



Ayana Legal

THE BUZZ

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Continuous Service

The requirement of continuous employment refers to uninterrupted service. This includes service which may be interrupted due to sickness, accidents, leave, absence from duty without leave, lay-off, strike, lock-out or a cessation of work that is not caused by any fault of the employee.

Employees who are not in continuous service as aforementioned, shall be deemed to be in continuous service if, during a period of 12 calendar months, the employee has worked :

- 190 days in case employed below the ground in a mine or in an establishment which works for less than six days in a week; and
- 240 days in any other case

PAYMENT OF GRATUITY

Gratuity is a lump sum payment made by the employer for the continuous service rendered by the employee towards the establishment. It is a social security benefit intended to protect employees upon the termination of their employment.

When Does Gratuity Become Payable?

Gratuity becomes payable to an employee on the termination of his employment on the occurrence of any of the following events:

- on his superannuation; or
- on his retirement or resignation; or
- on his death or disablement due to an accident or disease.

An important criterion is that the employee must have been in continuous service for a period of not less than five years to become eligible for gratuity.

Where the termination of the employment of any employee is due to death or disablement, the completion of continuous service of five years shall not be necessary.

The maximum amount of gratuity allowed has been increased to INR 20 lakh after the implementation of the 7th pay commission.

Not less favourable than

Section 5 of the Payment of Gratuity Act, 1972 gives the The appropriate Government the power to exempt any establishment to which the Act applies including factories, mines etc. or any employee or class of employees if the gratuity or pensionary benefits for the employees are not less favourable than what is conferred under the Act.

Protection of Gratuity

As per Section 13 of the Act no gratuity payable shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Disclaimer

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Procedure To Claim Gratuity

A person who is eligible for payment of gratuity shall send a written application to the employer in such form, as may be prescribed within 30 days from the date on which gratuity becomes payable. As soon as gratuity becomes payable, the employer shall, regardless of whether an application 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. The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable. If the amount of gratuity is not paid by the employer within such period, 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.

Establishments To Which The Act Applies

It is important to note that there are certain establishments that the Act applies to these include: (a) every factory, mine, oilfield, plantation, port and railway company; (b) every shop, establishment or such other class of establishments in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

The Payment of Gratuity (Amendment) Act, 2009 made the Act retrospectively applicable to teachers in educational institutions with ten or more employees with effect from 3rd April, 1997. The amendment has been upheld by the Supreme Court of India in the case of Independent Schools' Federation of India (Regd.) v. Union of India and Anr.

The Hon'ble Supreme Court has also extended the benefits of the Act to Anganwadi Workers and helpers working at Anganwadi centres (Maniben Maganbhai Bhariya v. District Development Officer Dahod & Ors.)