

The Code on Social Security, 2020

Section 53 - 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 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; or
- (d) on termination of his contract period under fixed term employment; or
- (e) on happening of any such event as may be notified by the Central Government:

Provided that in case of working journalist as defined in clause (f) of section 2 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), the expression "five years" occurring in this sub-section shall be deemed to be three years:

Provided further 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 or expiration of fixed term employment or happening of any such event as may be notified by the Central Government:

Provided also 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 nominee or heirs is a minor, the share of such minor, shall be deposited with the competent authority as may be notified by the appropriate Government who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed by the appropriate Government, until such minor attains majority.

(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 or such number of days as may be notified by the Central Government, 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:

Provided also that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on *pro rata* basis.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government.

(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, wilful 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 such offence is committed by him in the course of his employment.

Explanation 1.--- For the purposes of this Chapter, employee 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.

Explanation 2.--- 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.

Explanation 3.--- For the purposes of this section, it is clarified that 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.

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