpaid leave

64. Except as provided in Section 54 of this regulation, 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.

Chapter 8

Penalties

65. A person who contravenes any section of this regulation shall pay fine, for each contravention as follows:

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

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

Third offence and each subsequent offence: Three hundred and sixty five (360) times the Daily National Minimum Wage.

REGULATION: NATIONAL MINIMUM WAGES

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning minimum wages and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called the *National Minimum Wages Regulation, 2009*
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 provide guidelines to the Ministry of Labour and Human Resources for fixing minimum wages should it seek to exercise its discretionary powers as stated in Section 138 of the Labour and Employment Act, 2007. More specifically, the regulation provides for criteria guidelines and procedure for the Ministry to follow should it decide to fix a National Minimum Wage.

Scope

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

6. This regulation provides for fixing different minimum wages at the discretion of the Ministry by geographic location, zone, region, occupation, sector, industry, and for employees of different work status including trainees, disabled workers, and child workers, as the Ministry so decides.

Chapter 2

Definitions

7. The 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.
8. The National Minimum Wage is established by law and is legally enforceable.
9. Ministry means the Ministry of Labour and Human Resources and Minister means the Minister of Labour and Human Resources.

Chapter 3

Fixing the National Minimum Wage

10. The Minister may fix the National Minimum Wage through executive order in consultation with the government, employers and employees which shall come to effect from:
 - a. 90 calendar days after the making of the order,
 - b. from a date fixed by the Minister in the order but not earlier than the date of the order.
11. If the Minister decides to adjust the National Minimum Wage or wages the new wage or wages shall come into effect from:
 - a. 90 calendar days after the making of the order; or

- b. from a date fixed by the Minister in the order but not earlier than the date of the order.
12. 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.
13. A minimum wage may be set to reflect differences between:
- a. zones, regions or geographic locations in the country;
 - b. sectors or industries in the country;
 - c. occupations;
 - d. employees of different work status including those under 18 years of age, trainees, disabled workers, and workers on probation.

Consultation

14. The Chief Labour Administrator shall chair the National Minimum Wage Committee comprised of 8 members, appointed by the Minister, to advise the Minister on the level of minimum wage.
15. The National Minimum Wage Committee shall be comprised as follows:
- a. Chief Labour Administrator as chairperson,
 - b. Two members from government,
 - c. One representative of employers from the private sector,
 - d. One representative of employers from the corporate sector,
 - e. One representative of employees from the private sector,
 - f. One representative of employees from the corporate sector, and
 - g. The Head of the Department of Labour as Member Secretary.
16. Each member and representative shall be appointed for a period of 3 years and shall be eligible for re-appointment.
17. The National Minimum Wage Committee shall meet at least once per year and shall be entitled to sitting fees, the amount of which shall be decided by the government.

Criteria for wage fixing

18. The National Minimum Wage Committee shall take account of the following factors when providing advice to the Minister about a minimum wage or wages;
 - a. the needs of employees;
 - b. the productivity of employees;
 - c. the capacity of employers to pay;
 - d. the general economic environment in which the country is operating, including the competitiveness of business;
 - e. the general level of wages in the country;
 - f. social security benefits; and
 - g. the cost of living in the country, including variations as between different locations, zones and regions.

Duration

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

Chapter 4

Adjusting the National Minimum Wage

20. In consultation with the National Minimum Wage Committee the Minister may adjust the minimum wage or wages from time to time.
21. After one year of fixing the initial National Minimum Wage or wages, and on an annual basis thereafter, the National Minimum Wage Committee shall meet to advise the Minister whether the minimum wage should be adjusted or not, and if so by how much it should be revised.
22. 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 17 of this Regulation.

Chapter 5

Compliance and enforcement

23. An employer shall not pay an employee less than the National Minimum Wage set or adjusted by order of the Minister.
24. Labour inspectors of the Department of Labour appointed under the Labour and Employment Act, 2007 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.
25. An employer who fails to comply with section 23 of this regulation commits an offence and shall be liable for penalty of up to 360 times the National Minimum Wage for each contravention.

REGULATION: WORKERS' COMPENSATION

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning compensation, entitlements of employees related to injury, illness or death related to their work and the obligations of employers to provide adequate insurance cover to meet these contingencies as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Workers' Compensation Regulation, 2009*
2. This regulation contains legal requirements that must be met by all enterprises under the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation shall come into force with effect from November 11, 2009

Purpose

4. The purpose of this regulation is to establish standards and procedures for compensation for employees and their dependants as a result of injury, diseases or death arising from their work or related to the tasks and duties they are required to perform, as provided in sections 96 and 102 of the Labour and Employment Act, 2007.
5. The regulation aims to compensate employees or their dependants **for a loss of earning capacity rather than compensate for a particular injury or disease**, and provides for the payment of medical and related costs and the rehabilitation of employees to enable them to return to work as soon as possible.

Scope

6. This regulation applies to all enterprises in which an employee undertakes work for an employer.
7. All enterprises irrespective of size, location or nature of products and services produced and provided are covered by this regulation.
8. This regulation provides for different types of compensation and assistance to employees as a result of injury, disease or death related to their work and work situation including lump sum benefits for dependants in the event of death of employees, total permanent disablement and temporary partial disablement.

Chapter 2

Definitions

9. For the purpose of this regulation unless the context indicate otherwise, the words, phrases and acronym are defined as follows:

“Accident” means any unintended or unforeseen event or mishap arising from work activity that results in death or injury to an employee, as distinguished from ‘dangerous occurrence’ which means an unintended or unforeseen event or mishap arising from work activity but which does not result in injury or death to any person.

“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.

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

“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.

“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.

“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.

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

“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.

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

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

Chapter 3

Employer’s duty to employees

10. An employer shall insure his or her employee with an authorized insurer to ensure that all types and level of compensation prescribed in this regulation are covered by an insurance policy, that binds the insurer to make such payments to the insured in accordance with the terms and conditions of the insurance policy, including the timely payment of the policy premium to ensure the policy does not lapse.
11. The agreed premium shall be paid by the employer and shall not be deducted from the employee’s wage/salary.
12. 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 Regulation.

13. An employer or the Insurer shall compensate an employee for injuries or 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:
 - a. at any place for the purpose of working for his or her employer,
 - b. having a break from work at the workplace for a meal or rest period,
 - c. in a vehicle provided by the employer to transport employees to and from work,
 - d. traveling to or from treatment for a previous work related injury or disease.

Chapter 4

Compensation payments

Emergency care

14. 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 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

15. The employer or the insurer shall compensate an injured employee or one suffering from an occupational disease for all medical and nursing care, surgery, hospital fees, medication, X-rays, diagnostic testing, and all other forms of treatment, to the extent that such services are not provided free of charge by the Royal Government’s health services.

Loss of earnings

16. 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.

17. 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.
18. 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.
19. 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

20. 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 17 and 18 of this regulation shall be compensated by the employer or the insurer, for the cost of rehabilitation and re-training services aimed at enabling the disabled employee to return to work, not necessarily to the same job, as soon as possible, to the extent that such services are not provided free of charge by the Royal Government's health services.
21. An employer or the insurer shall meet the cost of any assistive devices including crutches, prosthesis, wheelchair, or other 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 government.
22. The employer or the insurer shall meet the cost up to a maximum of Nu. 50,000/- 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

23. 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

24. The employer or the insurer shall pay a lump sum amount to the dependants of an employee who dies as a result of a work related injury or disease, such amount to be a minimum of equivalent to 1080 days of the National Minimum Wage
25. In addition, the employer or the insurer shall compensate the dependants of an employee who dies as a result of a work related injury or disease for loss of earnings equivalent of 70% of the employee's last month's basic wage/pay, before the deduction of income tax, but excluding overtime payments, allowances and other benefits, for a period of 1 year from the date of death.

Chapter 5

Exceptions to employer's liability to compensate

26. An employer or the insurer shall not be liable for compensation in the following circumstances:
 - a. Where the work accident and related injury is the result of the willful disobedience of an employee to an order or directive expressly framed for ensuring the safety of the employee.
 - b. Where the work accident and related injury is due to the willful 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.
 - c. Where 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 work premises.

- d. Where 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.
 - e. Where 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.
27. 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.

Chapter 6

Reporting an injury or death

- 28. The employee or representative of the employee shall notify the employer of an injury or death immediately to the Chief Labour Administrator.
- 29. On receipt of information concerning the injury or death of an employee, the employer shall submit detail 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 to be punished by a fine of up to 360 times the National Minimum Wage
- 30. In the event of death of an employee the employer shall also notify the nearest police station of that death as provided in Section 155 of the Labour and Employment Act, 2007.

Chapter 7

Claims

31. 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

32. 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 Labour and Employment Act, 2007.

Fraudulent claims

33. 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 imprisonment for a period of 1-3 years.

REGULATION: GRATUITY

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act 2007, hereby promulgates the following regulation concerning the gratuity entitlements of employees on the occasion of retirement or other severance of employment and related matters, as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

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

Purpose

4. The purpose of the regulation is to prescribe the nature of and arrangements for gratuity payments to employees who retire from employment or otherwise end their employment relation with their employer, as provided in section 99 of the Labour and Employment Act, 2007.

Scope

5. This regulation applies to all situations in which an employee undertakes work for an employer under a contract of employment.
6. For the purpose of this regulation gratuity means a lump sum payment made to an employee at the separation from an employee from service.

7. 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.

Chapter 2

Employee’s entitlement

8. All employers shall operate a defined gratuity scheme without any contribution from employees for the benefit of all employees who have completed minimum of **10** years of continuous employment.
9. 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 transfer not affecting the employee’s right to claim continuous employment.
10. A gratuity of a minimum of one month’s basic pay for every year or part thereof of continuous service shall be paid to a retiring employee who has served the employer for minimum of **10** years.
11. 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.
12. A gratuity payment shall not be paid to:
 - a. an employee who has not completed the years of continuous employment as prescribed in an enterprise’s internal service rules.
 - b. an employee who has been dismissed on the grounds of gross misconduct after all procedures required by section 87 of the Labour and Employment Act, 2007 have been complied with.
13. A gratuity payment shall be paid to all employees with minimum of 10 years of continuous employment with the same employer who:
 - a. retire on the basis of age
 - b. voluntarily resigns with the consent of the employer
 - c. are retrenched
 - d. are declared redundant

- e. become disabled and unable to work, irrespective of whether the disability arises from work or not.
14. A gratuity shall be paid to the dependants of an employee whose employment is terminated by death, irrespective of whether the death arises from work or not.

Calculation of benefit

15. The gratuity payable to an employee shall be based on the basic pay/wage paid to the employee during the last month of his or her employment with the employer, 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.

Advances against gratuity payment

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

Chapter 3

Records

17. An employer shall keep records of duration of service for all employees to enable labour inspectors to verify those employees entitled to gratuity payments. An employer who fails to keep the required records shall be liable to be punished by a fine of 90 times the National Minimum Wage for each contravention.

Penalty for non-payment of gratuity

18. An employer who fails to pay the gratuity to an employee in accordance with the provisions of this Regulation shall be liable for penalty of between 90 and 360 times the National Minimum Wage for each contravention, and shall also be liable to compensate the employee to the full amount of his or her entitlement.

REGULATION: PROVIDENT FUND

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007, hereby promulgates the following regulation concerning the Provident Fund entitlements of employees on the occasion of retirement or other severance of employment and related matters, as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Provident Fund Regulation, 2009*
2. This regulation contains legal requirements that must be complied by all enterprises employing 5 or more employees under the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation shall come into force with effect from November 11, 2009

Purpose

4. The purpose of the regulation is to prescribe the nature of and arrangements for provident fund contributions from employees and employers, and payments to employees who retire from employment or otherwise end their employment relation with their employer, as provided in section 99 of the Labour and Employment Act, 2007.

Scope

5. This regulation applies to all small, medium or large scale enterprises as certified by the Ministry of Economic Affairs in which an employee undertakes work for an employer under a contract of employment as covered by Chapter V of the Labour and Employment Act, 2007.

Chapter 2

Provident fund scheme

6. For the purpose of this regulation ‘provident fund’ means a scheme the purpose of which is to make a lump sum payment and or a payment in installments to entitled employees at the severance of the employer-employee relation.
7. The provident fund scheme as indicated in this regulation is a ‘defined contribution scheme’ whereby the benefits paid under the scheme are determined by the amount of contributions made by both the employer and employee plus the interest or investment earnings accruing to an employees’ account. The obligation of the employer and employee is limited to making regular contributions to the scheme and not to guaranteeing a pre-defined level of benefit.

Chapter 3

Participation in the scheme

8. 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.
9. The contributions of both the employer and employee shall commence from the first pay period after the completion of the probation period.
10. The number of years of participation in the scheme shall be calculated from the completion of the probation period.

Contributions

11. 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.
12. The employee provident account shall be segregated from other assets of the enterprise and an assured accounts maintained with an authorized financial institution as determined by the Ministry of Labour and Human Resources.

13. 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

14. 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 annual basis or at any time on request of the employee.

Interest and earnings

15. 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.
16. Funds held in a provident fund account shall be guaranteed by the authorized financial institution at all times.

Chapter 4

Entitlements

17. On severance of employment, other than termination for gross misconduct, after a minimum of 5 years of continuous contribution, an employee shall be entitled to receive the full amount, including interest, credited to his or her individual provident fund account.
18. 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 transfer shall not affect the employee's right to claim continuous employment.
19. 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:
 - a. retires on the basis of age; or
 - b. voluntarily resigns with the consent of the employer; or

- c. is retrenched; or
- d. is declared redundant; or
- e. becomes disabled and unable to work, irrespective of whether the disability arises from work or not.

Less than 5 year's service

- 20. An employee with less than 5 year's 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

- 21. An employee who has been dismissed on the grounds of gross misconduct after all procedures required by section 87 of the Labour and Employment Act, 2007 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

- 22. 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

- 23. 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 year period has elapsed.

Payments

24. 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.

Chapter 5

Records

25. An employer shall keep records of dates and amounts of contribution to the fund for all employees to enable labour inspectors to verify those employees entitled to participate in the fund and the amount of their entitlements. An employer who fails to keep the required records shall be liable for penalty by a fine of 90 times the National Minimum Wage.

Penalties

26. 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 penalty of between 90 to 360 times the National Minimum Wage for each contravention. In addition, the employer shall be liable to compensate the employee to the full amount of his or her entitlement.
27. 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 penalty interest of 1% of the total contribution to the account holding financial institution for every day delayed.
28. An employer who fails to establish a separate and identifiable provident fund account in an authorized financial institution, who fails to establish an individual account for each participating employee in the said financial institution, or who diverts the monies or part thereof in the provident fund account for purposes unrelated to the fund's purpose shall be liable for penalty equivalent to maximum of 360 days of the National Minimum Wage

REGULATION: WORKERS' ASSOCIATIONS

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning workers' associations and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Workers' Associations Regulation, 2009*
2. This regulation contains legal requirements that must be met by all workplaces covered by Section 176 of the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation shall come into force with effect from November 11, 2009

Purpose

4. The purpose of the regulation is to indicate the procedures to be followed for the formation and registration of a workers' association, outline the roles and functions of a workers' association, and stipulate the formalities relating to its registration, operational procedures, and reporting obligations.

Scope

5. This regulation shall apply to all enterprises of 12 or more workers employed under contracts of employment for more than one year's duration.

Chapter 2

Definitions

6. **‘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.
7. **‘Worker’** means an employee who is not managerial or supervisory employee at workplace.
8. **‘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.

Chapter 3

Functions of a workers’ association

9. 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.
10. 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.
11. 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 sexual harassment complaint lodged by a worker, and be represented on an enterprise safety and health committee where one exists.
12. 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.

Chapter 4

Formation

13. 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 minimum of 5 years of commencement of commercial operation of the enterprise.
14. 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.
15. A minimum of 7 workers over the age of 18 years shall be required to form a workers' association.
16. 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.
17. The employer shall not interfere in the organization or activities of the workers' association.
18. A workers' association shall not represent the interests of a managerial or supervisory employee.
19. There shall be no more than one workers' association for each enterprise.

Chapter 5

Procedure for formation

20. The formation of a workers' association shall be in accordance with the following procedures.
 - a. 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.

- b. 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.
- c. The decision to form a workers' association shall be taken by a majority vote of those workers present at the meeting.
- d. 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.
- e. 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.
- f. 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.

Chapter 6

Registration

- 21. 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.
- 22. The workers' association shall apply for registration to the Chief Labour Administrator within 30 calendar days of its formation.
- 23. The application for registration shall comprise the following.
 - a. application letter in the form required by the Department of Labour as shown in Annex 1
 - b. name of the workers' association

- c. number and names of members
 - d. address of the workers' association
 - e. name of the enterprise in which the association is formed
 - f. 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
 - g. copy of the constitution or charter of the association setting out its purpose, objectives, operational procedures and rules
 - h. minutes of the meeting establishing the workers' association including the names of those present and the resolutions passed by that meeting
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. An application for renewal of registration shall be in the form prescribed by the Department of Labour, as shown in Annex 2.
31. 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

32. Once a workers' association has received a notice of registration from the Chief Labour Administrator the workers' association shall
 - a. have an existence distinct and separate from its members
 - b. be able to operate in its own name
 - c. be able to open and operate a bank account in its own name
 - d. be able to collect subscriptions from its members
 - e. be able to make disbursements from its bank account
 - f. be able to take legal action in its own name
 - g. be liable to have legal action taken against it
 - h. be required to submit an annual report and financial statements to its members and the Chief Labour Administrator
 - i. 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
 - j. be able to prepare and serve claims on the employer for future benefits
 - k. be able to negotiate and enter into a collective bargaining agreement with the employer
 - l. be able to participate in the enterprise grievance procedure

- m. be able to participate in the enterprise sexual harassment procedure
- n. be able to assist in the settlement of complaints within the enterprise
- o. be able to participate in a safety and health committee within the enterprise.

De Registration

- 33. 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 winding up, 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.
- 34. If the Chief Labour Administrator is satisfied that the winding up 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.
- 35. The Chief Labour Administrator shall be empowered to initiate the winding up of a workers' association if there is evidence that the workers' association has operated in breach of the Labour and Employment 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.

Chapter 7

Workers' Association Committee

- 36. 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.

37. 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.
38. 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.
39. The chairperson of the committee shall ensure that accurate records are kept of the meetings and the decisions of the committee.
40. The chairperson shall make all records of the committee's meetings available to any member of the workers' association.

Chapter 8

Labour dispute relating to a workers' association

41. 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 grievance procedure.
42. If the complaint by workers is not resolved through the application of the enterprise 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.
43. During the hearing of the complaint and 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.

Chapter 9

Protection of association members and office bearers

44. 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, internal service rules, custom and practice, or collective agreement.
45. The protection referred to in section 43 above shall include candidates for election as office bearers or committee members in a workers' association and former office bearers or committee members of a workers association.

Chapter 10

Rights of workers' association and its committee

46. 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.
47. An employer shall provide the workers intending to form 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.
48. 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.

49. 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.
50. The members of the committee of the workers' association shall
 - a. have access to all parts of the workplace necessary for the efficient conduct of its operations,
 - b. be permitted to post notices in the workplace in such places as agreed with management
 - c. be permitted to distribute information, news sheets, and pamphlets provided such distribution does not prejudice the operations of the enterprise or its tidiness
 - d. 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
 - e. have reasonable access to information to assist in preparing claims against the employer as part of the collective bargaining process.

Chapter 11

Subscriptions

51. 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 workers' salary.
52. 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.
53. 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.

Chapter 12

Reporting obligations

54. 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, such report and statements to be prepared in accordance with the provisions of the association's constitution or charter.
55. 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.

Chapter 13

Collective bargaining

56. 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.
57. 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.
58. 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.
59. If the workers' association and the employer reach agreement, the agreement shall be made in writing and dated and be known as a collective bargaining agreement.
60. If a 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.

61. 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 Labour and Employment Act and its regulations.
62. 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.
63. A collective bargaining agreement negotiated in terms of this regulation shall not be affected by
 - a. a change in membership of the management or ownership of the employer; or
 - b. a change in membership of the workers' association committee or the workers concerned; or
 - c. a transfer of the undertaking or enterprise in which the workers concerned are employed.

ANNEX 1

Application for the Registration of a Workers' Association under the Labour and Employment Act, 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 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

ANNEX 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 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 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

REGULATION: INTERNAL SERVICE RULES

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning internal service rules and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Internal Service Rules Regulation, 2009*
2. This regulation contains legal requirements that must be met by all workplaces covered by Section 76 of the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation shall come into force with effect from November 11, 2009

Purpose

4. The purpose of the regulation is to provide guidelines for the preparation, content and implementation of internal service rules for those enterprises specified under Sections 5 and 6 of this regulation

Scope

5. Enterprises that are registered companies under the Companies Act of the Kingdom of Bhutan 2000 and enterprises with 5 or more employees under Contracts of Employment are required to prepare and implement internal service rules.
6. Enterprises not covered by Section 76 of the Labour and Employment Act, 2007 but are still within the scope of the Act are encouraged but not compelled to prepare and implement internal service rules.

Chapter 2

Preparation

7. Internal service rules shall be prepared by the employer in consultation with the enterprise workers' association or, where no such association exists, with the employees of the enterprise.
8. The internal service rules shall be signed and dated by the employer or his or her designated representative and by at least 3 members of the workers' association or, if no such association exists, by at least 3 employees.
9. Once signed and dated by the parties the internal service rules shall be sent to the Chief Labour Administrator to verify that the rules comply with the provisions of the Labour and Employment Act 2007 and its related rules and regulations.
10. Should the Labour and Employment Act 2007 and its related regulations be amended, the enterprise shall, if necessary, change its internal service rules in consultation with the workers' association or employees, and re-submit the rules to the Chief Labour Administrator for verification.
11. The Chief Labour Administrator shall notify the enterprise of approval or non approval of the internal service rules within 21 calendar days from their lodgment with the Chief Labour Administrator.
12. If the internal service rules are approved by the Chief Labour Administrator, such rules shall take effect from the date of that approval and shall have no retrospective application.
13. If the internal service rules are not approved by the Chief Labour Administrator they will be returned to the enterprise within 21 calendar days of their receipt, indicating the reasons for non-approval and re-directing the enterprise to rectify shortcomings and re-submit to the Chief Labour Administrator within 14 calendar days.
14. The internal service rules have no status and are not enforceable until approved by the Chief Labour Administrator.

Chapter 3

Content

15. The internal service rules shall comply with the minimum standards set out in the Labour and Employment Act, 2007 and its regulations.
16. The internal service rules may contain terms and conditions that exceed the minimum standards of the Labour and Employment Act, 2007 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.
17. The internal service rules 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) Wages
 - 9) Payment of wages
 - 10) Overtime rates
 - 11) Wage advances
 - 12) Allowances
 - 13) Bonuses
 - 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) Night work
- 31) Disciplinary procedures
- 32) Summary dismissal
- 33) OSH policy, rules and implementation
- 34) Accidents and incidents
- 35) OSH representatives
- 36) Consultation with employees
- 37) Training
- 38) Information for employees
- 39) Grievance procedures
- 40) Workers' Association

Chapter 4

Dissemination

18. The internal service rules once approved shall be displayed in one or more prominent locations in the workplace in a language understood by workers.
19. New employees shall be provided with a copy of the internal service rules or have them brought to their notice by other means including reference to notice boards or other means of display.
20. An enterprise must reasonably assure that the contents of Internal Service Rules are explained and comprehended by illiterate workers of the enterprise if any.

Chapter 5

Review

21. The internal service rules shall be reviewed by the employer and workers' association or employees at least annually and more frequently if the employer and workers association or employees so agree.

Chapter 6

Model internal service rules

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

LABOUR INSPECTION REGULATION

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning labour inspection and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

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

Purpose

4. The purpose of the regulation is to further elaborate the powers, functions, obligations, procedures and practices of labour inspectors as provided under Chapters III and IV of the Labour and Employment Act, 2007.

Scope

5. This regulation applies to all workplaces liable to inspection under the Labour and Employment Act, 2007. 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 Labour and Employment Act, 2007.

Chapter 2

Register of Enterprises

6. The Department of Labour will prepare and maintain a register of all factories, plants, shops, establishments, enterprises, construction sites, workplaces, and other entities, including private dwellings, where work is performed by an employee of an employer.
7. 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.
8. 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.
9. The register shall include for each entity liable for inspection the following:
 - a. Name
 - b. Location, including Dzongkhag, Geog, Chewog, Street
 - c. Date of commencement
 - d. Family business or not
 - e. Contact persons
 - f. Contact numbers including telephone, fax, mobile telephone, and email and website where applicable.
 - g. Number of employees in total, disaggregated by national and foreign, male and female workers under 18 years, and casual workers.
 - h. Sector/industry according to main products and services produced.
 - i. Main raw materials and substances used.
 - j. Equipment and machinery used
10. The register will be up-dated on a regular basis, based on the reports of labour inspectors prepared as a result of their inspection visits.

Chapter 3

Types of inspection visits

11. Labour inspectors as defined under the Labour and Employment Act, 2007 are empowered to undertake three types of inspection visits, as follows.
 - a. **Routine visits** where the inspection visit is directed by the Department of Labour as part of the day-to-day work of inspectors. Such visits aim to anticipate and prevent problems by informing workers and employer, on the content of the law, advising them on how to comply and, if necessary, securing compliance with the law and its regulations through enforcement. Routine visits normally cover the full range of matters to be inspected. They are not made in response to any complaint from a worker or employer, and do not focus on specific problems or issues. Routine inspection visits may be announced or unannounced, as decided by the Department of Labour
 - b. **Follow-up visit** where the inspector 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. Follow-up visits may be announced or unannounced, as decided by the Department of Labour.
 - c. **Special visits** where the inspector focuses on a specific and particular issue including fire safety, child labour, or other priority matter as determined by the Department of Labour. Inspection visits that are a response to a specific complaint from a worker, or an accident investigation are examples of special inspection visits.

Announced and unannounced visits

12. Labour inspectors are empowered to undertake both announced and unannounced visits.
13. An announced visit requires the inspector to notify the enterprise in advance of an intended visit and make a firm appointment. For an

announced visit the inspector shall give a minimum of 2 working days' notice to the enterprise.

14. An unannounced visit requires no advance notification to the enterprise and permits the inspector to enter the enterprise, without warning, at any reasonable time.
15. Whether an inspection visit shall be announced or unannounced shall be decided by the Department of Labour on a case by case basis.

Chapter 4

Inspection work plans

16. The Department of Labour shall prepare a quarterly 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.
17. The quarterly inspection work plan shall be approved by the Chief Labour Administrator or, as provided in Section 24 of the Act, the approval may be delegated in writing to the Head of the Department of Labour.
18. Labour inspectors shall undertake a minimum of 20 routine inspection visits per month, and quarterly inspection work plans shall be based on that standard. This standard may be reduced if special circumstances apply, including a need on the part of inspectors to undertake more follow-up or special inspection visits, or the number of complaints to be handled by inspectors is unexpectedly large.

Entry at reasonable times

19. In accordance with section 27 of the Act inspectors are empowered to enter at reasonable times during regular working hours any work place where work is performed by any employee for an employer. Regular working hours shall include hours after 5.00 P.M until closing time for those workplaces whose working hours include night time hours.

Report

20. The labour inspector shall prepare a written report on each inspection visit, the format and content of which will be determined by the Department of Labour. Each report shall be added to the file kept by the Department of Labour on each enterprise or workplace liable to inspection under the Act.
21. The content of inspection reports shall be treated as confidential unless:
 - a. the inspector is required to divulge this information by a court of law; or
 - b. the inspector is required to divulge this information as part of his or her work as a labour inspector.

Chapter 5

Inspection process

22. When a labour inspector enters a workplace for an inspection visit, the inspector shall take all reasonable steps to notify
 - a. the employer or employer's representative;
 - b. the health and safety representative, if any, at the workplace; and
 - c. one member of the workers' association, if any, at the workplace of his or her entry.
23. The labour inspector shall provide proof of identity at the commencement of each inspection visit.
24. The labour inspector shall explain to the employer or employer's representative and worker's representative, if any, the purpose of the inspection visit, the functions of inspectors, and the powers of inspectors under the Act and its regulations.
25. The labour inspector shall interview workers, if required, but in such a way to cause minimal disruption to the work flows and the production process of the enterprise.
26. The labour inspector shall conduct an exit meeting prior to leaving the workplace with the employer or employer's representative, the

health and safety representative, if any, and a representative of the workers' association, if any, to notify them of

- a. the main outcomes of the inspection visit;
- b. the priority areas where improvements are required;
- c. the specific action to be taken to ensure compliance with the law.

Chapter 6

Improvement Notices

27. In accordance with section 40 of the Act a labour inspector may issue an Improvement Notice to an employer where the inspector is of the opinion that a contravention of the Act has taken place. The Improvement Notice may be issued on the spot during the inspection visit or up to 5 working days after the visit has been completed.
28. Each improvement notice shall indicate
 - a. a unique reference number,
 - b. the name of the enterprise to whom the Improvement Notice is addressed,
 - c. the name of the employer or employer's representative responsible for making the required improvement,
 - d. the section or sections of the Act, regulations, rules, or orders to which the improvement relates,
 - e. the specific improvement to be made to ensure compliance with the law,
 - f. the time period for making the improvement and remedying the contravention, such period to be not less than 7 or more than 35 calendar days from the date of the improvement notice,
 - g. the date the improvement notice is issued,
 - h. the signature of the labour inspector(s) issuing the notice,
 - i. the right of the receiver to lodge an appeal against the notice, the procedure for so doing, the time limits for lodging such an

appeal, and reference to the fact that the appeal shall result in the temporary suspension of the notice,

- j. the penalties incurred by the receiver in the event that the specified improvement is not effected within the stated time.
29. At the time of issuing the Improvement Notice, the 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.
 30. An inspector may issue more than one Improvement Notice to an enterprise during or as a result of a single inspection visit.
 31. On the expiry of the number of days specified in the Improvement Notice, the inspector shall conduct a follow-up inspection visit to verify whether the Improvement Notice has been acted upon and compliance with the law achieved. If the required improvements have been completed to the satisfaction of the inspector, the inspector shall confirm this in writing to the employer. If the required improvements have not been complied with the inspector shall impose penalty as per the Labour and Employment Act, 2007 and its regulations.

Prohibition Notices

32. In accordance with section 43 of the Act, an inspector may issue a Prohibition Notice to stop an immediate risk emanating from within an enterprise to the safety or health of any person. The Prohibition Notice may be issued on the spot during the inspection visit or up to 5 working days after the visit has been completed.
33. Each Prohibition Notice shall indicate
 - a. a unique reference number,
 - b. the name of the enterprise to whom the Prohibition Notice is addressed,
 - c. the name of the employer or employer's representative who has or who may reasonably be presumed to have control over the activity that is the subject of the Prohibition Notice,

- d. the section or sections of the Act, regulations, rules, or orders, if any, to which the prohibition relates,
 - e. the specific activity or activities to be prohibited and the reasons for the inspector's opinion,
 - f. directions from the inspector as to the measures to be taken to remedy the activity giving rise to the immediate risk,
 - g. that the prohibition notice takes immediate effect from the date and time indicated on the notice, as signed by the inspector(s),
 - h. the date and time the prohibition notice is issued,
 - i. the signature of the labour inspector(s) issuing the notice,
 - j. the right of the receiver to lodge an appeal against the notice, the procedure for so doing, the time limits for lodging such an appeal, and reference to the fact that the notice shall remain in force until the appeal has been decided,
 - k. the penalties incurred by the receiver in the event that the Prohibition Notice is not acted upon or the appeal against it being issued is dismissed.
34. At the time of issuing the Prohibition Notice, the 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.
35. An inspector may issue more than one Prohibition Notice to an enterprise during or as a result of a single inspection visit if the inspector is of the opinion there is more than one activity involving or likely to involve an immediate risk to the safety or health of any person.
36. An inspector may issue a prohibition notice for the entire enterprise if the inspector 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 environs are at immediate risk.
37. If a prohibition notice is issued, it shall remain in force until-

- a. an inspector certifies in writing that the matters which give or will give rise to the risk are remedied; or
- b. after an appeal under section 47 of the Act has been decided

Chapter 7

Staff

38. The Department of Labour shall be provided with sufficient labour inspectors, both men and women by the government to enable it to inspect each workplace liable to inspection at least once per year.

Support resources

39. The Department of Labour shall be provided with sufficient support resources, including vehicles by the government to enable its inspection duties to be carried out efficiently and effectively.

Annual report

40. 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:
 - a. a list of the laws and regulations relating to labour inspection work,
 - b. the number of inspectors, including the number of female inspectors, and their location,
 - c. statistics on the number of workplaces liable to inspection by sector or industry, including numbers employed,
 - d. number and type of inspection visits,
 - e. the number of improvement and prohibition notices issued,
 - f. the number of convictions for contraventions and the penalties imposed,
 - g. the number of complaints from workers,
 - h. statistics of accidents and deaths at work or arising out of work, including causes,
 - i. statistics of occupational diseases notified, classified by industry, occupation, and causes,
 - j. statistics of workers' compensation
 - k. achievements and shortcomings of the labour inspection system.

REGULATION:

FOREIGN WORKERS RECRUITMENT AGENTS

Introduction

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

Chapter 1

Preliminary

1. This regulation shall be called a *Foreign Workers Recruitment Agents Regulation, 2009*
2. This regulation contains legal requirements that must be met by all Foreign Workers Recruitment Agents covered by Chapter 13 of the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation repeals the Rules and Regulations Governing Employment Agencies in Bhutan 2006.
4. This regulation shall come into force with effect from November 11, 2009

Purpose

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

Objectives of the regulation

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

Scope

7. This regulation shall apply to all Foreign Workers Recruitment Agents including a person or entity, independent of the labour administration, who:
 - a. places foreign workers with employers resulting in the formation of a contract of employment between them, but without the Foreign Workers Recruitment Agents becoming a party to that contract,
 - b. employs an employee with a view to make that employee available to a third person, and that third person assigns and supervises the execution of the employee's tasks, but without the employee entering into a contract of employment with the third person.

Chapter 2

Registration and re-registration

8. A Foreign Workers Recruitment Agent shall not be permitted to operate until it has been registered with the Ministry of Labour and Human Resources, filed a signed Record of Understanding with the Chief Labour Administrator and has obtained the business license.

9. A Foreign Workers Recruitment Agent shall not be registered until its proprietor has :
 - a. completed the registration application form and submitted to the Chief Labour Administrator,
 - b. attended an interview process under the direction of the Chief Labour Administrator, and
 - c. satisfied the Chief Labour Administrator that it has suitable and permanent physical premises from which to operate, and
 - d. satisfied the Chief Labour Administrator of his or her competence and capacity to carry out the operations of a Recruitment Agent.
10. Before being formally registered with the Ministry of Labour and Human Resources, the aspiring Recruitment Agent shall enter into a written Record of Understanding with the Ministry that testifies and confirms that the aspiring Recruitment Agent has:
 - a. a knowledge and understanding of the Labour and Employment Act 2007, with particular emphasis on Chapter 13 relating to employment agents, and
 - b. a knowledge and understanding of the regulations under the Act applying to employment agents, and
 - e. a knowledge and understanding of the penalties and sanctions under the Act and regulations that apply to employment agents.
11. The Record of Understanding is presented in ANNEX 1.
12. An applicant for registration as a Recruitment Agent with the Ministry of Labour and Human Resources who satisfies all requirements of the Ministry and selected shall be issued with a Certificate of Registration, signed by the Chief Labour Administrator, within 30 calendar days of signing the Record of Understanding, and shall be valid for a period of 2 years in the first instance.
13. An applicant for registration as a Recruitment Agent who, in the opinion of the Chief Labour Administrator, fails to satisfy the

requirements for registration with the Ministry, shall have the right to appeal to the Minister within 15 calendar days from the date of receiving notice that the application for registration has failed. The Minister's decision shall be communicated to the applicant within a period of 15 calendar days.

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

Chapter 3

Staffing arrangements

19. A Recruitment Agent shall not employ foreign workers in its office.
20. A Recruitment Agent shall ensure that his or her staff engaged in the registration and placement functions of that agent are competent and capable to perform their functions to an acceptable level as evidenced by previous experience, the completion of a training course conducted by the Ministry of Labour and Human Resources, or training provided by another institution acceptable to the Ministry.

21. A Recruitment Agent shall ensure that the provisions of the Labour and Employment Act, 2007 and its regulations are applied to all staff employed by that agent, concerning all aspects of working conditions and the working environment.

Chapter 4

Premises

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

Chapter 5

Receipt of vacancy notice or job offer from an employer

25. Employers and Recruitment Agents shall be notified from time to time the categories of foreign workers that may be recruited compulsorily through the Agents
26. On receipt of a job offer from an employer, a Recruitment Agent shall apply for recruitment of foreign workers for the employers if the post does not fall in the list of occupations closed to foreign workers and abide by the requirements and procedures prescribed in the "Guidelines for Foreign Workers Recruitment Agents" to be issued by the Department of Labour from time to time.

Contract between Recruitment Agent and Employer

27. On receipt of a job offer from an employer, a Recruitment Agent shall prepare a written contract between the parties that contains:

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

Fees

30. A Recruitment Agent shall be entitled to charge fees for placement services rendered as follows :
- a. The agent may charge up to 20% of the first month's basic salary for the placement of a foreign worker, such fee to be payable by the employer. The employer shall not be entitled to recoup this amount from the placed worker.
 - b. An Agent shall not register a foreigner seeking job in Bhutan.

31. A Recruitment Agent shall maintain records of fees collected from an employer and shall report these fees in its quarterly report to the Ministry of Labour and Human Resources, as indicated in section 33 of this regulation.
32. A Recruitment Agent shall make its records of fees collected from employers available to a labour inspector on demand.

Information

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

Inspection by labour officers

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

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

Penalties and sanctions

38. A Recruitment Agent if found to be in violation of any section of this regulation shall be liable to be penalized by a fine of between Nu. 9,000 to Nu. 252,000 for a first offence, and between Nu. 252,000 to Nu. 540,000 for a subsequent violation, or have his or her business license cancelled or revoked
39. A Recruitment Agent shall be guilty of an offence of a violation if the agent refuses or fails to obey a direction of the Ministry of Labour and Human Resources. The Ministry shall deregister the agent and recommend to the Ministry of Economic Affairs for cancellation of the Agent's business license.

ANNEX 1

Record of Understanding

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

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

Signature

Signature

Chief Labour Administrator

Foreign Workers Recruitment Agent

Address:

Contact No.

Date:

Date:

Signature of Witness:.....

Address:.....

Contact No:.....

Date:.....

REGULATION: GRIEVANCE PROCEDURE

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning grievance procedures and related matters as applied to all workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Grievance Procedure Regulation, 2009*
2. This regulation contains legal requirements that must be met by all workplaces covered by Sections 188 and 189 of the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation shall come into force with effect from November 11, 2009

Purpose

4. The purpose of the regulation is to provide guidelines for the handling of grievances within those enterprises which are required to have a grievance procedure under the Labour and Employment Act, 2007.

Scope

5. Enterprises that are registered under the Companies Act of the Kingdom of Bhutan 2000 and small, medium and large scale enterprises that employ employees under a contract of employment of more than one year's duration shall prepare and implement a grievance procedure.

6. Enterprises not covered by Section 188 of the Labour and Employment Act 2007 but still within the scope of the Act are encouraged but not compelled to prepare and implement a grievance procedure.

Chapter 2

Definition

7. A grievance is defined as 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 Labour and Employment Act, 2007.
8. A grievance procedure shall normally relate to the existing rights of workers under the Labour and Employment Act, 2007 and its regulations, a written contract of employment, internal service rules, a collective bargaining agreement between workers and their employer, and rules established by custom and practice.
9. 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 group of employees, and their employer.
10. A grievance procedure shall be distinguished from a disciplinary procedure. A disciplinary procedure shall normally be included in the Internal Service Rules 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.
11. Employers with a grievance against a worker or workers shall first exhaust the disciplinary procedure as included in the Internal Service Rules, or a separate Disciplinary Procedure, as the case may be, before making use of the grievance procedure within the enterprise

Chapter 3

Objective- Why an Internal Grievance Procedure

12. In preparing a grievance procedure, enterprises should consider the following benefits and advantages of such a procedure which can:
 - a. help resolve labour problems and complaints within the enterprise without the need for government intervention,
 - b. solve labour problems and complaints quickly and fairly in accordance with an agreed procedure,
 - c. prevent minor labour problems and complaints from escalating into a formal labour dispute,
 - d. encourage greater cooperation and build trust between workers and managers within the enterprise,
 - e. minimize possible disruptions to production within the enterprise as a result of labour problems.

Chapter 4

Preparation

13. A grievance procedure shall be prepared in consultation with the workers' association within the enterprise or, if there is no such workers' association, with the employees of the enterprise.
14. A grievance procedure shall be agreed and signed by the employer and three representatives of the workers' association or, if no workers' association exists, by three employees of the enterprise nominated by the employees of the enterprise.
15. The grievance procedure shall be in writing and brought to the notice of all employees within the enterprise in a language that is understood by all employees.
16. The grievance procedure shall be written in simple language and presented in a form that is easy for all parties to follow.
17. The grievance procedure once agreed shall be periodically reviewed by the employer and workers' association or if no workers'

association exists by representatives of the employees, such review to take place at a time agreed between the employers and the workers' association or employees as the case may be.

Chapter 5

Rights and obligations

18. The employer shall not retaliate in any form whatsoever against an employee who lodges a complaint under the grievance procedure.
19. Any employee who lodges a frivolous or mischievous complaint under a grievance procedure shall be subject to the disciplinary provisions of the Internal Service Rules of the enterprise or other disciplinary rules, to the extent that such rule exists, or the provisions for misconduct as provided under the Labour and Employment Act, 2007.
20. 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.
21. An employee lodging a complaint under a grievance procedure shall be entitled to have time off during working hours to take advantage of the procedure, such time off to be paid at the same rate as if the employee was working.
22. 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.
23. 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.
24. 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 in any way their rights under the laws of Bhutan.

Chapter 6

Steps in the procedure

25. The grievance procedure shall comprise of a number of clearly defined steps, with the number of steps to be decided by the enterprise in consultation with the workers' association or employees, in accordance with its size and production processes.
26. 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.
27. Each step shall indicate the records to be kept and who shall keep them.
28. 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 7

Operational arrangements

29. 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.
30. 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.
31. 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.
32. 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.

REGULATION: PENALTIES UNDER THE LABOUR AND EMPLOYMENT ACT, 2007 AND ITS RELATED REGULATIONS

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning penalties liable to be paid by parties found to be in contravention of the Act and its related regulations.

Chapter 1

Preliminary

1. This regulation shall be called *Penalties Regulation, 2009*
2. This regulation indicates the penalties, including periods of imprisonment, fines, and damages to be applied to persons found to be in contravention of the Labour and Employment Act, 2007 and its related regulations. These penalties and punishments apply to 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 indicate the forms and levels of penalties to be applied to employers, employees, labour inspectors, labour relation officers and advisors, who fail to comply with the provisions of the Labour and Employment Act, 2007 and its regulations.

Scope

5. This regulation shall apply to all workplaces, employees, employers, labour inspectors, labour relation officers and advisors falling within the scope of the Labour and Employment Act, 2007.
6. This regulation reflects the penalties contained in the Penal Code of Bhutan, 2004 and which have been applied to contraventions under the Labour and Employment Act, 2007. The Penal Code provides for seven (7) levels of punishment for wrongdoers ranging from felony of the first degree as the highest punishment to a violation as the lowest.
7. The Labour and Employment Act, 2007 provides for the following levels of punishment for various offences.

Felony of the third degree	5-9 years imprisonment
Felony of the fourth degree	3-5 years imprisonment
Misdemeanor	1-3 years imprisonment
Petty Misdemeanor	1 month to less than 1-year imprisonment
Violation	a fine calculated as a multiple of the National Minimum Wage.
8. The Penal Code of Bhutan indicates various situations in which mitigating or aggravating circumstances apply that may reduce or increase the penalties that would otherwise be given. These mitigating circumstances apply to penalties under the Labour and Employment Act, 2007.

Chapter 2

Prohibitions under the Act

Compulsory Labour

9. A person who causes or permits any form of forced or compulsory labour under section 6 of the Act shall be liable for the offence of felony of the fourth degree.

Prohibited forms of child labour

10. A person who employs a child in work or circumstances as stated in section 9 of the Act shall be liable for the offence of felony of the third degree.
11. A person who employs a child in unacceptable occupations, jobs or situations as indicated in the *Acceptable Forms of Child Labour Regulation*, shall be liable for the offence of felony of the third degree.

Discrimination

12. An employer who discriminates against an employee or job applicant concerning recruitment, dismissal, transfer, training, demotion, wages, or working conditions as indicated in sections 11 to 13 of the Act shall be liable to be penalized by a fine of a minimum of 360 times and a maximum of 1080 times the National Minimum Wage .

Sexual harassment

13. A person guilty of sexual harassment under sections 16 to 19 of the Act shall be liable for the offence of petty misdemeanor.
14. In addition, the court may impose a fine of up to 3000 times the Minimum National Wage.
15. The court may also award damages to the victim of sexual harassment up to a maximum of 3000 times the National Minimum Wage Rate as provided in Section 34 of the *Sexual Harassment Regulation*.

Chapter 3

Labour Inspection

Confidentiality

16. A labour inspector, labour relations officer or advisor who contravenes the confidentiality requirements under sections 31 and 32 of the Act, shall be liable for the offence of misdemeanor. In

addition, the Ministry of Labour and Human Resources may initiate administrative action against the offender.

Conflict of interest

17. A labour inspector, labour relations officer, or an advisor, who fails to avoid a conflict of interest in their work under section 35 of the Act, shall be liable for the offence of petty misdemeanor.

Obstruction

18. A person who prevents an inspector or advisor from carrying out his or her duties under the Act shall be liable for the offence of petty misdemeanor.

Improvement Notices

19. A person who fails to meet the requirements stipulated in an Improvement Notice issued by a labour inspector under section 40 of the Act shall be liable to be penalized by a fine up to a maximum of 360 times the National Minimum Wage Rate

Prohibition Notices/Appeal against the notice

20. A person, who fails to meet the requirements stipulated in a Prohibition Notice issued by a labour inspector under section 43 and 44 of the Act or a Notice affirmed by the Chief Labour Administrator under section 48, shall be liable for the offence of petty. If aggravated circumstances exist the person who fails to meet the requirements of a Prohibition Notice shall be liable for the offence of felony of the fourth degree.

Chapter 4

Contracts of employment

Written contracts

21. An employer who fails to ensure that a contract of employment with an employee is in writing and who fails to provide a copy to the employee under section 61 of the Act shall be liable to be penalized by a fine of 90 times the National Minimum Wage Rate.

22. An employer who fails to specify the required content in a contract of employment, including its duration, under sections 64 and 65 of the Act shall be liable to be penalized by a fine of 90 times the National Minimum Wage Rate. In addition, the Ministry of Labour and Human Resources may direct the employer to pay damages to the employee.

Notice period for termination

23. An employer who fails to specify a notice period on termination of a contract of employment of not less than 30 days as required under section 68 of the Act shall be liable to be penalized by a fine of 90 times the National Minimum Wage.

Probation

24. An employer who fails to satisfy the termination requirements during the probation period of a contract of employment as provided in section 72 of the Act shall be liable for the offence of petty misdemeanor
25. An employer who requires an employee to repeat a probationary period for the same work, or work that is materially similar, as provided in section 73 of the Act shall be liable for the offence of petty misdemeanor

Internal service rules

26. An employer who is required to have internal service rules but fails to do so, who fails to include the required content, or fails to have them approved as required and as provided under sections 76 to 79 of the Act shall be liable to be penalized by a fine up to a maximum of 1080 times the National Minimum Wage Rate.

Unlawful termination

27. An employer who unlawfully terminates a contract as stated in section 85 of the Act shall be liable to be for the offence of petty misdemeanor. In addition, the court may order the employer to reinstate the wrongfully dismissed employee and or pay compensation of 1 month's pay for each year of continuous service with that employer, up to a maximum of 6 month's pay.

Redundancy

28. An employer who terminates a contract of employment under section 90 but does not complete the procedures given under section 91 shall be liable to be penalized by a fine to a maximum of 90 times the National Minimum Wage Rate.

Chapter 5

Compensation and benefits

Compensation

29. An employer who fails to compensate an employee for death or disablement due to an accident or occupational disease under section 96 of the Act shall be liable for the offence of petty felony of the fourth degree. In addition, the court may order the payment of compensation as provided under the *Workers' Compensation Regulation*.
30. 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 shall be liable for the offence of petty misdemeanor

Benefits

31. An employer who fails to pay gratuity and provident fund payments to an employee on retirement under section 99 of the Act shall be liable for the offence of felony of the fourth degree. In addition, the court may order the payment of compensation as provided under the Regulation on *Gratuity* and the *Regulation Provident Fund*.
32. An employer who fails to make the required contributions to the fund of an employee in accordance with the provisions of Regulation on gratuity shall be liable for penalty of between 90 to 360 times the National Minimum Wage for each contravention. In addition, the employer shall be liable to compensate the employee to the full amount of his or her entitlement.

33. An employer who fails to deposit the required PF contributions or the employees' contributions by the fifteenth day of the day of payment of salary/wage shall pay penalty interest of 1% of the total contribution to the account holding financial institution for every day delayed.
34. An employer who fails to establish a separate and identifiable provident fund account in an authorized financial institution, who fails to establish an individual account for each participating employee in the said financial institution, or who diverts the monies or part thereof in the provident fund account for purposes unrelated to the fund's purpose shall be liable for penalty equivalent to maximum of 360 days of the National Minimum Wage

Chapter 6

Working conditions

35. An employer who contravenes Section 15 to 22 of Acceptable forms of Child labour *Regulation* shall be liable to be penalized by a fine of between 30 and 360 times the National Minimum.

Hours of work

36. An employer who does not comply with the *Hours of Work Regulation* shall pay a fine for each contravention, as follows:

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

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

Third offence and each subsequent offence: Three hundred and sixty five (360) times.

Leave and holidays

37. An employer who fails to provide an employee with the annual leave, casual leave, sick leave, maternity leave, paternity leave, and public holidays or maintain records of leave and holidays for each employee as stipulated in the *Leave Regulation* and sections 106-110 of the Act shall be liable to be penalized by a fine of between 30 and 360 times the National Minimum Wage for each contravention.

Maternity arrangements

38. An employer who contravenes the provisions concerning night work and risky work for a pregnant employee, appropriate work on return from maternity leave, nursing time, or continuous employment as stipulated in sections 111 to 114 of the Act shall be liable for the offence of felony of the fourth degree.

Chapter 7

Wages

Payment of wages

39. An employer who fails to pay to an employee the correct amount of wages including overtime pay, at the correct place, at the correct time, and in the correct form as stipulated in sections 118 to 122 of the Act shall be liable to be penalized by a fine of 90 times the National Minimum Wage for each contravention.

Pay for night work

40. An employer who fails to pay to an employee the correct amount of pay for work performed at night after the completion of that employee's normal day shift as stipulated in section 125 of the Act shall be liable for the offence of petty misdemeanor.

Payment of wages on termination

41. An employer who fails to pay wages due to an employee within 7 calendar days after the date of termination of that employee's employment as stipulated in section 127 of the Act shall be liable to be penalized by a fine of 90 times the National Minimum Wage for each contravention.

Unclaimed wages

42. An employer who fails to take the required action to locate an employee who has left employment and to whom wages are owed as stipulated in section 129 of the Act shall be liable to be penalized by

a fine of 90 times the National Minimum Wage for each contravention.

Deductions

43. An employer who makes deductions as stated in section 131 of the Act from an employee's pay that amount to more than half the total wages payable to that employee shall be liable for the offence of petty misdemeanor.

Wage records

44. An employer who fails to keep wage records with details of the information stipulated in sections 134 and 135 of the Act, or who fails to maintain and keep a wage register for a period of 5 years as required by section 136 shall be liable to be penalized by a fine to a maximum of 1080 times the National Minimum Wage

Chapter 8

Occupational Health and Safety

Employer's duty to employees

45. An employer who fails to comply with the health and safety requirements as detailed in sections 141 to 144 of the Act shall be liable for the offence of felony of the fourth degree.

Employer's duty to non-employees

46. An employer who fails to ensure that persons other than employees are not exposed to health and safety risks arising from the conduct of that employer as required under section 146 of the Act shall be liable for the offence of felony of the fourth degree. In addition, the court may impose appropriate compensatory damages.

Health and safety policy

47. An employer who fails to prepare and implement a health and safety policy as required by sections 150 to 152 of the Act shall be liable to

be penalized by a fine up to a maximum of 360 times the National Minimum Wage.

Accident record

48. An employer who fails to prepare a written record of work accidents and incidents and submit such record to the Chief Labour Administrator in accordance with the provisions of section 157 of the Act shall be liable to be penalized by a fine to a maximum of 360 times the National Minimum Wage

Duties of employees

49. An employee who fails to take reasonable care of his or her own health and safety and the health and safety of others in the workplace, or who is under the influence of alcohol, drugs or psychotropic substances, or acts willfully and recklessly thereby placing at risk the health and safety of others as provided by sections 159 and 160 of the Act shall be liable to be penalized by a fine to a maximum 360 times the National Minimum Wage

Rights of an employee

50. An employer who requires an employee to return to a work in situation where there is a threat of serious harm to that employee or withholds the pay of the employee for such action by the employee or takes other punitive or discriminatory action against the employee as provided in sections 162 to 164 shall be liable to be penalized by a fine to a maximum of 90 times the National Minimum Wage. In addition, the employer may be liable to pay damages according to the nature of the punitive or discriminatory action against the employee.

Duties of other persons

51. A person who designs, manufactures, imports or supplies any machinery or chemical for use at a workplace and who fails to comply with the provisions of section 167 of the Act is liable to be penalized by suspension of his or her business license in the first instance, and the cancellation of that business license for a second offence.

Chapter 9

Minimum age

52. A person who employs a child between the age of 13 and 17 years in a category or type of work that is outlawed by the Act or the *Acceptable Forms of Child Labour Regulation* shall be liable for the offence of felony of the third degree.

Chapter 10

Labour relations

Bargaining in good faith

53. An employer, workers' association or group of workers who fail to bargain in good faith or otherwise fail to satisfy the requirements of section 180 of the Act shall be liable to be penalized by a fine up to a maximum of 360 times the National Minimum Wage

Workers' associations

54. A workers' association that engages in any activity that adversely affects the security of the people and the well being of the country as indicated in section 182 of the Act shall be liable for penalties by the court in accordance with the relevant provisions of the Penal Code or the National Security Act.

Grievances and disputes

55. An employer who fails to provide an employee who is party to a grievance or dispute, paid time off to attend the grievance, conciliation or court proceedings under section 185 of the Act shall be liable for the offence of petty misdemeanor.
56. An employee who fails to refund any payments made to him under a grievance or dispute that has been unambiguously resolved in favour of the employer under section 186 of the Act shall be liable for the offence of petty misdemeanor.

Grievance procedure

57. An employer with 12 or more employees who fails to prepare and implement a grievance procedure as provided in sections 188 and 189 of the Act, or who fails to make the procedure known and available to employees at the workplace as provided in section 190 shall be liable for the offence of petty misdemeanor.

Chapter 11

Employment agents

Non-compliance with a license

58. A person granted a license as an employment agent who contravenes the terms and conditions of that license as provided in section 216 of the Act *shall be liable to be penalized as per licensing rules and regulations of Ministry of Economic Affair.*

Or

shall be liable to be penalized by a fine of between Nu. 9,000 to Nu. 252,000 for a first offence, and between Nu. 252,000 to Nu. 540,000 for a subsequent violation, or have his or her business license cancelled or revoked

Chapter 12

Employment of foreigners

59. A person who employs a foreigner without the approval of the Chief Labour Administrator or a person who knowingly assists a person to employ a foreigner without a permit as provided in sections 219 and 220 of the Act shall be liable for the offence of felony of the fourth
60. A person who varies or transfers a permit to employ a foreigner without the approval of the Chief Labour Administrator as provided in section 221 of the Act shall be liable for the offence of felony of the fourth degree
61. An employer who terminates a contract of employment of an employee who is a citizen or resident of Bhutan for the purpose of

employing a foreigner as provided in section 223 of the act shall be liable for the offence of misdemeanor

62. An employer who terminates the contract of employment of a citizen or resident of Bhutan without first terminating the contracts of all foreigners employed by him or her working in a similar capacity to that of the citizen or resident as provided under section 224 of the Act shall be liable for the offence of misdemeanor

Work permits

63. A person who fails to comply with the terms and conditions of a work permit as provided in section 229 of the Act shall be liable for the offence of misdemeanor
64. A person who forges or counterfeits a work permit as indicated in section 230 of the Act shall be liable for the offence of felony of the fourth degree

Non Disclosure of Information

65. A person who refuses or fails to comply with Section 232 of the Labour and Employment Act, 2007 or fails to respond to or obey a direction of the Ministry of Labour and Human Resources shall be liable to be penalized by a fine to a minimum of 90 times the National Minimum Wage.

Failure to Answer

66. Failure to answer or comply with any directives of the Ministry, may result in a finding of contempt and the Ministry may seek the assistance of the police to produce the party before it or forward the case to the court of law.

REGULATION: HOURS OF WORK

Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act 2007, hereby promulgates the following regulation concerning hours of work and related matters for all employees, workers and workplaces falling within the coverage of the Act.

Chapter 1

Preliminary

1. This regulation shall be called *Hours of Work Regulation, 2009*.
2. This regulation contain 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 a uniform standard for maximum working hours and related matters, including overtime, for all workplaces falling within the coverage of the Labour and Employment Act, 2007

Scope

5. This regulation shall apply to all workplaces and all employees and workers, whether Bhutanese or non-Bhutanese, falling within the definition of ‘employee’ and ‘worker’ as provided in the Labour and Employment Act, 2007.
6. This regulation also apply to managerial and supervisory employees employed at a workplace, except with regard to the provisions concerning overtime.

Hours of Work

7. 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

8. 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.
9. An employer shall pay a worker performing overtime work at a minimum of the worker's 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 of that workplace.
10. 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.
11. An employee at supervisory level and above shall not be entitled to overtime payments, as provided in section 124 of the Labour and Employment Act, 2007.
12. All overtime work is voluntary and a worker must not be disciplined or punished by an employer for a refusal to perform overtime work.
13. An employer must keep and maintain a record of all normal and overtime hours worked by all workers, including the rates of pay for overtime hours performed, and make this record available to a labour inspector if so requested.
14. An employer requiring 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

15. All employees 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. Employees, 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.
16. All employees 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.
17. 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.
18. An employee working less than 2 hours per day is not entitled to a rest break.
19. An employee working less than 4 hours per day is not entitled to a meal break.

Daily and Weekly Rest Periods

20. All employees shall have a daily rest period of a minimum of 12 consecutive hours.
21. All employees shall have a weekly rest period of 24 consecutive hours except those performing overtime night shift under section 8 of this Regulation.

Internal Service Rules

22. For those workplaces required by law to have Internal Service Rules such rules may provide for different hours of work, overtime hours, overtime rates of pay, rest breaks, meal breaks, and daily and weekly rest periods, provided such arrangements are agreed by the employer and employee and represent an improvement for employees on the standards included in this regulation.

23. For those workplaces not required by law to have Internal Service Rules the employer and employees may agree on different hours of work, overtime hours, overtime rates of pay, rest breaks, meal breaks, and daily and weekly rest periods, provided such arrangements represent an improvement on the standards included in this Regulations.

Labour Inspection

24. Labour inspectors of the Department of Labour, Ministry of Labour and Human Resources, are mandated to secure compliance with these rules and may enter workplaces at any reasonable time to do so.
25. Employers and employees shall cooperate with the labour inspectors in undertaking their inspection duties and make available all relevant documents and records to facilitate inspection activities.

Penalties

26. A person who contravenes any section of this regulation shall pay a fine for each contravention, as follows

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

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

Third offence and each subsequent offence: Three hundred and sixty (360) times .

REGULATION ON RECRUITMENT AND MANAGEMENT OF FOREIGN WORKER

The Ministry of Labour and Human Resources, in accordance with the powers conferred under Section 234 of the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning Foreign Workers Recruitment and Management in the country.

Chapter 1

Title, Commencement and Extent

1. This Regulation shall :
 - (a) be called the *Regulation on Recruitment and Management of Foreign Worker, 2012*
 - (b) come into force with effect from 1st November, 2012.
 - (c) extend to the whole of the Kingdom of Bhutan

Scope

2. This Regulation shall apply to all matters relating to Recruitment and Management of foreign workers in the country within the coverage of the Labour and Employment Act, 2007 including a person or entity who employs foreign workers resulting in the formation of a contract of employment between them.

Purpose

3. The purpose of this regulation is to establish standards of conduct for the employers and Foreign Workers in Bhutan and ensure compliance to the provisions of the Labour and Employment Act, 2007.

Objectives

4. To elaborate the legal requirements for recruitment of foreign workers in all parts of Bhutan.

5. To protect foreign workers from unfair placement and employment practices.
6. To guide the employers and foreign workers on various requirements.
7. To indicate the circumstances in which the employers and foreign workers shall be suspended, prohibited or penalized.
8. To safeguard the sovereignty and security of the kingdom.
9. To ensure that the foreign workers are provided with decent working condition and safe working environment.

Chapter 2

Approval of work permits for foreign workers

10. The services of foreign workers shall be governed by the “Labour and Employment Act 2007” and its “Regulations” and other relevant laws of the country.
11. Foreign Workers shall not be allowed in closed occupation the list of which shall be revised by MoLHR from time to time.
12. A foreign worker can be recruited only after obtaining approval for work permit from the Chief Labour Administrator. The duration of work permit shall be approved for a maximum period of one year at a time.
13. Foreign workers shall not be permitted for occupations against which Bhutanese are available.
14. The number of foreign workers for various sectors shall be decided by the Department of Labour from time to time based on the labour market situations.
15. The total number of foreign workers in the country shall be as per the ceiling prescribed by the Government from time to time.
16. Foreign worker shall be permitted to work only on approved work sites.

Work permit

17. Upon receiving the approval of work permit for foreign worker, the employer/FWRA shall initiate the recruitment process.
18. The work permit cards for the foreign workers shall be issued by the competent authority identified by the government as per the procedures given in the “Guidelines for Recruitment of Foreign Workers” and the “Immigration Rules and Regulations 2012”.
19. All costs related to processing for work permit shall be borne by the employer.

Entry and Exit of foreign worker

20. The FWRA/employer shall ensure that his/her foreign worker enter and exit the country on completion of all the immigration formalities as prescribed in the Immigration Rules and Regulations 2012.
21. In the event the foreign worker absconds from the country, it must be reported to the Department of Immigration and the work permit must be cancelled immediately.

Chapter 3

Responsibilities of the Employer and Foreign Workers

Recruitment Agents (FWRA)

22. The employer/FWRA shall:
 - a. Strictly follow the procedures for recruitment as prescribed in the “Handbook on Recruitment and Employment of Foreign Workers in Bhutan”.
 - b. Employ a foreigner who is above 18 years only.
 - c. Ensure that only those foreign workers are recruited who have no criminal records and also who had not left Bhutan during his/her earlier employment without completing the immigration formalities and permission of the employer.

- d. Be fully responsible for screening, recruitment, management and repatriation of their foreign workers.
- e. Ensure that foreign workers recruited and placed by them are not exploited and abused,
- f. Ensure that foreign workers are paid the agreed wages by the first week of the subsequent month and are employed only by the designated employer,
- g. Ensure that foreign workers are in possession of work permits at all times,
- h. Ensure that the foreign worker works in approved work sites only.
- i. After the completion of the work the employer/FWRA shall ensure that the foreign workers recruited by them are repatriated through proper channel,
- j. The employer shall bear the cost of processing work permit cards of the foreign workers.

23. The employer/FWRA shall not:

- a. Employ a foreigner unless the employer has an approval of the Chief Labour Administrator to employ a Foreigner.
- b. Knowingly assist a person to employ a foreigner without a permit.
- c. Permit the foreign worker to work for another person without the approval of the Chief Labour Administrator.
- d. 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.
- e. 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 foreigners employed by him or her who are working in a similar capacity.

- f. Recruit foreign workers who have undesirable antecedents and likely to cause harm to Bhutan and her people,
- g. Recruit foreign workers who had absconded from the country previously,

24. Foreign worker's welfare

- a. The employer/FWRA is responsible for looking after the welfare of the foreign worker as per the Labour and Employment Act 2007 and its Regulations.
- b. The employer/FWRA shall provide proper care and guidance to the foreign worker during their tenure in Bhutan.

25. Responsibilities of the Foreign Worker

- a. Be physically and mentally fit and free from any communicable diseases.
- b. A foreign worker shall be in possession of work permit card all the time and produce it as and when demanded by authorities concerned.

Chapter 4

Code of Conduct and Ethics

26. A foreign worker shall:
- a. Respect the values, tradition, culture and law of the country.
 - b. Respect the systems, policies, rules and procedures of the country.
 - c. Demonstrate exemplary behavior at all times that are congenial to decorum of the Bhutanese society.
 - d. Be honest and sincere in his/her duty.

- e. Possess a valid work permit card during his/her employment period in Bhutan.
 - f. Work for only his/her employer.
 - g. Refrain from visiting places restricted for entry by foreigners without specific permits.
27. A foreign worker shall not:
- a. Engage in politics, proselytization, corrupt practices and illegal activities.
 - b. Engage in anti-government activities, terrorism and such other actions that would undermine the peace, security and sovereignty of the country.
 - c. Criticize the system of government and its policies and programs through speech or in writing while in Bhutan and after repatriation.
 - d. Pose any danger to the socio-economic and political stability of the country.
 - e. Seek to enter into arrangements with a Bhutanese citizen that will result into prolonged stay in Bhutan.
 - f. Leave the job and country without completing the exit formalities.

Chapter 5

28. Definition

- a. **Foreign worker:** A non-Bhutanese who is employed in Bhutan on a temporary basis.
- b. **Work permit:** It is a permit approved by the competent authority to a foreigner permitting him/her to work in the country.

29. Penalty

- a. A person who contravenes section 22, (b) shall be guilty of an offence which shall be a felony of the third degree.
- h. A person who contravenes section 23(a) to 23(c) shall be guilty of an offence which shall be a felony of the fourth degree.
- i. A person who contravenes section 23 (d) and 23 (e) shall be guilty of an offence which shall be a misdemeanor.
- j. The work permit of a foreign worker who contravenes section 27 (a) to 27(e) shall be cancelled immediately and the worker deported and shall not be permitted to enter the country in future.
- k. A foreign worker who contravenes section 27 (f) shall not be permitted to enter the country in future.
- l. All other offences and penalties relating to work permit of a foreign worker which are covered under the Labour and Employment Act 2007 and the Immigration Rules and Regulations 2012 shall be applicable.

Erratum

- ❖ Page 40, section 28, should be read as:
The employee, representative of the employee or employer shall notify immediately to Chief Labour Administrator of an injury or death.
- ❖ Page 58, section 45, “section 43” should be read as “section **44**”.
- ❖ Page 93, section 8, the second sentence, “These mitigating circumstances” should be read as “This mitigating or **aggravating** circumstances”.
- ❖ Page 95, section 20, “petty” should be read as “petty misdemeanor”.
- ❖ Page 97, section 29, “petty felony of the fourth degree” should be read as “felony of fourth degree”.
- ❖ Page 97, section 32, “regulation on gratuity” should be read as “regulation on Provident Fund”.
- ❖ Page 99, section 38, should be read as:
An employer who contravenes the provisions concerning night work and risky work for a pregnant employee, appropriate work on return from maternity leave, nursing time, **and** continuous employment as stipulated in sections 111 to **115** of the Act shall be liable for the offence of **misdemeanor**.
- ❖ Throughout the Regulations on working conditions, “Three Hundred Sixty Five Days” should be read as “360 days”.