

THE GRATUITY ACT, 1972
The Payment of Gratuity (Maharashtra) Rules, 1972.

APPLICABILITY

(i) Every factory & shop, establishment in which 10 or more persons are employed.

ELIGIBILITY

(i) Any person employed on wages / salary.

(ii) At the time of retirement or resignation or on superannuation, an employee should have rendered continuous service of not less than 5 yrs.

(iii) In case of death or disablement, the gratuity is payable, even if the person has not completed 5 yrs. of service.

CALCULATION OF GRATUITY

(i) The quantum of gratuity is to be computed @ 15 days wages for every completed year of service or a part thereof exceeding 6 months, based on rate of basic wages last drawn by the employee.

$$\text{GRATUITY} = \frac{\text{BASIC SALARY}}{26} * 15 \text{ Days} * \text{No. of yrs of service.}$$

(*) Maximum Gratuity payable under the act is Rs. 10, 00,000/-

Other Requirements

- 1) Notice of opening in form 'A' is to be submitted to the controlling authority as per Rule 3 (1)
- 2) The Notice specifying the name & designation of the officer authorized by the employer to receive on his behalf notice, under the act & rules is to be displayed within the premises of the est. as per rule 4.
- 3) Nomination forms in form 'F' to be filled up of those employees, who have completed their one year of service as per sec. 6 r/w rule 6.
- 4) Abstract of the Payment of Gratuity Act & Rules made there under is to be displayed as per Rule 20.

5) **Compulsory insurance of the employees is to be obtained**

Section:4A

Compulsory insurance

Every employer has to obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer.

The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of 'contribution to all approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation : In this section "approved gratuity fund" shall have the same meaning as in clause (5) of section 2 of the Income-tax Act, 1961 (43 of 1961)].

***) In what contingency the employer has to pay gratuity to his employees?**

The employer has to pay gratuity to his employees:-

- a) When the service of the employee is terminated on superannuation; or
- b) When the employee retires or resigns from service; or
- c) When the employee dies while in service (In the case of death or disablement, due to accident or disease, of the employee gratuity becomes payable to his nominee or heirs even if he has rendered less than five yrs of service.)

Determination of the amount of gratuity. Section: 7

As soon as gratuity becomes payable, the employer shall 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 gratuity so determined.

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.

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.

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.]

***) Forfeiture of gratuity**

1) Can be done in the case of serious misconduct – If the action of the workmen is willful or negligent causing loss to management, or acts of violence against management or other employees or riotous or disordering behavior in or around place of work, the management can forfeit gratuity.

-) Dismissal in case of serious misconduct gratuity of employee can be forfeited.
-) Employee should not be wholly deprived of the benefit of gratuity in case of dismissal on misconduct but actual loss only can be deducted from gratuity amount.

2) For any act which constitutes an offence involving moral turpitude.

-) Theft is an offence involving moral turpitude and consequently if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him stands forfeited.

***) Can any Court attach gratuity payable under the Act?**

-) Gratuity payable under the Act cannot be attached in execution of any decree or order of any civil, revenue or criminal Court.

FORM "I"
[See sub – rule (1) or rule 7]

Application for Gratuity by an employee

To,

Sir,

I beg to apply for payment of gratuity to which I am entitled under sub- section (1) of section 4 of the Payment of Gratuity Act, 1972.on account of my superannuation / retirement / resignation. after completion of not less than five years of continuous service / total disablement due to accident / total disablement due to disease with effect from _____ . Necessary particulars relating to my appointment in the establishment are given in the statement below:-

STATEMENT

1. Name in full :
2. Address in full :
3. Department / Branch / Section
Where last employed :
4. Post held with Ticket No. or
Serial No., if any.
5. Date of appointment :
6. Date & cause of termination
of service. :
7. Total period of service :
8. Amount of wages last drawn :

9. Amount gratuity claimed :

2. I was rendered totally disabled as a result of –
(here give the details of nature of disease or accident)

The evidences witnesses in support of my total disablement are as follows:-
(Here give details)

3. Payment may please be made in cash/ open or crossed bank cheque.

4. As the amount of gratuity payable are less than Rupees one thousand. I shall request you to arrange for payment of the sum due to me by Postal money order at the address mentioned above after deducting postal money order commission there form.

Place:

Yours' faithfully,

(Signature/Thumb-impression of applicant employee)

Date:

FORM 'A'
[See sub- rule (1) of Rule 3]

Notice of Opening

1. Name and address of the Establishment....
2. Name and designation of the Employer....
3. Number of Persons employed
4. Maximum number of persons employed on any day during the preceding twelve months with date...
5. Number of employees covered by the Act...
6. Nature of Industry...
7. Whether Seasonal...
8. Date of Opening.....
9. Details of Head office/ branches:

(a) Name and address of the Head office...

(b) Name and address of other branches in India...

Number of employees

- 1.
- 2.
- 3.

I verify that the information furnished above is true to the best of my knowledge and belief.

Place:-....

(Signature of the Employer)

(With name and designation)

Date:-....