

## Social Security System in Nepal

*by Ramesh Badal*

The Labour Act 1992 was enacted by the first parliament in 1992. Before this Act, the Factory and Factory Workers Act 1959 had been in force in factories and other establishments as notified by the government. After the change of polity in 1990, the parliament also enacted the Trade Union Act 1993. In order to complement the Acts, Labour Rules 1993 and Trade Union Rules 1993 were enacted and implemented. Social security issues are dealt with by the Labour Act 1992 and the supplementary Rules.

### **Application of the labour law**

Both the Labour Act and Labour Rules are applicable to those organizations established as per Nepali laws where more than ten workers are employed. This law is not applicable to those companies with less than ten workers. In addition, it is not applicable to the entire informal sector.

### **Social security applies only to workers with permanent statuses**

Of the workers in the formal sector, the provision relating to social security is applicable only to the permanent ones. Otherwise these provisions are not applicable.

**Social security benefits:** There is no comprehensive social security system under the Nepali labour law. Employees are entitled to receive following benefits as part of social security under the Labour Act and Rules.

**Provident fund:** Provident fund is a contributory old age benefit under the labour law. According to the provision, the employer should deduct 10 percent of basic salary of the employees and add 10 percent to it, and deposit the amount in any commercial banks or

*Karmachari Sanchaya Kosh*, the autonomous provident fund authority in Nepal.

**Gratuity:** Gratuity is also part of an old age benefit. It is also known as a severance pay. As per the provision in the Labour Rules, the employees serving for three years or more and retiring from the service are entitled to get gratuity at the following rates:

- a. For the first seven years of continuous service, gratuity should be paid at the rate of 50 percent of the monthly salary per annum;
- b. For seven to fifteen years of continuous service, gratuity should be paid at the rate of the two-thirds of the monthly salary per annum;
- c. For service exceeding 15 years gratuity should be paid at the rate of one month's salary per annum.

For gratuity payment, a gratuity fund is to be created to deposit the relevant amount every year. Nowadays, some of commercial banks and Nagarik Lagani Kosh (Citizen's Investment Fund) also administer gratuity funds. The enforcement of the gratuity provision is, however, almost non-existent.

**Treatment Expenses:** Under the provision of Labour Rules, the employer must pay entire expenses required for treatment, including hospitalization and medical expenses, to an employee who suffers physical injury while on duty.

**Salary during treatment:** During the period of treatment, employer should pay full salary for the period of their stay in hospital or half of their salary if they have undergone treatment at home. However, if the period of such treatment exceeds a year, the employer is not obliged to pay the salary after one year.

**Disability compensation:** If an employee is physically disabled as a result of an accident while in employment, the employer must pay a lump sum amount equivalent to the salary of five years of the last drawn salary in case disability is found to be 100 percent. In case disability is less than 100 per cent, the amount of compensation shall be calculated according to the percentage of disability. The

percentage of disability should be determined by a doctor recognized by HMG.

**Compensation in case of death:** In case of death of an employee instantly or in the course of treatment as a result of an accident while in employment, the employer should pay an amount equivalent to three years' salary calculated at the last drawn salary rate to the nearest heir as compensation.

In case an employee dies or becomes physically disabled as a result of a natural calamity, the employee or his/her legal heir shall not be entitled to any compensation.

**Insurance and compensation:** If an employee is entitled to receive compensation, he/she is entitled to compensation as mentioned above or the compensation under the insurance whichever is higher..

**Termination on health ground:** In case any employee sustains physical injuries while in employment and does not recover even after a year-long treatment or becomes physically disabled, he/she may be terminated from the service provided that a physician recognized by His Majesty's Government certifies that he/she is incapable of working. In such a case, the employer should pay gratuity and treatment compensation before termination.

**Housing Fund:** Under the Labour Act, 5 percent of the gross annual profit of an enterprise should be deposited as a housing fund and operated by a joint committee called Labour Relations Committee. However, this provision is almost non-existent in practice.

**Welfare Fund:** As per the Bonus Act, 1974, 10 per cent of net profit should be deposited for bonus distribution to workers. The Act fixes the maximum upper limit of bonuses to be paid. The amount that is left after bonus distribution will be deposited by every enterprise in the Welfare Fund. Of the amount deposited in the Welfare Fund, 70 percent goes into Local Welfare Fund and 30 percent into National Welfare Fund.

**Pension:** Pension is limited to government employees in civil services, police and armed forces, including some of public

corporations. This provision is not applicable to the workers addressed by the Labour Act.

**Retrenchment:** If the employer wanted to close the whole or part of an organization, he/she should obtain approval from His Majesty's Government through the Department of Labour before the retrenchment of the employees.

This is a legal compulsion on the part of the employer that he/she should provide one-month notice with reasons for retrenchment or pay the salary of one month in lieu of such a notice. Similarly, the employer should pay retrenchment compensation in lump sum equivalent to the amount of thirty days multiplied by the total number of years in service. The labour law has attempted to establish this form of compensation as an unemployment benefit. However, it cannot be practiced properly because gratuity considered by the employers as part of this benefit.

**Sick Leaves:** All workers or employees who have completed one year of service in the establishment without any interruption shall be granted a sick leave with half-pay for not more than 15 days in a year.

**Maternity Leaves:** Pregnant women workers or employees shall be granted a maternity leave with full pay for 52 days before or after delivery. Such a leave may be obtained not more than twice during the entire period of service. However, in the event of the death of two children of a woman employee, who has already utilized the maternity leave twice, she may be entitled to a maternity leave for two times more.

**Leave is not a right!** Under the Labour Rules, no employee can claim a leave as a matter of right. It should only be treated as a facility, which could be permitted by an employer. However, the court has by interpretation established that some kind of leave can be taken by an employee even if it is not authorized by the employer. Maternity and sick leave fall under this category..

**Change by collective bargaining:** An employee working in the organization has the right to union. Ten or more employees working in an organization can form a Plant Level union. The Plant Level union has the right to submit a charter of demand and bargain

collectively with the management. The collective agreement may change social security provisions of a particular organization. This can be settlement shall be valid for up to two years.

### **On the Informal Sector**

There is no concrete social security arrangement for the informal sector. Some of the workers working in the informal sectors are covered partly by the legislation. The Vehicle and Transportation Management Act provides accidental compensation to workers under a compulsory insurance provision. As per this provision, the vehicle owner should have accidental insurance coverage for the driver and helper. It may vary according to the type vehicles and positions of the workers. Normally, the compensation should be 100,000 to 200,000 Nepalese Rupees.

Similarly, the workers in the trekking and mountaineering sectors should also have their accidental insurances covered. The amount of insurance doe the workers in these sectors should not be less than 250,000 rupees. Likewise, employer should have a group insurance policy for accidental injuries for construction workers.

There is no provision for social security benefits for workers in the informal sector. They are treated as a general citizen and are provided with some sort of relief on an ad-hoc basis, such as the senior citizen allowance (Rs. 100 monthly provided to persons above 70 years of age and to widow and helpless women above 65), maternity protection allowances in some DVCs and DDCs, and so on.

### **Union's Proposal for Social Security Scheme**

The government of Nepal is trying to make a new law with more flexibility. The union has proposed a comprehensive social security package to be included in the new law.

**Old age benefit:** Gratuity should be paid at the rate of 1.5 months salary for each year of service. There should be no time bar for the entitlement of this benefit. Similarly, a provident fund should be established by deducting 10 percent from workers' salary and adding the equal amount by the employer each month.

**Workplace injury:** In work place related accidents, all hospitalization and medical expenses should be covered by the management. In case of disability, a monitory compensation should

be paid with a 5-year equivalent salary for 100 percent disability. For disability of other kinds, compensation amount should be determined taking into consideration the disability ratio as determined by the medical doctor.

**Dependant benefit:** The employer should pay 3-year equivalent salary compensation to the dependants of a worker in case of his/her death in a workplace accident. In case of his/her mental disorder resulting from the accident, the compensation should be paid with an amount no less than half of the death-compensation.

**Sickness benefit:** Sick leave should be provided at the rate of 1.5 days for each month of service with full pay in case of the illness of workers and their close relatives, that is spouse, parents and children. Likewise, the employer should establish medical insurance to all workers with an amount equivalent to their one-year salary.

**Maternity benefit:** Maternity leave and benefit should not be less than as provisioned in the ILO Convention 183 on Maternity Protection. On the basis of this Convention, the union proposed a paid maternity leave of 98 days, 7-week leave with pay in cases of miscarriages and 15-day paternity leave.

**Retrenchment:** There should be separate compensation for retrenchment. It should not be seen as gratuity.

### **Proposal of integrated social security fund**

The trade union proposed an integrated social security system to administer all benefits as mentioned above. A tripartite board should manage such fund.

**Contribution:** The workers, employers and the government should contribute at the ratio of 1:2.5:2.5 respectively and 15 percent in the informal sector by all side. For the construction sector, 5 percent of the project amount should be providing to cover social security of the workers in the construction sector.

Once the Integrated Fund comes into operation, the employers will not be liable to pay provident fund, gratuity, injury benefits and compensation as mentioned above.

All workers shall be registered in the Integrated Social Security Fund. The Fund will also have a provision for the compulsory registration of domestic workers.

**Social security operated by Union Itself:** The Transportation Union and Construction Union of GEFONT have established a social security system for their members. The Transportation Union provides accidental leaves custody compensation in the case of accident. The Union also provides legal assistance to the members.

The Union in the construction sector has established sickness benefits and work injury benefits at the micro level.

GEFONT has also operated a health cooperative for its members. There is a micro health insurance scheme operated for the agricultural labourers in the western part of Nepal. It is trying to introduce such programmes in other areas as well.

*(Presented in Social security Seminar in Beijing; November 2005)*