

THE MATERNITY BENEFIT ACT, 1961

No. 53 OF 1961

[12th December, 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

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. (1) This Act may be called the Maternity Benefit Act, 1961. Short title,
extent and
commence-
ment.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as may be notified in this behalf in the *Official Gazette*,—
 - (a) in relation to mines in the territories to which this Act extends, by the Central Government; and
 - (b) in relation to other establishments in a State, by the State Government.

2. (1) It applies, in the first instance, 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 :]

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of as doing, by notification in the *Official Gazette*, declare that all or any of the provisions of this Act, shall apply also to any other establishment or class of establishments industrial, commercial, agricultural or otherwise.

(2) Nothing contained in this Act shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948, apply for the time being [save as otherwise provided in section 5-A].

3. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means, in relation to an establishment being a mine, [or an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances] the Central Government and in relation to any other establishment, the State Government;

(b) "child" includes a still-born child,

(c) "delivery" means the birth of a child;

(d) "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

Definitions

¹ Substituted by Act No. 52 of 1973.

² Substituted by Act No. 21 of 1972.

³ Inserted by Act No. 52 of 1973.

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;

[(e) "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; or

(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section (2) to be applicable;]

(f) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948; 63 of 1948.

(g) "Inspector" means an Inspector appointed under section 14;

(h) "maternity benefit" means the payment referred to in sub-section (1) of section 5;

(i) "mine" means a mine as defined in clause (j) of section 2 of the Mines Act 1952; 35 of 1952.

(j) "miscarriage" means 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 causing of which is punishable under the Indian Penal Code; 45 of 1860.

(k) "plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; 69 of 1951.

(l) "prescribed" means prescribed by rules made under this Act;

(m) "State Government" in relation to a Union territory means the Administrator thereof;

(n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes—

(1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;

(2) incentive bonus; and

(3) the money value of the concessional supply of food-grains and other articles,

but does not include—

(i) any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service ;

(o) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

4. (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. **Employment of, or work by women prohibited during certain period.**

(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 sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) 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 ;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

5. (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. **Right to Payment of maternity benefit.**

[5-A. *Continuance of payment of maternity benefit in certain cases.*—Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (31 of 1948), to the factory or other establishment in which she is employed continue to be so entitled until she becomes qualified to claim maternity benefit under section 15 of that Act.]

Explanation.—For the purpose of this sub-section, 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 three calendar months immediately preceding the date from which she absent herself on account of maternity, or one rupee a day, whichever is higher.

(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.

Explanation.—For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks upto 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 upto 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 upto and including the day of the death of the child.

Notice of
claim for
maternity
benefit and
payment
thereof.

6. (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment until the expiry of six weeks after the day of her delivery.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed 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 production of such proof as may be prescribed that the woman has been delivered a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

7. If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

8. 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.

9. 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
miscarriage.

10. A woman suffering from 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.

Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage.

11. 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.

Nursing breaks.

12. (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

Dismissal during absence or pregnancy.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus :

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus or both, may within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).

13. No deduction from the normal and usual daily-wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of—

No deduction of wages in certain cases.

(a) the nature of work assigned to her by virtue of the provisions contained in sub-section (3) of section 4 ; or

(b) breaks for nursing the child allowed to her under the provisions of section 11.

14. 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 functions under this Act.

Appointment of Inspectors.

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

Powers and duties of Inspectors.

(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 woman are employed or work is given to them in an establishment, for the purposes of 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 woman employed, payments made to them, and applications or notices received from them under this Act, and

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

Inspectors to be public servants. 16. 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, 1860.

Power of Inspector to direct payments to be made. 17. (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 inquiry 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 this section shall be recoverable as an arrear of land revenue.

Forfeiture of maternity benefit. 18. If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorised absence, she shall forfeit her claim to the maternity benefit for such period.

Abstract of Act and rules there under to be exhibited. 19. An abstract of the provisions of this Act and the rules made thereunder in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which woman are employed.

Registers, etc. 20. Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

Penalty for contravention of Act by employer 21. If any employer contravenes the provisions of this Act or the rules made thereunder, he shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both; and 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 thereto.

22. Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both. Penalty for obstructing Inspector.

23. (1) No prosecution for an offence punishable under this Act or any rule made thereunder shall be instituted after the expiry of one year from the date on which the offence is alleged to have been committed and no such prosecution shall be instituted except by, or with the previous sanction of, the Inspector : Cognizance of offences.

Provided that in computing the period of one year aforesaid, the time, if any, taken for the purpose of obtaining such previous sanction shall be excluded.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any such offence.

24. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder. Protection of action taken in good faith.

25. The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act and the State Government shall comply with such directions. Power of Central Government to give directions.

26. If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefits which are not less favourable than those provided in this Act, it is necessary so to do, it may, by notification in the *Official Gazette*, exempt, subject to such conditions and restrictions, if any, as may be specified in the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder. Power to exempt establishments.

27. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act : Effect of laws and agreements inconsistent with this Act.

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

Power to
make rules.

28. (1) The appropriate Government may, subject to the condition of previous publication and by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of registers, records and muster-rolls ;

(b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act ;

(c) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefor in this Act ;

(d) the form of notices under section 6 ;

(e) the nature of proof required under the provisions of this Act ;

(f) the duration of nursing breaks referred to in section 11 ;

(g) acts which may constitute gross misconduct for purposes of section 12 ;

(h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie ; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof .

(i) the authority to which an appeals shall lie against the decision of the Inspector under section 17 ; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof ;

(j) the form and manner in which complaints may be made to Inspectors under sub-section (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section ;

(k) any other matter which is to be, or may be prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session [or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

29. In section 32 of the Plantations Labour Act, 1951,--

Amendment
of Act 69 of
1951.

(a) in sub-section (1), the letter and brackets "(a)" before the words "in the case of sickness", the word "and" after the words "sickness allowance" and clause (b) shall be omitted;

(b) in sub-section (2), the words "or maternity" shall be omitted.

30. On the application of this Act--

Repeal.

19 of
1941.

(i) to mines, the Mines Maternity Benefit Act, 1941; and

(ii) to factories situate in the Union territory of Delhi, the Bombay Bom. Act Maternity Benefit Act, 1929, as in force in that territory, shall stand VII of 1929. repealed.

INDUSTRIES AND LABOUR DEPARTMENT

Sachivalaya, Bombay 400 032, 9th August 1965

MATERNITY BENEFIT ACT, 1961.

No. MBA. 1063-Lab-III.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 1 of the Maternity Benefit Act, 1961 (53 of 1961), the Government of Maharashtra hereby notifies the first day of September 1965, as the date on which the said Act shall come into force.

By order and in the name of the Governor of Maharashtra,

J. CARVALHO,
Under Secretary to Government.

INDUSTRIES AND LABOUR DEPARTMENT

Sachivalaya, Bombay 400 032, 9th August 1965

MATERNITY BENEFIT ACT, 1961.

No. MBA. 1063-Lab-III.—In pursuance of clause (2) of rule 1 of the Maharashtra Maternity Benefit Rules, 1965, the Government of Maharashtra hereby notifies the first day of September 1965 as the date on which the said Rules shall come into force.

By order and in the name of the Governor of Maharashtra,

J. CARVALHO,
Under Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya, Bombay—400 032, dated the 17th May 1978

MATERNITY BENEFIT ACT, 1961.

No. MBA-1072/44-Lab-II.—In exercise of the powers conferred by the proviso to sub-section (1) of section 2 of the Maternity Benefit Act, 1961 (53 of 1961) having been given notice as required by the proviso to sub-section (1) of the said section 2, the Government of Maharashtra hereby declares that all the provisions of the said Act shall apply also to all hospitals not being those to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply or those which are run by Government or by Zilla Parishads established under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962).

By order and in the name of the Governor of Maharashtra.

Arvind Chitnis
Desk Officer.

NOTIFICATION

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya, Bombay—400 032, Dated the 22nd February 1980.

MATERNITY BENEFIT ACT, 1961.

No. MBA-1975/76-Lab-II.—In exercise of the powers conferred by the proviso to sub-section (1) of section 2 of the Maternity Benefit Act, 1961 (53 of 1961) having been given notice as required by the proviso to sub-section (1) of the said section 2, the Government of Maharashtra hereby declares that all the provisions of the said Act shall apply also to those of the following classes of establishments to which the provisions of the Employees' State Insurance Act, 1948, (34 of 1948) do not apply for the time being, namely :—

- (1) Residential hotels, restaurants and eating houses as defined in the Bombay Shops and Establishments Act, 1948, (Bom. LXXIX of 1948).
- (2) Establishments in Cotton and Ginning Industry.
- (3) Shops and Commercial Establishments as defined in the Bombay Shops and Establishments Act, 1948 (Bom. LXXIX of 1948).

By order and in the name of the Governor of Maharashtra.

Sd./—Arvind Chitnis,
Desk Officer to Government.