

Lesson 21: Payment of Gratuity Act, 1972

1. Extent and Applicability

Applicable to –

- every factory, mine, oilfield, plantation, port and railway company;
- every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State in which ten or more persons are employed or were employed on any day of the preceding twelve months;
- such other establishments or class of establishments, in which ten or more employees are employed or were employed on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

Note: A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

2. Important Definitions

- **"Completed year of service"** means continuous service for one year;
- **"Controlling authority"** means an authority appointed by the appropriate Government under section 3
- **"Retirement"** means termination of the service of an employee otherwise than on superannuation;
- **"Superannuation"** in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;
- **"Wages"** means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

3. Payment of Gratuity (Section 4)

- Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years –
 - (a) on his superannuation, or
 - (b) on his retirement or resignation, or
 - (c) on his death or disablement due to accident or disease.However, the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement. However, in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is a minor, the share of such minor shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed until such minor attains majority.
- For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned.

However, in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

However, in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days wages for each season.

4. Determination of Gratuity Amount Payable

- A person who is eligible for payment of gratuity under this Act or any person authorised in writing, to act on his behalf shall send a written application to the employer within such time and in such form as may be prescribed for payment of such gratuity.
- As soon as gratuity becomes payable, the employer shall, whether an application referred to above has been made or not determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.
- The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.
- If the amount of gratuity payable is not paid by the employer within the period specified, the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits as that Government may, by notification specify.
However, no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

5. Wages for Calculation

Payment of Gratuity (15 days salary for every completed year of service) to be payable to an employee after rendering services of 5 years on his:

- Superannuation.
- Retirement or Resignation.
- Death or Disablement due to accident or disease.

6. Nomination for Gratuity

Employee to submit his nomination in Form F - within 30 days of appointment.

7. Forfeiture of Gratuity

Forfeiture of gratuity on termination of an employee for moral turpitude or riotous or disorderly behaviour, wholly or partially for wilfully causing loss, destruction of property etc.

8. Penalties

- Imprisonment for 6 months or fine up to Rs.10, 000 for avoiding to make payment by making false statement or representation.
- Imprisonment not less than 3 months and up to one year with fine on default in complying with the provisions of Act or Rules.

9. Checklist

| S. No. | Description of Form | Timeline and Submitting Authority |
|--------|--|---|
| 1 | Form A: Notice Of Opening | Within 30 days from which the rules become applicable by concerned controlling authority of the area |
| 2 | Form B: Notice Of Change | Within 30 days of any change in the particulars of the establishment like- name, address or nature of business by concerned controlling authority of the area. |
| 3 | Form C: Notice Of Closure | Atleast 60 days before the intended closure of the business concerned controlling authority of the area. |
| 4 | Form D: Notice for excluding husband from family | To be submitted by the employee to the employer in triplicate. The employer after receipt forwards a copy to the concerned controlling authority of the area. |
| 5 | Form E: Notice of withdrawal of notice for excluding husband from family | To be submitted by the employee withdrawing notice in form D to the employer in triplicate. The employer after receipt forwards a copy to the concerned controlling authority of the area. |
| 6 | Form F: Nomination | To be submitted by the employee to the employer in duplicate. The employer within 30 days of the receipt of nomination , verify with the service particulars and after attestation return back a copy to the employee. |
| 7 | Form G: Fresh Nomination | To be submitted by the employee within 90 days of acquiring a family to the employer. |
| 8 | Form H: Modification Of Nomination | To be submitted by the employee to the employer in cases including where a nominee predeceases an employee. |
| 9 | Form I: Application for gratuity by an employee | To be submitted by the employee eligible for payment of gratuity to the employer within 30 days from which the gratuity becomes payable. |
| 10 | Form J: Application for gratuity by a nominee | To be submitted by the nominee of an employee to the employer within 30 days from the date of gratuity payable to him/her. Note: An application in plain paper may also be accepted. |
| 11 | Form K: Application for gratuity by a legal heir | To be submitted by the legal heir of an employee, eligible for payment of gratuity , to the employer, within 1 year from the date of gratuity payable to him/her. |
| 12 | Form L: Notice for payment of Gratuity | On verification of claims made for payment of gratuity, the employer within 15 days of receipt of an application, issue a notice to the applicant employee , his nominee or legal heir, specifying the amount of gratuity payable and fixing a date of payment not later than the 30th day of receipt of the application. |

Note: The Compliance List is inclusive not exclusive.
