

## All about Maternity Benefit Act, 1961

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### Introduction-

Every woman has a right to live with dignity and avail certain benefits for the complete and healthy maintenance of herself and her child even when she is not working. With the advent and progress in the present era there has been a robust growth in the number of working women employees in the organization and hence resorting to maternity leave and various other benefits is on the go. The key arrangement includes: Every woman shall be entitled to, and her employer shall be liable for making timely payment of maternity benefit which is payable for the period of her actual absence at the rate of the average daily wage so determined. There is need to enforce maternity benefits so that a woman is to be able to provide a quality living for her child without having to worry about whether she will lose her job and her source of income.

### **Q1) When did the Maternity Benefit Act, 1961 come into force?**

The Maternity Benefit Bill was passed by both the Houses of the Parliament & subsequently received the assent of the President on 12<sup>th</sup> December 1961, and came to be known as an Act under the short title “The Maternity Benefit Act, 1961 (53 of 1961)” so as to provide maternity relief and benefit to women employees.

### **Q2) Who is entitled to Maternity Benefit?**

Every woman employee who may be employed directly or through any contractor and who has worked in an establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery shall be entitled to for the same.

### **Q3) What are the different benefits that can be availed under this Act?**

The Maternity Benefit Act, 1961 provides both cash as well as non-cash benefits which include-

#### *Cash Benefits*

- Leave with average pay for six weeks before the delivery.
- Leave with average pay for six weeks after the delivery.

- A medical bonus if the employer does not provide free medical care to the woman.
- An additional leave with pay up to one month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage or premature birth.
- In case of miscarriage, six weeks leave with average pay from the date of miscarriage.

### *Non Cash Benefits/Privilege*

- Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it.
- Two nursing breaks in the course of her daily work until the child is 15 months old.
- No discharge or dismissal while she is on maternity leave.
- No change to her disadvantage in any of the conditions of her employment while on maternity leave.
- Pregnant women discharged or dismissed may still claim maternity benefit from the employer.

In addition to the above the Act also makes provisions to undertake light work activities for pregnant women 10 weeks prior to her delivery also nursing breaks during daily work till the child attends age of 15 months.

### **Q4) What is the period for which maternity benefit can be availed?**

The maximum period for which maternity benefit can be sought shall be 12 weeks in totality whether taken before or after childbirth. More than 6 weeks before delivery cannot be taken. Prior to the amendment of 1989, women employees could not avail benefit of 6 weeks before delivery.

### **Q5) What are the restrictions that are imposed on the employment of pregnant women?**

No employer shall knowingly employ any woman who is in the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. No woman shall be working in any establishment during the period of 6 weeks.

No woman shall be engaged in any arduous work which may involve long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery and also the period of 6 weeks for which she does not take leave.

**Q6) How much is the amount of remuneration that a women under the Maternity Benefit Act, 1961 is entitled to?**

It is calculated by including the average daily wages for the actual absence period which is in fact the average wages payable to the woman on the days which she has worked during the period of 3 months immediately preceding the date from which she takes absence on the ground of maternity or Rupees 10, whichever is higher.

**Q7) What benefit can be availed in case of death of a pregnant woman employee?**

As per *Section 7*, maternity benefit shall be paid only for the days including and upto the day of death. Such benefit or amount shall be paid by the employer to the person nominated by the woman. If no nomination is made then her legal representative must avail of the benefit.

**Q8) How has the Indian Constitution shaped the need for providing maternity benefits?**

The rights for the upliftment of women are embedded under various Articles of the Constitution such as,

*Article 14*- Right to social equality for all genders

*Article 15*- Right to social equality in terms of employment

*Article 15(3)*- Empowers the State to make special provisions for women in order to promote and preserve the strength and vigor of the race.

*Article 16*- Equal opportunities for all citizens in matters relating to employment or appointment of any office under the State.

*Article 42*- Right to just and humane conditions of work and maternity relief

*Article 46*- Right to improvement in employment opportunities and conditions of working women

*Article 21*- Right to Life and Personal Liberty in the context of providing a pregnant woman all the required facilities along with protection of her employment

Therefore, constitutional privileges go a long way in the enforcement of an Act.

**Q9) What are the different schemes implemented by the Central Government for maternity benefits?**

The Indian Govt. has contributed largely so as to make appropriate forums and schemes for facilitating the benefit of this provision far and wide in the country.

*The Indira Gandhi Matritva Sahyog Yojana (IGMSY)* - Indira Gandhi Matritva Sahyog Yojana (IGMSY)"- it is also known as Conditional Maternity Benefit (CMB) scheme. The scheme provides recourse on the issues regarding the woman's compulsions to work right up to the last stage of pregnancy and resumption of work soon after child birth. The basic aim of the proposed scheme IGMSY is to improve the health and nutrition status of pregnant and lactating women and infants by:

- Encouraging the women to follow (optimal) IYCF practices including early and exclusive breast feeding for the first six months;
- Contributing to better enabling environment by providing cash incentives for improving the health of pregnant and nursing mothers;
- Promoting appropriate practices, care and service utilization and safe delivery and lactation.

*Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers*- This scheme is implemented by three governmental bodies i.e. the Central Social Welfare Board, Indian Council for Child Welfare and Bhartiya Adim Jati Sevak Sangh for collecting user charges of rs. 20/- per month from BPL families and Rs. 60/- from other families. To meet the growing need for more crèches, the National Crèche Fund was set up in 1993-94 for making assistance available to voluntary organisations/mahila mandals (women's groups) through interest earned from the corpus fund to convert existing AWCs (preschool centers) into AWC-cum-crèche centers.

**Q10) What precedents paved way for the exclusion of arbitrariness and established a just platform for women to enforce their rights?**

*Municipal Corporation of Delhi v. Female Workers*<sup>1</sup>- In this case female workers who were treated as temporary employees and employed on muster roll claimed that they should also be entitled to maternity benefit. The court held that as per Articles 39 and 42 of the Directive Principles of the State Policy a woman at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery.

*Shah v. Presiding Officer, Labour Court, Coimbatore and Ors*<sup>2</sup>- In this case, the question was whether in calculation of the maternity benefit for a period covered by Section 5 Sundays being wage-less holiday should be excluded? The Apex Court ruled that Sunday must also be included and read in light of Article 42 stating that the Constitution was intended to enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

*Chandrika v. Indian Red Cross Society*<sup>3</sup>- Here, the Petitioner was terminated while she was on maternity leave. The relief of reinstatement and consequential benefits were denied to her. Also, there was no evidence to show that the Petitioner had received the communication. The Court held that the Petitioner's services had been terminated illegally and she should be reinstated with the service and avail the necessary benefits.

*Air India v. Nergesh Meerza*<sup>4</sup>- In this case, Air India Corporation (AIC) Act and Indian Airlines Corporation (IAC) Act formulated certain regulations between the conditions of retirement and termination of service pertaining to air hostesses (AH) and those of male pursers (MP) forming part of the same cabin crew and performing similar duties. These conditions were that an AH under AIC retired from service in case of 'first pregnancy'. The Court held it to be "grossly unethical" and as smacking of "deep rooted sense of utter selfishness at the cost of all human values" as

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<sup>1</sup> AIR 2000 SCC 224.

<sup>2</sup> (1977) 4 SCC 384.

<sup>3</sup> 131 (2006) DLT 585.

<sup>4</sup> (1981) 4 SCC 335.

compelling to terminate services if a woman becomes pregnant would amount to forbidding her not to have any children. It has been stated that mere pregnancy should not be considered to be a disability but a natural outcome of marriage and any distinction made on the ground of pregnancy is extremely unreasonable and manifestly arbitrary.