



**KOCHHAR & Co.**  
ADVOCATES & LEGAL CONSULTANTS



## **India: Amendments to The Payment of Gratuity Act, 1972**

04 April 2018

by [Debjani Aich](#) (Gurgaon)

Kochhar & Co.

Your **LinkedIn Connections**  
with the authors

On March 22, 2018, the Payment of Gratuity (Amendment) Bill, 2017 ("Amendment Bill") was passed by India's Upper House of Parliament (Rajya Sabha), seeking to amend the Payment of Gratuity Act, 1972 ("Gratuity Act"). The Amendment Bill was also passed by the Lower House of Parliament (Lok Sabha) on March 15, 2018. The Gratuity Act is one of India's key social welfare legislations. The Gratuity Act provides for payment of gratuity as a retirement benefit to employees *inter alia* engaged in private sector establishments who have been employed for a minimum of 5 years of continuous service (with exceptions in case of death or disablement) and the establishment employs 10 or more persons.

Gratuity is calculated at fifteen days of wages for each year of completed service (or part of the year in excess of six months), subject to a ceiling. The present ceiling is Rs. Ten Lakhs (approx. USD 15,150), which was fixed in 2010 (unless the employer and employee have agreed to a higher limit as better terms of employment).

By way of the Amendment Bill, the Government of India now proposes to increase the aforesaid ceiling of Rs. Ten Lakhs to such amount as may be notified by the Central Government. As of date, the proposed increase will be to Rs. Twenty Lakhs (approx USD 30,300). This increase flows from a commensurate increase in the ceiling of the gratuity amount for Central Government employees through the implementation of the seventh Central Pay Commission in 2016.

The Amendment Bill has not fixed a specific ceiling for the gratuity amount, thereby giving the Central Government the flexibility to revise the limits from time to time keeping in view the increase in wage and inflation and future Pay Commissions, without having to amend the law each time.

The other proposed amendment is in relation to inclusion of a female employee's statutory maternity leave period in the employment term for calculation and payment of gratuity. The current Gratuity Act includes 12 weeks of maternity leave. India's maternity benefit laws were amended in 2017, increasing maternity leave from 12 weeks to 26 weeks. Flowing from this amendment, the Amendment Bill proposes to allow the Central Government to enhance the period of the existing 12 weeks of maternity leave to such period as may be notified by it – this will again give the Government flexibility to change the maternity leave for the purpose of gratuity calculation without amending the Gratuity Act.

The Amendment Bill will now need to receive Presidential assent and be brought into force as a law. The amendment will make employees in the private sector eligible to receive a higher amount of gratuity – at this stage, upto Rs. 20 lakhs. Once effective, the amendment will also provide a higher tax benefit for employees covered under the Gratuity Act, as the increased gratuity amount will be exempt under income tax laws.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

#### AUTHOR(S)



**Debjani Aich**  
Kochhar & Co.

