

Maternity Benefit Act, 1961

The Act regulates employment of women in certain establishments for a certain period before and after child birth and provides for maternity and other benefits.

The Act applies to mines, factories, circus, industry, plantation and shops and establishments employing ten or more persons, except employees covered under the Employees State Insurance act, 1948. It can be extended to other establishments by the state governments. There is no wage limit for coverage under the Act.

4. Employment of, or work by, women prohibited during certain period.- No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

During the period of one month immediately preceding the period of six weeks, before the date of her expected delivery. A pregnant woman cannot be forced by her employer to do strenuous or prolonged standing work or any task that might harm her pregnancy, fetal development, or overall health.

5. Right to payment of maternity benefit. Every woman is entitled to get maternity benefits, and employers must pay them at the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery.

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 eighty days in the twelve before her expected delivery date.

Women are entitled to a maximum of 26 weeks of maternity benefit, with up to 8 weeks before the expected delivery and the remaining weeks after. However, if a woman has two or more surviving children, the maximum period is 12 weeks, with up to 6 weeks before the expected delivery. If a woman dies during childbirth or immediately after, while eligible for maternity benefits and leaving behind a child, then employer is responsible for providing the maternity benefit for the whole period. If the child also dies during this period, the employer is responsible for benefits up to the child's death.

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the

child is handed over to the adopting mother or the commissioning mother.

5-A. Continuance of payment of maternity benefit in certain cases. Every woman eligible for maternity benefits under this Act remains entitled to her, even if the Employees' State Insurance Act, 1948 applies to her establishment. Her entitlement continues until she qualifies for maternity benefits under the Employees' State Insurance Act, 1948.

5-B. Payment of maternity benefit in certain cases. A woman employed in a factory or other establishment covered by the Employees' State Insurance Act, 1948, whose wages (excluding overtime pay) for a month exceed the specified limit, also qualifies for maternity benefits under this act. However, she must have worked for at least eighty days in the twelve months preceding her expected delivery date.

6. Notice of claim for maternity benefit and payment thereof. Any woman employed in an establishment and entitled to maternity benefits under this Act may give written notice to her employer. In the notice, she can state that her maternity benefits, along with any other entitled amount, may be paid to her or to a nominated person. Furthermore, she needs declare that she will not work in any establishment during the period for which she receives maternity benefits. Upon receiving the notice, the employer shall permit the woman to absent herself from the establishment during the period she receives maternity benefits.

The amount of maternity benefit for the period preceding the date of expected delivery shall be paid in advance by the employer to the woman upon the production of proof that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of the production of proof that the woman has delivered a child.

7. Payment of maternity benefit in case of death of a woman. If a woman entitled to maternity benefits dies before receiving benefit, the employer must pay the benefits to the person nominated by the woman. If there is no nominee, the benefits should be paid to her legal representative.

8. Payment of medical bonus. Every woman eligible for maternity benefits under this Act is also entitled to a medical bonus of one thousand rupees from her employer, unless the employer provides free pre-natal and post-natal care.

9. Leave for miscarriage. In case of miscarriage or medical termination of pregnancy, a woman shall 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. However, for this, she needs to produce appropriate proof.

9A. Leave with wages for tubectomy operation. In case of tubectomy operation, a woman shall be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation. However, for this, she needs to produce appropriate proof.

10. Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage. A woman suffering with pregnancy-related illness, childbirth, premature birth, or miscarriage can take an extra month of leave with wages, in addition to the regular maternity leave. However, for this, she needs to produce appropriate proof.

11. Nursing breaks. Every woman who has given birth to a child and returns to work is entitled to two breaks during her daily work schedule for nursing her child until the child reaches fifteen months of age. These breaks are in addition to the rest interval she is allowed.

11A. Crèche Facility. Every establishment with fifty or more employees must provide a crèche facility, either separately or alongside other common facilities. The employer must permit the woman to make four visits to the crèche each day, which also includes her designated rest intervals. Additionally, every establishment must inform women in writing and electronically about all the benefits available under this Act at the time of their initial appointment.

12. Dismissal during absence or pregnancy. When a woman is on maternity leave in accordance with this Act, the employer cannot discharge or dismiss her or give notice of discharge or dismissal. The employer also cannot change any of her service conditions.

On the other hand, if a woman is discharged or dismissed during her pregnancy when she would have been eligible for maternity benefits or medical bonuses, she cannot be deprived of these benefits due to the discharge or dismissal. However, if the dismissal is due to severe misconduct as defined by regulations, the employer can withhold the maternity benefits or medical bonuses or both by informing the woman in writing.

13. No deduction of wages in certain cases. No deduction is permitted from the normal and usual daily wages of a woman entitled to maternity benefits due to the nature of work assigned to her, which means she is not engaged in strenuous or prolonged standing work or any task that might harm her pregnancy. Nor are deductions allowed for breaks for nursing her child.

20. Registers, etc. Every employer shall prepare and maintain registers, records and muster-rolls.

21. Penalty for contravention of Act by employers. Employers who violate this Act or its rules may face imprisonment for up to three months, or a fine of up to five hundred rupees, or both. If the violation concerns maternity benefits or other payments not yet recovered, the court will additionally recover these amounts as fines and pay them to the entitled person.