

THE MATERNITY BENEFIT ACT, 1961

An Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits

Application of Act.

It is applicable to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances,

Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:

Employment of, or work by, women prohibited during certain period.-

- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- 3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in subsection

The period referred to in sub-section (3) shall be—

- (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.

Right to payment of maternity benefit.

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 1*[eighty days] in the twelve months immediately preceding the date of her expected delivery.

Penalty for contravention of Act by employer

If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees

F.A.Q

The object of the Maternity Benefit Act, 1961: The Object of the Act is (1) to provide for maternity benefit to women workers in certain [establishments](#); (2) to regulate the employment of women workers in such establishments for certain period before and after child birth.

Establishments are covered by the Act: The Act applies to (1) every [establishment](#) being a [factory](#), mine, plantation or circus; (2) every shop in which 10 or more persons are employed; (3) any other establishment to which the Act is applied by the [State Government](#) under the proviso to Section 2(1)

Note: (1) The Act applies to a [factory](#), mine or plantation belonging to Government. (2) The Act does not apply to any factory or other [establishment](#) to which the provisions of the [Employees' State Insurance Act](#) apply. {Section 2}

Is there any justification for denying the benefits of the [Maternity Benefit Act](#) to women workers on the ground that they are not regular employees but they are on the muster roll?:

The Supreme Court, in *Municipal Corporation of Delhi v. Female workers (Muster Roll) & Anr.* (2000 I C.I.R. 879) has said; "We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular woman employees to the benefit of maternity leave and not those who are engaged on casual basis or on muster roll on daily wage basis."

Restrictions placed by the Act on the employment of women: The restrictions placed by the Act on the employment of women are as follows:

- i. The employer is prohibited from knowingly employing a woman in any [establishment](#) during the six weeks immediately following the day of her delivery or her miscarriage;
- ii. A woman also, on her part, is required to abstain from working in any establishment during the said period;
- iii. A pregnant woman can also request her employer not to give her any work which is of an arduous nature or which involves long hours of standing, etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery or any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence, under the Act. On such a request being made by her, the employer shall not give her such work during such period. {Section 4}

To whom maternity benefit is payable in case of death of a woman?: If a woman entitled to maternity benefit dies before receiving such benefit, the employer shall pay such benefit to the person nominated by the woman and in case there is no such nominee, to her legal representative. {Section 7}

Restrictions placed by the Act on the termination of employment of a woman: When a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence. {Section 12}

Time for payment of maternity benefit: The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance to the woman on production of proof that the woman is pregnant and the amount due for the subsequent period shall be paid to the woman within 48 hours of production of proof that the woman has been delivered of a child. {Section 6}

Period for which a woman is entitled to maternity benefit and the rate of the benefit: (i) The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks of which not more than 6 weeks shall precede the date of her expected delivery. If 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. If a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable to the maternity benefit for the entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

(ii) But 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 80 days in the 12 months immediately preceding the date of her expected delivery.

For the purpose of calculating the days on which a woman has actually worked in the [establishment](#), the days for which she has been laid off or was on holidays declared under any law to be holidays with wages during the period of 12 months immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. For the purpose of this provision, 'the average daily wage' means the average of the woman's wages payable to her for the days on which she has worked during the period of 3 calendar months immediately preceding the date from which she absents herself on account of maternity, or the minimum rate of wage fixed or revised or under the [Minimum Wages Act, 1948](#) or 10 rupees, whichever is the highest. {Section 5}

Is a woman entitled to maternity benefit, also entitled to any medical bonus?: A woman entitled to maternity benefit under the Act shall also be entitled to receive from her employer a medical bonus of 250 rupees, if no pre-natal confinement and postnatal care is provided for by the employer free of charge. The medical bonus shall be paid along with the second installment of the maternity benefit. {Section 8 & Rule 5}

Can a woman claim the maternity benefit from her employer if she works elsewhere during the period for which she has been permitted to absent herself under the provisions of the Act?: If a woman works in any [establishment](#) after she has been permitted by her employer to absent herself under the provisions of the Act for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period. {Section 18}

Is it permissible under the Act to exempt any establishment for the provisions of the Act?: The appropriate Government can exempt any [establishment](#) from the operation of all or any of the provisions of the Act or of any rule made under the Act if the benefits provided by the establishment are not less favourable than those provided in the Act. {Section 26}

Is a woman entitled to any leave with wages for illness in addition to the period of absence allowed to her under the provisions of the Act?: A woman suffering from illness arising out of pregnancy delivery, premature birth of child or miscarriage shall be entitled, in addition to the period of absence allowed to her under the provisions of the Act, to leave with wages at the rate of maternity benefit for a maximum period of one month. {Section 10}

Is a woman entitled to any leave with wages for miscarriage?: In case of miscarriage, a woman shall be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage. {Section 9}

Is it necessary for a woman claiming leave with wages for miscarriage to satisfy the condition that she had worked for a period of not less than 80 days in the 12 months immediately preceding the date of miscarriage?: Such condition has to be satisfied for claiming Maternity Benefit under Section 5 of the Act. There is no condition of any sort to be satisfied for claiming leave wages for miscarriage under Section 9 of the Act.

What are the other obligations of the employer under the Act?: Under the Act the employer is required: (a) to exhibit the abstract of the provisions of the Act and the rules made thereunder in a conspicuous place in every part of the establishment in which women are employed {Section 19 & Rule 5}; (b) to maintain a muster roll in the prescribed form {Rule 3}; (c) to submit annual returns in the four prescribed forms. {Rule 16}

What is the punishment for the contravention of the provisions of the Act?: (1) If any employer fails to pay any amount of maternity benefit to a woman entitled under the Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. The Court may, however, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment. (2) If any employer contravenes the provisions of the Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the Court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled hereto. {Section 21}

