

General Guide

Differences between Regular and Contractual Employees

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Overview

This general guide outlines the differences between the recruitment of regular and contractual employees in Nepal. It covers different types of employments under labor laws of Nepal and differentiation between regular and contractual employment.

A. Introductory

Labor Act, 2017 (2074) (the “**Labor Act**”) and Labor Rules, 2018 (2075) (the “**Labor Rules**”) govern the matters regarding labor in Nepal. **Section 10(1)** of the Labor Act has differentiated the types of employments based on the nature of the works performed by the employees, which are:

S.N.	Nature of Employment	
1.	Regular Employment	
2.	Contractual Employment	a. Work-based Employment b. Time-bound Employment
3.	Casual Employment (<i>Employee is required to provide service or perform work for seven days or less in a month</i>)	
4.	Part-time Employment (<i>Employee is required to provide service or perform work for 35 hours or less in a week</i>)	

Similarly, the Labor Act defines regular employment as an employment arrangement that do not fall under contractual, casual or part-time employment.

While labor laws do not provide a specific definition of ‘regular employment’, it can be understood that individuals hired under a standard employment arrangement, typically on a full-time basis, with an ongoing and continuous relationship with the employer, will come under a ‘regular employment’.

Further, contractual employment incorporates both work-based and time-bound employment. Accordingly,

- a) a work-based employment is where an employer hires an employee by outlining specific tasks or services to be performed by the employee, whereas,
- b) a time-bound employment is where an employer hires an employee by specifying the duration by which the employee must complete its task.

Thus, under the Labor Act, in case employees are hired detailing the specific task or service to be performed by such employee or specified duration till which such employees are hired, it shall be regarded as work-based or time-bound employment, respectively.

B. Differentiation between Regular and Contractual Employees

Apart from termination, both regular and contractual employees are entitled to remuneration, allowances, holidays, leave, and other facilities as outlined by the labor laws. While contractual employment may be terminated upon fulfillment of contractual time period, unless such contract is extended further, an employer cannot terminate regular employment without sufficient grounds, as stipulated in the table below.

The differentiation between regular and contractual employees regarding termination formalities and other factors have been detailed in the table provided below.

S.N.	Headings	Regular Employment			Contractual Employment	
					Time-bound	Work-based
1.	Reference	Section 10(1)(a) of the Labor Act.			Section 10(1)(c) of the Labor Act.	Section 10(1)(b) of the Labor Act.
2.	Working Hours	<p><i>Permitted Work Hour</i> – 8 hours in a day & 48 hours in a week</p> <p><i>Permitted Overtime</i> – 4 hours in a day & 24 hours in a week</p> <p><i>Overtime Payment</i> – At a rate of 1.5 basic income</p> <p><i>Working Time</i> – As determined in the employment contract</p>				

4.	Holiday/ Leave/ Allowance/ Remuneration and other facilities	As per the labor laws, employment contract and the By-Laws prepared by the company for its internal management.		
5.	Term	From the effective date till the date of termination as stated below.	From the effective date till the completion of <u>duration</u> , unless otherwise terminated as stated below.	From the effective date till the completion of <u>work</u> , unless otherwise terminated as stated below.
6.	Termination	N/A	<u>On the end of Term:</u> Employment shall terminate upon the completion of the term as defined above.	
<p style="text-align: center;"><u>Termination under the Labor laws</u></p> <p><u>Termination by Employee:</u></p> <p>Voluntary termination by serving a notice. The notification requirement is not applicable for when the employment is terminated due to employee misbehavior or misconduct</p> <p style="text-align: center;">i. <u>Termination by Employer (General Circumstances):</u></p> <p>a) Incompetence of the Employee, i.e., an unsatisfactory or poor performance depicted through three or more consecutive performance evaluation,</p> <p>b) Physical or mental incapacitation except when the cause of such incapacity is occupational,</p> <p>c) Warning letters: 3 (three) warning letters by the Employer for Employee's misbehavior and misconduct as stipulated in the Labor Act.</p> <p style="text-align: center;">ii. <u>Termination by Employer (Specific Circumstances):</u></p> <p>a) <i>Retrenchment</i>: This occurs due to financial hardships, operational changes, or enterprise mergers. A notice must be given to the Labor Office and the authorized trade union (<i>if any</i>) of at least 30 days prior to taking any actions.</p> <p>b) <i>Lay off</i>: This is not a termination <i>per se</i>, but a temporary suspension resulting from special circumstances defined under labour laws.</p>				

C. Potential Risk Associated with Hiring Employees as Contractual Employees

Under Labor Rules, in case a dispute arises on whether an employment is regular or not, the Labor Office may determine on such dispute considering following factors, among others:

- (a) whether the work must be continued upon completion of the employment duration; and
- (b) if the employment duration is specified, whether the employee is required to work for more than one year.

Thus, in case an employee is hired as a 'contractual employee' and the factors mentioned above holds true, there remains a risk that such employee could be considered as a 'regular employee' by the Labor Office.

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