

# The Payment of Bonus Act, 1965

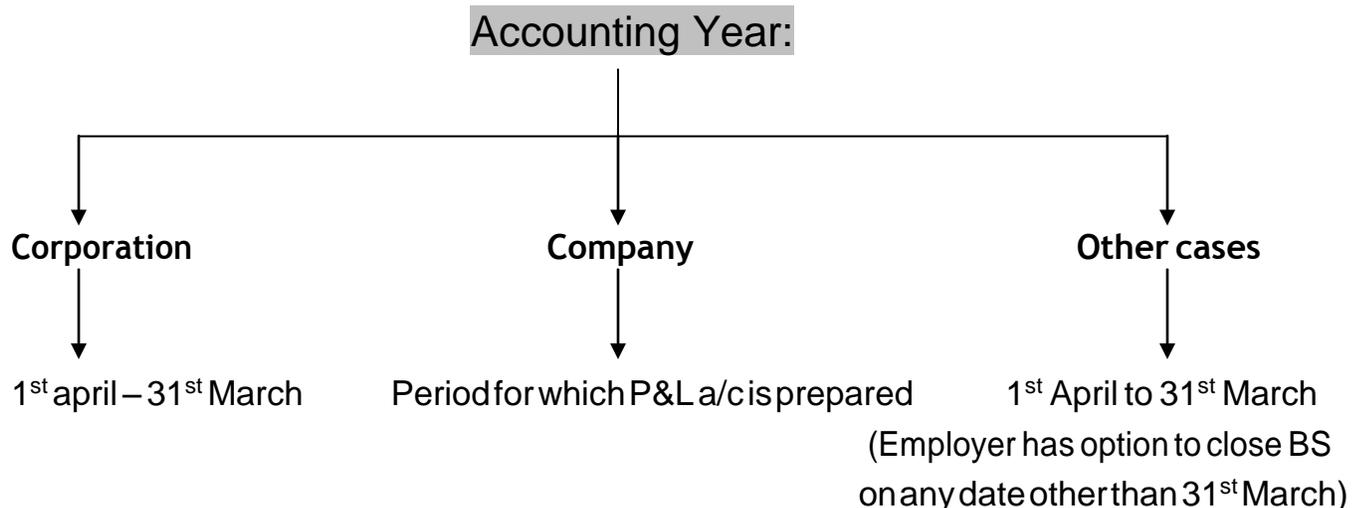
## Applicability of the Act:

- The Act applies to every **Factory**.
- The Act applies to every establishment in which **20** or more persons are employed on **any day** of the AY.
- Appropriate Government may, by notification in the official gazette, make the Act applicable to establishments with **more than 10 employees but less than 20**
- Once the act becomes applicable, it shall continue to be applicable to the establishment, even if the number of persons employed falls below the number specified in the act.

## Establishments to include Departments and Branches:

The Act shall apply to the departments and Branches of the Establishment. However, the branch or dept shall not be treated as part of establishment, if the following **two conditions** are satisfied-

- i. A **separate P&L and BS** is prepared for such branch or dept.
- ii. Such branch or dept has never been treated as part of establishment for the purpose of **computation of bonus**.

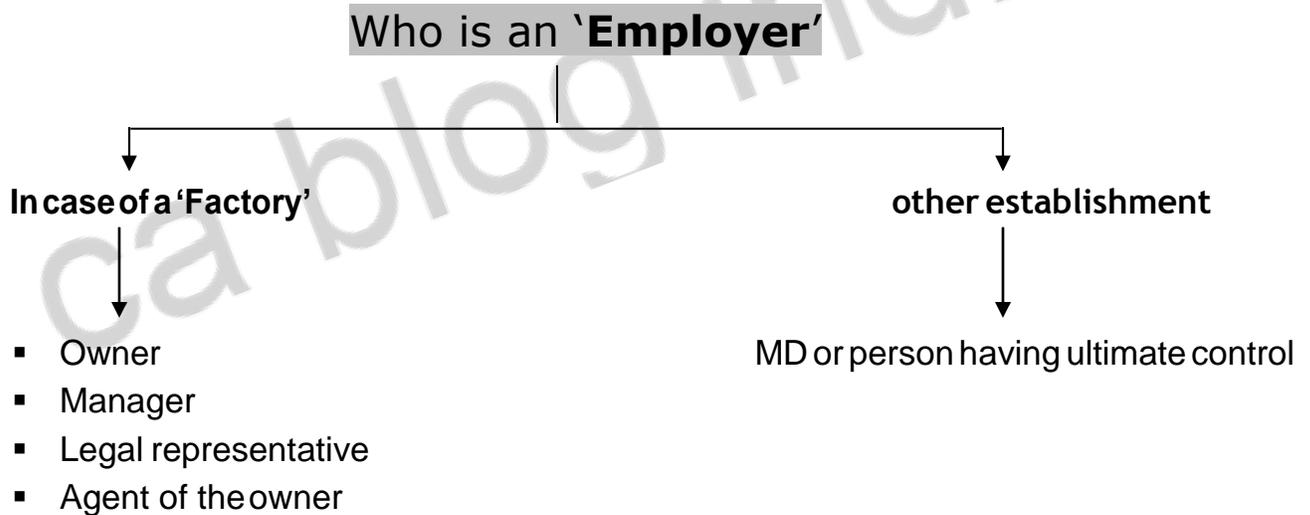


## Employee:

'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** work.

**Following list of employees are also entitled to bonus:**

- Probationer
- Dismissed or Suspended employee
- Temporary/Part-time employee
- Piece rated employee



## Salary or Wage:

Salary shall mean the remuneration and will include Dearness allowance, Food allowance given in lieu of salary.

**What does not include salary:** Other Allowances, Commission, Bonus, Travelling Concession, Overtime remuneration or any other addition, what so ever.

## Eligibility for bonus:

**In case of normal establishments and also seasonal establishments:** If the employee has worked for at least **30 working days** in an Accounting Year.

## Disqualification for Bonus [Sec.9]:

An employee shall be disqualified from bonus, if employee has been dismissed from the service for the following reason-

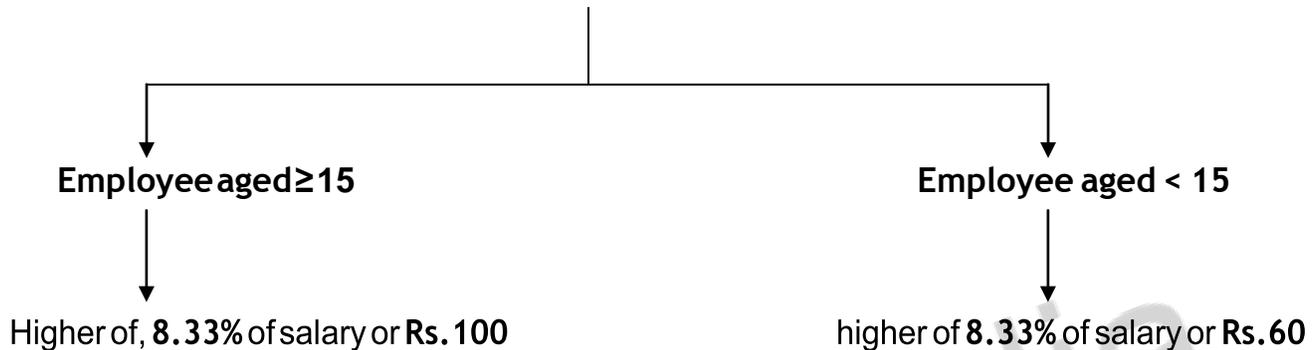
- Fraud; or
- Riotous or violent behavior while on the premises of the establishment; or
- Theft, misappropriation or sabotage of any property of the establishment.

Once disqualified, an employee shall not be eligible for any bonus relating to any previous year or current year, that is remaining unpaid. **[Sriram Bearings Vs Labour Court]**

**Question: Mr. Suresh was suspended on the charge of violent behavior in the premises of the company, for 60 days pending enquiry. Later nothing was proved against him and he was reinstated in the service. Later he worked for 10 months and company refused to pay the bonus. Advice whether company is required to pay the bonus and if yes, suggest whether the bonus is to be paid for 10 months or 12 months?**

- Section 9, which deals with disqualification for bonus shall not apply to ram because, he was suspended only for enquiry and no wrong was proven on his part.
- He shall be paid bonus for 12 months, as employee is entitled for bonus even during a suspended period.

## Payment of Minimum Bonus:



*The minimum bonus shall be **proportionately reduced**, if the employee has not worked on all the working days in the AY.*

**Working days in case of seasonal establishment:** In such case, 'working days' in an accounting year means those days of the year during which the employee concerned is actually allowed to work.

*The period for which a female employee has been on maternity leave with salary or wages shall be deemed to be the 'working days'*

## Deductions from Bonus:

The employer is entitled to deduct from bonus payable to an employee-

- a) The amount paid as **customary bonus** (Eid bonus, Durga puja bonus etc)
- b) The amount paid as **interim bonus**

The employer is entitled to make deduction from the bonus, if an employee is found guilty of misconduct and some financial loss is caused to the employer.

*If the employee has caused the loss in 2013-14, then the deduction from bonus can be made only from the bonus relating to 2013-14, but not any other year.*

- ❖ **Mode of payment of bonus:** The bonus shall be paid only in **Cash**

### **Time limit for payment of bonus [Section.19]:**

- Bonus shall be paid within **8 months** from the end of AY
- AG shall grant an extension, not exceeding **2 years**, provided the employer has made an application and there is appropriate ground.
- If there is any dispute with the bonus, the bonus shall be settled within **1 month** from the end of settlement.

### **Payment of Production linked bonus:**

Bonus shall be paid linked with production, only if there is an agreement or settlement, which shall state that-

- The bonus shall be paid **annually** to the employees
- Such bonus shall be linked with production
- Such bonus shall be paid **in lieu** of bonus based on profits
- The bonus shall not exceed **20%** of salary/wages earned in the relevant AY.

The agreement shall be **null and void** if it deprives the employee from minimum bonus. This is because, minimum bonus is an employee right and the employee shall be paid the minimum bonus, even though the bonus calculated as per the agreement is less than the minimum bonus.

### **Recovery of Bonus dues:**

- Application can be made by the employee, person authorized by the employee or legal heir. Application can be made even if employee is not in employment.
- Application shall be made within **1 year** of bonus becoming due for payment.
- The application shall be made to **AG**.
- If AG is satisfied, it shall issue a **recovery certificate** to a collector.
- The bonus shall be recovered by the collector in the same manner as if it were arrears of land revenue.

## 'Allocable Surplus' and 'Available Surplus':

### Step 1: Computation of Gross Profit:

#### Net Profit as shown in P&L Account

- Add:**
1. Provision for bonus, depreciation, reserves
  2. Bonus paid to employees in respect of previous accounting years
  3. Gratuity paid in excess of reserve
  4. Donations in excess of the amount admissible for income-tax
  5. Capital Expenditure
  6. Income directly credited to reserves
  7. Losses and expenditure of any business situated outside India

- Less:**
1. Capital receipts and capital profits
  2. Profits of any business situated outside India
  3. IT Refund
  4. cash subsidy received from government

**Gross Profit**

---

XXXX

- Less:**
1. Development Rebate
  2. Development allowance
  3. Investment allowance
  4. Depreciation admissible under IT Act
  5. Income Tax payable for current year
  6. Sums referred to in third schedule-
    - ✓ Dividend payable to pref. share holders
    - ✓ 6% of reserves at the beginning of the year
    - ✓ 8.5% of equity capital at the beginning of the year

**Adjusted Gross Profit**

---

XXXX

**Available Surplus = Adjusted Gross profit + Tax saved on bonus paid**

**Allocable Surplus = 67% of Available Surplus (If company has declared dividend)**

**In any other case, 60% of available surplus**

## Maximum Bonus:

If in an AY, allocable surplus exceeds the amount of minimum bonus, the employer shall pay to every employee, in lieu of minimum bonus, such amount not exceeding **20%** of such salary or wage.

## Set On and Set Off

- If in an AY, allocable surplus exceeds maximum bonus, such excess shall be carried forward to **4 succeeding years**.
- If in an AY, allocable surplus is less than the minimum bonus, then such deficiency shall be carried forward to 4 succeeding years.
- Such amounts carried forward to next year will be adjusted to allocable surplus of respective year.

## New Establishments:

**First 5 Years:** Bonus shall be payable only in respect of an AY in which the employer derives profit. No Set on or Set off provisions will apply.

**6<sup>th</sup> Year:** Set on/Set off shall be made taking into account the deficiency/excess of 5<sup>th</sup> year and 6<sup>th</sup> year.

**7<sup>th</sup> Year:** Set on/Set off shall be made taking into account the deficiency/excess of 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> year.

**8<sup>th</sup> year:** From 8<sup>th</sup> year, normal set on and set off procedure shall apply.

### Non-Applicability of the Act [Sec 32]:

- Employees employed by **LIC** and General Insurance companies.
- Seamen
- Employees registered under any scheme made under the **Dock Workers Act, 1948**
- Employees employed by **Inland Water Transport** Establishments operating on routes passing through any other country.
- Employees employed by **RBI, CG, SG or a local authority.**
- Employees employed by **Non-profit** organizations.
- Employees employed by **SFC, NABARD, IDBI, UTI**

Whether Authorized Controller appointed by Government is treated as employer to whom the Act does not apply?

### Exemption from provisions of the Act [Power by CG]:

- Before granting exemption, CG shall consider the **financial position** and other relevant circumstances.
- Exemption shall be granted only if it does not affect the **public interest.**
- The Order of exemption shall be published by way of a notification in the **Official Gazette.**
- The Order shall contain the **conditions and period** of exemption.

**A company has its office in Andhra Pradesh. Due to bad financial position, the AP government granted exemption. Is the exemption valid?**

**Will your answer be different if the company has one of its Branch office in Kerala also?**

## Establishment in Public Sector:

Establishment in public sector means-

- A Government company,; or
- A corporation in which 40% or more capital is held by Govt or a corporation owned by Govt.

## Inspectors:

- Inspectors are the public servants appointed by AG.
- Inspectors have powers-
  - ✓ To call such necessary information form employer.
  - ✓ To examine employer, his agent or servants.
  - ✓ To make copies and extracts of books