MATERNITY BENEFIT ACT, 1961

Motherhood is a very special experience in a woman’s life. A woman needs to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income. That is where the concept of maternity leave and the benefits it entails, comes in handy. The Maternity Benefits Act, 1961, gives her the assurance that her rights will be looked after while she is at home to care for her child.

The object of the Act is to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits.

Applicability of the Act

This act applies to women who work in factories, mines, plantations, circus industry, shops and establishment with more than 10 employees. It does not apply to employees covered by the Employees State Insurance Act, 1948. It can be extended to other establishments by the State Governments.

Important definitions under the Act

"Child" includes a still-born child. (Sec.3(b))

"Delivery" means the birth of a child. (Sec.3(c))
"Employer" means – (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person. (Sec.3(d))

"Establishment" means—

(i) a factory;
(ii) a mine;
(iii) a plantation;
(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
    (iv - a) a shop or establishment; or
(v) an establishment to which the provisions of this Act have been declared under sub- section (1) of section 2 to be applicable. (Sec. 3(e))

"Miscarriage" means the expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the cause of which is punishable under the Indian Penal Code, 1860. (Sec.3(j))

"Wages" means remuneration paid or payable in cash to a woman and includes dearness and house rent allowance, incentive bonus and the money value of the concessional supply of food grains and
other articles. It does include any other kind of bonus, overtime earnings, any contribution towards the pension fund or provident fund and any gratuity payable on the termination of service. (Sec. 3(n))

**Persons entitled to maternity benefit**

Every woman is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

The average daily wage is calculated on the basis of the amount payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she has absented herself on account of maternity, or one rupee a day, whichever is higher.

To be eligible for maternity benefit, a woman should have worked in an establishment for not less than 160 days in the twelve months immediately prior to the date of her expected delivery.

The maximum period for which any woman can be entitled to maternity benefit is twelve weeks.

This includes six weeks up to and including the day of her delivery and six weeks immediately following that day. If a woman dies during this period, the maternity benefit will be payable only for the days up to and including the day of her death. However, if she delivers a child and dies during the delivery or during the period of six weeks following the delivery, the employer will be liable for the maternity benefits of the entire period of six weeks immediately following the day of her delivery. If the child dies during this period, the liability will be only up to and including the day of the death of the child. In case the woman dies before receiving the benefit, the amount must be paid to her nominee or legal representative.
In the event of a miscarriage, the woman must produce relevant proof that she has suffered a miscarriage. This will entitle her to receive leave with wages at the rate of the maternity benefit, for a period of six weeks immediately following the date of the miscarriage. Women who are ill on account of pregnancy, delivery, premature birth of a child or a miscarriage are also entitled to a period of absence or to leave with wages at the rate of maternity benefit for a maximum period of one month. However, they must submit proof of their illness.

**Notice of claim for maternity benefit**

A pregnant woman is required to give her employer a notice in writing, stating that the maternity benefit that she is entitled to should be given to her or any person nominated by her and that she will not be working during the period in which she receives the benefit. This notice should start from the date when she was absent from work, provided that date is not earlier than six weeks from the date of her expected delivery. This notice can also be given soon after the delivery.

On receiving the notice, the employer is bound to permit the woman to absent herself from work until the expiry of six weeks after the delivery. In case a woman fails to give notice, this does not disentitle her from claiming maternity benefit. The employer is still liable to pay her the amount due to her.

**Right to payment of maternity benefit**

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred
and sixty days in the twelve months immediately preceding the date of her expected delivery:
Provided that the qualifying period of one hundred and sixty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child.

**Dismissal during absence on account of pregnancy**

When a woman absents herself from work on account of illness during pregnancy, she may not be discharged or dismissed by her employer or issued notice for dismissal. It is equally unlawful for the employer to alter any of the conditions of her service to her disadvantage.

If she is discharged or dismissed from service, she should still be entitled to receiving maternity benefit or medical bonus. She cannot be deprived of these. The woman can be dismissed only if she is guilty of gross misconduct. In this case, the employer is well within his rights to deprive her of the maternity benefit or medical bonus.
A woman who has been deprived of maternity benefit or medical bonus may, within sixty days from the date on which the order was communicated to her, appeal to the relevant authority. This authority has the final say on whether the woman should or should not be deprived of these benefits.

If a woman continues to report to work during the period when she is entitled to maternity benefit, she forfeits her claim to the maternity benefit for the period. However, individual companies may allow the woman to take her leave as late as possible so that she may have more time to nurse the baby later on.

**Punishment under the Act**

An employer who violates the provisions of the Maternity Benefits Act can be punishable with imprisonment up to three months or with fine up to five hundred rupees or both. Besides, if the violation is related to the non-payment of maternity benefit or any other amount, the court can recover this amount as if it is a fine and pay it to the aggrieved person.

**Payment of medical bonus.**

Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of twenty-five rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

**Leave for miscarriage**

In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.
Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage

A woman suffering illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

Nursing breaks

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

Appointment of Inspectors

The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their function under this Act.

Powers and duties of Inspectors

An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely:

(a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where
women are employed or work is given to them in an establishment, for the purposes or examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection

(b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment: Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself

(c) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received form them under this Act; and

(d) take copies of any registers and records or notices or any portions thereof.

Inspectors to be public servants

Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Power of Inspector to direct payments to be made

(1) Any woman claiming that maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld, may make a complaint to the inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub- section (1), make an enquiry or cause an inquiry to be made and if satisfied that payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders.
(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under these sections shall be recoverable as an arrear of lane revenue.

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