



# General Note

## Redundancy and Compliances

**Published Date**  
22 June, 2024

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## 1. Relevant Laws.

- (a) The matters related to lay off and redundancy are regulated under the –(a) Labor Act 2017 (2074) (the “**Labor Act**”), and (b) Labor Rules 2018 (2075) (the “**Labor Rules**”) (collectively the “**Labor Laws**”).
- (b) The provisions of the Labor Laws do not apply for lay off or retrenchment where the employer has a headcount of less than 10.

## 2. Layoff

### 2.1. **Permissibility**

Section 15 of the Labor Act (the “**Labor Act**”) allows an employer (the “**Company**”) to layoff the existing employees under *special* situation. The same section elaborates the grounds for layoff and approvals required respectively.

### 2.2. **Grounds**

The grounds for layoff under *special situation* are:

- a. If there is shortage of electricity, water or raw material;
- b. *If there is lack of fund;*
- c. *If there is inability to reach the workplace or work because of situation beyond one’s control, or*
- d. *If the workplace cannot be operated because of situation beyond one’s control.*

### 2.3. **Approval required**

- (a) Under the aforementioned section, the Company employing ten or more than ten workers can lay off the employees for up to (15) fifteen days without any approval. However, laying off the employees for more than *fifteen days period*, the Enterprise is required to *consult either the authorized trade union or Labor Management Committee*.
- (b) The Labor Laws are silent as to whether the Employer will be able to lay off its employees in a situation where the authorized trade union or labor management committee does not consent for such lay off.

### 2.4. **Compliance required**

Further, Rule 5 of the Labor Rules requires the Company to give prior notice to the employees with subsequent disclosures.

- a. Reason for layoff
- b. Duration of layoff
- c. Name, position, working branch or division and work description of the employee or employees being laid off

- d. Mention of half salary to be provided during layoff
- e. If there are other reason such reason to be mentioned.

## **2.5. Financial Liability**

- (a) Section 39 of the Labor Act states that the financial liability of paying half of the remuneration (basic salary) for the duration of layoff befalls to the Company. The “basic salary” includes basic pay and annual increment but does not include allowances.
- (b) For the duration of the layoff, employees are exempted from giving attendance in the workplace unless otherwise stated in the notice issued.

## **3. Retrenchment**

### **3.1. Permissibility**

Section 145 of the Labor Act has specific provisions for retrenchment. The section allows retrenchment in the circumstance mentioned in paragraph 3.2 below. However, the provisions of retrenchment are not applicable to the Company employing ten or less than ten workers.

### **3.2. Grounds**

Under the following circumstance a Company is able to/can retrench their employees:

- a. If the company faces financial problems; or,
- b. If the employees become redundant as a result of merger; or,
- c. If the company needs to shut down partially or completely.

### **3.3. Approval required**

- (a) The employer is required to provide 30 days prior notice *to the Labor Office and authorized trade union of the enterprise respectively*. In the absence of such authorized trade union, the notice should be provided to an active trade union or labor relation committee of such enterprise.
- (b) For the detailed outline of the process of approval for retrenchment, please refer to Annex I.

### **3.4. Compliance required**

- (a) Additionally, the notice of retrenchment should mention the grounds for retrenchment, probable date for retrenchment and probable number of workers to be retrenched.
- (b) Section 146 of the Labor Act imposes the company with rehiring obligation. The Company, if within two years resumes operation or requires to hire more employees after retrenchment then priority should be given to retrenched employees.

### **3.5. Retrenchment Order**

- (a) While retrenching the workers pursuant to the said Section 145, the Labor Act requires the retrenchment to be in following order;
  - a) foreign workers;
  - b) comparatively, those workers who have received more punishments for misconducts;
  - c) workers with poor work performance standard;
  - d) workers who are hired at the last from among the workers in the same category of work.

Provided that the workers who were appointed earlier may be retrenched first by stating the grounds for doing so without following the rule of retrenching the workers first who were hired last.

- (b) Further, the said Section states that unless otherwise agreed with the trade union, the office bearers of the Collective Bargaining Committee and the authorized trade union shall be retrenched last.

### **3.6 Financial Liability**

- (a) The Company is liable to pay a lump sum amount as compensation calculated at the rate of one-month *basic salary* for each year of service to the employees who have completed at least one year of employment in such enterprise.
- (b) If the service period of an employee is less than one year, the compensation has to be paid proportionately.
- (c) If under the social security laws of Nepal, if an employee is entitled to receive unemployment benefit such employee shall not be compensated.

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Mr. Chaulagain is a distinguished legal professional of Nepal with more than 18 years of experience in the legal sector. His first-hand expertise lies on matters concerning project finance, energy and infrastructure projects, mergers and acquisitions, legal due diligence, and legal reforms. As a corporate and litigation expert, his profound understanding of legal matters is an invaluable asset, and his contributions significantly benefit those seeking professional legal guidance.

## Annex I: Process for retrenchment

