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REDUNDANCY & RETRENCHMENT AS PER THE LABOUR LAWS OF NEPAL

UNDERSTANDING EMPLOYEE REDUNDANCY AND
RETRENCHMENT



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REDUNDANCY & RETRENCHMENT AS PER THE LABOUR LAWS OF NEPAL

Redundancy Clause: As per **Section 145(1)** of the **Labour Act 2074 (2017)** (the "**Labour Act**"), "Retrenchment of employees is possible where an enterprise faces financial problems in its operation or the workers become redundant because of the merger of more than one enterprise or because of any other reason the enterprise needs to be closed down partially or completely."

1. WHAT ARE THE CASES WHERE RETRENCHMENT IS POSSIBLE?

- 1.1. According to **Section 145(1)** of the Labour Act, there are three specific cases where retrenchment of employees is possible:
 - 1.1.1. When an enterprise faces financial difficulties.
 - 1.1.2. When workers become redundant due to the merger of multiple enterprises.
 - 1.1.3. When the enterprise needs to be partially or completely closed down for any reason.
- 1.2. While the Labour Act does not provide specific details about these situations, the clauses mentioned offer a general understanding of when retrenchment is allowed.
- 1.3. To fully comprehend the situations described in **Section 145 (1)** of the Labour Act, it is necessary to refer to the definitions of specific terms provided in other relevant statutory

- provisions.
- 1.4. The term "financial difficulties" is defined in the **Insolvency Act 2063 (2006)** (the "**Insolvency Act**") as a situation where a company is or may become insolvent unless it undergoes restructuring according to the Act. This includes financial problems related to company law, taxes, and other relevant factors.
 - 1.5. "Merger" refers to the combination of two or more companies into a newly merged company, where the individual companies cease to exist primarily as per **Section 176** of the **Company Act 2063 (2006)**. This can result in the redundancy of workers.
 - 1.6. The term "partial or complete closure of business" has not been explicitly defined. Generally, partial closure indicates the suspension of certain aspects of a business, such as specific departments, branches, or services, while other areas may continue to operate as usual. Complete closure involves the comprehensive shutdown of all business activities, often due to insolvency, insurmountable challenges, or a strategic decision to exit the market.
 - 1.7. Based on the aforementioned provisions and **Section 145(1)** of the Labour Act, it is evident that retrenchment can occur under the following circumstances:
 - 1.7.1. Financial difficulty: When an enterprise faces financial problems that may lead to insolvency or require restructuring as per the **Insolvency Act**.

- 1.7.2. Redundancy due to a merger: When workers become redundant as a result of the merger of multiple enterprises, where the merging company ceases to exist.
- 1.7.3. Partial or complete closure of the enterprise: Partial or complete closure of the enterprise may result in the termination of employment for some or all employees, depending on the nature and extent of the closure.

2. WHAT ARE THE DO'S AND DON'TS THAT AN ENTERPRISE NEEDS TO FOLLOW DURING SUCH RETRENCHMENT?

- 2.1. In the case of retrenchment, the Enterprise should ensure that the process aligns with the guidelines outlined in the Labour Act to comply with the laws of the land and protect the rights of employees.
- 2.2. To maintain legal compliance and handle the sensitive matter of retrenchment appropriately, here are the Do's and Don'ts based on the Labour Act of Nepal:

DO'S:

- 2.3. Provide a notice to the Labour Office and the authorized trade union (or an active trade union or labour relation committee) at least thirty days before the scheduled date for retrenchment.

- 2.4. The notice should include the reason for retrenchment, the possible date for retrenchment, and the estimated number of employees to be retrenched.
- 2.5. Engage in discussions with the concerned trade union or labour relation committee regarding alternatives to retrenchment and the criteria for selecting employees for retrenchment.
- 2.6. Retrench employees based on the agreement reached during the discussions.
- 2.7. If the trade union or labour relation committee refuses to engage in discussions or an agreement is not reached, inform the Labour Office about the matter of retrenchment.
- 2.8. Follow a specific order while retrenching employees, generally prioritizing the retrenchment of foreign employees, employees with a history of misconduct, employees with weak work performance, and employees who were appointed last among those engaged in the same type of work.
- 2.9. However, if it becomes necessary to retrench employees who were appointed earlier, provide a reason for the deviation from the specified order.
- 2.10. Retrench the office-bearers of the collective bargaining committee or the authorized trade union last, unless otherwise agreed upon with the trade union.

DON'TS:

- 2.11. Do not initiate retrenchment without providing the required notice to the Labour Office and the authorized trade union (or an active trade union or labour relation committee).
- 2.12. Avoid neglecting discussions with the trade union or labour relation committee regarding alternatives to retrenchment and the criteria for selecting employees to be retrenched.
- 2.13. Do not retrench employees without an agreement reached during the discussions or without informing the Labour Office if no agreement is reached.
- 2.14. Do not deviate from the specified order of retrenchment, except when providing a valid reason or as agreed upon with the trade union.
- 2.15. Avoid retrenching the office-bearers of the collective bargaining committee or the authorized trade union before other employees, unless otherwise agreed upon with the trade union.
- 2.16. Additionally, the company should provide compensation to the retrenched employees based on their years of service. The compensation should be calculated as a lump sum amount, equivalent to one month's basic remuneration for each year of completed service. If the service period is less than one year, the compensation should be proportionate. However, the labour who is entitled to the unemployment allowance under the social security laws shall not receive the compensation.

3. ARE THERE ANY OTHER SENSITIVITIES THAT NEED TO BE CONSIDERED DURING THE RETRENCHMENT OF UNIONISED EMPLOYEES?

- 3.1. Any retrenchment of unionised employees must be approached with additional sensitivities and considerations as it can be highly contentious.
- 3.2. Though there are no specific additional requirements in this regard, it is crucial to understand that retrenchment is distinct from termination as per the agreement, as it is governed by specific laws and regulations.
- 3.3. In order to proceed with retrenchment, the situations as described under para 1, which outline the specific cases where retrenchment is permissible, must exist.
- 3.4. Furthermore, the procedures outlined under para 2 should be followed to ensure compliance with legal requirements.

4. ARE THERE ANY INDUSTRY PRACTICES OF RETRENCHMENT, AND HOW DID THEY GO ABOUT IMPLEMENTING THE SAME?

- 4.1. Industry practices of retrenchment can vary across different countries and legal systems. However, here are some key points related to industry practices and how they have been implemented:

- 4.1.1. **Legal Principles and Procedures:** According to legal precedents, retrenchment must follow the principles of law, and strict adherence to the prescribed procedures is necessary. Failure to follow the proper procedures can result in the reinstatement of retrenched employees.
- 4.1.2. **Reinstatement of Retrenched Employees:** In certain cases, retrenched employees have been reinstated due to procedural errors in following the mandates of the law. This indicates that if the retrenchment process is not conducted in accordance with legal requirements, employees can be reinstated.
- 4.1.3. **Retrenchment Scheme during COVID-19:** During the COVID-19 pandemic, industry stakeholders, including trade unions, agreed to retrenchment schemes. These schemes often involved rotating employees, with 50% of employees retained while the remaining 50% were retrenched.
- 4.1.4. **Favourable Rulings for Employees:** In various cases, related to retrenchment in manufacturing and labour-oriented industries, courts have ruled in favour of employees. Procedural errors in following legal mandates have led to favourable decisions for employees, emphasizing the importance of compliance with legal requirements.

- 4.1.5. **Voluntary Retirement Schemes (VRS) in Mergers:** In the case of mergers of financial institutions, Voluntary Retirement Schemes (VRS) have been offered as an alternative to retrenchment. VRS allows redundant employees to voluntarily retire, reducing the need for retrenchment.

KEY CONTACTS

If you have any questions or would like to know how this might affect your business, get in touch with these key contacts



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