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LABOUR RULES: EMPLOYEE WELFARE FUND

ANALYSIS OF RULE 84 OF THE LABOUR RULES, BONUS ACT AND UTILIZATION OF EMPLOYEE WELFARE FUND



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LABOUR RULES: EMPLOYEE WELFARE FUND

1. ABSTRACT:

- 1.1. The Employee Welfare Fund ("**EFW**") plays a pivotal role within the framework of Nepal's labour regulations.
- 1.2. **Rule 84** of the **Labour Rules, 2075 (2018)** (the "**Labour Rules**") mandates the establishment and utilisation of the EWF in enterprises following the distribution of bonuses under the **Bonus Act, 2030 (1974)** (the "**Bonus Act**").
- 1.3. This short publication examines the statutory background provided by the **Bonus Act, 2030 (1974)**, the relevant regulatory provisions, and the discretionary powers of the Labour Relation Committee (the "**LRC**") in determining the EWF's usage.
- 1.4. It also explores the permissible activities under the EWF, as well as the reporting requirements and regulatory governance provided by the Department of Labour to provide clarity and guidance on the practical implementation of the EWF within Nepalese enterprises.

2. STATUTORY FRAMEWORK:

2.1. In accordance with **Section 5** of the Bonus Act, it is mandated that every profit-making enterprise allocate a sum equivalent to ten percent (10%) of its net income (profit) for a fiscal year for the purpose of disbursing bonuses to its employees. The calculation of this allocation is as follows:

$$\text{Amount to be allocated for bonus distribution} = 10\% \times \text{Net Income (Profit) before Statutory Bonus and Taxes}$$

2.2. The term "Net Income" above does not align with its customary interpretation specifically, within the purview of the Bonus Act. "Net income" for the purpose of Bonus refers to the total earnings prior to the inclusion of statutory bonus and tax deductions.¹

2.3. **Section 6** of the Bonus Act outlines the categories of employees eligible to receive bonuses. Employees engaged in casual or substitute work are expressly excluded from bonus entitlement.

2.4. **Section 7** of the Bonus Act stipulates that, in determining the amount of bonus to be received by an employee, the amount designated for bonus distribution by the enterprise

¹ *Labour Union of Indushankar Chini Udhoj Limited v. Indushankar Chini Udhoj Limited, Supreme Court, 069-WO-0029 (Decision: 2073/04/30)*

shall be divided by the remuneration or wage amount earned by the employee (entitled to receive the bonus) in a fiscal year. The resultant figure shall constitute the percentage of the bonus to be awarded to the employee. For reference:

Bonus Percent = Amount allocated for bonus distribution / Total Salary or wage of all employees entitled to receive the bonus X 100

- 2.5. **Section 7(3)** of the Bonus Act mandates the upper ceiling of the bonus to be received by an employee i.e. bonus equivalent to eight (8) months of salary for those employees receiving up to twice the amount of minimum wage stipulated by the Government of Nepal and bonus equivalent to six (6) months of salary for those employees receiving more than twice the amount of minimum wage stipulated by the Government of Nepal.
- 2.6. Further, **Section 8** of the Bonus Act specifies that an employee shall not be eligible to receive a bonus if they have been subject to disciplinary action or dismissal from employment due to certain acts.
- 2.7. Therefore, due to the operation of the above provisions of law and specifically **Section 7(3)** of the Bonus Act, the amount allocated for the distribution of bonus may result in a surplus which is required to be deposited in the Employee Welfare Fund.

3. CALCULATION OF AMOUNTS TO BE DEPOSITED IN WELFARE FUNDS:

- 3.1. **Rule 84** of the Labour Rules mandates that when distributing bonuses under **Section 13** of the Bonus Act, any remaining surplus must be allocated to create the EWF for the benefit of employees.
- 3.2. Further, **Section 13** of the Bonus Act specifically stipulates that Seventy percent (70%) of the remaining undistributed bonus should be deposited at the enterprise level, while the residual thirty percent (30%) is directed towards a national-level welfare fund established by the Government of Nepal.

4. PERMISSIBLE EXPENDITURES FROM THE EWF:

- 4.1. **Rule 84** of Labour Rules empowers the EWF to be used for specific purposes benefitting employees or their family members.
- 4.2. Specifically, according to **Section 84(4)** of Labour Rules, the fund may be utilized for:
 - 4.2.1. **Medical Expenditures:** The EWF may cover medical expenses incurred during sickness or accidents, providing essential support to employees and their families.
 - 4.2.2. **Educational Development:** The EWF could be provided to support the education and development of employees or their children, fostering growth and learning.
 - 4.2.3. **Sports or Entertainment:** The fund may be used to promote sports or entertainment activities, enhancing the physical and mental well-being of

employees.

- 4.2.4. **Other Activities Benefitting Employees: Rule 84** allows for the utilisation of the EWF in any other activities that benefit all employees collectively, cultivating a supportive work environment.

5. REGULATORY GOVERNANCE AND REPORTING:

- 5.1. **Section 14** of the Bonus Act requires enterprises to submit a report to the Labour Office within seven (7) days of distributing bonuses, including details of the EWF allocation.
- 5.2. **Rule 2** of the **Bonus Rules, 2039 (1983)** (the "**Bonus Rules**") further mandates enterprises to furnish financial statements, including the EWF details, within six (6) months from the conclusion of a fiscal year.
- 5.3. The fund deposited at the national level is currently managed by the Department of Labour and Occupational Safety as per **Rules 11 and 13** of the Bonus Rules.
- 5.4. Furthermore, in this regard, **Section 26** of the **Contribution Based Social Security Act 2074 (2017)** mandates that the fund is to be deposited and managed by the Social Security Fund established as per the referred Act. However, this is yet to be implemented at the date of this report.

6. CONCLUSION:

- 6.1. The EWF plays a vital role in promoting employee welfare and development in Nepalese enterprises. To ensure transparent and lawful utilisation, it is essential for enterprises and the LRC to interpret **Rule 84** judiciously.
- 6.2. Adherence to the statutory framework, reporting requirements, and the discretionary powers vested in the LRC will enhance the EWF's efficacy and contribute to a conducive work environment that fosters employee well-being.
- 6.3. Clarity in the EWF's application will reinforce the government's commitment to a progressive and equitable labour regime in Nepal.

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



PRAKRIT SHRESTHA
ATTORNEY AT LAW
MANAGING PARTNER



BISHAL PANTHI
CHARTERED ACCOUNTANT
JOINT PARTNER



TANUJA SINGH
ATTORNEY AT LAW
ASSOCIATE



RELIANCE CORPORATE ADVISORS

C/O Corporate Services Pvt. Ltd.
Milap House, Sanepa Main Road,
Lalitpur, Nepal

+9771 5423316, 5441262 / 3
enquiry@reliancecs.co

www.reliancecs.co