

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)]

© "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 year-

- 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 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 3920]
 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 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. [Se. 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 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 difference 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].

ABSTRACT OF THE CONTRACT LABOUR ACT, 1971

The Act aims at the abolition of Contract Labour in respect of such categories as may be notified by the appropriate Government and at regulating the service conditions of Contract Labour where abolition is not possible.

APPLICABILITY

This act applies

- To every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour [Sec 1(4) (a)]
- To every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen [Sec 1(4) (a)]

To whom does it not apply?

It shall not apply to establishments in which work only of an intermittent or casual nature is performed [Sec 1(5)(a)].

If question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a state Board, and its decision shall be final [Sec 1(5) (b)]

For this purpose of this subsection, work performed in an establishment shall not be deemed to be an intermittent nature:

- If it was performed for more than 120 days in the preceding 12 months; or
- If it is of a seasonal character and is performed for more than 60 days in year.

Administration

The Act is administered by the Central or State Advisory Boards, as the case may be, whereon the Labour Commissioner will be a member [Sec 3 & 4]

Who is principal employer?

The head of any office or department of Government or local authority or, in a factory, the owner or occupier of the factory or a person named as the Manager of the factory under the Factories Act 1948, is the principal employer under the Act [Sec 2(g)]

What are Wages?

For the purpose of this Act, the expression 'wages' shall have the same meaning assigned to it under the Payment of Wages Act Wages will, therefore, comprise Basic Pay (B. P.), Dearness Allowance (D.A), City Compensatory Allowance (C.C.A), Overtime Wages (O.W) and Production Incentive.. The term also includes encashment amount of leave, terminal dues, such as, notice pay, retrenchment compensation layoff., if the contract between the worker and the immediate employer so provide [Sec 2(h)]

Who is a 'Workman'?

Workman means any person employed in or in connection with a work of skilled, semi- skilled or unskilled, manual, supervisory, technical or clerical nature for hire or reward, whether terms of employment are express or implied. The expression 'workman' does not include:

- a) any person employed mainly in a managerial or administrative capacity; or
- b) a person being employed in a supervisory capacity but draw wages exceeding Rs. 500/- per mensem or exercises either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature; or
- c) a person who is out-worker, that is to say, a person to whom any articles or materials are given out by on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of the principal employer and process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer [Sec 2(i)]

Contractor to make payment of wages

The contractor shall be responsible for payment of wages to each contract worker employed by him, such amounts as wages and at such intervals as are agreed upon in the contract. The contractor should ensure that the wages are disbursed in the presence of authorized representative of the principal employer.

The obligations of the principal employer

In the case Contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour, employed by the Contractor and recover the amount so paid from the Contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the Contractor [Sec 21]

Employer's Obligation

Every principal employer of an establishment shall, under this Act, make an application to the Registering Officer in Form I for registration of his establishment. If the establishment fails to so register, it is prohibited to employ contract labour after the expiry of the period permitted for making the application [Sec 7(1) & (2)]

Licensing of Contractors

No employer shall undertake any work through Contract Labour except under the license issued by the Licensing Officer [Sec 11]. Such license will contain conditions as to hours of work, fixation of wages and other essential amenities for the contract employees. Such license shall be valid for a specific period where after the employer may apply for renewal [Sec 12(2)]. Any appeal against an order of the licensing officer may be made by the employer within 30 days before the Appellate Officer nominated by the Government [Sec 15].

Welfare, Safety and Health measures

Every principal employer governed by this Act is responsible for maintaining such standards of welfare, safety and health of contract labours as prescribed in detail in the Act [Sec 16 to 21]

Registers and Records

Registers of contractors: Every principal employer shall maintain in respect of each registered establishment a register of contractors in Form XII [Rule 74]

- Employment Card: I) Every contractor shall issue an employment card in Form XIV to each worker within 03 days of employment of the workers,
II) The card shall be maintained up to date and any change in the Particulars shall be entered therein [Rule 76]

Service Certificate: On termination of employment for any reason whatsoever the contractor shall issue to the workman whose service have been terminated a Service Certificate in Form XV [Rule 77]

Muster Roll, Wages Register, Deduction Register and Overtime Register: Every contractor shall in respect of each work on which he engages contract labour [Rule 78]

- maintain a Muster Roll and Registers of Wages in Forms XVI & XVII respectively provided that a combined Register of Wage- cum- Muster Roll in Form XVIII shall be maintained by the contractor where the wage period is a fortnight or less;
- maintain a Register of Deductions for damage or loss, Register of Fines and Registers of Advances in Form XX, Form XXI and Form XXII respectively.
- Maintain a Register of Overtime in Form XXIII recording therein the numbers of hours of, and wages paid for, overtime work if any.
- Every contractor shall, where the wage period is one week or more, issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages.
- Every contractor shall obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of Wages or Muster Roll-cum-Wages Register, as the case may be, and the entries shall be authenticated by the initials of the contractor or his authorized representative and shall also be duly certified by the authorized representative of the principal employer in the following manner:
The authorized representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages or the (Register of Wages-cum-Muster Roll), as the case may be, in the following form: "Certified that the amount shown in Column No.....has been paid to the workman concerned in my presence on (date) a (place) or deposit in concern labours bank account

Display of the Act

Every contractor shall display an abstract of the Act and rules in English and Hindi and in the language spoken by the majority of workers in such form as may be approved by the Chief Labour Commissioner (Central). The contractor shall also display notices showing rates of wages, hours of work, wage period, dates of payment of wages in conspicuous places at the establishment and the work site [Rule 80-81 (1) & (2)].

Returns

Every principal employer shall, within 15 days of the commencement or completion of each contract work under each contractor, submit a return to the Inspector, intimating the actual dates of commencement and completion of such contract work in Form VI-B [Rule 81(3)].

Every contractor shall send half yearly returns in Form XIV (in duplicate) so as to reach the Licensing Officer concerned not later than 30 days from the close of the half year [Rule 82(1)]

Every principal employer of registered establishment shall send annually a return in Form XXV (in duplicate) so as to reach the Registering Officer concerned not later than 15th February following end of the year to which it relates. [82 (2)]

Penalties

Contravention of provisions of the Act will attract punishment by way of imprisonment or fine or both.

FORM NO. V

ABSTRACT OF THE PAYMENT OF WAGES ACT, 1963
AND THE RULES THEREUNDER

Whom the Act Affects:

1. The Act applied to the payment of wages to persons employed in any factory/Industrial Establishment receiving less than Rs.....per month.
2. No employed person can give up by contract or agreement his rights under the Act.

Definition of Wages

3. "Wages" means all remuneration (whether by way of salary, allowances, or otherwise) payable to an employed person in respect of his employment or of work done in such employment.

It includes bonus, if provided for expressly or implicitly in the contract of employment and any sum payable for want of proper notice or discharge. It excludes the value of any house-accommodation, supply of light, water, medical attendance or other amenity or any service excluded by the State Government; Any contribution paid by the employer to any pension or provident fund Any traveling allowance or the value of any traveling concession or other special expenses entitled by the employment, any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; any gratuity payable on the termination of employment.

Responsibility for and Method of payment of wages

4. The Manager of the factory/ Industrial Establishment is responsible for the payment under the Act of wages to persons employed and any contractor employing persons is responsible for the payments to the persons he employs.
5. No wage-period shall exceed one month.
6. Wages shall be paid on a working day within 07 days or the end of the wage period (or within 10 days if 1000 or more persons are employed) the wages of the person discharged shall be Paid not later than the 2nd working day from the day on which his employment is discharged.
7. Payments in kind are prohibited.

Fines and Deductions

8. No deduction shall be made from the wages of an employed person except those authorized by or under this Act. (See paragraph 9-15)
9. (1) Fines can be imposed only for such acts and omissions as the employer may, with the previous approval of the chief Inspector of Factories, specify by a notice displayed at or near main entrance of the factory or Industrial Establishment and after giving the employed person an opportunity for explanation.
- (2) **Fines-** a) shall not exceed.....in the rupee;
 - b) Shall not be recovered by installments, or latter than 60 days of the date of Imposition
 - c) Shall be recorded in a register and applied to such purposes beneficial to the Employed persons as approved by the Chief Inspector; and
 - d) Shall not be imposed on a child.

10. (a) Deductions for absence from duty can be made only on account of the absence of the employed person at times when he should be working and such deductions must not exceed an amount which is in the same proportion to his wages for the wage period, at the time he was absent in that period is to the total time he should have been at work.

(b) If 10 or more employed persons, acting in concert, absent themselves without reasonable cause and without due notice, the deduction for absence can include wages for 8 days in lieu of notice, but:-No deduction for breaking a contract can be made from a person less than 15 years of age or a woman.

There must be provision in writing forming part of the contract of employment, and requiring the Employee to give notice of the termination of such employment the period of such notice not exceeding either- 15 days or the wage period, which ever is less; or The period of the notice which the employer is required to give of the termination of that employment. The above provision must be displayed at or near the main entrance of the factory/ Industrial Establishment No deduction of this nature can be made until a notice that this deduction is to be made has been posted at or near the main entrance of the factory/ Industrial Establishment. No deduction must exceed the wages of the employed person for the period by which the notice he gives of leaving employment is less than the notice he should give under his contract.

11. Deductions for damage to or loss of goods expressly entrusted to an employed person or loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default such deduction can not exceed the amount of the damage or loss caused and can be made only after giving the employed person an opportunity for explanation.

12. Deductions can be made, equivalent to the value thereof, for house-accommodation, amenities and services (other than foods and raw material) supplied by the employer provided these are accepted by the employed person as a part of the terms of his employment and have in the case of amenities and services been authorized by order of the State Government.

13. a) Deductions can be made for recovery of advances or for adjustment of over-payments of wages;
 b) Advances made before the employment began can only be recovered from first payment of wages or a complete wage period but no recovery can be made of advances given for traveling expenses before employment began. c) Advances of unearned wages can be made at the employer's discretion during employment. But must not exceed the amount of 2 months wages without the permission of an inspector

14. Deductions can be made for subscriptions to, and for repayment of advances from any recognized provident fund.

15. Deductions can be made for payments to co-operative societies approved by the State Government or to the Insurance of Mysore Government Insurance Department subject to any conditioned imposed by the State Government.

Inspections

16. An Inspector can enter on any premises and can exercise powers of inspection (including examination of documents and Taking of evidence) as he may deem necessary for carrying out the purpose of the Act.

Complaints of Deductions or Delays:

17. Where irregular deductions are made from wages or delays in payment take place, an employed person can make an application in the prescribed form within six months to the authority appointed by the State Govt for the purpose. An application delayed beyond this period may be rejected unless sufficient cause for the delay is shown.

Any legal practitioner, official of a registered trade union, inspector under the Act, or other person acting with the Permission of the authority can make the complaints on behalf of an employed person. A single may be presented by or on behalf of any number of persons belonging to the same factory/ industrial Establishment the payment of whose wages has been delayed.

Action by the authority:

18. The authority may award compensation to the employed person in addition to ordering the payment of delayed wages Or the refund of illegal deductions. If a malicious or vexatious complaint is made, the authority may impose a penalty not exceeding Rs. 50 on the applicant and order that it be paid to the employer.

Appeal against the authority

19. An appeal against an order or direction made by the authority may be referred, within thirty days to the District Court.

(a) by the employer, if the total sum directed to be paid exceeds three hundred rupees.
 (b) by an employed person or any legal practitioner or any official of a registered trade union if the total amount of wages withheld from him or his co-workers, exceed fifty rupees.

(c) by any person directed to pay a penalty for a malicious or vexatious application. Punishment for breaches of the Act Any one delaying the payment of wages beyond the due date or making any unauthorized deduction from wages is liable to a fine up to Rs. 500/- but only if prosecuted with the sanction of the authority or the Appellate Court.

20. The employer, who –
 Does not fix a wage period, make payment in kind, fails tom display at or near the main entrance of the factory/ industrial establishment of this abstract in English and the language of the majority of the employed persons, contravenes certain rules made under the Act, is liable to a fine not exceeding Rs 200.
 A complaint to this effect can be made only by the inspector, or with his sanction.