

Gratuity for Contract Workers

As per Sec 53 (1) of the Code on Social Security, 2020, 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 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:



As per Sec 56, as soon as the gratuity becomes payable, the employer shall determine the amount of gratuity and give notice to the person to whom gratuity is payable and to the competent authority, specifying the amount payable.

The next question which requires clarification is as to who is an employee. The term is defined under Sec 2 (26) of the Code on Social Security which includes, any person who is employed directly or through a contractor. This makes us to come to a conclusion that the contract workers are also entitled for payment of gratuity if they fulfil the qualifying conditions.

It is also pertinent to understand as to who is 'an employer' for payment of gratuity. While there will be no doubt that for direct employees it would be the 'Principal Employer', there could be slight confusion with respect to the contract workers particularly in the wake of the fact that 'contractors' are also included in the definition of the term 'employee' under Sec 2 (27) of the Code. This is may not require a deep analysis because this point has been clarified by the Ministry of Labour and Employment, GoI through the FAQs released by them stating that the employer (i.e. Contractor) will pay gratuity in respect of the contract workers on rendering of five years continuous service at the rate of 15 days wages for each completed year of service based on the last drawn wages.



Since the term 'employee' includes contract workers also, Principal Employer is primarily responsible for payment of gratuity to the contract workers (like they are responsible for PF and ESI). However, as per the guidelines issued by the Ministry, the contractor will be responsible in the first place and if the contractor fails, only then the liability could pass on to the Principal Employer.

The various scenario with respect to the engagement of contract labour and the stake-holder responsible for payment of gratuity for contract workers are given hereunder :

Scenario	Responsibility
When the contract labour works under the same contractor and same principal employer	First, the contractor and if he fails, the principal employer
When the contract labour works under the same contractor and multiple principal employers	The contractor and if he fails, the claim could lie with the principal employer for whom the contract worker worked last (at the time of termination)
When the contract labour works under multiple contractors but the same principal employer	The arrangement itself could be considered sham and therefore, principal employer is responsible





The contract workers were not entitled for payment of gratuity prior to the introduction of codes except in some specific situations. Only now the law is evolving and the legal position is not yet fully settled. The above table is derived based on our experience so far and it only reflects the probability.

