**Gratuity**

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**1. Gratuity Overview**

The "Payment of Gratuity Act 1972" regulates gratuities, which are mandatory payments made by employers to workers who have worked for them for five years or more. It is typically provided when an employee leaves an establishment or retires.

The most significant provisions of the Payment of Gratuity Act of 1972 are briefly discussed in this article. They are crucial for any HR personnel managing gratuity in any establishment to be aware of. It also discusses the implications for anybody who contravenes the provisions of the gratuity act.

**2. Provisions and Rules as per the Payment of Gratuity Act, 1972**

Various sections of the Payment of Gratuity Act, 1972 specify specific provisions for applicability, eligibility, calculation, and payment or non-payment of gratuity. These provisions are given below.

 **2.1 Applicability and Employee Eligibility**

As stated in thegratuity act, its provisions apply to below organizations:

(a) Every factory, mine, oilfield, plantation, port, and a 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 a state in which ten or more persons are employed, or were employed, on any day of the preceding twelve months

All employees, irrespective of status or salary, are covered under this act. They are entitled to gratuity payment on completion of five continuous years of service at superannuation, retirement or resignation, death, or disablement. In case of death or disablement, the completion of a continuous period of five years is not necessary. Employees are said to be in continuous years of service even if their service tenure is interrupted by the following incidents in their career life cycle.

1. Sickness,
2. Accident,
3. Maternity leave of 26 weeks as per the amendment in the Payment of Gratuity Act, 2018 (cases covered before or after the commencement of this act)
4. Leave or leave with full wage
5. Absence from duty without leave
6. Laid-off period, strike, lockout
7. Temporary disablement

 **2.2 Qualifying Period**

All employees completing the five years of continuous service are qualified to receive gratuity at the time of resignation, retirement, or termination.

**Continuous Service**

The continuous service as per the gratuity act is explained as the following.

1. In case of employment under the ground in mines or organizations working less than six days a week, 190 days of employment is considered one year of service, and 95 days of employment is considered as six months service period.
2. In case of employment with any other establishments, 240 days of work is considered one year of service, and 120 days of employment is considered as six months service period.
3. In seasonal establishments1, employees are deemed to be in continuous service if they have worked for at least 75 percent of the number of days on which the establishment was operational for a year or six months.

 **2.3 Calculation of Gratuity Amount**

1. For **monthly salaried employees**, gratuity is calculated at 15 days’ wages (at the last drawn wages) for every completed year, considering each month comprises 26 days.

Gratuity = monthly salary \* 15/26 \* number of completed years of service\*

\* Any period over 6 months will be considered one completed year of service, and a period less than or equal to 6 months shall be ignored.

**Illustration:**

Last drawn basic salary plus DA = ₹40,000 + ₹15,000

Employee’s joining date = 01-09-2010

Employee’s date of exit (retired or terminated) = 30-04-2020

**Gratuity will be calculated as follows -**

**(40,000 + 15,000) \* 15/26 \* 10 = ₹317,307/-**

Here the employee has completed ten years of service. The seven months of his first year, i.e., from September 2010 to March 2020, will be counted as one year as it is more than six months of service.

For **piece-rated employees,** gratuity is calculated at 15 days’ wages (wages will be calculated as an average of the total daily wages received by him for a period of three months preceding the date of leaving) for every completed year of service divided by twenty-six.

**Illustration:**

Average daily wages for last 3 months = ₹18,000

Employee’s joining date = 01-04-2011

Employee’s date of exit = 30-09-2020

**Gratuity will be calculated as follows -**

**(18,000) \* 15/26 \* 9 = ₹93,461/-**

Here the employee has completed nine years of service. The period of six months of his first year of service, i.e., from April 2011 to September 2011, will be ignored.

1. For **seasonal employees** employed for a particular period of the year, gratuity is calculated at seven days’ wages for every season of service by the employee.

**Illustration:**

If an employee has worked for 5 seasons, gratuity will be calculated as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Season | Total days worked | Total wages earned (₹) | Gratuity payable in ₹ (7 days’ wages) |
| 1 | 26 | 35000 | 9423 |
| 2 | 26 | 35000 | 9423 |
| 3 | 25 | 35000 | 9800 |
| 4 | 25 | 35000 | 9800 |
| 5 | 25 | 40000 | 11,200 |

 **2.4 Ceiling on Gratuity Amount**

The Payment of Gratuity act has allocated a maximum ceiling of ₹20,00,000 on the payment of gratuity.

Gratuity is exempt from Income tax u/s 10(10)(i) up to ₹20,00,000 or the actual amount received, whichever is lower for employees covered under the Payment of Gratuity Act. In the case of other employees:

Retirement gratuity received by members of the Defence Service under the Pension Code Regulations, which apply to such members of the Defence Service, is entirely exempt from tax.

Employees of Central Government/local authority or Members of Civil Services: Any death cum retirement gratuity is exempted from tax under section 10(10)(i).

**2.5 Penalties**

According to the gratuity act, if an employer makes false statements or representations to avoid paying a gratuity to an employee entitled to one, they might face up to a ten thousand rupee fine or six months in prison, or both.

On default in complying with the provision of the Act, imprisonment, not less than three months, and up to one year with a fine can be levied.

**2.6 Payment of Gratuity**

Gratuity is payable to employees upon terminating their employment after completing at least five years of continuous service with an establishment. Gratuity should be paid within 30 days of the employee leaving service. It is to be paid:

1. on his superannuation, or
2. on his retirement or resignation or
3. on his death or disablement of an employee due to accident or disease

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

Further, in case of the employee’s death, gratuity payable shall be paid to their nominee or, if no nomination has been made, to their heirs. Suppose the nominee or heir is a minor. In that case, the share of such minor shall be deposited with the guardian to invest the same for the benefit of the minor in a bank or other financial institution, as may be prescribed, until the minor attains majority.

**Mode of Payment**

Gratuity payments can be made in cash, bank draft, or cheque.

**Section 4(2) provides the following:**

In the case of a salaried employee, the employer shall pay gratuity at the rate of fifteen days' wages based on the rate of wages last drawn by the concerned employee for each completed year of service or part thereof more than six months.

In the instance of a piece-rated employee, daily wages shall be computed on the average of his total pay during the three months immediately preceding the termination of his employment. For this purpose, the salaries earned for overtime work shall not be considered.

In the instance of an employee who is employed in a seasonal establishment and is not employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wage for each season.

 **2.7** **Forfeiture of Gratuity**

Payment of gratuity does not apply to an employee dismissed from the service due to indiscipline or misconduct.

**As per section 4 (6)-**

The gratuity of an employee whose employment has been terminated due to any act, deliberate omission, or negligence that results in any loss of, damage to, or destruction of employer property shall be forfeited to the extent of such loss or damage.

The gratuity payable to an employee may be wholly forfeited: -

(a) 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

(b) if the services of such employee have been terminated for any act which constitutes an offense involving moral turpitude, provided that he commits a such offense in the course of his employment.