

## THE MATERNITY BENEFIT (Amendment) ACT - 2017

*A detailed review on the amendment*

# Preamble: Maternity Benefit Act, 1961

## ✓ Principal Objective of Enactment

To regulate the employment of women for a certain period before and after child-birth and to provide them maternity benefits.

## ✓ Relevant Acts for Maternity Protection

At present provided under the different State Acts on the subject

And via three Central Acts

- The Mines Maternity Benefit Act, 1941,
- The Employees' State Insurance Act, 1948
- The Plantations Labor Act, 1951



***One of the few acts that is applicable even in the State of Jammu and Kashmir.***

# Applicability

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Every Shop or Establishment, Factory, Mine, Plantation or any establishment belonging to Government



Every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances in a State



In which TEN or more persons are employed or were employed, on any day of the preceding twelve months.



The benefits under the Maternity Benefit Act are available to all female employees, who are not covered under the Employees' State Insurance Act and **have worked for a continuous period of 80 days in twelve months immediately preceding the date of her expected delivery.**

# Maternity Benefit Act, 2017

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## The big change

This amendment has increased the duration of maternity leave available for women employees from the existing **12 weeks to 26 weeks**.



**India, third** on the list of countries with most number of days given as maternity leave, after Canada and Norway.



Passed by  
Parliament:

09th March 2017



Received Assent from  
the President:

27th March 2017



Date of Enforcement :

01st April for  
majority of  
amendments

# Key Aspects: Principal Maternity Benefit Act, 1961

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## 12 weeks max of maternity benefit leave

6 weeks before the expected delivery date and extending up to 6 weeks after the child birth .

**Additional maternity** leave of **4 weeks** in case of “illness”, supported by a doctor’s opinion



## Rs. 3,500 per maternity

Current provision of maternity bonus.



## Leave for Miscarriage or medical termination of pregnancy

A woman shall, on production of such proof as 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.



## 2 Nursing breaks till child is 15months old

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 prescribed duration for nursing the child until the child attains the age of fifteen months.**



## Penalties: Imprisonment, Monetary Fine

Penalties for contravention of the act by Employers; Imprisonment which shall **not be less than three month, which may extend up to one year** and with fine **not less than two thousand rupees, which may extend up to five thousand rupees.**

# Changes Brought in By the Amendment

Section	Old	New
Sec 5 (3)	Maximum period of maternity benefit Leave entitlement - 12 weeks i.e. 6 weeks before the expected delivery date and extending up to 6 weeks after the child birth	Maximum period of maternity benefit Leave entitlement - shall be 26 weeks i.e. 8 weeks before the expected delivery date and extending up to 18 weeks after the child birth.
Sec 8	Provide for Maternity Bonus which is currently Rs.3500 per maternity	~~ No Change ~~
Sec 9 & 9A	Leave for Miscarriage or medical termination of pregnancy, a woman shall, on production of such proof - entitlement for a period of 6 weeks immediately following the day of her miscarriage; Similarly a woman undergoing tubectomy operation is eligible for 2 weeks of leave from the date of such operation	~~ No Change ~~
Sec 10	Additional maternity leave of 4 weeks Post Maternity Leave of 12 weeks, in case of "illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation, supported by a Medical Certificate	~~ No Change ~~
Sec 11	Every woman delivered of a child and 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 prescribed duration for nursing the child until the child attains the age of fifteen months.	Insertion of new Sec 11A (1) : Women employee should be permitted to visit the crèche 4 times during the day, which includes the regular rest interval .
Sec 21	Penalties for contravention of the act by Employers; Imprisonment which shall not be less than three month, which may extend up to one year and with fine not less than two thousand rupees, which may extend up to five thousand rupees.	~~ No Change ~~

# New Inclusions

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## **New Proviso to Sec 5(3): Extended Benefit limited only up to two children**

The extended benefit of 26 weeks i.e. 8 weeks pre and 18 weeks post expected date of delivery, is limited to a woman up to 2 children. They shall continue to be entitled for 12 weeks of paid maternity leave (as per earlier rule) i.e. 6 weeks pre and 6 weeks post expected date of delivery for the third child onwards.



## **Sec 5(4): Significance given to “Commissioning Mother”**

**“Commissioning mother: A biological mother who uses her egg to create an embryo implanted in any other woman”.**

This means even if modern medical technology is used via Surrogacy, the biological mother shall get the benefit of maternity leave. However, the entitlement of maternity leave in this case shall be for a period of 12 weeks from the date the child is handed over to her.



## **Sec 5(4): Significance given to “Adopting Mother”**

A woman who legally adopts a child below the age of 3 months, shall be entitled to maternity benefit for a period of 12 weeks from the date the child is handed over to her.

# New Inclusions (contd.)

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## Sec 11A(1): Crèche facility

Mandatory for every establishment employing 50 or more employees, within such distance as may be prescribed, either separately or along with common facilities

Woman employee should be permitted to visit the crèche 4 times during the day, which includes the regular rest interval .



## Sec 5(5): Provision for working from home

Depending upon the nature of work and if such work can be executed from home, on terms and conditions mutually agreed between the employer and the employee.. **This is effective from July 01st 2017 onwards**



# Awaiting Clarity

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## Creche

- The amended Act is silent in relation to the period up to which the arrangement of the crèche facility could be extended to the concerned woman and await clarity which is expected to be outlined in the rules to be framed soon by the government.
  - There is also a question when the Creche facility is required. The new section provides when an establishment employing more than 50 or more employees. It therefore appears that it is gender neutral. IF that is the case then Father should also be entitled to leave his child in such a crèche. But the new section talks only about woman (read Mother) being allowed to visit the creche.
- Government is expected to clarify various aspects, such as crèche facilities and location, and guidelines on partnering with external service providers.
- If Crèche is made available within the office premise, then specific licensing provisions, if any



## **Work-From-Home**

- Work-from-Home concept introduced as per the new provision leaves the period of such option etc to be mutually agreed between the Employer and Woman employee concerned. Probably rules to be published would provide more clarity here as well

## **Woman already on Maternity Leave**

- Applicability to a woman employee who is on Maternity leaves as on 1<sup>st</sup> April 2017 when the 26 week benefit is effective
  - Considering that it is a Welfare Legislation, the interpretation shall be beneficial to the Woman Employee, therefore such an employee could be granted the additional benefit.

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# Thank You!



**Simpliance**