



## Competitive Exams Payment of Gratuity Act 1972

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Describe the scope of payment of gratuity act 1972, to who this entire act does not apply. How the forfeiture of gratuity is applies to an employee. Scope of coverage

- Every factory (as defined in Factories Act), mine, oilfield, plantation, port and railway.
- Every shop or establishment to which Shops & Establishment Act of a State applies in which 10 or more persons are employed at any time during the year end.
- Any establishment employing 10 or more persons as may be notified by the Central Government.
- Once Act applies, it continues to apply even if employment strength falls below 10.
- The act does not apply to Apprentices and Persons who hold civil posts under central government or sate government and are governed by any other act or by any rules providing for payment of gratuity

## Payment of Gratuity

payment of gratuity by an employer to an employee as defined under the act is mandatory

1. 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: Provided that 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: Provided further that 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 nominees 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. Explanation: For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

2. 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: 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 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: Provided further that 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. Explanation: In the case of a monthly rated employee, the fifteen days'wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.
3. The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.
4. For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.
5. Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.
6. Notwithstanding anything contained in sub-section (1) (a), the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused (b). the gratuity payable to an employee may be wholly or partially 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.

## Gratuity

Explain the procedure for determination and recovery of gratuity? Determination of gratuity:

1. 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.

2. As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) 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 of 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.
3. If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), 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: Provided that 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.
4. It includes
  - a. If there is any dispute to the amount of gratuity payable to an employee under this Act 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, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.
  - b. Where there is a dispute with regard to any matter or matters specified in clause a, the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.
  - c. The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.
5. The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-
  - i. to the applicant where he is the employee; or
  - ii. where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is

satisfied that there is no dispute as to the right of the application to receive the amount of gratuity.

6. For the purpose of conducting an inquiry under sub-section 4, the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 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
  - d. issuing commissions for the examination of witnesses.

## Recovery of Gratuity

If the amount of gratuity payable under this Act 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 such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereto

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