



A General Guide Nationals Termination Dynamics in Nepal

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Contributors

Mr. Narayan Chaulagain

Ms. Rejina Paudyal

Ms. Alangkrita Upadhayay

Overview:

This document outlines the basic framework, regulatory framework, modalities for lawful termination of employment along with consequences of unlawful termination in Nepal. It covers aspects such as the types of employment relationships, grounds for termination, special circumstances for termination of certain Employees, and procedural steps for termination. Additionally, it discusses the consequences of unlawful termination and the recourse available to Employees.

Basic Framework

1. What is employment?

Employment is a relationship between two parties (**Employer** and **Employee**) that regulate the provision of paid services.

2. Who are Employers?

Employers are authorities that pay their Employees for their labor.

3. Who are Employees?

Employees are individuals that offer their labor in return of compensation.

4. How is an employment relationship established?

An employment relationship is formed through the **employment agreement** agreed between the Employer and the Employee.

5. What is an Employment Agreement?

The Employment agreement outlines the terms of employment, including the scope of work, working hours, and other conditions.

6. What types of employment relationships are recognized in Nepal?

The types of employment relationships recognized in Nepal are illustrated as follows:

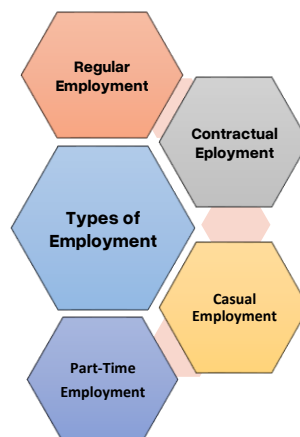


Illustration: Types of employment recognized in Nepal

Types of employment recognized in Nepal:

7. What is Regular employment?

Regular employment refers to working steady hours for a fixed salary, covering of all types of employment except part-time and casual engagements.

8. What is Casual employment?

Casual employment is based on the condition that the Employee has to perform any work, for seven days or less within a period of one month.

9. What is Part-Time employment?

Part-time employment is based on the condition that the Employee has to perform a work within thirty-five hours or less than thirty-five hours in a week.

10. What is Contract-based Employment?

Contract-based employment relies on terms mutually agreed by the Employer and the Employee.

11. Are there any types of contract-based Employment?

Yes, there are mainly two types of contract-based employment. The types are described as follows:

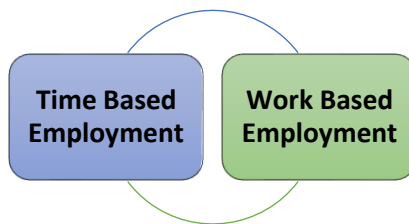


Illustration: Types of Contractual employment

12. What is meant by Time Based employment?

Time-based employment is when the Employee commits to work in the enterprise for the specified period only.

13. What is meant by Work Based employment?

Work-based employment is limited to a specific kind of work such that its completion would lead to its *automatic* termination.

14. Is a written agreement necessary for all kinds of employment relationship?

No, a written agreement is not necessary for casual employment.

15. How long does the employment relationship last?

The employment relationship lasts unless the term of employment agreed expires or if the employment relationship is terminated by the parties.

16. What is lawful termination of employment?

Lawful termination is terminating employment following conditions and procedures established by law.

Regulatory Framework

17. Which agency of Nepal Government handles employment termination issues?

The labor office and labor department regulate employment termination issues.

18. Which primary laws and regulations govern employment termination in Nepal?

Employment termination issues are primarily governed by the following laws :

1. Labor Act, (2017) 2074 [the “**Labor Act**”],
2. Labor Rules, (2018) 2075 [the “**Labor Rules**”],

Modalities for Lawful Termination: General Circumstances

19. Who can terminate employment relationship?

Employee or the Employer can terminate employment relationship.

A. Employer

20. How can the Employer lawfully terminate employment relationship?

Employer can terminate employment relationship under four grounds illustrated as follows:

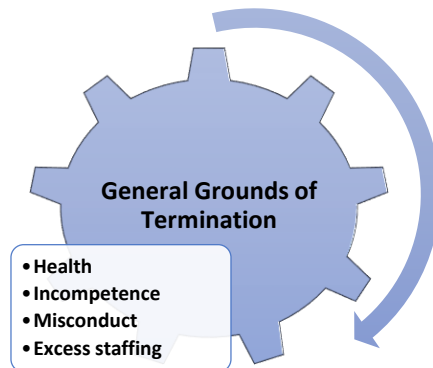


Illustration: General Grounds of termination by Employer

i. Health

21. How can the Employer terminate the employment relationship on the grounds of health?

The Employer can terminate employment for health reasons if it meets the following requirements illustrated below:

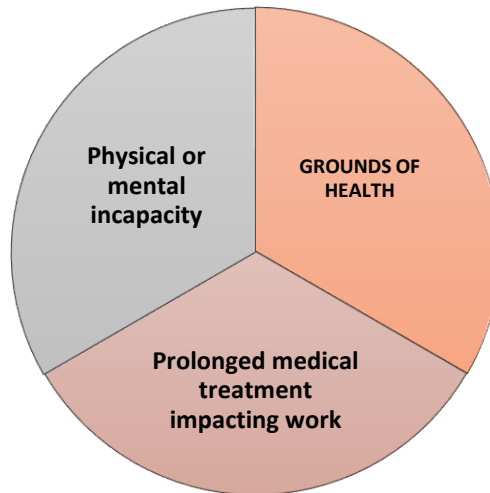


Illustration: Termination on grounds of health

22. What documents should the Employer rely on while terminating on grounds of health?

Employers should rely on a medical doctor's recommendation when terminating for health reasons.

23. Are there any exceptions to this termination?

Yes, the Employer is not liable to terminate this relationship on grounds of health under two circumstances illustrated below:



Illustration: Exception to termination on grounds of health

ii. Incompetence

24. When is an Employee declared incompetent?

An Employee is deemed incompetent when he/she consistently performs poorly for three(3) or more years.

25. How is unsatisfactory or poor performance of Employee determined?

Poor performance of the Employee is determined based on the performance evaluation of the respective Employee done by the Employer in the enterprise.

26. What is performance evaluation?

Performance evaluation is assessing how well an Employee does their job.

27. How often can performance evaluations of an Employee be conducted by an Enterprise?

Enterprises typically conduct performance evaluations once a year, however it is unclear if they can do so more frequently.

28. What are the requirements to be fulfilled for termination on grounds of incompetence?

If the Employee performs unsatisfactory performance persistently over three consecutive evaluations, then the termination can be made on grounds of incompetence.

29. What criteria does current labour law specify for Employee performance evaluations?

The criteria outlined in current labour laws for Employee performance evaluations include the following:

- a) Conducting evaluations fairly and reasonably,
- b) Communicating the evaluation procedure to Employees before the evaluation period, and
- c) Providing Employees with an evaluation sheet at the beginning of the fiscal year, which must be securely recorded for at least three (3) years.

30. What responsibilities does the Employer have after each performance evaluation?

After each performance evaluation, the Employer is responsible for discussing the results with the respective Employee and providing them with a reasonable opportunity to address and improve any weaknesses.

31. What happens if the concerned Employee disagrees with the performance evaluation?

If the Employee disagrees with the evaluation, they shall sign the evaluation sheet only after expressing their disagreement. The enterprise must then re-review the evaluation for the Employee.

iii. Misconduct

32. What is Misconduct?

Misconduct refers to unacceptable behavior or actions by the Employee, typically within the context of employment, which may include acts such as assault, bribery, unauthorized absence from work, submission of false educational credentials, or other similar actions that violate enterprise rules or standards.

33. How many instances of misconduct must occur before termination can be considered?

This depends on the nature and severity of the misconduct committed by the Employee as illustrated below.



Illustration: Misconduct instances leading to termination

iv. Excess staffing

34. What is excess staffing?

Excess staffing means having more Employees than necessary for the workload or tasks available in the enterprise.

35. What is termination due to excess staffing called?

Termination due to excess staffing is called retrenchment.

36. How is retrenchment different from layoff?

Layoff typically involves a temporary suspension of employment, while retrenchment entails permanent termination.

37. Under what circumstances is retrenchment possible?

Retrenchment is possible under the following circumstances.

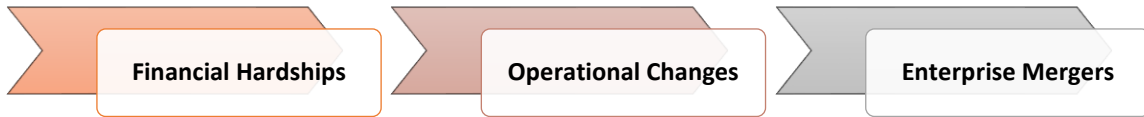


Illustration: Circumstances for retrenchment

38. Is there a priority order for retrenchment?

Yes, the Employers are liable to comply with the following priority order while retrenching their Employees as illustrated below:

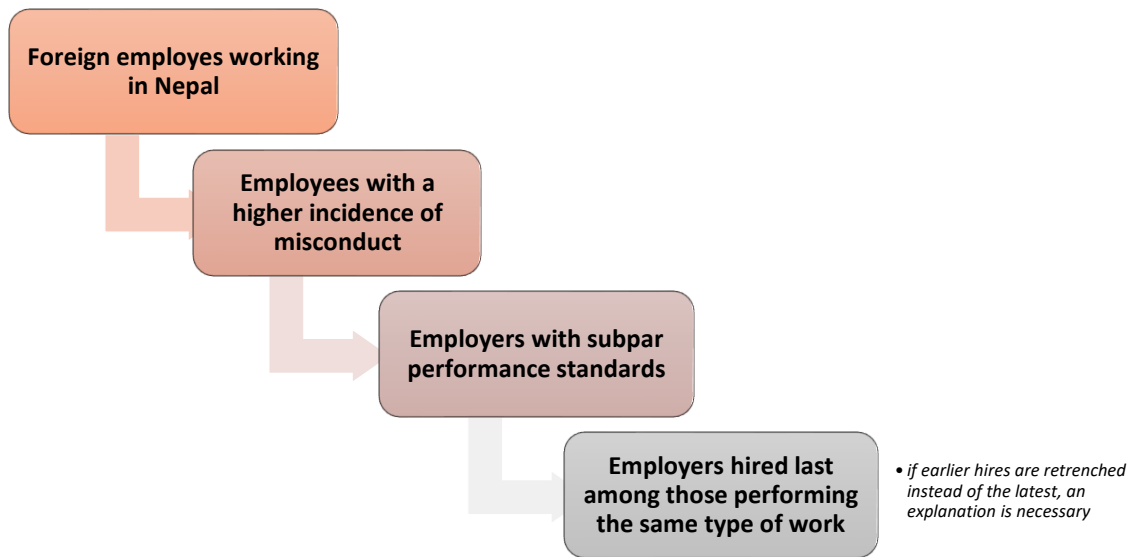


Illustration: Priority order for retrenchment

B. Employee

39. How can an Employee terminate the employment?

Employee can terminate their employment by resigning from the job as per the employment agreement.

Modalities for Lawful Termination: Special Circumstances

40. Are there any exceptional procedures for termination of certain Employees?

Yes, there are some exceptional procedures for termination of certain Employees illustrated as follows:

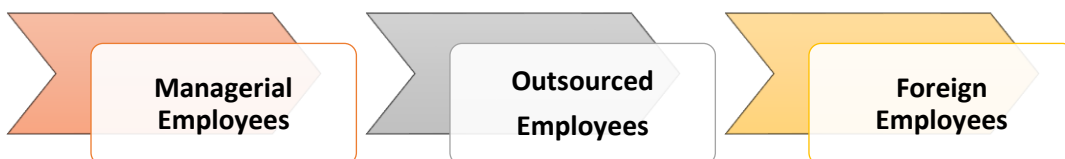


Illustration: Special circumstances for termination

i. Managerial Employees

41. Who are managerial level Employees?

In Nepal, labor laws define managerial Employees as those who supervise others on behalf of the Employer.

42. How does termination for managerial-level Employees differ from general Employees?

While the law generally prohibits termination of general Employees contrary to its provisions, for managerial-level Employees hired on time-bound basis, Employers can determine termination terms as per the employment agreement.

ii. Outsourced Employees

43. Who are outsourced Employees?

Outsourced Employees are Employees that work for an enterprise through a third-party labor supplier.

44. Who are the parties to an outsourcing arrangement?

Parties to an outsourcing arrangement are illustrated as follows:

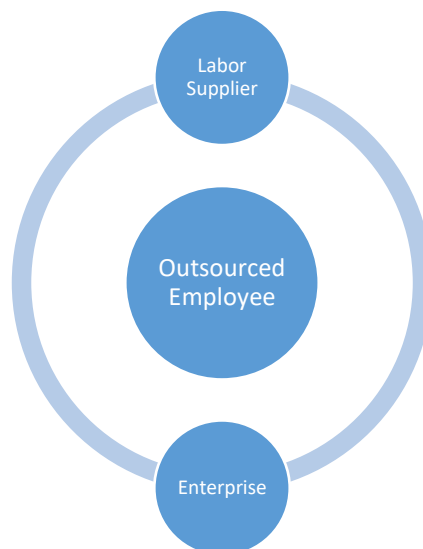


Illustration: Parties to an outsourcing arrangement

45. Who is considered the Employer for an outsourced Employee?

The Employer recommending the job i.e. labour supplier is deemed the Employer.

46. What are the grounds of termination for outsourced Employees?

Termination grounds are governed by the contract between the outsourced Employee and the labour supplier, as well as the contract between the enterprise and the labour supplier.

47. What happens if an outsourced Employee is wrongfully terminated by the labour supplier?

If wrongfully terminated, the liability rests with the labour supplier. However, if the labour supplier is unlicensed, the liability shifts to the enterprise.

iii. Foreign Employees

48. Who are foreign Employees?

Foreign Employees in Nepal are individuals from outside the country who work for a Nepalese organization and possess a valid work permit.

49. What factors influence the termination of employment for foreign Employees in Nepal?

While foreign Employees are entitled to the same remuneration, benefits, and allowances as Nepalese Employees, the termination of employment for foreign Employees depends on the renewal of work, consistency, or validity of work permit obtained by them.

Procedural steps for Termination

50. What procedure must the Employer follow when terminating employment?

The Employer is required to follow the following procedure while terminating employment.

A. Notification to Employee regarding termination	
The Employer informs the Employee of termination by providing advance notice, which varies depending on the length of employment illustrated below:	
Tenure	Prior notice
Maximum 4 weeks	1 day notice
4 weeks to 1 year	7-day notice
More than 1 year	At least 30 days' notice
B. Right of Clarification to Employee	
The Employee is provided with an opportunity to clarify why their employment should not be terminated.	



Illustration: Procedure of employment termination by the Employer

Consequences of unlawful termination

51. What is unlawful termination?

Unlawful termination is termination of employment without complying to the prevailing laws.

52. What is the general recourse available to Employees for unlawful termination?

Employees can either file a complaint with the Labor Office within six (6) months or seek personal dispute settlement as per the employment agreement. In the event they are dissatisfied with the decision of the authorized personnel, they may appeal to the Labor Court within thirty-five (35) days of the decision from such officials.

53. What immediate steps of enforcement are foreseeable in case of filing of complaint by the Employee under question 56?

Immediate enforcement steps against the Employer in response to an Employee's complaint include:

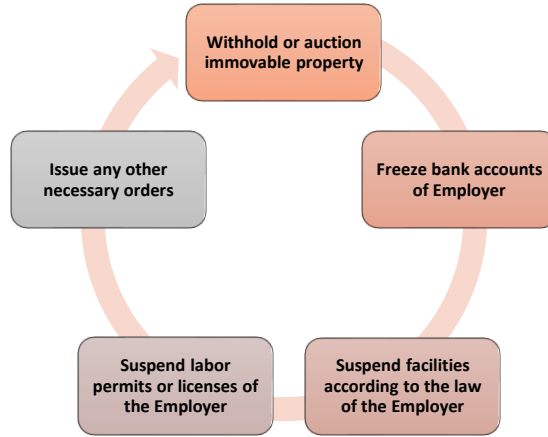


Illustration: Immediate enforcement steps against the Employer

54. What are the consequences of unlawful termination to the Employer?

In case unlawful termination is proven, two foreseeable situations may arise illustrated as follows:



Illustration: Possible situations in case of unlawful termination

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Contributors

Mr. Narayan Chaulagain

Managing Partner,
Infinity and Partners,
Anamnagar, Kathmandu

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.

Ms. Rejina Paudyal

Associate,
Infinity and Partners,
Anamnagar, Kathmandu

Ms. Paudyal has been affiliated with Infinity & Partners since 2022 and has been practicing law since then. She has consistently aided the firm in matters pertaining to Energy Projects, Foreign Investments, Labor, and Employment Issues, Civil and Criminal Litigation and Dispute Resolution. Ms. Paudyal's professional focus centers on Commercial Law with a particular prominence on Dispute Settlement Laws.

Ms. Alangkrita Upadhayay

Associate,
Infinity and Partners,
Anamnagar, Kathmandu

Ms. Upadhayay, a Kathmandu University law graduate, is a versatile individual committed to contributing to the legal sector. She has made contributions in both commercial and litigation areas and has an impressive record of achievements in international legal competitions. With a multifaceted skill set encompassing legal proficiency, language, and effective communication, Alangkrita is poised to drive positive change and deliver exceptional outcomes.