

Amendments to the Maternity Benefit Act

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The Factories and establishments employing ten or more employees are covered under the Employees' State Insurance Act in the notified areas. The employees working in such factories and establishments with a gross monthly wage of Rs. 21,000/- and below are required to be covered under the ESI Scheme and they are entitled to (i) Medical Benefit (ii) Sickness Benefit (iii) Maternity Benefit (iv) Disablement benefit (v) Dependents benefit (vi) Funeral expenses (vii) other benefits

When an employees is covered under ESI Act and is entitled to benefits provided by the said Act, he or she shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment [Section 61].

In view of the above, employees covered under ESI Act are not covered under The Maternity Benefit Act, 1961 and Employee Compensation Act 1923.

The Maternity Benefit Act is applicable to every factory, mine or plantation and to shops and establishments employing ten or more employees. In such factories and establishments, employees who are not covered under ESI Act employed directly or through any agency will only be covered under the Maternity Benefit Act.

To become entitled for maternity benefit, the employee should have worked eighty days in the twelve months immediately preceding the date of her expected delivery in an establishment of the employer.

The amendments to the Maternity Benefit Act have come inforce with effect from 1st April 2017 are summarised hereunder:

1. The Act now mandates that the employer of the establishment should inform a women all benefits made available under the law, at the time of her appointment. Such information must be given in writing and electronically.
2. Every establishment employing fifty or more employees shall provide crèche facilities within a prescribed distance and the woman should be allowed four visits to the crèche in a day. However, this includes her rest interval. However, this provision will come into force with effect from 1st July 2017.

Whereas, creche is required to be provide and maintained only if a factory employs more than thirty women employees under Section 48 of the Factories Act. In view of the amended maternity benefit act, if the factory is employing fifty or more employees, they are required to provide crèche facility even though the number of women employees are thirty.

3. After completion of the statutory maternity benefit period with wages, an employer can permit a woman to work from home, if the nature of work assigned permits her to do so for a duration that is mutually decided by the employer and the woman employee. Though it is

not mandatory, the law made it open to the women employee to make a request in this regard.

4. Now the Maternity Benefit Act provides leave up to twelve weeks for a woman who adopts a child below the age of three months. The period of leave will be calculated from the date the child is handed over to the adoptive mother.
5. In surrogacy, the surrogate mother carries a child for another person after an agreement made before conception of the child. The person wishing to adopt and foster the child is called the commissioning person/couple. The amended legislation provides leave up to 12 weeks for commissioning mothers also.
6. The maximum period for which any woman shall be entitled to maternity benefit shall be twenty six weeks of which not more eight weeks shall precede the date of her expected date of delivery. Provided that the maximum period entitled to maternity benefit by a women having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

Thus women employees having two or more children will continue to get the maternity benefit as earlier.

7. Woman who have already availed 12 weeks of maternity benefit on or before 31st March 2017 will not be entitled to the enhanced benefits mentioned above. However, woman who are on maternity benefit of 12 weeks and the period of 12 weeks ends on or after 1st April 2017 will be entitled to the enhanced maternity benefit of twenty six weeks in place of twelve weeks.

It is essential to recognise that the act has not defined 'employee' and extended the benefits to 'woman'. Thus the intent of the legislature is to cover all categories of personnel whether be it casual, temporary, outsourced, contractual, full time consultants, trainees, probationers etc.,

When a woman absents herself from work in accordance with the provisions of the maternity benefit act, the employer is restrained from terminating her services during the said period. Over two decades ago, in 1991, the Supreme Court had ruled in favour of pregnant employees in the matter of Neera Mathur Vs Life Insurance Corporation of India. The facts of the matter are Ms. Mathur was appointed on September 25, 1989. She was put on probation for six months and during the probationary period she applied for maternity leave on December 27, 1989. On February 13, 1990, she was discharged from service during her period of probation. The reason cited for termination was that she had deliberately withheld the fact of being pregnant at the time of filling up a declaration form prior to being appointed. The court ordered her reinstatement. The apex court judgement further reinforces the fact that though the contract of employment provides for termination of employment during the probationary period, the employer will not be in a position to implement the same, if it is in violation of provisions of the applicable laws.

Similarly, in accordance with the Section 73 of the ESI Act employer shall not dismiss, discharge or reduce or otherwise punish an employee during the period when he / she is in receipt of sickness benefit or maternity benefit and also during the period in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of certified illness arising out of pregnancy or confinement.

During the said period no notice of dismissal or discharge or reduction shall be served on an employee.

In view of the amended legislation, the HR professionals are required to have a relook at their HR manual and also the contract of employment to comply with the amended maternity benefit act.