

Guide to Indian Labour Laws - Payment of Bonus Act | Payment of Gratuity Act | Payment of Wages Act 1936

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Guide to Indian Labour
Laws – Payment of Bonus
Act | Payment of Gratuity
Act | Payment of Wages
Act 1936



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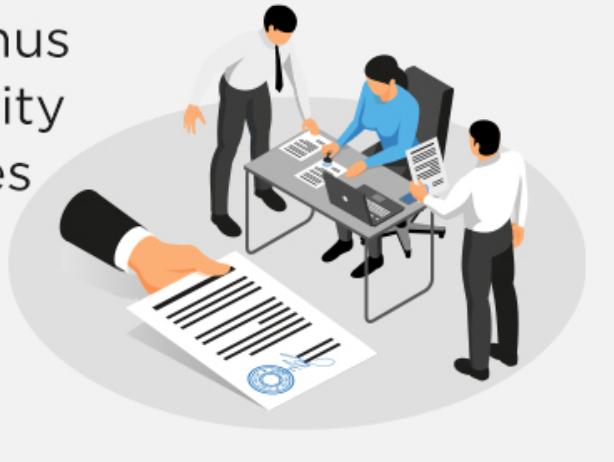


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which covers 20+ Indian laws related to Labour Laws, Industrial Relations, and Industrial Disputes. It also includes a detailed 50+ page guide and encompasses key acts like the Apprentices Act 1961, Industrial Disputes Act 1947, etc.

1. Payment of Bonus Act, 1965

The present Payment of Bonus Act, 1965 is being replaced by Code on Wages, 2019. Once the Code on Wages, 2019 is notified and made effective, the present Payment of Bonus Act, 1965 will be repealed.

The highlights of present Payment of Bonus Act are as follows –

The Object of the present Payment of Bonus Act, 1965 is to provide for payment of minimum and

maximum bonus in certain establishments.

Bonus is really a reward for good work or share of profit of the unit where the employee is working. Often there were disputes between employer and employees about bonus to be paid. It was thought that a legislation will solve the problem and hence Bonus Act was passed. Unfortunately, in the process, bonus has become almost as deferred wages due to provision of payment of minimum 8.33% and maximum 20% bonus. Bonus Act has not in any way reduced the disputes. Now, Bonus is accepted by Trade Unions as per Bonus Act and disputes are raised about 'ex gratia' amount to be paid.

The Act is applicable to

(a) any factory employing 10 or more persons where any processing is carried out with aid of power

(b) Other establishments (established for purpose of profit) employing 20 or more persons.

Minimum bonus payable is 8.33% and maximum is 20%. Bonus is payable annually within 8 months from close of accounting year. Bonus is payable to all employees whose salary or wages do not exceed Rs. 21,000 per month (the limit was Rs. 10,000 upto 1-4-2014) provided they have worked for at least 30 days in the accounting year. However, for calculation of bonus, maximum salary of Rs. 7,000 or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher (the limit was Rs. 3,500 upto 1-4-2014) is considered.

The Payment of Bonus Act applies to—

(a) every factory; and

(b) every other establishment in which twenty or more persons are employed on any day during an accounting year [section 1(3)].



1.1 Establishments to include departments, undertakings and branches

Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act. [section 3 of Payment of Bonus Act].

Even a worker working in seasonal factory is eligible to get bonus on proportionate basis if he has worked for at least 30 working days. Apprentices are not eligible for bonus.

1.2 Who is employee

‘Employee’ means any person (other than an apprentice) employed on a salary or wage not exceeding Rs. 21,000 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied [section 2(13)] [The limit was Rs. 10,000 per month upto 1-4-2014 and Rs. 3,500 upto 31-3-2006].

1.3 Summary of employees eligible/not eligible

Following is the summary of employees eligible/not eligible for bonus under Payment of Bonus Act.

Following employees have been held as eligible –

- (a) Temporary workmen**
- (b) Retrenched employee**
- (c) Part time employee**
- (d) Probationer**
- (e) Piece rated workman**
- (f) employee is seasonal factory is entitled, though on proportionate basis**
- (g) Retrenched employee**
- (h) Employee who has caused financial loss to employer is eligible, but the loss can be recovered from bonus only of the current year – section 13 (i) Employees of Public Sector Units which sell goods or renders services in competition with others.**

Following are not eligible –

(a) Apprentice – section 2(13) – definition of employee

(b) In case of employees employed through contractors, Principal Employer is not liable, as bonus is not 'wages', though contractor may be liable

(c) Employees dismissed from service on ground of fraud, riotous behaviour, theft, misappropriation or sabotage of property of establishment – section 9 – but he will be entitled if he is reinstated by Court with back wages

(d) Employees excluded u/s 32 e.g. employees of LIC, Docks, institutions not established for making profits, universities, Financial Institutions, RBI, NABARD, UTI, IDBI etc.

(e) Government employees

(f) Establishments employing less than 20 persons

(g) Employees of PSU where the PSU does not sell goods or renders services in competition with private sector

(h) Employee whose salary/wage exceeds Rs. 21,000 per month (the limit was Rs. 10,000 upto 1-4-2014).

1.4 Meaning of 'salary' and 'wages'

'Salary or wage' means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would be payable to an employee in respect of his employment or of work done in such employment, if the terms of employment were fulfilled. Terms of employment may be express or implied. "Salary or wage" includes dearness allowance, *i.e.* all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living.

1.5 Minimum bonus

Every employer shall be bound to pay to every employee in respect of any accounting year, a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs. 100, whichever is higher. This is payable whether or not the employer has any allocable surplus in the accounting year. Where an employee has not completed fifteen years of age at the beginning of the accounting year, the minimum bonus payable is 8.33% or Rs. 60 whichever is higher [section 10].

1.6 Payment of maximum bonus

Where in respect of any accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer will pay to every employee in respect of that accounting year bonus in proportion to the salary or wage earned by the employee during the accounting year. The bonus payable will be subject to a maximum of 20% of such salary or wage. [section 11(1)]. – – In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section. [section 11(2)].

Thus, maximum bonus payable to employee is 20% in any accounting year, even if allocable surplus is high and bonus calculated on basis of allocable surplus exceeds 20%.

1.7 Time-limit for payment of bonus

All amounts payable to an employee by way of bonus under the Payment of Bonus Act shall be paid in cash by the employer. Bonus should be paid within a period of eight months from the close of the accounting year. Where there is an industrial dispute regarding payment of bonus pending before any authority under section 22, bonus shall be payable within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute [section 19].

1.8 Bonus usually paid before due date of filing income-tax return

Bonus for the financial year will be allowed as deduction for income tax only if it is paid before filing of income-tax return. Otherwise, the deduction can be claimed only in subsequent year. Hence, many companies may bonus earlier than the 8 month period allowed for payment of bonus.

1.9 Inspectors

The ‘Appropriate Government’ may, by notification in the Official Gazette, appoint persons as Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction. [section 27(1)]

1.10 Maintenance of registers, records and submission of returns by employer

Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed. [section 26]. The records prescribed in Payment of Bonus Rules, 1975 are as follows —

Form A – Computation of allocable surplus u/s 4(2)

Form B – Set-on and set-off of the allocable surplus u/s 15

Form C – Register showing details of bonus due to each employee, deductions u/s 17 and 18 and amount actually disbursed.

1.11 Annual return

Annual return shall be filed with inspector within time limit specified in section 19 of Payment of Bonus Act, for payment of bonus. The return should be submitted in Form D. Every employer shall submit annual return electronically before 1st February. – rule 3 of Payment of Bonus Rules. [The rule is clumsily drafted – it is not clear whether return has to be filed electronically or to inspector or both. It is also not clear whether return has to be filed as per section 19 or before 1st February].

2. Payment of Gratuity Act, 1972

Gratuity is a lump sum payment to employee when he retires or leaves service. It is basically a retirement benefit to an employee so that he can live life comfortably after retirement or superannuation. However, under Payment of Gratuity Act, gratuity is payable even to an employee who resigns after completing at least 5 years of service.

Payment of Gratuity Act makes provision for payment of gratuity to employees. It is a social welfare legislation.

The Payment of Gratuity Act applies to following –

- (a)** Every factory, mine, oilfield, plantation, port, and railway company [section 1(3)(a) of Payment of Gratuity Act].
- (b)** The Act also applies to every ‘shop and establishment’ (within the meaning of State law in relation to shop and establishment) where 10 or more persons are employed or were employed on any day in preceding 12 months. [section 1(3)(b) of Payment of Gratuity Act].
- (c)** The Act applies to whole of India. It applies to Jammu and Kashmir also, except in case of plantation and ports in J&K [section 11(2) of Payment of Gratuity Act].

The Act can be extended by Central Government by issue of notification, to any other establishments or class of establishments in which ten or more employees are employed or were employed on any day in preceding 12 months [section 1(3)(c) of Payment of Gratuity Act].

An ‘employer’ is responsible for payment of gratuity. Section 8 of Payment of Gratuity Act

provides for recovery of gratuity from 'employer'. Section 9(2) provides for imposition of punishment to 'employer' for default in compliance of provisions of Payment of Gratuity Act.

'Employee' means any person (other than apprentice) 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 the Payment of Gratuity Act applies, but does not include any such person who holds a post under The Central Government or State Government and is governed by any other Act or rules providing for payment of gratuity [section 2(e) of Payment of Gratuity Act amended on 31-12-2009 but with retrospective effect from 2-4-1997].

Thus, the Payment of Gratuity Act is applicable to all employees – workers as well as persons employed in administrative and managerial capacity.

2.1 The Act is applicable to all employees, irrespective of the salary

Gratuity is payable to a person on

- (a)** resignation
- (b)** termination on account of death or disablement due to accident or disease
- (c)** retirement
- (d)** death.

Normally, gratuity is payable only after an employee leaves after completing five years of continuous service. In case of death and disablement, the condition of minimum 5 years' service is not applicable. [section 4(1) of Payment of Gratuity Act].

An employee is entitled to receive gratuity if he has completed five years of 'continuous service' [section 4(1) of Payment of Gratuity Act]. For every year of completed service or part in excess of six months, an employee is entitled to get 15 days wages based on rate of wages last drawn by employee [section 4(2) of Payment of Gratuity Act].

Section 4A of Payment of Gratuity Act does provide that every employer must obtain insurance of his gratuity liability with LIC or any other insurer. *However, this section has not yet been brought into force. Hence, presently, such insurance is not mandatory.*

Presently, such insurance is optional. An employer can get his liability under Payment of Gratuity Act assessed from an Actuary. However, mere provision in annual accounts will not enable the employer to claim income tax deduction. He can get tax deduction only if he takes an insurance

policy or makes actual payment of gratuity to employee/s.

The Payment of Gratuity Act makes provision for exempting establishment as well as employee from the provisions of the Act.

Gratuity is payable @ 15 days wages for every year of completed service in case of regular employees. In the last year of service, if the employee has completed more than 6 months, it will be treated as full year for purpose of gratuity, i.e. 15 days gratuity will be payable.

In case of seasonal establishment, gratuity is payable @ 7 days wages for each season [section 4(2) of Payment of Gratuity Act].

2.2 Meaning of completed year of service

Completed year of service means continuous service for one year [section 2(b) of Payment of Gratuity Act].

Wages for gratuity means all emoluments which are earned by an employee while on duty or on leave in accordance with terms and conditions of his employment and which are payable to the employee in cash. It includes dearness allowance. However, allowances like bonus, commission, House Rent allowance (HRA), overtime and other allowances are not to be considered as 'wages' for purpose of Payment of Gratuity Act. [section 2(s) of Payment of Gratuity Act].

2.3 Maximum gratuity payable

Maximum gratuity payable under the Act is Rs. 20 lakhs w.e.f. 29-3-2018 [It was Rs. 10 lakhs w.e.f. 24-5-2010] [section 4(3) of Payment of Gratuity Act read with notification No. [SO 1420\(E\)](#) dated 29-3-2018].

The Gratuity Act provides only for minimum gratuity payable. If employee has right to receive higher gratuity under a contract or under an award, the employee is entitled to get higher gratuity [section 4(5) of Payment of Gratuity Act].

Gratuity is payable within 30 days from the date it become payable, i.e. from date of retirement/termination of service after resignation/death/date of disablement due to accident.

An employee should make an application for gratuity in prescribed form. [section 7(1) of Payment of Gratuity Act].

Legal heir of deceased employee should normally apply to employer in Form K within one year.

Employer is under obligation to pay the gratuity within 30 days from the date it becomes payable

[section 7(3) of Payment of Gratuity Act]. If not so paid, interest shall be payable at notified rates. Interest is not payable if delay was due to fault of employee and employer has obtained permission from Controlling Authority for delayed payment due to fault of employee [section 7(3A) of Payment of Gratuity Act].

The rate of interest is 15% w.e.f. 1-12-1987.

If employee is alive, gratuity will be paid to him.

Gratuity amount will be payable to nominee if employee dies before getting gratuity.

2.4 Partial or full forfeiture of gratuity

An employer can forfeit gratuity wholly or partially if (i) an employee has been removed from service for riotous or disorderly conduct or act of violence on his part **or** (ii) if service was terminated for any act which is offence of moral turpitude, if such offence of moral turpitude is committed by employee during employment of the company [Thus, if offence of moral turpitude is committed outside employment, payment of gratuity cannot be denied]. [section 4(6)(b) of Payment of Gratuity Act].

The inspector is deemed to be public servant within meaning of section 21 of Indian Penal Code [IPC]. [section 7A(3) of Payment of Gratuity Act]

If there was no financial loss, forfeiture of gratuity is not permissible – *Union Bank of India v. C G Ajay Babu* (2018) 9 SCC 529.

2.5 Controlling authority

'Appropriate Government' will appoint 'Controlling Authority' who is responsible for the administration of the Act. Different controlling authorities can be appointed for different areas. [section 3 of Payment of Gratuity Act]. Dispute in respect of gratuity will be decided by Controlling Authority [section 7(4) of Payment of Gratuity Act].

2.6 Appeal against order of Controlling Authority

Appeal against order of Controlling authority can be filed with Appropriate Government or Appellate Authority as specified by 'Appropriate Government'. Appeal should be filed within 60 days. The Appellate Authority can condone delay upto further 60 days [section 7(7) of Payment of Gratuity Act].

3. Payment of Wages Act, 1936

The present Payment of Wages Act, 1936 is being replaced by Code of Wages, 2019. Once the Code of Wages, 2019 is notified and made effective, the present Payment of Wages Act will be repealed.

The highlights of present Payment of Wages Act, 1936 are as follows –

The Act is an old pre-independence Act of 1936. The purpose of Act was to regulate payment of wages to certain class of employed persons. The Act was passed to ensure timely and regular payment to employees and to ensure that employer does not deduct any unauthorized amounts from the wages payable to employees.

3.1 Applicability of the Act

The Act applies to payment of wages to persons employed in factory or railways. It also applies to any ‘industrial or other establishment’ specified in section 2(ii) [section 1(4)]. ‘Factory’ means factory as defined in section 2(m) of Factories Act.

The Act can be extended to other establishment by Appropriate Government by giving three months notice in Official Gazette [section 1(5)].

Presently, the Act applies to employees drawing wages upto Rs. 10,000 per month [section 1(6) read with Notification No. [SO 1380\(E\)](#), dated 8-8-2007 [78 SCL 2 (St.), 2007 LLR 333 (Journal)]. The limit was Rs. 6,500 during 5-9-2005 to 8-8-2007. Limit till 5-9-2005 was Rs. 1,600.

3.2 Employed person cannot contract out

An employed person cannot relinquish his rights under the Act by any contract or agreement. Such contract or agreement shall be *null* and *void* to that extent.

3.3 Responsibility of payment of wages

Every employer is responsible for payment to persons employed by him on wages. [section 3(1)]. The employer can name a person responsible for payment of wages. Contractor will be liable to payment of wages to his employees.

Section 3 of the Act has been amended to clarify that though a contractor or person named by employer is liable to make payment of wages, employer is still responsible if contractor does not make payment of wages.

3.4 Payment of Wages

‘Wages’ means all remuneration expressed in terms of money and include remuneration payable

under any award or settlement, overtime wages, wages for holiday and any sum payable on termination of employment. However, it does not include bonus which does not form part of remuneration payable, value of house accommodation, contribution of employer to PF, travelling allowance or gratuity. [section 2(vi)]

3.5 How wages should be paid

Following provisions have been made —

Person responsible for making payment shall fix wage period. Wages can be paid on daily, weekly, fortnightly or monthly basis, but wage period cannot be more than a month. [section 4].

Wages should be paid on a working day. Wages are payable on or before 7th day after the 'wage period'. In case of factories employing more than 1,000 workers, wages can be paid on or before 10th day after 'wage period' is over. [section 5(1)]. [Normally, 'wage period' is a 'month'. Thus, normally, wages should be paid by 7th of following month and by 10th if number of employees are 1,000 or more].

Wages should be paid in coins and currency notes or by cheque or by crediting the wages in the bank account of employee. Appropriate Government may specify that the employer shall pay wages only by cheque or by crediting the wages in the bank account [section 6 as amended w.e.f. 28-12-2016].

3.6 Deductions permissible

Deductions permissible have been specified in section 7 of the Act.

3.7 Maximum deductions permitted

Maximum deduction from wages can be 50%. However, maximum deduction upto 75% is permissible if deduction is partly made for payment to co-operative society [section 7].

3.8 Deduction of 8 days wages for absence in concert or sit-in strike

Proviso to section 9(2) has a very interesting provision, which has not been much used. As per this provision, if ten or more employees absent themselves in concert without notice and without reasonable cause, deduction upto 8 days of wages can be done. This provision will apply even if employees are present at work place but do not work in pursuance of a stay-in-strike. It is obvious that principles of natural justice will have to be followed and opportunity of hearing will have to be given to employees.

3.9 Maintenance of records

Employer shall maintain records. The register shall be provided for three years (section 13). Form of records has been prescribed by Rules made by State Government.

3.10 Inspectors

Appropriate Government will appoint inspectors. Inspector of Factories can also act as Inspector under the Act. Inspectors will have powers to make examination, supervise payment of wages, require production of documents, seize record etc. as provided in section 14. The Inspector shall be deemed to be a 'public servant'.

Section 14A clarifies that every employer shall provide facilities to inspector for inspection, examination or inquiry.

3.11 Annual Return

Rules made by many State Governments provide for Annual Return in prescribed form.