

THE PAYMENT OF GRATUITY ACT, 1972

1. Extends to the whole of India
2. For plantations or ports, it shall not extend to the State of Jammu & Kashmir
3. Applies to
 - a) Every factory, mine, oilfield, plantation, port and railway company
 - b) Every shop or establishment in which 10 or more persons are/were employed on any day of the preceding twelve months
 - c) Point (b) establishments notified by the Central Government

Notified establishments:
Motor Transport undertakings, clubs, chambers of commerce and industry, inland water transport establishments, Solicitors' Offices, Local Bodies and Circus Industry
4. Once applicable, continue to be applicable even if no. of employees falls below 10
5. Shop or establishment also includes Municipal Board

6. **Appropriate Government (AG):**

Central Government	State Government
Establishment under control	Any other case
Establishment branches in more than 1 State	
Factory under control	
Major port, mine, oilfield or railway company	

7. Completed Year of Service = Continuous service for 1 year

8. **Who is an employee?**

Any person, employed for:

- Wages
- In any kind of work
- In a factory, mine, oilfield, plantation, port, railway company
- Shop or other establishment to which this Act applies
- Company director not having ultimate control over the management

Employee does not include:

- An apprentice
- Who holds a post under the Central/State Government
- Post which is governed by any other Act for payment of gratuity

9. **Who is an employer?**

Establishment under Central or State Government	Establishment under local authority	Any other case
Person appointed for supervision	Person appointed for supervision	Person having ultimate management control
Head of the ministry/department	Chief Executive Officer (CEO)	Other person, like manager or managing director

10. **What constitutes family?**

Employee

- (+) Spouse
- (+) Children (married/unmarried)
- (+) Dependent parents and in-laws
- (+) Widow and children of predeceased son
- (+) Lawfully adopted child
- (-) Employee child, lawfully adopted by other

11. **Wages:**

All emoluments on duty/leave as per T&C

(+) D.A.

(-) Bonus, Commission, HRA, Overtime or any other allowance

(-) Free food or amenity

12. **Continuous service [2A]**

Service without interruption or break

(+) Services interrupted due to:

- Sickness
- Accident
- Leave
- Absence from duty without leave
- Lay-off, strike, lock-out
- Cessation of work **not** due to any fault of the employee

Deemed continuous service:

If the employee was employed	Not in continuous service for 1 year (deemed if during immediately preceding 12 calendar months, preceding the date of calculation, employee has worked for not less than)	Not in continuous service for 6 months (deemed if during immediately preceding 6 calendar months, preceding the date of calculation, employee has worked for not less than)
below the ground in a mine	190 days*	95 days* (half of 1 year)
In an establishment which works for less than 6 days in a week	190 days*	95 days* (half of 1 year)
Any other case	240 days*	120 days* (half of 1 year)

***Days will include the following:**

- Laid off under an agreement
- On leave with full wages, earned in the previous year
- Absent due to temporary disablement caused by accident in the course of employment
- Female on maternity leave, not exceeding 26 weeks

Deemed continuous service (for employee in seasonal establishment):

- Not in continuous service for 1 year or six months
- Deemed if he has worked for **not less than 75%** of the no. of days on which the establishment was in operation.

13. An employee who is **re-employed without any break** in service will be eligible for gratuity.

- *Jeevan Lal (1929) Ltd. vs. Controlling Authority*

14. A **retrenched employee** is also entitled for gratuity.

- *State of Punjab vs. Labour Court*

15. When a **partnership is converted into a registered company**, there the employees are entitled to gratuity on the basis of length of service under both the establishments taken together.

- *Bommidala Bros. vs. Authority*

16. **Controlling Authority:**

- Any officer appointed by AG
- Can be different officer for different areas

17. Payment of Gratuity:

- Payable on termination of employment
 - *superannuation, retirement, resignation, death, disablement (accident/disease)*
- After continuous service of not less than 5 years
 - *Not applicable in case of termination due to death or disablement*
 - *Disablement which incapacitates an employee from the work he was capable of*
- In case of death, gratuity is paid to nominee or heir, if no nomination is made.
- Payable on the date of termination (Rashtriya Mill Mazdoor Sangh v. NTC)
- Relation of employer and employees subsists with change in ownership and the new employer cannot escape from the liability of payment of gratuity
- Employee resigning from service is also entitled to gratuity (Texmaco Ltd. Vs Sri Ram Dhan)
- Non-acceptance of the resignation is no hurdle in the way of an employee to claim gratuity (Mettur Spinning Mills Vs Deputy Commissioner of Labour)
- **When an eligible employee should apply for payment:**
 - Within 30 days from the payable date (same in case of death of employee), Form-I
 - If date of retirement is known: Before 30 days of the date of retirement, Form-I
 - In Form-J, if applied by nominee in case of death. Plain paper application also accepted.
 - In Form-K, by legal heir, if employee dies and no nominee. With 1 year from the payable date.
 - Delayed application also accepted, if sufficient cause mentioned.
 - Application can be submitted personally or by registered post with AD
- **Employers Duty:**
 - When gratuity becomes payable, whether application from employee has been received or not, employer shall determine the amount of gratuity and give a notice to the person to whom it is payable and also to the controlling officer.
 - Employer shall pay within 30 days from the payable date
 - If not paid within specified time, interest payable:
 - Simple interest from the payable date to the payment date
 - Interest rate: Notified by CG for repayment of long term deposits
 - No interest, if delay due to fault of employee and employer and taken permission from the Controlling Authority
- **Notice for payment of gratuity:**
 - Claim found admissible: Employer will issue notice in Form-L to employee/nominee/legal heir
 - Notice should specify amount payable and payment date, not later than 30 days after the date of receipt of application
 - Claim not admissible: Employer shall issue notice in Form-M specifying the reasons.
 - Notice in Form-L and M shall be issued within 15 days of receipt of payment application
 - Claim payable to employee/legal heir: Employee may ask for witness/evidence for establishing the identity. Here 15 days limit will be from the date when witness is furnished to employer.
 - Notice can be served personally with receipt or by registered post with AD
- **Mode of Payment of Gratuity:**
 - Cash/DD/Cheque
 - Gratuity < 1000, money order, after deducting postal expenses
 - Nominee/Legal Heir is minor: Controlling authority will invest the gratuity amount in term deposit with SBI or any Nationalized Bank

18. Calculation of Gratuity Amount Payable:

a) Other than seasonal establishments:

- **In case of monthly rated employees:**

Last drawn wage x 15 x Number of years*

26

* *completed year of service or part thereof in excess of 6 months*

- **In case of piece rated employees**
 - Daily wages x 15 x Number of years
Daily wages = Avg. of 3 months wages immediately preceding the termination

b) Seasonal establishments:

- Works throughout the year: Same as 18(a), monthly rated employees
- Work only during the season: 7 days wages for every season
[in 18(a) substitute 15 for 7 and season for years]

c) For disabled employees:

When an employee becomes disabled **due to any accident** or disease and **is not in a position to do the same work** and **re-employed on reduced wages** on some **other job**:

- For the period **preceding** the disablement:
 - Last drawn wages at the time of disablement
- For the period **subsequent** to the disablement:
 - Reduced wages drawn at the time of termination

Note: Calculation process remains same as 18(a), monthly rated employees. Only change will be in last drawn wage for pre and post disablement.

- **Amount of Gratuity Payable [Sec. 4(3)]:**

1. Maximum amount should not exceed Rs. 20 lakhs
2. Employee entitled for better benefits but max. statutory ceiling cannot be reduced.
- *Bharat Commerce and Industries vs. Ram Prasad*

19. Forfeiture of Gratuity [Sec. 4(6)]:

a) Forfeiture to the extent of damage/loss caused:

- Employee terminated due to any act, willful omission or negligence, causing any damage, loss or destruction of property belonging to the employer

Note: Forfeiture to the extent of proof of such damage [Parmali Wallance Ltd vs. State of MP]

b) Whole/Partial Forfeiture:

- Employee terminated due to riotous or disorderly conduct or any other act of violence or an offence involving moral turpitude (immoral/corrupt) in the course of employment
- Wholly forfeited in case of theft
Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central)
- When employee has been given the benefit of probation*, he cannot be disqualified to received the amount of his gratuity
*[*Probation: The release of an offender from detention, subject to a period of good behaviour under supervision]*
S.N.Sunderson (Minerals) Ltd. Vs Appellate Authority-cum-Deputy Labour Commissioner

Note: Any charge payable by employee to employer and not paid during the course of service, then the employer can adjust the amount from the gratuity payable at the time of termination.

- *Wazir Chand vs. Union of India*

- **Other points:**

- Refusal of employees to surrender land belonging to the employer is not a sufficient ground to withhold the gratuity
[Travancore Plywood Industries Ltd. Vs Regional Joint Labour Commissioner]
- Gratuity cannot be withheld except circumstances u/s 4(6). It's a statutory right.
[K.C.Mathew Vs Plantation Corporation of Kerala Ltd]

20. Compulsory Insurance:

- a) Company shall obtain insurance towards its liability for payment of gratuity under this Act, from the Life Insurance Corporation of India or any other prescribed insurer.
 - *Establishments under Central/Govt. are exempted.*

- *Establishments who have already established an approved gratuity fund and who desires to continue such arrangement may be exempted by AG.*
 - b) Employers who have taken insurance as above or has established an approved gratuity fund shall within a prescribed time get the establishment registered with the controlling authority in the prescribed manner
 - c) AG may make rules for the composition of Board of Trustees of the approved gratuity fund
 - d) If the employer fails to pay premium or contribute to gratuity fund, then he will be liable to pay amount of gratuity with interest, if any, to the controlling authority.
 - e) Penalty: Upto Rs. 10,000 and Rs. 1000 per day extra for continuing offence.
21. Section 5 empowers the AG to **exempt** any employer or employee from the application of the Act provided that if there are existing beneficial provisions regarding gratuity in comparison with the provisions of the Act. It may be notified with retrospective effect.

22. Nominations for Gratuity: [Section 6]

- a) Nomination by the employee after the completion of 1 year of service
- b) Employee can distribute the amount of gratuity to more than 1 nominee
- c) If employee has a family at the time of nomination, it shall be made in favour of one or more family members, otherwise void (not valid)
- d) At the time of nomination, no family, nomination can be made in favour of any person. Later, if employee acquires family, such nomination becomes invalid forthwith (immediately) and fresh nomination shall be made in favour of one or more family members within 90 days in Form G in duplicate.
- e) Nomination can be modified any time after giving notice to employer in prescribed manner.
- f) If nominee dies before employee, interest of nominee reverts back to employee and fresh nomination shall be made in respect of such interest.
- For (e) and (f), Form H shall be submitted in duplicate.
- g) Every nomination, fresh and modification, shall be kept in safe custody by employer.

Procedure of nomination:

- Form F in duplicate to be sent by employee to employer
- Form shall be submitted personally with receipt or by registered post acknowledgement due
- When to submit the form?
 - Employee completed 1 year of service or more on the date of commencement of these rules: Within 90 Days
 - Employee completes 1 year of service after the date of commencement of these rules: Within 30 Days of service completion of 1 year.
- Form can be submitted after prescribed period with valid ground for delay and it cannot be termed as invalid.
- After receiving the form, the employer shall verify the particulars of the employee and return the attested duplicate copy to the employee after receiving a receipt and keep the original for records.
- Form shall be signed by the employee or thumb impression if he is illiterate in presence of two witnesses who shall also sign a declaration.

23. Disputes:

- a) Dispute regarding amount of gratuity payable:
 - Employer should deposit the amount, payable as per him, to the controlling authority
 - Employee will make an application to the controlling authority for deciding the dispute
- b) Payment of gratuity after inquiry and hearing:
 - CA shall decide the matter after inquiry and giving reasonable opportunity
 - If amount is payable to employee, employer will deposit the amount/difference to CA
 - CA will pay the employee/entitled person the amount deposited incl. excess, if any
- c) Where there is no dispute regarding the right of the applicant (employee/minor/legal heir), CA will pay the amount as soon as deposited by the employer

24. If employer refuses to accept nomination or application for payment or issues a notice regarding dispute in gratuity amount, then employee with 90 days of such event, may apply in Form N to CA for **issuing a direction**.

Procedure for Dealing with Application for Direction:

- After receiving application, CA will issue notice in Form-O to employee and employer to appear before him
- Both parties can be represented by any other person with letter of authorization. CA can accept or reject (with reason) such representation.
- After hearing, CA will record his findings, whether any amount is payable and give copy to both.
- If employer fails to appear: Hearing ex-parte (without employers presence)
- If employee fails to appear: Application may be dismissed
- Order passed may be reviewed within 30 days.
- Re-hearing application notice => 14 days before fixed date
- CA shall record the case in Form Q
- If employee entitled for gratuity, CA will issue notice to employee in Form-R with amount payable
- Employer shall intimate the payment to CA within 30 days of receipt of such notice

25. Appeal:

- After receiving CA order, any party can appeal within 60 days of receipt of such order to AG
- After hearing opportunity, AG can confirm/modify/reverse the decision of CA
- Employers appeal admitted if he submits gratuity deposit certificate issued by CA or deposit to AG

26. Recovery:

- If gratuity not paid by employer within prescribed time
- CA will issue certificate to Collector to recover it with compound interest as land revenue arrear
- Before issuing certificate CA will give opportunity to employer to show cause
- Interest payable should not exceed the amount of gratuity
- Employee will apply to CA in Form T for such recovery

Penalties:

For avoiding of any payment to be made	Imprisonment upto 6 months, or Fine upto Rs. 10,000, or both
For contravention and default in compliance of any provision	Imprisonment => 3 months =< 1 year Fine => 10,000 =< 20,000, or both
For non-payment of gratuity payable	Imprisonment => 6 months =< 2 year Court can reduce it or impose fine

27. Exemption of Employer from Liability

Employer charged with offence >> Employer can bring another person as actual offender after 3 days clear notice before the court >> offence proved and employer satisfies the court that he has used due diligence and the other person committed the offence without his knowledge >> then the other person will be convicted and will be punished like a employer

28. Cognizance of Offences:

- Gratuity not paid/recovered within six months from the expiry of the prescribed time
- AG will authorize CA to make a complaint against the employer
- CA will complaint with 15 days to the jurisdiction magistrate

29. Others:

- Legal proceedings cannot be initiated against CA for taking action as per law
- Gratuity cannot be attached in execution of any order
- Change in employer details: Notice to CA within 30 days
- Closure of business: Notice to CA, 60 days before
- Display of notice in office for details of authorized person
- Display of Acts & Rules abstract in office in Form U