**THE PAYMENT OF GRATUITY ACT, 1972**

[The Payment of Gratuity Act](https://www.stacowiki.in/en/acts/st-central/the-payment-of-gratuity-act1972/) applies to every shop or establishment in which 10 or more persons are employed or were employed on any day of the preceding 12 months.

There is no percentage set by the act for the gratuity amount an employee is entitled. An employer can use the formula-based approach or even pay higher than that.

**Gratuity depends on 2 factors:**

* Last drawn salary
* Years of service

**To calculate how much gratuity is payable, the Payment of Gratuity Act, 1972 has divided non-government employees into two categories:**

* Employees covered under the Act
* Employees not covered under the Act

**Calculation of gratuity**

**1. For employees covered under the Act**

The amount of gratuity payable is calculated using the below formula. The formula is based on the 15 days of last drawn salary for each completed year of service or part of thereof for more than six months.

***The Formula:***

*(15 X Last Drawn Salary X Tenure of Working) divided by 26*

*Last Drawn Salary= Basic Salary, Dearness Allowance, and Commissions Received on Sales*

**2. For employees not covered under the Act**

There is no law restricting an employer from paying gratuity to his employees even if the organization is not covered under the Act. The amount of gratuity payable to the employee can be calculated based on half a month's salary for each completed year.

***The Formula:***

*(15 X Last Drawn Salary X Tenure of Working) divided by 30*

*Last Drawn Salary= Basic Salary, Dearness Allowance, and Commissions Received on Sales*

As per the government pensioners' portal, retirement gratuity is calculated like this: one-fourth of a month's basic pay plus dearness allowance is drawn before retirement for each completed six monthly periods of qualifying service.

In case of the death of an employee, the gratuity is paid based on the length of service, where the maximum benefit is restricted to Rs 20 lakh.

**The Payment of Gratuity Act 1972:-**Gratuity is a voluntary payment made by the employer to the employee in recognition of continuous, meritorious services and sincere efforts by the employee towards the organization. It is governed under the Payment of Gratuity Act 1972.It is an Act to provide for a scheme for the payment of gratuity to employees engaged in factories,  mines, Oilfields, plantations, ports, railway companies, and shops or other establishments.

**Applicability:-**As per the Gratuity Act, the scheme for the payment of gratuity is available to:

* Employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental with.
* 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;
* Such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

**Employee :-**The term “employee” is defined in Section 2(e) of the Act as any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;’.

**Gratuity Entitlement: -**Gratuity is payable to an employee (nominee – in case of death of employee) who has rendered continuous service of five years or more on his termination of employment, superannuation, retirement or resignation. Completion of a continuous service of five years is not necessary where the termination of employment is due to death or disablement due to accident or disease.

**Exceptions: -**Forfeiture of gratuity amount wholly or partially or to the extent of Damage /loss in case of an employee whose service has been terminated for:

* Any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer; or
* Act of riotous or disorderly conduct or any other act of violence on part of the employee; or
* Any act which constitutes an of­fence involving moral turpitude, in the course of his employment.

**Nomination:-**In case of death, the gratuity is payable to any of the following persons:

* Nominee
* Heirs (in absence of nomination)
* In case nominee/ heir is a minor, such amount will 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.

**The Gratuity limit has been raised from 3.5 lakhs to 10 lakhs**:-There has been amendment in the Payment of Gratuity  Act  1972,    following the proposal of Labor and Employment  Ministry,  demands from trade unions and others to remove the ceiling or increase the maximum payable amount,  which was fixed in 1997. It shall come into force on 24 May 2010 as per the Notification in the Official Gazette.

**Maximum Limit: -*The Gratuity limit as per Section 4(3) has been raised from 3.5 lakhs to 10 lakhs.***This will give advantages to both private and public sector employees. According to this new amendment, the maximum gratuity exemption as per IT Act also increases to Rs. 10,00,000.

**Determination of Gratuity Amount**

* 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.
* The Gratuity calculation is done as per the last average remuneration is drawn and time in years served by an employee.
* The amount of gratuity payable to an employee shall not exceed Rs. 10,00,000 (increased from Rs. 3,50,000).
* In order to compute the gratuity payable in case of employees em­ployed in seasonal establishments, daily wages, or piece rated employ­ees. Computation will be as per the provision of the Act.
* It can be formulated as follows: **Basic + DA (Wages Last drawn)\* 15days 126**\* **number of years of continuous service (six months or less to be ignored and more than six months to be counted as full year)**

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| **TIME LIMIT**/ **FORMS FOR APPLICATION TO BE MADE TO EMPLOYER** |
| **Sr.** | **Particulars** | **Form** | **Timeline** | **Compliance by** |
| 1. | Nomination | F | 30 days after completing 1 year service | Employee |
| 2. | Application for Gratuity |  |  |  |
|  | * on gratuity be- coming payable to the **employee**
 | I | 30 days from the date of gratuity becoming pay-able | Employee |
|  | * on gratuity be- coming payable to the **nominee**
 | J | 30 days from the date of gratuity becoming pay-able | Nominee |
|  | * on gratuity be- coming payable to heir
 | K | 1 year from the date of gratuity becoming pay-able | Legal Heir |