



THE MATERNITY BENEFIT ACT, 1961

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Prior to the enactment of the Maternity Benefit Act of 1961 there were in force several central & state Maternity Benefit Acts in the country. But there was no uniformity in their provisions. It was desirable to have uniform maternity benefit provisions for all women workers in the country. It is true that its object was achieved by the enactment of the Employees' State Insurance Act of 1948, which superseded the provisions of several Maternity Benefit Acts. But the Employees' State Insurance Act did not cover all women workers in the country. The Maternity Benefit Act of 1961 was therefore passed to provide uniform maternity benefit for women workers in certain industries not covered by the Employees' State Insurance Act.

Object:-

1. To protect the dignity of motherhood and the dignity of a new persons birth by providing for the full and healthy maintenance of the woman and her child at this important time when she is not working.
2. To provide for maternity benefit to women workers in certain establishments.
3. To regulate the employment of women workers in such establishment for certain period before and after child birth.

Applicability:-

1. Every establishment being a factory, mine, plantation or circus.
2. Every shop or establishment in which 10 or more persons are employed
3. Any other establishment to which the Act is applied by the State Government under the Provision.
4. There is no wage limit and every female employee irrespective of wage limit is covered.
5. Every woman is entitled to maternity benefit whether she is directly employed or through agent.

Note: - The Act Does Not Apply to any Factory or other Establishment to Which the provisions of the ESI Act is apply.

Restriction on Termination:-

When a women absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence.

The employer cannot have settlement / agreement with a woman employee for restricting the benefits.

Exemptions:-

An establishment can seek exemption from the Act on the ground that the benefits granted by it are no less favorable than those under the Act and the appropriate government can issue a notification granting such exemption.

“ A women becomes eligible to Maternity benefit only when she has actually worked for 80 days in the preceding 12 months before the date of her expected delivery.”

Eligibility for benefits:-

Woman indulging temporary or unmarried is eligible for maternity benefit, when she is expecting a child and has worked for her employer for at least 80 days in the 12 months immediately preceding the date of her expected delivery.

Nursing breaks till child is 15months old

Insertion of new Sec 11A (1) : Women employee should be permitted to visit the crèche 4 times during the day, which includes the regular rest interval until the child attains the age of fifteen months.

Leave for Miscarriage or medical termination of pregnancy

A woman shall, on production of such proof as be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

Medical Bonus:-

A woman to maternity benefit under the Act shall also be entitled to receive from her employer a medical bonus of Rs. 3500/- w.e.f. 01/03/2012, if no pre-natal confinement and postnatal care is provided for by the employer free of charge. The medical bonus shall be paid along with the second installment of the maternity benefit

The Employees State Insurance Act covers only employees whose wage limit does not exceed Rs. 21,000/- p.m. and this does not insure an employee including a female employee whose wage exceeds Rs. 21,000/- p.m. while Maternity Benefit Act has not prescribed any wage limit and thus covers every female employee irrespective of wage limit working in an establishment to which the Maternity Benefit Act applies.

A women becomes eligible to Maternity benefit only when she has actually worked for 80 days in the preceding 12 months before the date of her expected delivery.

Female workers engaged on casual basis or on muster roll on daily wages are also entitled to benefit under the act. Since there is nothing in the act which confers the benefit only on regular woman employees

She has to give a notice in writing in Form 1 to the employer for payment of maternity benefit or any other amount which shall not be earlier than six weeks from the date of expected delivery. She has to nominate a person in Form 1 who can be paid the maternity benefit or such amount on her behalf.

Leave with wages for tubectomy operation

In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation].

Period of Maternity Benefit:-

It shall be 26 weeks of which not more than 8 weeks shall precede the date of her expected delivery.

A woman suffering from illness arising out of pregnancy, delivery, premature birth of child [miscarriage, medical termination of pregnancy or tubectomy operation] shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

No deduction of wages in certain cases

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of-

(a) The nature of work assigned to her by virtue of the provisions contained in subsection (3) of section 4; or (b) Breaks for nursing the child allowed to her under the provisions of section 11.

Obligations for the employer:-

- To exhibit the abstract of the provisions of the act and the rules made there under in a conspicuous place in every part of the establishment in which women are employed.
- To maintain a muster roll in the prescribed form;
- To submit annual returns in the four prescribed forms.
- The Employer cannot dismiss or discharge a woman employee during her absence/ leave due to her pregnancy / delivery, miscarriage or illness or for Tubectomy operations.

Computation of average daily wage:-

The average daily wage is computed by arriving at an average of the wages paid to a female employee for the days on which she has worked during the period of three calendar months immediately prior to the date on which she absents herself from duty on account of maternity or the minimum rate of wages or Rupees Ten whichever is highest.

In calculating 80 days in the twelve months immediately preceding the date of expected delivery.

The following days are to be included:-

- The days on which a woman has actually worked.
- The days of lay-off.
- And holidays with wages to be counted.

It Includes: -A) All remuneration in cash paid or payable on fulfilling the terms of employment.

B) Dearness Allowance C) House Rent Allowance or any such cash allowance D) Incentive Bonus E) Money value of concessional supply of food grains other articles.

It Excludes:- a) Any Bonus other than incentive bonus, b) Overtime wage, c) Amounts recovered as fines, d) Employer's contribution to provident fund and pension fund, e) Gratuity on termination of service.

Maternity Benefit in case of Death of Women:-

- The maternity benefit is payable only up to and including the date of death, if the woman dies during the benefit period.
- If she dies during delivery or immediately after delivery, leaving the child behind, the maternity benefit is payable for the entire period of 26 weeks.
- If the child also dies, the maternity benefit is payable up to and including the date of death of the child.
- A certificate in Form 4 as proof of death of woman employee or the child as the case may be is to be produced.
- The employer has to pay it to the persons, nominated in the notice of claim in Form 1 to be issued by her.

Forfeiture of Maternity Benefit / Medical Bonus:-

- If she works in any other establishment during the period of the maternity benefit during which her absence is permitted by the employer.
- If the woman is guilty of gross misconduct and dismissed for the same, the employer can by an order communicated to her in writing deprive her of maternity benefit or medical bonus or both.

Tips for Employer:-

- Abstract of the Maternity Benefit to be exhibited u/s. 19, shall be in Form
- Maternity Benefit Register in Form 10

has to be maintained

- Supply of Maternity Benefits Form to the Women Employees other than Form 9, 10 & 11
- Every Employer shall furnish to the Competent Authority by the 15th Day of January each year in Form no 11

Powers and duties of Inspectors

An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely: -

- Enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority, as he thinks fit, any premises or place where woman are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;
- Examine any person, whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself,

- Require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and
- Take copies of any registers and records or notices or any portions thereof.

Penal Provision:-

Imprisonment from 3 months may extend to 1 year &/or Fine up to Rs. 2000/- may extend to Rs. 5000/- .

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Executive Profile:

- Qualified as M.B.A. (HR), B.Sc. (Hons.), LL.B., D.L.L. & L.W., D.P.M. & I.R., A.I.I.I, M.P.M. (H.R), DMS
- Providing consulting services in the field of Labour Laws since last 35 years
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- Visiting Faculty at Bharatratna Dr. Ambedkar Institute of Management & Legal Research, Mumbai.