
NATIONAL GUIDELINES ON ESTABLISHMENT AND OPERATION OF CRÈCHES UNDER MATERNITY BENEFIT LEGISLATION**1. BACKGROUND**

The recent landmark amendments to the Maternity Benefit Act, 1961 (the “**MB Act**”) have placed India in the league of several developed countries with respect to maternity benefits. These amendments have not only increased the period of paid maternity leave from 12 to 26 weeks but they have also introduced several other progressive measures, including placing an obligation on employers to provide crèche facilities (the “**Crèche Requirement**”).

In order to enable and assist employers in complying with the Crèche Requirement and provide uniformity to those benefits, the Ministry of Women and Child Development has recently published the National Minimum Guidelines for Setting Up and Running Crèches under Maternity Benefit Act, 2017 (the “**Guidelines**”). The Guidelines provide a list of standards and norms that employers may use as a reference, until States enact relevant rules.

2. HIGHLIGHTS**2.1. Applicability**

These Guidelines apply to all establishments falling within the purview of the MB Act and engaging 50 or more employees. All women employees are covered, including temporary, daily wage, consultant and contractual personnel. Crèche facilities are required to be provided for all children between 6 months to 6 years. One crèche facility must be provided for every 30 children.

2.2. Location

The crèche facility must be located either within the establishment’s premises or the employees’ neighbourhood, or at a distance of 500 metres from either of these premises.¹

2.3. Working Hours

The working hours of the crèche should be flexible, although it has been recommended that the crèche should ideally be open for 8 to 10 hours a day. If the establishment operates in shifts, the crèche must also do so.

¹ There is no clarity as yet on how an employee can visit the crèche 4 times a day if a facility closer to the employee’s neighborhood is chosen and the distance is significant from the workplace.

2.4. Staff

Every crèche must have at least 1 adult and a helper for every 10 children below the age of 3 and 1 adult and a helper for every 20 children between 3-6 years of age. Apart from the adults and the helpers, the crèche must also have a *crèche-in-charge* and a guard. Every person working in the crèche should undergo specific training and satisfy background verification processes.²

2.5. Monitoring and Supervision

A significant point under the Guidelines is the establishment of a crèche monitoring committee (a “CMC”). This CMC must consist of a crèche worker, the *crèche-in-charge*, parents, and an administrative or human resources officer. The CMC is required to conduct meetings on a periodic basis and maintain records. Significantly, the Guidelines provide a draft of the child protection policy that can be adopted as a reference by every establishment and be administered by the CMC. Furthermore, the quality of the crèche must be evaluated on a periodic basis by a professional agency.³

2.6. Infrastructure and Utilities

During the construction of any crèche, compliance with Central Public Department norms must be ensured. In addition, the crèche must ideally satisfy the following requirements:

- | The crèche must be located on the ground floor and have ramps and handrails;
- | The crèche must have a minimum space of 10 to 12 square feet per child, have both closed and open areas, along with separate areas for different age groups of children for cleaning, eating and other activities;
- | There must be a kitchen and child friendly toilet facility; and
- | The crèche must have a water purifier to provide safe drinking water.

2.7. Norms and Standards

The Guidelines prescribe detailed norms and standards that may be adopted to ensure the best interests of the children. Significantly, they require that:

- | Any material or equipment used in the crèche must be age appropriate, sturdy, safe and easy to maintain. The crèche must also ensure that furniture for children with special needs is available;
- | Activities and the curriculum adopted must be age appropriate, diverse and flexible;
- | No corporal punishment or verbal abuse should be tolerated under any circumstances;

² A person appointed as the guard is mandatorily required to undergo police verification. The Guidelines prescribe basic qualifications, training requirements and details regarding the role and responsibilities of the crèche staff.

³ Any complaints pertaining to sexual harassment shall be addressed under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- | Steps such as the sanitation of toys, pest control and other measures to ensure safety and hygiene must be undertaken on a regular basis;
- | In order to ensure the safety of children, the crèche must have CCTV cameras, an evacuation plan, secure doors, gates and other safety equipments such as sprinklers and fire extinguishers; and
- | No third party (including maintenance staff) must be permitted to enter the crèche when it is open.

2.8. Health and Nutrition

Under the Guidelines, every child is required to undergo medical checks preferably on a monthly basis at the crèche or the parents may provide a medical card, which contains the medical records of the child. The crèche should have a first-aid kit and ensure that a doctor is available on call to attend to any medical emergency. However, no medication should be administered to any child without obtaining the parent's authorization. The Guidelines also prescribe nutrition practices that must be adopted by the crèche and the parents. Meals can either be provided by the crèche or the parents.

3. INDUSLAW VIEW

These detailed Guidelines provide much needed clarity on how employers are to comply with the Crèche Requirement and the extent of due diligence they should undertake while engaging crèche service providers. While the details provided in the Guidelines are undoubtedly laudable, the Guidelines are also silent on the issue of costs. It also remains to be seen how several small and medium sized establishments will comply with the Guidelines.

Further, State rules that will be formulated under the MB Act, will have to take into account these Guidelines. As an example, the Government of Karnataka in July 2018 published the draft rules under the MB Act (the "Draft Rules"), which clearly stipulated that crèches must be located within 500 metres from the entrance of the establishment. This stipulation is not in accordance with these Guidelines, which permit crèches to be located within 500 metres from the employee's neighbourhood as well. These Draft Rules should be now revisited in light of the Guidelines to ensure uniformity of practices.

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