

## **FOREIGN EMPLOYMENT ACT, 2042 (1985)**

Date of Royal Seal and Publication: 2042/7/14/4

Act No. 26 of the year 2042

### **Foreign Employment (First Amendment) Act, 2049 (1992)**

An Act made to provide for the matters relating foreign employment:

#### **Preamble:**

Whereas it is expedient to control and manage as well as to maintain economic interests and conveniences of the general public,

Now, therefore, His Majesty's King Birendra Bir Bikram Shah Dev has made this Act on the advice and with the consist of the National Panchayat.

#### 1. Short Title and Commencement:

1. This Act may be called the "Foreign Employment Act, 2042 (1985)".
2. This Act shall come into force on such date as His Majesty's Government may, by notification published in the Nepal Gazette, prescribe"

#### 2. Definitions:

Unless the subject or context otherwise requires, in this Act-

- a. "Worker" means a Nepali Citizen employed in accordance with this Act in a foreign country specified in the notification published by His Majesty's Government.
- b. "Foreign Employment" means the employment to be obtained by a worker to abroad.
- c. "Foreign Employment Enterprises" means the Act or providing foreign employment to Nepali citizens and the meaning of this expression also includes the solection act of workers by the representative of employment providing or cause to be given institution.
- d. "Licence-holder" means the institution obtaining the licence pursuant to Section 6.
- e. "Employment Providing Institution" means the institution providing foreign employment to workers.
  - (e1) "Association" means any association established under prevailing laws having industrial, commercial or service conducting purpose.
  - (e2) "Department" means the Department of Labour of His Majesty's Government.
- f. "Prescribed" or "As prescribed" means prescribed or as prescribed in Rules framed under this Act.

\* This Act is prescribed to be effective on 2043/3/2 (corresponding to 1986/6/17). (Nepal Gazette 2043/3/2)

3. Restriction to operate Foreign Employment Enterprises without Licence: No one shall be entitled to operate Foreign Employment Enterprise without obtaining licence under this Act.

4. Countries relating to Enterpr~3ing to be prescribed: Operation of Foreign Employment Enterprise under this Act shall be permitted only in the foreign countries specified in the notification published in the Nepal Gazette by His Majesty's Government.

5. Licence not to be issued except for Institution: Except for institution established under the existing laws, no licence shall be issued for the operation of Foreign Employment Enterprise.

5a. Ownership and liability of the Association:

Notwithstanding anything contained in the prevailing laws the Association conducting the foreign employment can not transfer or alter its ownership or liability without the prior approval of His Majesty's Government.

6. Licence

1. Institution intending to operating Foreign Employment Enterprise shall have to submit an application with prescribed particulars to His Majesty's Government.
2. His Majesty's Government may issue licence with conditions after receiving prescribed fee and the deposit pursuant to Section 8 from such institution if the institution~ applying for licence in accordance with Sub-section (1) is deemed competent and fit to operate Foreign Employment Enterprise.
3. The licence issued pursuant to Sub-section (2) shall have to be renewed by the licence-holder in each financial year by paying fee as prescribed.

7. Licence may be cancelled: His Majesty's Government may order to cancel the licence if the licence-holder fails to, abide by the conditions or fails to abide by this Act or the Rules, Orders or Directives issued under this Act.

8. Deposit to be kept:

1. Institution intending to obtain licence pursuant to Section 6 shall have to deposit prescribed amount of money to His Majesty's Government before obtaining the licence.  
His Majesty's Government may, as necessary order to deposit additional deposit, if the licence obtained by depositing the deposit pursuant to Sub-section (1) is found to be proportionately insufficient to the transaction of the licence-holder. The licence shall be cancelled if the additional deposited within the prescribed period.

9. Prior permission to be Obtained:

1. In order to selected workers for foreign employment the licence-holder shall have to obtain prior permission of His Majesty's Government and for such permission an application with the, following particulars shall have to be submitted:
  - a. Name and address of the employment providing institution.
  - b. Type of foreign employment,

- c. Copy of the agreement entered into between the employment providing institution and the licence-holder regarding sending of workers abroad.
- d. Copy of the contract to be entered into between the employment providing institution and the worker.
- e. Others particular as prescribed.

2. His Majesty's Government shall not provided permission for selecting workers if the particulars submitted pursuant to sub-section (1), when scrutinised show the followings:-

If the person with the qualification demanded by the employment providing institution is required for the economic development of Nepal,

- a. If the proposed foreign employment is to regularized by the laws of the concerned country,
- b. If the services, terms and facilities are found unsatisfactory in proportion to the qualification demanded by the employment providing institution,
- c. lithe proposed foreign employment is against the value, dignity or health of the worker, or
- d. If other condition as prescribed are found.

10. Advertisement: After obtained permission of His Majesty's Government pursuant to Section 9 the licenceholder shall have to advertise publicly with particulars as prescribed for the selection of workers.

11. Selection of Worker:

- 1. Selection of worker shall have to be done impartially.
- 2. The licence-holder while selection worker shall have to include the representative of His Majesty's Government and the representative of foreign employment providing institution, if such institution wants to be included in the selection.
- 3. The description along with the name list of the selected labours shall be submitted to the concerned authority within seven days from the date of selection of the labour under Sub-section (1).
- 4. The labours selected under Sub-section (1) shall he sent for foreign employment within four months from the date of selection. His Majesty's Government may extend the period upto two times not exceeding 15 days at one time, if there is reasonable cause of being failure to send the labours within the given period.
- 5. In case of failure to sent the selected labours within the period mentioned in Sub-section (4), the concerned agency shall pay hack the amount received from such labours and the interest thereof at the rate of 18 percent within fifteen days.

12. Control in providing Foreign Employment:

Notwithstanding anything mentioned elsewhere in this Act, the licence-holder shall not provide foreign employment to children and to women without the consent of her guardian.

13. Service Charge: The licence-holder is allowed to take service charge as prescribed for providing foreign employment.

14. Contract relating to Foreign Employment:

1. The licence-holder shall have to explain in the language understood by the worker the full content of the contract and the facilities to be obtained from it as well as the consequence thereto, before the conclusion of contract between the worker and employment providing institution.
2. Only if the worker agrees to the contract explained fully to him pursuant to Sub-section (1), one copy of such contract shall have to be provided each to the worker and His Majesty's Government after the contract has been signed by both the parties and the contract
3. The contract to be entered into between the worker and the employment providing institution shall not differ from the contract submitted by the licence-holder pursuant to clause (d) of Sub-section (1) of Section 9.
4. His Majesty's Government may give permission to the licence-holder to send worker abroad for foreign employment after receiving the contract pursuant to Sub-section (2).

15. Information on the Subject of the Country to be visited for Foreign Employment to be given: After obtaining licence pursuant to Sub-section (4) of Section 14, the licence-holder shall inform the worker to be sent for foreign employment about the geographical location, culture, labour law as well as economic, political and social conditions of the concerned country. Without giving such information no worker shall be sent for foreign employment.

16. Record to be kept: The licence-holder shall keep upto date record of the worker sent for foreign employment as prescribed.

17. Provision relating to worker's income:

The licence-holder shall make arrangement to deposit prescribed amount of money from the income of the workers at prescribed place or send to his home country in the prescribed way, for the welfare or maintenance of the workers and their dependents.

18. Investigation to be done:

1. His Majesty's Government may investigate or cause to be investigated if the worker files a complaint regarding the employment providing institution, which has not fulfilled its contract responsibility or the licence-holder who has not taken necessary and appropriate action to make the contract conditions fulfilled.
2. From the investigation conducted pursuant to Subsection (1) if it has been found necessary to call the concerned worker back home, His Majesty's Government

may order the licence-holder to provide necessary amount of money for the return of such worker.

3. In case the licence-holder does not abide by the order of His Majesty's Government pursuant to Sub-section (2) the return fare of the worker shall be met from the deposit of the licence-holder deposited pursuant to Section 8. The licence holder shall be informed as soon as possible to reimburse the amount borne as expenditure from the deposit and the licence holder shall deposit that amount within fifteen day of receiving notice.
4. In case the amount deposited under Section 8 is insufficient to return back the labours to the native country the licence-holder shall pay the due expenditure within the time notified by His Majesty's Government and if such amount is not paid within the time limit it shall be realised with pursuant to prevailing laws from the assets of the licence-holder.

19. Inspection: His Majesty's Government may inspect documents and other concerned papers kept by the licence-holder regarding the compliance of this Act and the Rules framed or Orders or Directives issued under this Act.

20. Power to Direct:

1. His Majesty's Government may, from time to time issue necessary directions to the licence-holder concerning foreign employment.
2. It shall be the duty of the licence-holder to abide by the direction, given pursuant to Sub-section (1).

21. Special Power of His Majesty's Government:

Notwithstanding anything mentioned elsewhere in this Act, in special situation His Majesty's Government may, at any time cancel the licence provided under this Act.

22. Advisory Committee: An advisory committee shall be constituted as prescribed to advise His Majesty's Government concerning foreign employment.

23. No Restriction to go in Personal Capacity: Nothing mentioned in this Act shall be considered to restrict anyone going for work in any foreign country after obtaining work permit.

Provided that the person going so shall notify to the Department explaining the details of the country of destination, nature of job and conditions and facilities of the employment.

24. Punishment:

1. His Majesty's Government may fine a sum of rupees five thousand to rupees fifty thousand to the licence-holder who do not follow the provisions of this Act or rule, order or direction issued under his Act
2. If someone conducts foreign employment business without obtaining a licence under This Act or sends anybody abroad by providing fake assurance or attraction by explaining that such person was sent for foreign employment or takes any money on such pretence, the money so taken and eighteen percent of interest to that amount and the two way 'expenses such person shall be reimbursed by the person sending him and the same shall be punished with a fine of rupees fifty thousand to two lakh or imprisonment of one year to five years or both. If such

person has not been sent abroad half of the above mentioned punishment shall be made.

3. Any person knowingly or maliciously, if conceals, changes or falsifies facts of any documents, reports, audit or particulars to be kept, prepared, or submitted under this Act or attempts to do such things such person shall be liable to a fine of rupees twenty five thousand to one lakh or imprisonment of six months to three years.
4. The licence of the licence-holder who has been liable for punishment for offence proved, shall he cancelled and the offender punished in accordance with sub-section (2) and (3) shall not be provided another licence.
5. Person being abetterin the offence under this act or conspiring to commit such offence shall he liable to half of the punishment of the offence if such offence was committed and such offender shall not be given any licence for conducting foreign employment business.

25. His Majesty's Government to be the Plaintiff: His Majesty's Government shall be the plaintiff in cases under this Act and the cases under this Act shall he deemed to he included in Schedule 1 of State Cases Act, 2017.

26. Delegation of Power . His Majesty's Government may delegate some or all of the power conferred upon it by this Act to any official by notification published in the Nepal Gazette.

27. Power to Frame Rules:

1. His Majesty's Government may frame rules to carry out the objectives of this Act.
2. Without prejudice to the power conferred by Subsection (1) such rules may provide for the following:—
  - a. Particulars to be given in the application to be submitted for licence.
  - b. Qualification of institution needed to operate Foreign Employment Enterprises.
  - c. Format of the licence, fee and renewal fee.
  - d. Conditions to be kept in the licence.
  - e. Procedure for cancellation and conditions of cancellation of the licence.
  - f. Particulars to be given in the application for permission to select workers.
  - g. Particulars to be mentioned in the advertisement by licence-holder
  - h. Provision relating to service charge.
  - i. Conditions to be mentioned in the contract relating to foreign employment.

- j. Provision relating to the functioning of office of the institution operating Foreign Employment Enterprise.
- k. Investigation procedure relating to the complaint of worker.
- l. Procedure and provision for returning workers to their homes.
- m. Procedure relating to inspection