

MAY 2017

AMENDMENTS TO THE MATERNITY BENEFIT ACT, 1961

1. INTRODUCTION

The Maternity Benefit Act, 1961 (the “Act”) has been recently subject to certain significant amendments. Women employees are now entitled to additional maternity leave and employers with a certain number of employees are required to provide crèche facilities.

2. AMENDMENT

The Maternity Benefit (Amendment) Act, 2017 (the “Amendment Act”) received the assent of the President of India on March 27, 2017. Subsequently, the Ministry of Labour and Employment issued a notification dated March 31, 2017 (and a subsequent corrigendum), stating that all the provisions (*except the provision pertaining to crèche facilities*) of the Amendment Act will come into force from April 1, 2017. The provision pertaining to crèche facilities will come into force on July 1, 2017.

The provisions of the Amendment Act are summarized below:

- (a) Maternity leave has been increased from twelve (12) weeks to twenty-six (26) weeks for the first two surviving children. Out of these twenty-six (26) weeks, not more than eight (8) weeks shall precede the expected date of delivery.
- (b) A woman having two (2) or more than two (2) surviving children shall be entitled to twelve (12) weeks’ maternity leave, of which not more than six (6) weeks shall precede the expected date of delivery.
- (c) The term “**commissioning mother**” has been defined as a biological mother who uses her egg to create an embryo implanted in any other woman. A commissioning mother is entitled to maternity leave for a period of twelve (12) weeks from the date the child is handed over to such commissioning mother.
- (d) A woman who legally adopts a child below the age of three (3) months is also entitled to maternity leave for a period of twelve (12) weeks from the date the child is handed over to the adopting mother.
- (e) In addition to the maternity leave, an employer may permit a woman to work from home on mutually agreed terms and conditions, in cases where the nature of work assigned to a woman is of such nature that she may work from home.
- (f) Every establishment with more than fifty (50) employees is required to provide crèche facilities within such distance as may be prescribed, either separately or along with common facilities. Further, the employer shall permit women employees four (4) visits a day to the crèche, which shall also include the interval of rest allowed to such woman.
- (g) The employer is required to inform all women employees in writing and electronically at the time of their initial appointment, details of rights available under the Act.

The Ministry of Labour & Employment in its clarifications dated April 12, 2017 and May 8, 2017 has clarified some of the provisions of the Amendment Act, which are as follows:

- (a) There is no change in the applicability of the Act and it is applicable to all women who are employed in any capacity, directly or through any agency (i.e. on contractual basis or as consultants). Further, the Act is applicable to women employed in the unorganized sector, including mines, plantations, shops and establishments and factories.
- (b) Women employees who are currently availing maternity leave are also entitled to twenty six (26) weeks of maternity leave. It is mandatory for the employer to extend the maternity leave for all employees who were already on maternity leave as on April 1, 2017.
- (c) Women employees who have completed twelve (12) weeks of maternity leave and have joined work before April 1, 2017 are not entitled to the extended benefit of twenty-six (26) weeks' leave.
- (d) The provisions relating to dismissal/discharge of women employees during pregnancy continues to be applicable and any such discharge/dismissal is unlawful and punishable under the Act.

IndusLaw View: The swift notification and subsequent clarifications to the Amendment Act are extremely significant. Given that women are often underrepresented in the formal workforce, it is expected that this Amendment Act will go a long way towards restoring gender balance at the workplace.

It also echoes international standards set by the International Labour Organization (ILO). Countries that have ratified the Maternity Protection Convention, 2000 are required to provide at least fourteen (14) weeks of maternity leave. By virtue of the Amendment Act, India is now far ahead of the curve, and ahead of countries such as France, Singapore, Germany and Japan.

Also, the Amendment Act incorporates other provisions such as providing leave for adoptive and commissioning mothers and allowing a 'work from home' option wherever possible.

However, as with any major legislative amendment, it's likely that the Amendment Act will throw up a few questions and may still require additional clarifications. An obvious one relates to companies with more than fifty (50) employees which are required to provide crèche facilities under the Amendment Act. It is currently not quite clear as to how an employer is to discharge this obligation or who will bear the costs of such a facility or even how far the crèche should be located from the office. Further nuances, such as the age group for crèche admissions and age until which the facility must be provided, have also been left unclarified.

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