

PAYMENT OF GRATUITY ACT ,1972



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E-CONTENT DEVELOPED for *MBA – HR* BY:

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OBJECTIVE OF THE ACT

- To provide social security to the employees after retirement
- To act as a social security legislation to the wage earning population in industries or establishments.
- Envisioned as a reward for those workers who have served for a long period of time as faithful employees.
- To impose a statutory liability upon employer to provide payment to employees when they suffer from any physical disability or death due to any disease or accident arising out of work.

APPLICABILITY

- It extends to whole of India.
- It has **15 sections**.
- It shall apply to every:
 - ❑ **Factory**
 - ❑ **Mine**
 - ❑ **Oilfield**
 - ❑ **Plantation**
 - ❑ **Port**
 - ❑ **Shop or such class of establishments, which employs more than 10 workers**
 - ❑ **Other establishments which the Central government specifies**

Gratuity means “***Gift***” or “***Token of Appreciation***”



DEFINITIONS u/s 2:

- **Appropriate Government:** (a) for any establishment or factory under the control of Centre or having branches in more than one state or oilfield, port, mine, railways – the *Central Government* (b) in other cases, *the State Government*.
- **Completed Year of Service:** means continuous *service for one year*.
- **Employee:** any person *employed on wages in a factory, mine, oilfield, railways, port, plantation ,etc, whether skilled, unskilled or semi-skilled*.
- **Family:** it shall consist of : (a) incase of *male employees* – himself, wife, children, dependent parents, dependent inlaws,children of predeceased son (b) incase of *female employees* – herself, husband, children, dependent parents, dependent in-laws, children of deceased son.
- **Superannuation:** means *attainment of the age fixed* in the contract or the condition of service at the *age at which the employee shall vacate his office*.
- **Wages:** any emoluments payable to the employee in *cash including DA* but *excluding bonus, commission , HRA, overtime wages and other allowances*.

Continuous Service u/s 2A

- **Clause 1** – an employee shall be in continuous service *if in that period he has been in uninterrupted service* (including sickness leave, accident leave, leave, layoff, strikes, lockout)
- **Cause 2**: when an employee is not in continuous service under clause 1, he shall be deemed to be in continuous service:
 - (a) For the said one year, if the employee has actually worked under the employer ,during the period of 12 calendar months, **for not less than (i) 190 days incase of employees employed in mines (ii) 240 days, in any other case.**
 - (b) For the said 6 month period, if the employee has actually worked under the employer ,during the period of 6 calendar months, **for not less than (i) 95 days, incase of employees employed in mines (ii) 120 days in any other case**

Sec 4: Payment of Gratuity

Gratuity shall be payable to the employee:






- ✓ If he has **rendered 5 years of continuous service**
- ✓ On his (a) superannuation (b) resignation or retirement (c) on his death or disablement
- ✓ At **the rate of 15 days wages** based on wage rate last drawn by the employee
[(15/26) * no. of years worked * wage rate]
- ✓ Gratuity payable shall **not exceed INR 10,00,000** (earlier it was INR 3,50,000)
- ✓ Shall be **payable within 30 days** from the due date
- ✓ If the **payment is delayed**, the employer is **liable to pay interest**.
- ✓ The gratuity may be **wholly or partially forfeited** incase the employee is charged of wilful omission, negligence causing damage, destruction of property, violence or disorderly conduct, charged with moral turpitude.

Gratuity Calculation

$$\text{Gratuity} = \frac{\text{Last Drawn Monthly Salary}}{26} \times 15 \times \text{Number of Years}$$

1 Month = 26 Days

Gratuity eligibility in India

-  Employee retiring after completion of 5 years in the same organization
-  Employee resigning after 5 years of working with the same organization
-  Temporary staffs, workers if they are considered as employees
-  Employee transferred overseas on an assignment
-  Employee suffering disability due to illness or an accident.



Conti.....

Sec 4A : Compulsory Insurance

- (1) all the *employers must obtain an insurance* from the Life Insurance Corporation or any other prescribed insurer ,for their liability of payment of gratuity
- (2) if the employer has already established *an approved gratuity fund*, he maybe exempted from sub section (1),
- (3) the employer shall *get the company registered with the controlling authority* within the prescribed time
- (4) *appointment of the Board of Trustees* by the appropriate government
- (5) every *employer shall be liable to pay the contribution* by way of premium to the approved gratuity fund
- (6) any contraventions to sub section 5 will lead to a **fine of INR 10,000** and for continuing offence, **a penalty of INR 1000 for each day.**

Conti.....

Sec 6: Nomination

- (1) the employee *must appoint a nominee* for such purpose
- (2) the employee can *distribute the gratuity in more than one nominee*
- (3) if the employee has a family, then he should *nominate any of the family members* and not an outsider
- (4) nomination *can be modified* as and when by the employee
- (5) if the *nominee predeceases* the employee, he has to make a *fresh nomination*
- (6) every *change in the nomination* has to be *sent to the employer* which must be *kept in a safe custody*.

Sec 7 : Determination of Amount of Gratuity

- A person eligible for gratuity *shall give it in writing to the employer.*
- The employer shall *determine the amount of gratuity and give a notice in writing* to the employee who is to receive the gratuity when due.
- The employer shall the make the gratuity *payment within 30 days when it becomes due.*
- If the amount is not paid during the specified time by the employer, he shall pay a simple interest for the delayed time at such rate as specified by the Government.
- Incase of *any dispute* regarding *amount of gratuity* or the person entitled to receive gratuity, it shall be *paid to the Controlling authority.*
- For the disputed case, an investigation shall be undertaken by *the controlling authority* (when employee or employer gives an application) and shall pay the *final amount of gratuity to the employee or his nominee.*
- Any aggrieved party can *make an appeal* to the appropriate government *within 60 days from receipt of such orders.*

Conti....

- **Sec 7A-7B: Appointment & Power of Inspectors-** *The appropriate government can appoint as many inspectors as it thinks fit* for the purpose of carrying on any investigation or enquiries. They have the power to conduct investigations, collect evidences, enter the premises, require to produce the copies , extracts from any registers, records, etc.
- **Sec 8: Recovery of Gratuity** - The controlling authority , on application from the aggrieved party, issue a Certificate to the *Collector to recover the amount of gratuity payable from the employer* along with the compound interest thereon.
- **Sec 10 : Exemption of employer in certain cases** – An employer if charged with an offence , can be exempted from the liability, if he is able to prove to the satisfaction of the court: (a) **he has used due diligence to enforce this act** (b) **the said other person committed the crime without his knowledge or consent**

Sec 9: Penalties

CONDITION	PENALTY
Knowingly making false statements or false representation	<ul style="list-style-type: none">▪ Imprisonment upto 6 months▪ Fine upto INR 10,000▪ Or Both
Any contravention of the provisions by the Employer	<ul style="list-style-type: none">▪ Imprisonment from 6 months upto 1 year▪ Fine upto INR 20,000▪ Or Both

Taxability of Gratuity Amount :

- Incase of *Government employees*: Wholly Exempt
- Incase of employees covered under the act:
 - a) 15 days salary based on salary last drawn for each year of service
 - b) INR 10,00,000
 - c) Gratuity actually received

[The least of the above three is exempt from tax and the remaining amount is taxable]

Income Tax Exemption on Gratuity received by

Government employee

The gratuity received by any government employee is wholly exempt

Employee where employer is covered by Payment of gratuity act

Least of following will be exempt:

- ❖ $\frac{1}{2}$ * average salary of last 10 months * completed year of service
- ❖ Rs.10,00,000
- ❖ Actual Gratuity received

Salary means Basic pay + D.A. (forming part)+ commission based on turnover.

Employee where employer is not covered by Payment of gratuity act

The least of the following will be exempt:

- ❖ last drawn salary* No. of completed years*15/26
- ❖ RS.10,00,000
- ❖ Actual Gratuity received

Last drawn salary means Basic Pay + D.A.



AMENDMENTS as on 2018

- Incase of *Government servants*, the upper ceiling on gratuity has been increased from INR 10 lakhs to **INR 20 Lakhs**.
- Considering inflation and wage increase, incase of *employees of private sector* also – the maximum limit has been extended to **INR 20 lakhs**.
- Incase of *female employees* , for the purpose of computing **Continuous Service** – maternity leave shall be considered for 26 weeks and not 12 weeks.

<https://pib.gov.in/newsite/PrintRelease.aspx?relid=178218>

THANK YOU....

<https://www.incometaxindia.gov.in/pages/acts/payment-gratuity-act.aspx>

<https://www.india-briefing.com/news/applicability-calculation-gratuity-india-6435.html/>