



Shekhar Ganagaluru's Free Skill Development Sessions



Session on Are the Karnataka Compulsory Gratuity Insurance Rules, 2024 Applicable to Contract Labour?



By

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Session on Are the Karnataka Compulsory Gratuity Insurance Rules, 2024 Applicable to Contract Labour?

Date & Time: March 10, 2024, from 10 am to 11 am



Platform: A Google Meet link will be shared with registered participants Google Meet

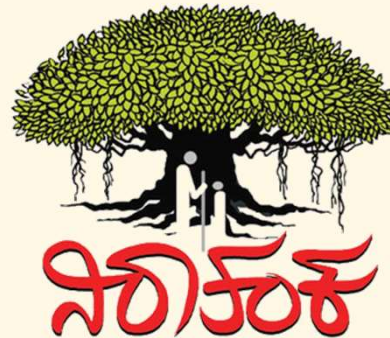


Shekhar Ganagaluru is a versatile professional with expertise in Human Resources and Industrial Relations. He holds degrees in Social Work, Law, and Training & Development. Besides his corporate role, Shekhar is an author, motivational speaker, and social worker. As a mentor and trainer, he actively contributes to community welfare, emphasizing safety and family values. With a holistic approach to life and work, Shekhar is committed to making a positive impact on individuals and communities.

To participate in this free session, interested individuals are encouraged to register at Nirthanka Webiste or the link provided.



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Nirathanka is a Non-Governmental Organisation with a registered office in Bengaluru.

Nirathanka has been founded by a young Professional Social Worker, Shri Ramesha MH (National Association of Professional Social Workers in India (NAPSWI) Young Achievers Awardee-2019) with the objective of extending the services to the weaker section of the society.



1. What is Gratuity?

- Gratuity serves as a **monetary expression of appreciation** from an **organization to its employees**, acknowledging and rewarding their contributions to the company's progress.
- This form of financial compensation is typically determined by considering the employee's **length of service and their most recent salary**.
- Employees are generally eligible for gratuity after a **minimum tenure of five years with the company**.
- This gesture not only provides financial support but also acts as a **morale booster**, recognizing and valuing the dedication and hard work that employees have devoted to the company's growth and success.





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2. The applicability of "Payment of Gratuity Act, 1972"

- The Act is applicable to the following categories as per section 1(3):
 - a) Every factory, mine, oilfield, plantation, port, and railway company.
 - b) Every shop or establishment as defined by the relevant laws governing shops and establishments in a State, where ten or more persons are employed or were employed on any day of the preceding twelve months.
 - c) Other establishments or classes of establishments, in which ten or more employees are employed or were employed on any day of the preceding twelve months, as specified by the Central Government through notification.

THE KARNATAKA
SHOPS AND
COMMERCIAL
ESTABLISHMENTS
ACT, 1961.



The Act covers any establishment defined by current laws where ten or more people were employed in the past year. Once the Act applies to an establishment, it continues to govern it, even if the employee count falls below ten later on.



3. Who is an employee as per Payment of Gratuity Act, 1972?



In simpler terms, according to section 2(e) of the Act:

- An "employee" refers to **any individual** (excluding apprentices) **engaged for wages**, whether the employment terms are stated or implied.
- The work can be of any kind, manual or otherwise, and **should be associated** with a factory, mine, oilfield, plantation, port, railway company, **shop, or another covered establishment** under this Act.
- However, individuals holding positions under the Central Government or a State Government, governed by other laws or rules for gratuity payment, are not included in the definition of an employee under this Act.



**Any individual engaged for wages,
Any kind of work, manual or otherwise,
Should be associated with a shop or another covered establishment.**



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4. Who is an employer as per Payment of Gratuity Act, 1972?



In simple terms, as per section 2(f) of the Act:

- "Employer" refers to **the entity responsible for an establishment**, which could be a factory, mine, oilfield, plantation, port, railway company, or shop.
- For establishments under the control of the Central or State Government, the employer is the person or authority appointed by the respective government for employee supervision. If no one is appointed, it is the head of the relevant Ministry or Department.
- For establishments under a local authority, the employer is the person appointed by that authority for employee supervision. In the absence of such an appointment, it is the chief executive officer of the local authority.
- **In any other case, the employer is the person or authority with ultimate control over the affairs of the establishment. If the management is entrusted to another person, regardless of the title (e.g., manager, managing director), that person is considered the employer.**



Employer in the establishment:

The person or authority with ultimate control over the affairs of the establishment.



5. What is the definition of "wages" as per Payment of Gratuity Act, 1972?

- "Wages" refer to all earnings received by an employee while working or on leave, as per the employment terms.
- These earnings should be paid or payable in cash.
- **The definition includes dearness allowance** but excludes certain components like
 - bonus,
 - commission,
 - house rent allowance,
 - overtime wages, and
 - any other allowance.



**Wages means:
Basic + Dearness Allowance**



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6. Does the Payment of Gratuity Act, 1972 apply to contract labour?



The Payment of Gratuity Act, 1972 applies to contract labour on the following grounds:

Grounds	Provision of the Law	Remarks
The contractor has registered his/her organization as "Establishment".	Section 1(3)(b)	Every shop or establishment within the meaning of any law, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.
Contract Labour is an "employee."	Section 2(e)	Employee means 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.
Contractor is an "employer"	Section 2 (f)	Employer" means, in relation to any establishment, the person, who, or the authority which, has the ultimate control over the affairs of the establishment.



Based on the stipulations of the Payment of Gratuity Act, 1972, contract labours are **considered employees of the contractor**, who is recognized as the **employer of the establishment**.

Consequently, **the employer of the contract labour holds the responsibility for gratuity payments on behalf of their employees.**



7. The major amendment of the Payment of Gratuity Act

- In 1987, Central Act No.22 introduced an amendment to the Payment of Gratuity Act, specifically in Section 4-A.
- **This amendment mandated compulsory insurance for the liability of gratuity payments under the Act.**

8. How does the amended Section 4-A affect employers in Karnataka?

- The amended Section 4-A, although inserted in 1987, did not immediately make it compulsory for employers in Karnataka to obtain insurance for liability towards gratuity payments.
- **The Government of Karnataka did not enforce this requirement as mandated by the amendment during that time.**



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9. The significance of the Government of Karnataka's notification dated Jan 10, 2024.



- The Government of Karnataka's notification dated Jan 1, 2024, is significant as it signifies the framing of rules in exercise of the power conferred under section 4-A of the Payment of Gratuity Act.
- **This indicates the state government's effort to implement and regulate the compulsory insurance requirement for GRATUITY LIABILITY.**
- The newly framed rules are potentially imposing obligations on employers in Karnataka to comply with the **compulsory insurance requirement for gratuity liability**. Non-compliance with these rules may lead to legal consequences.



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10. What is the official name of the rules related to compulsory gratuity insurance in Karnataka?

The official name of the rules is the **"Karnataka Compulsory Gratuity Insurance Rules, 2024."**

11. When did these rules come into force?

The rules came into force from the date of their publication in the Official Gazette. **Specifically, they have been in effect since Jan 10, 2024, the date of publication.**



12. Major highlights of the "Karnataka Compulsory Gratuity Insurance Rules, 2024:

- a. As per the rules, every employer in Karnataka must obtain the **compulsory insurance to ensure the gratuity liability**.
- b. **A new employer** must obtain a valid insurance policy within **THIRTY DAYS** from the date on which these rules become applicable to the establishment, as per Rule 3.
- c. **The existing employers** at the time of the commencement of these rules, must obtain a valid insurance policy within **SIXTY DAYS** from the date of the commencement of these rules.



12. Major highlights of the "Karnataka Compulsory Gratuity Insurance Rules, 2024:

- d. The compulsory insurance can be obtained from **the Life Insurance Corporation of India or any other insurance company** complying with relevant laws.
- e. Employers who have obtained a valid insurance policy are required, under Rule 3,
 - **to make all payments by way of premium to the insurance company,**
 - **renew the policy periodically, and**
 - **intimate the renewal details to the Controlling Authority within fifteen days from the date of renewal.**

Employers are also expected to initiate the payment and renewal process before the policy lapses.



12. Major highlights of the "Karnataka Compulsory Gratuity Insurance Rules, 2024:

- f. According to Rule 5, every employer is obligated **to submit an application in Form-I to get their establishment registered with the Controlling Authority** of the area or any other officer notified for this purpose by the State Government. This application should be submitted within **thirty days** from the date of obtaining insurance, along with the list of its insured employees.
- g. For registration with controlling authority, the details of the employees insured, along with **their wages details, date of joining and other details to be provided in the Form III.**
- h. Employers should update the Controlling Authority or any other officer notified for this purpose by the State Government in Form-III **at the time of registration** and thereafter **whenever there is a change in the employees insured, policies, or any other pertinent information.**



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12. Major highlights of the "Karnataka Compulsory Gratuity Insurance Rules, 2024:

- i. The rules condition regarding the coverage of the entire liability of all employees ensures that the approved gratuity fund is **comprehensive and meets the obligations outlined in the Act**. This condition **safeguards the interests of all employees** within the establishment.
- j. Rule 6 mentions that employers employing **FIVE HUNDRED OR MORE PERSONS** have the option to establish an approved gratuity fund.
- k. the Gratuity Trust should be registered with **five representatives**, but **not an equal number**, representing both the employer and employees.
- l. The gratuity trust can be managed in one of the following ways:
 - **Privately managed.**
 - Managed by the **Insurance Company**.
 - Jointly managed, with the employer periodically paying the calculated amount to the approved gratuity trust fund.



13. How to calculate total liability of gratuity to get compulsory insurance as per rules?

The method for determining the total gratuity liability involves several steps. However, the actual liability will be provided by the insurance company based on their specific calculation method. Here are the steps to get the approximate liability amount:

Methodology for Calculating Total Gratuity Liability:

1. Employee Information:

Compile a list of employees with their date of joining to determine the total experience as of today.

2. Salary Data:

Gather employee-wise Basic + DA (Dearness Allowance).

3. Average Experience and Salary:

Calculate the average experience based on the data from step 1.

Determine the average Basic + DA based on the information collected in step 2.

4. Gratuity Calculation:

Utilize the gratuity calculation formula using the averages obtained in step 3. This computation provides the gratuity payable as of today for one employee.

5. Total Liability:

Multiply the amount calculated in step 4 by the total number of employees to derive the total gratuity liability



14. Examples to arrive the estimated gratuity liability:

Only for reference but the actual liability will be provided by the insurance company based on their specific calculation method.

Steps	Example 1	Example 2	Example 3	Example 4	Example 5
Avg. Experience (in yrs)	1	2	3	4	5
Avg. Basic + DA	15,500	15,500	15,500	15,500	15,500
Gratuity per person	8,942	17,885	26,827	35,769	44,712
Total employees	97	97	97	97	97
Total Gratuity Liability	8,67,404	17,34,808	26,02,212	34,69,615	43,37,019

Gratuity Calculation Formula: $(\text{Basic} + \text{DA} * \text{Years of Service} * 15) / 26$



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15. Is it mandatory to obtain Compulsory Gratuity Insurance from the Life Insurance Corporation of India (LIC) as per the Karnataka Compulsory Gratuity Insurance Rules, 2024?

No, the Karnataka Compulsory Gratuity Insurance Rules, 2024 **do not mandate** obtaining the Compulsory Gratuity Insurance from the Life Insurance Corporation of India (LIC).

The rule 3 (1) of the said-rules clearly states that employers can choose to obtain the insurance policy either from:

- **Life Insurance Corporation of India (LIC)**
- **Any other insurance company** incorporated in accordance with specified laws, including the Insurance Act, 1938, the Companies Act, 2013, and the Insurance Regulatory and Development Authority of India Act, 1999.

Therefore, the choice of insurance provider lies with the employer, not mandated to be LIC.



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16. As per Karnataka Compulsory Gratuity Insurance Rules, 2024, is it the responsibility of principle employer to get compulsory gratuity insurance for contract workers?

1. Responsibility for Gratuity Insurance:

It is clarified that, as per the Karnataka Compulsory Gratuity Insurance Rules, 2024, the responsibility for obtaining compulsory gratuity insurance for contract workers lies with the contractor, not the principal employer.

2. Claiming Gratuity and Liability:

The contractor is responsible for claiming the gratuity applicable to the period the contract labour worked with the establishment of the principal employer. This amount is then deposited into the compulsory gratuity insurance.

3. Liability of Principal Employer:

In cases where the contractor fails to make gratuity payments for contract labour, the principal employer becomes liable. The principal employer is responsible for ensuring the payment of gratuity either through the contractor or by making the payment directly. Any amount paid by the principal employer can be recovered from the contractor.



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17. Compliance Checklist under Karnataka Compulsory Gratuity Insurance Rules, 2024.

Rule	Compliance Checklist for Gratuity Rules
Rule 3 - Obtaining Insurance for Payment of Gratuity	- <input type="checkbox"/> Obtain valid insurance policy within 30 days (for new employers)
	- <input type="checkbox"/> Comply with sub-section (2) of Section 4A of the Act
	- <input type="checkbox"/> Obtain insurance policy within 60 days (for existing employers)
	- <input type="checkbox"/> Ensure timely premium payments and policy renewal
Rule 4 - Recovery of the Amount of Gratuity	- <input type="checkbox"/> Empower Controlling Authority for recovery
	- <input type="checkbox"/> Specify recovery from the insurance company
Rule 5 - Registration of the Establishment	- <input type="checkbox"/> Submit Form-I for Registration of the Establishment within 30 days
	- <input type="checkbox"/> Furnish employee details in Form-III during registration
	- <input type="checkbox"/> Update employee details with changes
	- <input type="checkbox"/> Confirm registration with Form-IV
Rule 6 - Continuation of Approved Gratuity Fund	- <input type="checkbox"/> Opt to continue approved gratuity fund if eligible
	- <input type="checkbox"/> Establish approved gratuity fund for 500 or more employees



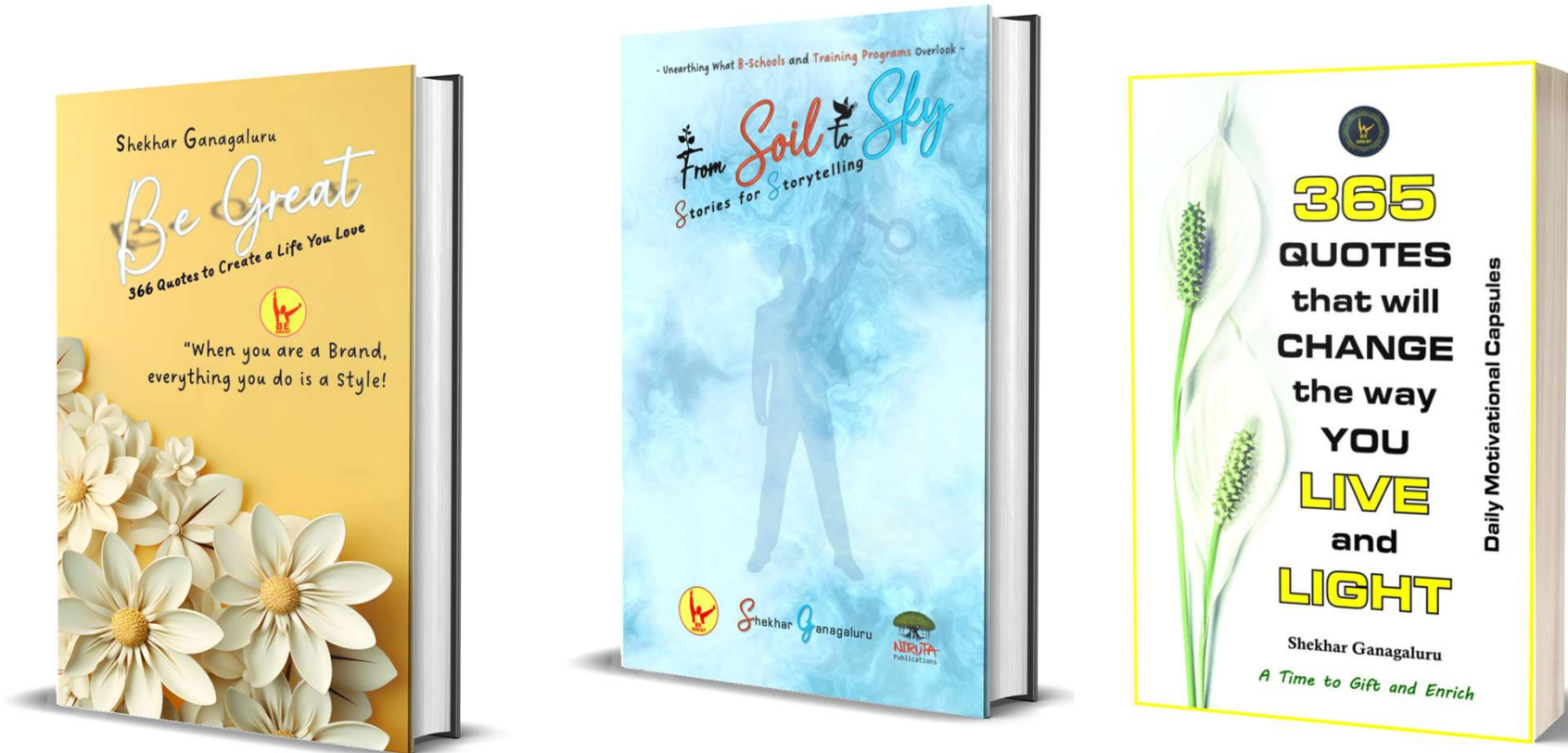
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Rule	Compliance Checklist for Gratuity Rules
Rule 7 - Incorporation of Gratuity Trust	- <input type="checkbox"/> Register Gratuity Trust with representatives
	- <input type="checkbox"/> Choose management option: private, insurance, or joint
	- <input type="checkbox"/> Adhere to Indian Accounting Standards 15
General Compliance	- <input type="checkbox"/> Maintain accurate documentation
	- <input type="checkbox"/> Communicate gratuity benefits and changes
	- <input type="checkbox"/> Ensure timely and accurate contributions
	- <input type="checkbox"/> Conduct regular compliance audits
	- <input type="checkbox"/> Keep proper records of gratuity payments
	- <input type="checkbox"/> Provide training on legal requirements



Literary works of Shekhar Ganagaluru

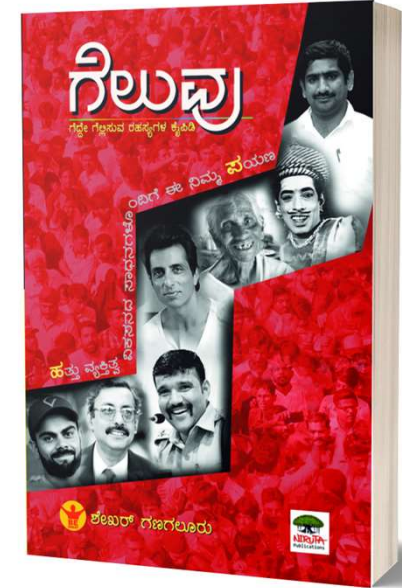
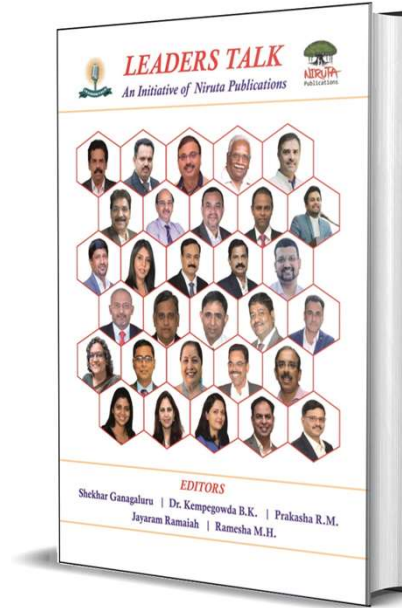
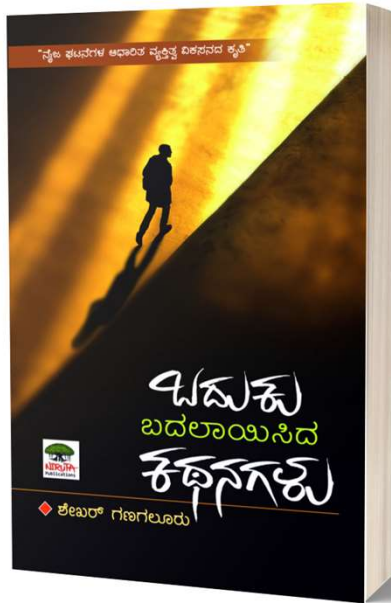


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