

Maternity Benefit (Amendment) Act, 2017

The Maternity Benefits Act, 1961 aims to regulate the women employed in factories, shops or commercial establishments 10 or more employees for certain period of leaves before and after child-birth.

Recently, the Maternity Benefit (Amendment) Bill was introduced and passed in Lok Sabha on 9th March, 2017, by the Rajya Sabha on 20th March, 2017 and the same received President's assent on 27th March, 2017. Ministry of Labour and Employment vide notification dated 31st March, 2017 appointed 1st April, 2017 to enforce the provisions of Maternity Benefit (Amendment) Act 2017. However, some of its provisions will come into force on 1st July 2017.

As per the new Maternity Benefit (Amendment) Act, 2017 ("Amendment Act"), the Maternity leave available to the working women has been increased from 12 weeks to 26 weeks for the first two children. Besides, provisions relating to work from home and crèche facility have been introduced in the Amendment Act.

After the notification of the Amendment Act, a slew of queries have started flowing both from the employers as well as the employees. Since the Maternity Benefit Act including the Amendment Act is applicable to every organization employing 10 or more people, its impact is fairly wide.

We at What's New on website have compiled Frequently Asked Questions which should help you implement the right HR policies in your organization in compliance with the Maternity Benefit Amendment Act, 2017.

Frequently Asked Questions

Applicability

Q1. Is Maternity Benefit Act applicable to all organizations?

As per Section 2 of the Act, the Act is applicable to every establishment being a factory, including every shop and establishment in which 10 or more persons are employed.

Benefits

Q2. What is the duration of Maternity Leave for working women?

As per the Maternity Benefit (Amendment) Act, 2017- Women who have completed 80 days in the 12 months immediately preceding the date of her expected delivery is entitled to maternity leaves for a maximum of 26 weeks of which not more than 8 weeks shall be preceding the expected date of her delivery.

Women having 2 or more surviving children shall be allowed maternity leave of 12 weeks of which not more than 6 weeks should be before the expected date of her delivery.

Additional 30 days of Maternity shall be available for sickness arising out of being in the family way, premature delivery or medical termination of pregnancy.

Eligibility

Q3. Whether enhanced maternity benefit of 26 weeks leave can be extended to women who are already under the maternity leave at the time of enforcement of this Amendment Act?

As per the clarification issued by the Ministry of Labour and employment, maternity benefit of 26 weeks leave can be extended to women who are already under the maternity leave at the time of enforcement of this Amendment Act. I.e. 1st April 2017.

Q4. Whether enhanced Maternity Benefit can be extended to those women who have joined after availing 12 weeks of the Maternity Leave?

Those women employees who had already availed 12 weeks of maternity leave before the enforcement of Maternity Benefit (Amendment) Act, 2017 i.e. before 1st April 2017 shall not be entitled to avail the extended benefit of the 26 weeks of maternity leave.

Q5. Whether benefits of this Act can be extended to the women employed in the unorganized Sector?

The Maternity Benefit Act is applicable to all mines, plantations, shops and establishments and factories either in organized sector or unorganized sector.

Q6. Whether Maternity Benefit Act is applicable to contractual or consultant women employees?

As per Section 2 of the Act, the original provision will prevail i.e. the Act is applicable to all women who are employed in any capacity directly or through any agency i.e. either on contractual or a consultant.

Q7. What are benefits to commissioning and adopting mother?

As per Section 3(b, a) of the Act, Commissioning mother means a biological mother who uses her egg to create an embryo implanted in any other woman. As per Section 5(4), adoptive mother who adopts a child of upto 3 months or a commissioning mother, are entitled to 12 weeks of maternity leave from the date of commissioning / adoption.

Compliance

Q8. Whether the employer has to intimate about the maternity benefits available to women working in their organization?

The Maternity Benefit (Amendment) Act, 2017 makes it mandatory for employers to intimate every female employee by writing or electronically at the time of her appointment regarding every benefit available to them under section 11A (2) of the Maternity Benefit Act. It is also recommended that the employers may amend their HR policies to include the provisions of maternity benefit act as amended.

Q9. Can the employer terminate the woman after learning about her pregnancy?

Section 12 of the Maternity Benefit Act, 1961 emphasizes that any dismissal or discharge of a women during the pregnancy is unlawful and such employer can be punished under Section 21 of the Act. However, in cases of gross misconduct, the employer can take necessary actions as per the defined disciplinary policy of the Company.

Q10. Does an employer have to necessarily provide Crèche? Children upto which age are entitled to the facility of Crèche?

As per Section 11A(1) of the Act, every establishment having fifty or more employees have to provide the facility of crèche within such distance as per prescribed rules, either separately or along with common facilities. The employer shall allow four visits a day to crèche by the women including the interval for rest. This provision of the act will come into force on 1st July 2017. No rules have been finalized as yet with respect to crèche facility.

Q11. Does an employer necessarily need to give facility of work from home?

As per section 5(5) of the Act, In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Q12. Does the employer need to have the crèche in its own premises?

The act is silent about this aspect it may be therefore inferred that the employer can tie up with the crèche nearby its office for providing such facility.

Q13. Children upto which age are entitled to the facility of Crèche?

The age of the Children upto which age are entitled to the facility of Crèche is not mentioned in the Act.