



Circular No – 009/2024

Date:19.01.2024

To

All Members of the Association

**QUERIES REGARDING
THE KARNATAKA COMPULSARY GRATUITY INSURANCE RULES 2024**

1. The Association has circulated the above Rules by circular no.5/2024 dated 11.01.2024.
2. Several queries have been received from the member establishment seeking clarification on the different provisions in the rules with regard to obtaining insurance to cover the liability of the establishment under the Payment of Gratuity Act.
3. The queries raised by the member establishments and the answers thereof are given below:

Queries	Answers
The company has operations, branches, offices in different States, which is the appropriate Government for the purpose of Payment of Gratuity Act and whether the above rules are applicable to our company.	1. Section 2(a) of the Payment of Gratuity Act defines appropriate Government as under: "Appropriate Government" means, - (i) in relation to an establishment (a) belonging to, or under the control of, the Central Government, (b) having branches in more than one State,

	<p>(c) of a factory belonging to, or under the control of, the Central Government,</p> <p>(d) of a major port, mine, oilfield or railway company, the Central Government,</p> <p>(ii) in any other case, the State Government;”</p> <p>2. Rules framed under the Act will not alter or amend the provisions of the Act. Definition of the appropriate Government should be as defined under the Act itself. Your company has its offices in different parts of the Country and in different States. Hence, the appropriate Government in your case is Central Government. Central Government has not framed any rules in exercise of power conferred on it under Section 4-A of the Payment of Gratuity Act.</p> <p>3. Unless the Central Government itself frames the rules and makes obtaining of insurance policy towards the liability of the employer for payment of gratuity under the</p>
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	<p>Act, there is no obligation on your company to obtain insurance policy to meet company's liability under the Act.</p> <p>4. In case of companies having branches in different States, the appropriate Government will be the Central Government. Hence, rules framed by the Government of Karnataka will not be applicable to such establishments.</p>
<p>The company has subsidiary companies in different States, which is the appropriate Government and whether the Karnataka Rules are applicable to our company and subsidiary companies.</p>	<p>A subsidiary company is defined with reference to a holding company. It is a company where the holding company controls the composition of Board of Director or controls more than one half of total share capital either on its own or together with one or more of its subsidiaries.</p> <p>Subsidiary company should be treated as independent legal entities and the State in which such subsidiaries are located will be the appropriate Government for the purpose of Payment of Gratuity Act.</p> <p>The parent company as well as each subsidiaries shall have to follow the law as applicable in the State in which they are located.</p>



<p>The company has set up gratuity trust and established gratuity fund and it is approved by the Income Tax Department. The trust has obtained insurance policy to cover the gratuity liability. Whether it is necessary for the company to set up the gratuity trust as contemplated under the Rules.</p>	<p>No. The gratuity trust as well as the rules thereunder and also the fund constituted in terms of the deed of trust are already recognized by the Income Tax Authorities. There is no need for setting up any separate trust or obtaining any further insurance policy to cover the liability towards Payment of Gratuity. However, in accordance with Rule -5 of the Karnataka Rules, the employer shall have to submit application in Form-I to the Controlling Authority of the area or any other officer notified for this purpose by the State Government within 30 days. The application should accompany list of employees who have been insured.</p>
<p>The company has approved gratuity fund. What are the compliances required under the new rules?</p>	<p>If the company has already established gratuity fund may opt to continue by submitting an application in Form-II prescribed under the Rules provided such existing approved gratuity fund covers the entire liability of all employees of the establishment under the provisions of the Act.</p>
<p>The company does not have gratuity fund and employs 500 or more persons, whether the</p>	<p>The Rule-6 provides that every employer who employs 500 or more persons who establishes an</p>



<p>company should set up approved gratuity fund.</p>	<p>approved gratuity fund may adopt such arrangement by submitting an application in Form-II prescribed under the Rules.</p> <p>However, the Rules does not mandate that the employer should set up gratuity fund. It only stipulates that if the company establishes the gratuity fund the procedure should be followed as has been laid down under Rule -6. It is purely the discretion of the company to set up gratuity fund or not.</p> <p>In the case of companies which have less than less than 500 persons setting up of gratuity fund is optional.</p>
<p>What is the time limit for obtaining insurance for payment of gratuity</p>	<p>Rule-3 mandates that the existing establishments should obtain the insurance within 60 days from the date, the Rules came into force. The Rules are published in Karnataka Gazette dated 10.01.2024. Rules have come into force from the said date.</p> <p>New establishments should obtain insurance within 30 days from the date on which the Payment of Gratuity Act and the Rules of 2024 become applicable.</p>

<p>The constitution of the Gratuity Trust.</p>	<p>The Establishments who are already having approved gratuity fund or who would set up the approved gratuity fund should ensure that the Trust consists of 5 representatives of the employer and equal number of representatives of the employees of the company.</p>
<p>The company does not have Gratuity Trust and has not created separate Gratuity Fund, but the company has obtained insurance to cover the liability under the Payment of Gratuity Act. Whether the company is required to set up the gratuity trust and fund in terms of the rules.</p>	<p>No. It is open to the company to obtain insurance directly from the Insurance Company without setting up of any gratuity trust.</p>
<p>What are the formalities to be completed for setting up of the gratuity trust as well as creation of gratuity fund?</p>	<p>The Board of Directors of the company should resolve to set up the Gratuity Trust and appoint the Trustees. Deed of trust shall have to be executed between the company and the trustees appointed by the Board of Directors. The Trustees will be called as Board of Trustees. They should frame rules for administration and payment of gratuity. The rules should contain all essential provisions which are</p>



	<p>required for day-to-day management of the Trust. Initial contribution to the trust should be made by the company. The deed of trust should be got registered with the Sub-Registrar of the Area. Got approved from the income tax department. The contribution to the fund should be made by the company every year on the basis of the actuarial calculations.</p> <p>The company should also get the Gratuity Trust registered with the Controlling Authority of the area by making application in Form-I prescribed under the Rules.</p>
<p>Are there any approved/authorized Insurance Companies by the Government?</p>	<p>The company may obtain insurance policy contemplated under the Rules from any of the Insurance Companies which have their operations in India and provide insurance to cover liability under the Payment of Gratuity Act.</p>

For KARNATAKA EMPLOYERS' ASSOCIATION
Sd/
[B C Prabhakar]
President