

THE PAYMENT OF GRATUITY ACT 1972

The term Gratuity is nowhere defined under the Act. It is a lump sum payment made by the employer to his employee in consideration of the services rendered by the employee in the undertaking. The idea behind making such a payment is to compensate the employee or to reward him for a considerably long period of time. The payment is to be made at the time when the employer-employee relationship comes to an end.

However, this terminal service benefit has now been recognised as a statutory right of employees by virtue of the passing of this Act. Every employer of the undertaking, to which this Act is applicable, has to pay to the his employee at the time of termination of employment

a gratuity ~~calculated~~ calculated as per the provisions of the Act. Thus, payment of gratuity is not an ex-gratia payment or a gift or BAKSHI SHI, made by the employer, but discharge of a legal obligation towards a ~~the~~ departing employee.

OBJECTIVES OF THE ACT

The preamble to the Act states that this is an act to provide for the payment of gratuity to employees in factories, oilfields, plantations, ports, railways Companies, shops and other establishments and for matters connected therewith or incidental thereto. The objects of the Act can thus be stated as follows:

- To remove the discrepancy in the Schemes for payment of gratuity to employees and to introduce a uniform Scheme for payment of gratuity throughout the country

2. To make the Scheme applicable to certain undertakings, as mentioned in the preamble and to empower the government to make the act applicable to other establishments, when considered necessary
3. To establish machinery for the purpose of enforcement of the provisions of the act and to make rules for the matters which are connected with or incidental to the main provisions of the Act.

Extent And Applications Of the Act

As already stated, it is a central legislation and therefore it extends to the whole of India. Section 1(3) provides that the Act is applicable to -

1. Every factory, mine oilfields, plantation, port and railways company.

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2. Every shop or establishment in which ten or more persons are employed, and.
 3. Such other establishments having ten or more employees, which the central Government may specify.

Payment of Gratuity

Section 4 of the Act provides for the payment of gratuity by the employer to the employee when the employer-employee relationship comes to an end under the circumstances as mentioned in the section. The section provides as follows:

Section 4 (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous services for not less than five years -

1. On his superannuation or
2. On his retirement or resignation
3. On his death or disablement due to accident or disease.

Section 4(2) for every completed year of service or part thereof in excess of six months, the employers 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.

Section 4(3) The amount of gratuity payable to an employee shall not exceed three lakh and fifty thousand rupees

Section 4(4) for the purpose of computing the gratuity payable to an employee who is employed after his disablement on reduced wages for the period preceding his disablement shall be taken to be the wages received by him during the period subsequent to his disablement shall be taken to the wages as so reduced

Section 4(5) Nothing in the section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Section 4(6) provides that an employee who is dismissed is not entitled to gratuity only when the grounds for dismissal are the ones stated in section 4(6)

Nomination

The section lays down that each employee who has completed one year of service shall make a nomination in favour of one or more persons to receive the gratuity payable to him in

the event of his death, before the payment is made. The following rules should be noted in respect of such nominations.

1. After completion of one year of service, an employee should make a nomination preferably within thirty days.
2. In this nomination, the employee can distribute the amount of gratuity payable to him amongst more than one nominee (e.g. 50% of father and 50% of mother).
3. Such nomination has to be in favour of a member of his family. Nomination made in favour of a person who is not a member of family of the employee, is invalid.
4. If, at the time of making the nomination, the employee does not have a family, the nomination can be in favour of any person. However if the employee subsequently acquires a family, such nomination shall become invalid. In such event, the employee shall make a fresh nomination.

5. An employee can change his nomination at any time by giving a written notice to the employer in a prescribed manner.
6. If the nominee predeceases the employee (dies before the employee) the interest in a gratuity shall revert to the employee who shall make a fresh nomination.
7. Every employee has to give due written notice to his employer about nomination, alteration etc and the employer has to keep the records in the safe custody.