

Annex 1: Legislative Proposal for amendment of Labour and Employment Act of Bhutan 2007

- 1. Title of the Proposal:** Amendment of Labour and Employment Act of Bhutan 2007
Type of Legal Measure: The Amendment of *Labor and Employment Act of Bhutan 2007*
Lead Ministry/Commission/Agency: Ministry of Industry, Commerce and Employment
Expected Date of Adoption (Day/Month/Year): To be decided

2. Problem identification:

The *Labour and Employment Act of Bhutan 2007* has been a cornerstone in governing employment relations and regulating working conditions in Bhutan. While the Act has played a crucial role in providing a framework for labor practices, the landscape of work in Bhutan and globally has undergone significant changes.

Evolving market dynamics, new labor market challenges, rapid technological advancements, and the shift in employment models highlights the need for amendment of the existing Act. . While Bhutan does not yet have specific data on the prevalence of gig work, remote employment, or short-term contracts, these models are becoming increasingly common across the globe and can be expected to follow suit in Bhutan as the digital economy grows. For instance, digital platforms and e-commerce services are expanding in Bhutan, creating new job opportunities that differ from traditional employment.

As Bhutan's economy continues to modernize and digital platforms expand, emerging employment models, including gig work and remote work, are becoming increasingly relevant. According to the World Bank's recent report on Bhutan's labor market, a strong labor market is essential for fostering inclusive growth, which includes ensuring equal access to opportunities, improving gender equality, and enhancing job quality. The rise of digital technologies and e-commerce offers significant opportunities for job creation but also presents new challenges in terms of labor regulations.

The World Bank's Bhutan Labor Market Assessment Report outlines the urgent need to create quality jobs in the private sector, especially for women, rural workers, and the educated youth, who are facing growing unemployment challenges in the aftermath of the COVID-19 pandemic. It is crucial that the Labor and Employment Act is updated to ensure that workers in these evolving employment models, regardless of gender, are provided with fair treatment, adequate protections, proportional benefits, and high-quality jobs. This aligns with the World Bank's call for strengthening the labor market to better accommodate new employment types and support inclusive economic development while ensuring that the workforce is treated equitably and fairly.

Furthermore, challenges in enforcement and the need for improved user-friendliness have been pointed out by stakeholders, including employers, employees, and legal experts. The Ministry has identified several ongoing issues in the implementation and interpretation of the Act, which have made it difficult for all parties involved to fully understand or comply with certain provisions. Some of the issues identified are as follows:

- **Emerging Employment Models:** New forms of work, such as gig work, remote work, and short-term contracts, are not sufficiently covered by the current Act.
- **Technological Changes:** The rise of digital platforms and virtual work environments necessitates updates to address the complexities of modern employment.
- **Ambiguities in Key Provisions:** Some provisions in the Act lack clarity, leading to inconsistent interpretation and enforcement.
- **Enforcement Challenges:** Effective implementation of the law is hindered by these ambiguities, requiring greater attention to ensure that its provisions are both clear and practical for all stakeholders.
- **International Alignment:** The Labour laws must align with emerging international labor standards and best practices.

In light of these developments, the Act needs to be refined to better serve the needs of regulators and all relevant stakeholders including employers, employees and workers. This allows stakeholders to examine legislation so as to identify any lacuna in the light of the specific problems and comparative law. By addressing these challenges, the Act can continue to protect workers' rights while promoting a thriving, flexible and competitive labor market in Bhutan.

3. Objective of the Proposal:

The primary objective is addressing the existing gaps in implementation and interpretation and ensuring that the Act remains robust and relevant in the context of emerging market practices. Specific objectives include:

A. Inclusion of Emerging Employment Models:

Incorporating emerging employment models entails defining and regulating gig work, remote work, contractors, and subcontractors to ensure fair treatment, access to benefits and adequate protections. Additionally, it includes strengthening provisions for part-time workers, ensuring they receive proportional benefits and safeguards aligned with their employment terms.

B. Simplifying and streamlining provisions:

Simplifying and streamlining provisions are to reduce administrative burdens, promote entrepreneurship and create a more business-friendly environment.

C. Aligning with International Labour Standards:

As an observer to International Labour Organization (ILO) it is beneficial to align the Act with their standards and global best practices prior to joining as a member country.

D. Streamline Workplace Dispute Resolution Process:

Review the dispute settlement mechanism provided in the Act and introduce measures to simplify and expedite the resolution of workplace disputes, ensuring fair outcomes for both employees and employers. Create clearer procedures for grievance redressal, promoting a more harmonious work environment.

E. Enhance working conditions and worker protections:

Accountability and liability should be clear in high-risk industries such as provisions to regulate cascade sub-contracting in the construction sector.

F. Review of Penalties: Review the penalties related to felonies to ensure they are proportionate and fair, easing the burden on employers while maintaining compliance standards.

4. Policy Options:

Option 1: Implementation through delegated legislation: While the Ministry has been able to address some of the implementation challenges through the rules and regulations, the same could not be considered for all, as there was no scope for further interpretation through rules. Hence, the option of addressing implementation challenges through this option could not be considered. For example, many offences have been categorized as felony of fourth degree due to which there is difficulty in implementation. Among many, one such Section is 221 as per which in case of variation or transfer of work permit to another employer without approval, it is categorized as felony of fourth degree. Hence, the option of addressing implementation challenges through this option could not be considered.

Option 2: Comprehensive Review and Amendment of the Act: This option proposes a thorough review of the *Labor and Employment Act of Bhutan 2007* by:

- **Removing outdated provisions:** Certain provisions of the Act has become outdated due to the fast changing working environment in the labour market. For example, as per Section 140 of the Act, Occupational Health and Safety does not apply to farming due to which we cannot enforce OHS regulations in the farming sector. However, it is felt necessary to enforce the OHS regulations in this sector as well.

- **Clarifying ambiguous sections:** Certain sections of the Act are not clear and has created confusion in its interpretation. For example, in Section 68 of the Act, there is difference of interpretation in English and Dzongkha versions. As per Dzongkha version, notice period to terminate employment contract is one month whereas in English it states as minimum of one month.
- **Introducing new measures:** There is need to align the Act with the Singaporean Acts and international standards which would entail inclusion of new provisions.
- **Impact:**
 - **Social Impact:** The review is expected to cover all types of workers and employers in the labour market and shall be an inclusive Act.
 - **Economic impact:** The revision would clarify the gaps and streamline the penalty aspects which would ease economic burden on the employers.
 - **Environmental impact:** Enhanced OHS enforcement would result in safe and clean work environment benefitting the surrounding environment as well.

No significant negative impact is anticipated from the comprehensive review of the Act.

- **Affected Groups:**
 - **Workers:** The revised Act would benefit all workers including gig workers, remote and part-time workers, as well as rural workers from new provisions that protect their rights.
 - **Employers:** Employers would have more practical and implementable provisions.
 - **Government:** Enforcement agencies is expected to be more effective in enforcing the revised Act.

The Ministry recommends for a Comprehensive Review and Amendment of the Act. This approach ensures that all necessary changes are incorporated and effectively executed, fostering a labour market that is both fair and adaptable. A comprehensive review would be beneficial for all workers including gig, farmers and part-time workers ensuring basic protections and benefits.