

ABSTRACT OF THE PAYMENT OF GRATUITY ACT AND RULES, 1972

1. EXTENT OF THE ACT:

The Act extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir [Sec 1(2)]

2. TO WHOM THE ACT APPLIES:

The Act 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 establishments in State, in which 10 or more persons are employed, or were employed, on any day of the preceding 12 months,; and c) such other establishment, or class of establishments, in which 10 or more employees are employed or were employed, on any day of the preceding 12 months, as the Central Government may, by notification, specify in this behalf. [Sec 1(3)]

3. DEFINITIONS:

(a) "Appropriate Government" means.

- (i) in relation to an establishment;
 - a) belonging to, or under the control of, the Central Government,
 - b) having branches in more than one State,
 - c) of a factory belonging to, or under the control of, the Central Government,
 - d) of a major port, mine, oilfield, or railway company, the Central Government.
- ii) in any other case, the State Government. [Sec 2(a)]

(b) "Completed year of service" means continuous service for one year, [Sec 2(b)]

(c) "Continuous Service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or a lock-out or cessation of work not due to any fault of the employees concerned, whether such uninterrupted service was rendered before or after the commencement of this Act.

Explanation I: In the case of an employee who is not in uninterrupted service for year, he shall be deemed to be in continuous service if he has been actually employed by an employer during the 12 months immediately preceding the year for not less than i)

190 days, if employed below the ground in a mine, or

ii) 240 days, in any other case, except when he is employed in a seasonal establishment.

Explanation II: An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than 75% of the number of days on which the establishment was in operation during the year. [Sec 2(b)]

(d) "Controlling Authority" means an authority appointed by an appropriate Government under Sec. 3. [Sec 2(d)].

(e) "Family" in relation to an employee, shall be deemed to consist of i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependant parents and the widow and children of his predeceased son,

if any,

ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any:

Provided that if a female employee, by a notice in writing to the controlling authority, expresses her desire to execute her husband from her family, the husband and his dependent parents shall no longer be deemed for the purposes of this Act, to be included in the family of such female employee unless the said notice is subsequently withdrawn by such female employee.

Explanation- Where personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee. [Sec 2(h)].

4. NOMINATION:

1. Each employee, who has completed one year of service, after the commencement of the payment of Gratuity (Central) Rules, 1972, shall make within 30 days of completion of one year of service, a nomination [Sec 6(1) read with rule 8, 6 (1)]

2. If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family and any nomination made by such employee in favour of a person who is not member of his family shall void. [Sec 6(3)].

3. If at the time of making a nomination, the employee has no family, the nomination can be made in favour of any person, but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make within 90 days a fresh nomination in favour of one or more members of his family. [Sec 6(4) read with Rule 6(3)]

4. A nomination or a fresh nomination or a notice of modification shall be signed by the employee or, if illiterate, shall bear his thumb impression in the presence of two witness, who shall also sign declaration to that effect in that nomination, fresh nomination or notice

of modification of nomination as the case may be. [Rule 6(5)]

5. A nomination may, subject to the provisions of Sub-secs (3) and (4) of Sec 6 be modified by an employee any time after giving to his employer a written notice of his intention to do so. [Sec 6(5)]
6. A nomination or fresh nomination or notice of modification of nomination shall take effect from the date of receipt of the same by the employer. [Rule 6(6)].

5. APPLICATION FOR GRATUITY:

1. An employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall apply ordinarily within 30 days from the date of gratuity become payable: provided that where the date of superannuation or retirement. [Rule 7(1)]
2. A nominee of an employee who is eligible for payment of gratuity shall apply, ordinarily within one year from the date the gratuity became payable to him, to the employer. [Rule 7(2)]
3. A legal heir of an employee who is eligible for payment of gratuity shall apply, ordinarily within one year from the date the gratuity became payable to him, to the employer. [Rule 7(3)]
4. The employer shall also entertain an application for payment of gratuity filed after the expiry of the periods specified above, if the applicant adduces a sufficient cause for the delay. [Rule 7(5)]

6. PAYMENT OF GRATUITY:

1. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years) on his superannuation, or
 - b) on his retirement or resignation, or
 - c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or

Disablement:

Provided further that in 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 nominees or heirs is a minor the shares 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.

Disablement means such disablement, which incapacitates an employee for the work, which he was capable of performing before the accident resulting in such disablement. [Sec 4(1)]

2. For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned:

Provided that 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 3 months immediately preceding the termination of his employment, and, for this purpose, the wage paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee employed in seasonal establishment, the employer shall pay the gratuity at the rate of 7 days' wage for each season [Sec 4(2)]

Examination- In case of a monthly rated employee, the 15 days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by 26 and multiplying quotient by 15.

3. The amount of gratuity payable to an employee shall not exceed 20 months wages. [Sec 4(3)]

7. FORFEITURE OF GRATUITY:

1. The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damages or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damages or loss so caused;
2. The gratuity payable to an employee shall be wholly forfeited i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. [Sec 4(6)]

8. NOTICE OF OPENING, CHANGE OR CLOSURE OF THE ESTABLISHMENT:

1. A notice shall be submitted by the employer to the controlling authority of the area within 30 days of any change in the name, address, employer or nature of business. [Rule 3(3)]

2. Where an employer intends to close down the business he shall submit a notice to the controlling authority of the area at least 60 days before the intended closure. [Rule 3(3)]

9. APPLICATION TO CONTROLLING AUTHORITY FOR DIRECTION- IF AN EMPLOYER:

- i) refuses to accept a nomination or to entertain an application for payment of gratuity, or
- ii) issues a notice either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility

to payment of gratuity, or

iii) having received an application for payment of gratuity, fails to issue notice within 15 days; the claimant employee, nominee, or legal heir, as the case may be, may within 90 days of the occurrence of the cause for the application, apply to the controlling authority for issuing a direction under Sub-sec (4) of Sec. 7 with as many extra copies as are the opposite party;

Provided that controlling authority may accept any application on sufficient cause being shown by the applicant after the expiry of the period of 90 days. [Rule 10].

10. APPEAL:

Any person aggrieved by an order of the controlling authority may, within 60 days from the date of the receipt of the order, prefer an appeal to the Regional Labour

Commissioner (Central) of the area who has been appointed as the appellate authority by the Central Government:

Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of 60 days, extend the said period by a further period of 60 days. [Sec. 7(7)]

11. MACHINERY FOR ENFORCEMENT OF THE ACT OR RULES IN CENTRAL SPHERES:

All Assistant Labour Commissioner (C) have been appointed as Controlling Authorities and all the Regional Labour Commissioners as Appellate Authorities.

12. POWERS OF THE CONTROLLING AUTHORITY:

The controlling authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, shall have the same powers as are vested in court, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- a) enforcing the attendance of any person or examining him on oath
- b) requiring the discovery and production of documents;
- c) receiving evidence on affidavits; and
- d) issuing commissions for the examination of witnesses. [Sec 7(5)]

13. RECOVERY OF GRATUITY:

If the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the collector, who shall recover the same together with compound interest thereon at the rate of 9% per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto. [Sec 8J]

14. PROTECTION OF GRATUITY:

No gratuity payable under the Payment of Gratuity Act, and rules made there under shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. [Sec 13]

15. PENALTIES FOR OFFENCES:

1. Whoever, for the purpose of avoiding any payment to be made by himself or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to one thousand rupees, or with both. [Sec 9(1)]
2. An employer who contravenes, or makes defaults in complying with, any of the provisions of the Act or any rule or order made there under shall be punishable with imprisonment for term which may extend to one year, or with fine which may extend to one thousand rupees, or with both:

Provided that if the offence relates to non-payment of any gratuity payable under the Payment of Gratuity Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months unless the court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice. [Sec 9(2)].

16. DISPLAY OF NOTICE:

The employer shall display conspicuously a notice at or near the main entrance of the establishment in bold letters in English and in the language understood by the majority of the employees specifying the name of the officer with designation authorized by the employer to receive on his behalf notices under the Payment of Gratuity Act, or the rules made there under. [Rule 4J]

17. DISPLAY OF ABSTRACT OF THE ACT AND RULES:

The employer shall display an abstract of the Payment of Gratuity Act and the rules made, there under in English and in the language understood by the majority of the employees at a conspicuous place at or near the main entrance of the establishment. [Rule 20].