

## **Payment of Gratuity**

The Payment of Gratuity Act 1972 is a social security enactment. It is derived from the word 'gratuitous', which means 'gift' or 'present'. However, having being enacted as a social security form, it ceases to retain the concept of a gift but it has to be seen as a social obligation by an employer towards his employee.

### **Application**

The Payment of Gratuity Act 1972 applies to the whole of India and so far as it relates to ports and plantations it does not apply to the State of Jammu and Kashmir. It applies to:

- (a) every factory, mine, oilfield, plantation, port and railway company.
- (b) Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State, in which 10 or more persons are or were employed on any day in the preceding 12 months.
- (c) Such other establishments or class of establishment, in which 10 or more employees are or were employed on any day in the preceding 12 months, as the Central Government may notify in this behalf.

Any shop or establishment shall continue to be governed by the Act even if the no. of its employees comes below 10 persons at any time in the future.

### **Applicability to NGOs**

Public charitable and religious trusts are also covered by this Act, provided that they are shops or establishments within the meaning of the Shops and Establishment Act applicable to their area of operation and that 10 or persons have been employed by them on any day in the preceding 12 months.

### **Payment of Gratuity**

Gratuity shall be paid to an employee on the termination of his employment after s/he has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease (Sec 4).

The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death the amount is paid to the legal heirs

“Continuous Service” means uninterrupted service which may be interrupted on account of sickness, accident, leave, absence from duty without (not being treated as break in service), lay-off, strike, lock-out or cessation of work not due to the fault of the employee. (Sec 2A).

## **Calculation of Gratuity**

Gratuity is calculated at 15 days wages last drawn by the employee for each completed year of service. The monthly wage is divided by 26 and multiplied by 15. In computing a completed year of service the period in excess of six months shall be taken as a full year.

$$\text{Gratuity} = \frac{\text{Monthly salary}}{26} \times 15 \text{ days} \times \text{No. of years of service}$$

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## **Maximum amount of Gratuity payable**

The maximum amount of gratuity payable under the Act is Rs. 3,50,000.00.

## **Forfeiture of Gratuity**

Gratuity can be forfeited {Sec 4(6)} where an employee has been terminated:

- (i) for any act, willful omission or negligence causing any damage or loss to or destruction of any property belonging to the employer, to the extent of such loss or damage.
- (ii) for riotous or disorderly conduct or any act of violence on his part.
- (iii) For any act which constitutes an offence involving moral turpitude, provided the offence has been committed by him in the course of his employment.

## **Compulsory Insurance**

The Payment of Gratuity (Amendment) Act, 1987 has prescribed provisions for compulsory insurance for employer's liability for payment towards the gratuity under the Act from the Life Insurance Corporation of India establishment under the Life Insurance Corporation of India Act, 1956 or any other prescribed Insurer.

However, employer of an establishment belonging to or under the control of the Central Government or the State Government are exempted from operations of these provisions. (Section 4A)

## **Nomination (Sec 6)**

Each employee who has completed one year of service is required to make a nomination for the purposes of gratuity in case of his death. There can be more than one nominee. (Form F).

Nominees may be changed at any time by the employee, by giving a written notice to the employer. (Form H).

If no nomination has been made, it shall be paid to the legal heirs of the deceased employee or if the heirs are minor, the share of such minor shall be deposited by the controlling authority with a bank till he attains majority.

### **Protection of Gratuity**

No gratuity payable under the Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. However if the employee had agreed to a deduction from the amount due as gratuity then that amount can be recovered. (Jaganatha Dasik v Bina Khadi & Village Industries Board 1995 Lab. IC 923. (Sec. 13)

### **Notice of Opening, change, closing of Establishment (Rule 3)**

Once the Payment of Gratuity Act becomes applicable to the establishment, a notice in Form 'A' has to be given by the employer to the controlling authority within 30 days.

Notice in Form 'B' is to be given to the controlling authority within 30 days of any change in name, address, employer or nature of business.

Where an employer proposes to close down the business he shall submit a notice in Form 'C' to the Controlling Authority at least 60 days before the intended closure.

### **Penalties**

Failure to comply with the Payment of Gratuity Act 1972 entails certain penalties (Sec. 9), which are the following:

Sl. No.	Details of Violation	Penalty
1	For avoiding any payment knowingly makes any false statement or representation	Shall be punishable with imprisonment upto 6 months or fine upto Rs. 10,000.00 or both.
2	Failure to comply with any provision of the Act or Rules	Shall be punishable with imprisonment upto 1 year but will not be less than 3 months or with fine, which will not be less than Rs. 10,000.00 but may extend upto Rs. 20,000.00 or with both.
3	Any offence relating to non payment of gratuity under the Act	Employer shall be punishable with imprisonment for a term which

		shall not be less than 6 months but may extend to 2 years, unless the court for reasons recorded decides for a lesser term of imprisonment or a fine, which would meet
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