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An overview on the Maternity Benefit (Amendment) Act, 2017

Introduction

The Maternity Benefit (Amendment) Bill 2016 (the "Amendment Bill"), an amendment to the Maternity Benefit Act, 1961 ("Act"), was passed in Lok Sabha on March 09, 2017 , in Rajya Sabha on August 11, 2016 and received an assent from President of India on March 27,2017.

The provisions of The Maternity Benefit (Amendment) Act, 2017 (MB Amendment Act) is effective from **April 01, 2017**. However, provision on *crèche facility* (Section 11 A) shall be effective from July 01, 2017.

Applicability: The Act is applicable to all establishments which are factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislations, or any other establishment as may be notified by the Central Government.

Eligibility: As per the Act, to be eligible for maternity benefit, a woman must have been working as an employee in an establishment for a period of at least 80 days in the past 12 months.

Payment during the leave period is based on the average daily wage for the period of actual absence.

Key highlights of the Amendment

Increase in Maternity Benefit: The period of paid maternity leave ("Maternity Benefit") that a woman employee is entitled to has been increased to 26 (twenty six) weeks. Further, the Act previously allowed pregnant women to avail Maternity Benefit for only 6 (six) weeks prior to the date of expected delivery. Now, this period is increased to 8 (eight) weeks. [1]Maternity benefit of 26 weeks can be extended to women who are already under maternity leave at the time of enforcement of this Amendment.

> *Paid Maternity leave increased to 26 weeks.*
>
> *Leave Prior to expected delivery date - 8 weeks*

- **No increased benefit for third child:** The increased Maternity Benefit is only available for the first two children. The Amendment provides that a woman having two or more surviving children shall only be entitled to 12 (twelve) weeks of Maternity Benefit of which not more than 6 (six) shall be taken prior to the date of the expected delivery.

- **Adoption/Surrogacy**: A woman who adopts a child below the age of 3 (three) months, or a commissioning mother (means a biological mother, who uses her egg to create an embryo implanted in any other woman), will be entitled to Maternity Benefit for a period of 12 (twelve)

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[1] Clarification by GOI/ Ministry of Labour & Employment vide no. S-36012/03/2015-SS-I dated 12.4.2017.

weeks from the date the child is handed over to the adopting mother or the commissioning mother.

- **Creche Facility:** Every establishment having 50 (fifty) or more employees are required to have a mandatory creche facility (within the prescribed distance from the establishment), either separately or along with other common facilities. The woman is also to be allowed 4 (four) visits a day to the creche, which will include the interval for rest allowed to her.

> *Establishment having 50+ employees – mandatory to have crèche facility.*

- **Work from home:** If the nature of work assigned to a woman is such that she can work from home, an employer <u>may</u> allow her to work from home post the period of Maternity Benefit. The conditions for working from home may be mutually agreed between the employer and the woman.

- **Prior Intimation:** Every establishment will be required to provide woman at the time of her initial appointment, information about every benefit available under the Act.

Conclusion

The MB Amendment Act is a welcome move towards protection for women to exercise her right to carry profession guaranteed under Indian Constitution. However, the amendments has few shortfalls like the women working in an unorganized sector are not included; the concept of "Paternity Leave" not considered; Rules has to provide a better clarity on prescribed distance for crèche facility; paid leave for 26 weeks shall be an additional cost for employers so, this may impact the hiring of women employees.