

News Highlight

As decided in the first Central Labour Advisory Committee (CLAC) meeting held on August 7, 2014, the second CLAC meeting was called on September 3, 2014 at the Ministry of Labour and Employment. The meeting was chaired by Mr. Tek Bahadur Gurung, Honorable Minister of State, Ministry of Labour and Employment and was attended by the representatives of the trade unions, FNCCI and the government. The

Presidents of GEFONT, NTUC-I, ANTUF and other members of Joint Trade Union Coordination Committee (JTUCC) were present from the trade unions side in the meeting. Similarly, from the employers' side, Mr. Shekhar Golchha, Vice-President of FNCCI and Chairperson of Employers' Council along with the President of HAN, Mr B.K. Shrestha and other team members attended the meeting. The members present in the meeting discussed the progress made on the Draft Labour Act during the two week's time provided for narrowing down the differences between the trade unions and employers. The chairperson, Honorable Minister of State agreed to extend the time by one more week to continue the effort to settle remaining major issues which includes no work no pay and asked the Task Force to submit the draft accordingly to the Ministry on September 9, 2014.



Regional Meeting of the District Chambers located in the Eastern Region on the Establishment and Capacity Building of their Employers' Units

The meeting was jointly organized by Employers' Council FNCCI and Chamber of Industries, Morang with the support of ILO in Biratnagar on September 12, 2014. The meeting was attended by the representatives of 11 District Chambers of the eastern region. The names of the Chambers are as follows:

- 1 Chamber of Commerce and Industry, Inaruwa
- 2 Damak Chamber of Commerce and Industry
- 3 Jhapa Chamber of Commerce and Industry
- 4 Ilam Chamber of Commerce and Industry
- 5 Itahari Chamber of Commerce and Industry
- 6 Morang Merchant Association, Biratnagar
- 7 Mechi Chamber of Commerce and Industry
- 8 Sunsari Chamber of Commerce and Industry
- 9 Saptari Chamber of Commerce and Industry
- 10 Terhathum Chamber of Commerce and Industry
- 11 Federation of Cottage and Small Scale Industries, Nepal

In the meeting, the President of CIM Mr. Shiv Shankar Agrawal, in his opening remarks, highlighted the importance of Employers' Units in the district chambers

and expressed that the establishment of Employers' Units will make it easy to handle specific issues relating to the labour and other industrial issues. As the new labour law will be applicable to both formal and informal sectors, new types of labour problems and issues are bound to come for which the establishment of employers' units within the district chambers is relevant. He expressed his happiness over the role that the chamber is entrusted to play for the strengthening of the district chambers in the eastern region.

Mr. Yagyaman Shakya, Deputy Director of FNCCI-EC spoke on the objective of the meeting. He briefed the participants about the workshop on the strengthening and capacity building of the Employers Units of the district chambers held in Kathmandu and the decisions made in that workshop. One of the decisions was to hold meetings in the five regions of Nepal. He stressed on the need of the Employers' Units in the district chambers so that these units could be transformed into specialized units to handle



industrial relations issues including labour problems. He opined that there is a great need for the expansion of the service of the Employers' Council of the FNCCI to more district chambers through these units. As the new Labour Act has provisions to bring formal and informal sectors within its scope of application, all the district chambers must be equipped to handle various types of labour issues which may arise in the informal sector also. He also said that these units will make it easy for the Employers' Council to communicate, coordinate and collaborate with the district chambers effectively.

After his presentation, the President of CIM facilitated the discussion among the participants on the topic. All the representatives spoke on the proposal to establish Employers' Units in the participating district chambers. Sunsari Chamber of Commerce and Industry informed that it has already established EU in its chamber. Other chambers welcomed the initiative and expressed their commitment to support it. The chambers requested for two months time to work on the establishment of the units in their respective chambers. Some chambers inquired about the procedure to create employers' unit within their chambers and the specific functions the units should be responsible for. The Deputy Director of FNCCI-EC explained the process of establishment of Employers' Units to the participants. The chambers also discussed briefly about the issues that come up in their districts.

It was also agreed that the FNCCI-EC will send a formal letter requesting the participating chambers to establish Employers' Units and send the names of the officer bearers and focal persons of the district chambers responsible for their units. This was well supported by the participants.

The Executive Secretary of the Chamber, Mr. Som Nath Adhikari also explained the structure of the Employers' Council of the chamber. The Council is headed by the third vice president of the chamber. It is responsible for all kinds of industrial and labour issues/disputes referred to the chamber and representations.

Finally, the first Vice President of the Chamber of Industry, Morang, Mr. Mukesh Upadhaya concluded the program with vote of thanks. He thanked all the participants, FNCCI-EC and ILO for supporting this meeting. He said that the issues that come up in the units are not so simple. Sometimes they are very serious and challenging. He gave the examples of the Employers' Council of the Chamber and his experience. He was optimistic about the initiative of FNCCI-EC to promote the creation of employers' units in the district chambers and their positive roles in establishing sound industrial relations in Nepal.

Information Sharing on Hire and fire provision in America

The United States is one of the few countries in the world that still embraces the employment at-will concept.

- Basically any employee is hired or terminated at the pleasure of the employer.
 - The employment at-will doctrine allows for the dismissal of workers for any reason, or for no reason at all. Nevertheless, American workers in various sectors have some primary protections from arbitrary termination of employment.
 - There are some laws which protect the termination of employment on some grounds. The most important of these are :
 - ◆ Firstly, collective bargaining agreements usually contain provisions requiring that employees are only dismissed for "just cause" - the employer must have a valid reason to dismiss an employee. Usually, these agreements also contain various disciplinary measures of a lesser severity that an employer must implement before terminating the employee. Whenever an individual is fired it must be approved by an independent arbitrator. However because only 7% of workers in America are members of Unions this is not common in America. All Employees are subject to "Employment at Will".
 - ◆ Secondly, the National Labour Relations Act (NLRA) has provisions that protect organized activity, and establishes a structure by which organized employees can collectively bargain for a common labour contract.
 - The National Labour Relations Act protects a workers right to organize.
 - Protects a worker from being Terminated or not hired on the basis of his/her Union Activity
 - "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargain"
 - National Labour Relations Act is enforced through the National Labor Relations Board
 - Reasons must be provided to show that the firing was not motivated by Union Activity
 - The board is empowered to reinstate employees, offer them back pay, and fine the company for any unfair labor practices.
 - ◆ Thirdly, the Civil Rights Act of 1964 which seeks to prevent discrimination on the basis of race, national origin, sex or religion.
 - This can also apply to the percent of women, minorities in leadership positions within a company.
 - The enforcement of the Civil Rights Act is held by the Equal Employment Opportunity Commission (EEOC).
 - The EEOC can fine employers and force them to issue formal apologies and change their hiring practices.
 - ◆ Fourthly, several statutes like the 1967 Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act of 1990 (ADA) and the 1974 Pregnancy Discrimination Act (PDA) provide employees with protection against discriminatory termination. Thus, the ADEA prohibits dismissal based on age discrimination; and the ADA prohibits dismissal arising out of discrimination against disabled persons.
 - ◆ Lastly, the protection against employment at-will comes from case law, in which there are three major exceptions : breach of an implied contract which requires that dismissal be for just cause ; Public policy exception and tort actions.
- Contracts of employment
 - Federal legislation does not distinguish between the various types of employment contracts in relation to termination of employment. If the nature or duration of employment is not specified in a contract, the employee or employer may, with a few exceptions, terminate the relationship for any reason or for no reason at all. This is the basis of the employment at-will doctrine.
 - As regards the contracts of employment concluded for a specific period of time, the courts have established the general principle under which termination of a fixed-term employment contract prior to its completion is justified only for good cause and the party asserting that there has been a substantial failure of performance should have the burden of proving the fact.

Participation in programs

The representatives of FNCCI-EC participated in the following programs :

- District Level Stakeholder Workshop on Formalization of Construction Sector Enterprises and Workers, Issues and Way forward with possible interventions organized jointly by Lalitpur Sub-Metropolitan City Office and ILO on August 19, 2014. The program objective was to collect recommendations to be provided to the Government of Nepal and ILO to formalize the construction sector enterprise and workers and prepare possible interventions at the district levels.
- Disability Creates Innovation in Employment organized by National Federation of the Disabled, Nepal and Disability Rights Promotion International on September 5, 2014 at Hotel Soaltee Crown Plaza. The purpose of the DRPI AWARE Disability Creates Innovation in Employment Workshop was to create a road map of how to go forward with increasing employment opportunities for women and men with disabilities. This workshop provided a platform for understanding challenges, barriers and opportunities for employing people with disabilities. In the changing context of employment where some employers like Nanglo Bakery and Deurali Pharmaceuticals Pvt Ltd have already taken an initiative on this matter, this workshop was very well timed.
- The Central Advisory Committee Meeting of Japan international Labour Foundation (JILAF) on September 9, 2014 at Hotel Soaltee Crown Plaza. JILAF is implementing a project on "Supporting Grass-Roots Activities through the International Employers' and Workers' Network". Under this project, various educational and vocational training programs are provided to the target group

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EC Programs in Nutshell

■ Consultative Meeting on Draft Labour Act :

The meeting of the Officer Bearers of FNCCI, Employers' Council members and other member organizations including HAN, FHAN, Security Guards, APPON, Jute, tea and multinationals was held on 2nd September, 2014 at FNCCI secretariat. The meeting was chaired by Mr. Shekhar Golchha, Vice president of FNCCI and Chairperson of Employers Council and was attended by Mr. Pradeep Jung Pandey, President, Mr. Pashupati Murarka, Senior vice president, Mr. Dinesh Shrestha, Vice president and MR. Kishore Pradhan, Vice president. The meeting reviewed the progress of the Task Force members working on the Draft Labour Act. The representatives of the various employers' organizations suggested the Chairperson of the EC and Task Force members to continue the dialogue with the trade unions without compromising on some major issues including no work no pay during lawful and unlawful strike. In the meeting, Mr. Golchha, highly appreciated the effort put in by the Task Force members in narrowing down the differences.

■ Interaction Program on Draft Labour Act :

At the initiative of Chamber of Industries, Morang and FNCCI-EC, an interaction program on current labour law reformation process for HR managers was held in Biratnagar on September 12, 2014. Deputy Director of FNCCI-EC, Mr. Yagyaman Shakya made a presentation on the provisions of the current Draft Labour Act. Members of the Labour Law Reformation Task Force from the employers' side, Mr. Som Nath Adhikari, Executive Secretary of Chamber of Industries, Morang and Dr. Mohan Chandra Bhattarai also expressed their views on the provisions of the Act.

■ ILO ILMR (Improving Labour Management Relations) project in four enterprises

ILO office in Nepal in collaboration with its key partners launched a project involving four enterprises (Rijal Tashi Industries, Kiran Shoes Manufacturer, Probiotech Industries and Arihant Multi Fibres) setting an aim to improve labour-management relations by developing and sharing best practice examples of dialogue between workers and employers. The launching program was held at Hotel Himalaya on August 29, 2014.

The key partners include Ministry of Labour and Employment (Government of Nepal), FNCCI and major trade unions - GEFONT, ANTUF and NTUC. This is not the first project of its kind. In 2000, the ILO launched a similar project in which the following four companies participated with great success: Hotel Soaltee Ltd, Mahashakti Soap and Chemicals Co. Ltd., Sri Raghupati Jute Mills and Ami Apparel Pvt Ltd.

This initiative will help the employers and employees of the participating enterprises to learn to resolve conflicts through cooperation and share the experiences with others. This program ultimately aims to create a mechanism for dialogue in the enterprise, train both managers and workers in work related issues, improve the working environment and help increase productivity.

Upcoming events in Ashwin

- ✓ September 22, 2014 Regional Meeting of the District Chambers located in the Western Region on the Establishment and Capacity Building of their Employers' Units in Butwal
- ✓ September 22/23, 2014 Advanced HRM Training in Kathmandu

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