
UNIT 26 THE MATERNITY BENEFIT ACT, 1961

Objectives

The Objectives of this unit are to:

- discuss the salient features of the Act
- present selected case law on the subject

Structure

- 26.1 Genesis of the Act
- 26.2 Applicability of the Act
- 26.3 Benefits
- 26.4 Restrictions on Employment
- 26.5 Forfeiture
- 26.6 Miscellaneous
- 26.7 Administration
- 26.8 Case Law
- 26.9 Self-Assessment Questions
- 26.10 Answers to Check Your Progress
- 26.11 Further Readings

26.1 GENESIS OF THE ACT

The Convention of "Protection of Motherhood" adopted in 1919 was the earliest among the ILO Conventions. In 1921, the Government of India reported that it was not possible to adopt the Convention passed in 1919 due to various reasons. A Bill was brought before the Central Legislative Assembly by a private member in 1924; urging the Government to make it compulsory for the employers to provide maternity benefit to women workers. However, the Bill was opposed by the government on the ground that the need for such a Bill was not felt and that if legislation was passed to that effect, it might have adverse repercussions on the employment of women. The Royal Commission on Labour, in its recommendations, also stressed the need for suitable maternity legislation, at least for women employed permanently in non seasonal factories. As the Government of India was slow to 'act on these recommendations, the provincial governments took the lead. The Government of Bombay passed the Maternity Benefit Act, way back in 1926.. It was followed by Central Provinces, Madras, U.P., Bengal and some other provinces. The period of leave, the quantum of benefit and the qualifying conditions varied slightly from province. With a view to reducing the disparities relating to maternity protection under different provincial or State enactments, the Central Government passed the Maternity Benefit Act in 1961.

26.2 APPLICABILITY OF THE ACT

The Act extends to the whole of India and applies to every establishment, factory, mine or plantation, including any such establishment belonging to the government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The Act was brought into force in mines with effect from 1⁰ November 1963, after repealing the Mines Maternity Benefit Act, 1941. The State government may extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or



otherwise. But the State government-can do so-only with the approval of the Central Government, after giving not less than two months notice, by a notification in the Official Gazette, of its intention to do so. The-Act specifically excludes the applicability of the provisions of the Act to any factory or other establishment to which provisions of the Act to any factor or other establishment to which provisions of the Act to any factor or other establishment to which provisions of the Employees' State Insurance Act, 1948, apply for the time being. The Act was amended on May 1, 1976 to extend the benefits to all women employees earning more than the wage ceiling in establishments covered by the E. S.I. Act.

26.3 BENEFITS

The Maternity Benefit Act is a piece of social legislation enacted to promote the welfare of working women. It prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to women workers during the period when they are out of employment because of their pregnancy. Further, the services of a woman worker cannot be terminated during the period of her absence on account of pregnancy, except for gross misconduct.

The maximum period for which a woman can get maternity benefit is twelve weeks. Of this, six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date.

To be entitled to maternity leave, however, a woman must have actually worked for not less than 80 days in the twelve months immediately preceding the day of her expected delivery. Only working days are taken into account when calculating these 80 days. Weekly holidays and all leave - paid or unpaid - are not included. However, if a workman is laid off from work, such periods will be deemed as working days.

To avail of the six weeks' leave before expected delivery, a notice must be given in writing stating the date of absence from work also a certificate of pregnancy. (There is a form for both which must be filled in). The employer has to pay the maternity benefit in advance for this period to the concerned employee or any person nominated for this purpose.

For the six weeks' leave from the date of delivery, another notice must be sent together with a certificate of delivery after the child is born. The employer has to pay to the employee, or her nominees, maternity benefit within 48 hours of receiving this notice. The failure to give notice for the subsequent six weeks does not, however, disentitle a woman from maternity benefit.

Every woman entitled to maternity benefit is also entitled to a medical bonus of rupees two hundred and fifty if no pre-natal and post-natal care have provided for by the employer free. of charge.

In case of miscarriage, a woman is entitled to six weeks leave with pay from the day of miscarriage. In this case, too, she must give notice, together with a certificate of miscarriage.

For illness arising-out of pregnancy, delivery, premature birth or miscarriage, a woman employee can take extra leave up to a maximum period of one month. She has, of course, to get a certificate from a doctor in the prescribed form. This leave can be taken at any time during the pregnancy, or can be attached to the six weeks prior to or after delivery or miscarriage.

With a view to encourage planned parenthood, the Act provides for (a) six weeks leave with wages in cases of medical termination of pregnancy (MTP); (b) grant of leave with wages for a maximum period of one month in cases of illness arising out of MTP or tubectomy; and (c) two weeks' leave with wages to women workers who undergo tubectomy operation.,

A female employee can ask for light work for one month preceding the six weeks prior to her delivery or during these six weeks if, for any reason, she does not avail of her leave,



26.4 RESTRICTIONS ON EMPLOYMENT

An employer is prohibited from knowingly employing any woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Likewise, a woman is prohibited from working in any establishment during this period of six weeks. Further, no pregnant woman shall, on a request being; made by her, be given

1. Any work which is of an arduous nature;
2. Any work which involves long hours of standing;
3. Any work which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage or otherwise adversely affect her health.

A female employee resuming duties after delivery is to be given two nursing breaks of prescribed duration, in addition to her regular rest intervals, to nurse the child until her child attains the age of fifteen months. Each State has its own rules as to the length of this break. (In Maharashtra, it is fifteen minutes).

An employer cannot reduce the salary on account of 'light work assigned to her or for breaks taken', to nurse her child. Further, she cannot be discharged or dismissed on grounds of absence arising out of pregnancy, miscarriage, delivery or premature birth. Nor can her service conditions be altered to her disadvantage during this period.

If a woman entitled to maternity benefit dies before receiving her dues, the employer has to pay the person nominated by her in the notice, or to her legal representative, in case there is no nominee. If she dies during the six weeks before delivery, maternity benefit is payable only for the days up to and including the day of her death. If she dies during delivery or during the following six weeks, leaving behind a child, the employer has to pay maternity benefit for the entire six weeks; but if the child also dies during the period, then only for the days up to-and including the death of the child.

26.5 FORFEITURE

A female employee, however, can be deprived of maternity benefit if :

1. After going on maternity leave, she works in any other establishment during the period she is supposed to, be on leave; and
2. During the period of her pregnancy, she is dismissed for any prescribed gross misconduct;

The acts which constitute misconduct are

- a) Wilful destruction of employer's goods or property;
- b) Assaulting any superior or co-employee at the place of work;
- c) Criminal offence involving moral turpitude resulting in conviction in a court of law;
- d) Theft, fraud or dishonesty in connection with the employer's business or property; and
- e) Wilful non-observance of safety measures or rules or wilful interference with safety devices or with fire fighting equipment.

The aggrieved woman may, within sixty days from the date, on which the order of such deprivation is communicated to her, appeal to the prescribed authority, and the decision of the authority on such appeal shall be final.



26.6 MISCELLANEOUS

An abstract of the provisions of the Act and the rules made thereunder has to be exhibited in the language or languages of the locality in a conspicuous place in every of the establishment in which women are employed.

The Act provides for penalties for the contravention of the provisions of the Act.

The Central Government has power to exempt an establishment from the operation of all or any of the provisions of the Act if it is satisfied that the benefits granted by the establishment are not less favourable than those provided in the Act.

Apart from the benefits provided under the Central Act, some State enactments provide additional benefits, such as free medical aid, maternity bonus, provision of creches, and additional rest intervals. If benefits are improperly withheld, a complaint can be made to the inspectors appointed by the government.

26.7 ADMINISTRATI[®]N

The administration of the Act in all the States is the responsibility of the factory inspectorate. So far as the coal mines are concerned, the Coal Mines Welfare Commissioner is responsible for the administration of the Act. The Director-General of Mines Safety administers the Act in mines other than coal mines. The rules framed under the Central and State enactments require the employers to furnish to the administering authorities annual returns, showing the number of women workers covered, number of claims made, the amount paid, etc., during the year. The information contained in these returns is analysed and published by State Governments in their annual reports on the working of the Act.

26.8 CASE LAW

In the case of *B. Shah v. Labour Court, Coimbatore and Others* (1978-1 LLJ 29), the Supreme Court held that the computation of maternity benefit in case of a female worker engaged on a daily wage basis has to be made for all the days, including Sundays and *rest* days which may be wageless holidays, upto six weeks preceding and excluding the day of delivery, as also for all the days falling within six weeks immediately following the day of delivery thereby ensuring that the woman worker gets for the said period not only the amount equalling 100 % of the wages which she was previously earning but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods. This being a beneficial piece of legislation, the interpretation of law is in tune with social justice. It is also in conformity with the Maternity Benefit Protection (Revised) Convention adopted by the ILO in 1952. The court struck down the decision of the full bench of -the Kerala High Court in *Malayalam Plantations Ltd. v. Inspector of Plantations* (A.I.R. 1975 Ker. 86).

The computation of maternity benefit in case of a female worker engaged on a daily wage basis has to be made for ail the days including Sundays and rest days which may be wageless holidays upto six weeks preceding and excluding the day of delivery as also for all the days falling within six weeks immediately following the day of delivery thereby ensuring that the woman worker gets for the said period not only the amount equalling 100% of the wages which she was previously earning but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods (*B. Shah vs. Labour Court, Coimbatore and Ors.* 19'781 LLJ 29 SC).

Work on half days and the period during which women worker was laid-off should be included in calculating the days of qualifying service (*Ram Bahadur Thakur vs. Inspector of Plantations* 1989 II'LLJ 20).



26.9 SELF-ASSESSMENT QUESTIONS

1. What is the object of the Maternity Benefit Act, 1961?
2. Which establishments are covered by the Act?
3. What are the benefits payable to a female employee under the Act?

26.10 ANSWERS TO CHECK YOUR PROGRESS

Write “True” or “False” against the following statements :

- () 1. The Convention of "Protection of Motherhood" was adopted in 1929
- () 2. The Act is applicable to the mines and plantations.
- () 3. To be entitled to maternity benefit a female employee must have actually worked for not less than 160 days in the twelve months immediately preceding the day of her expected delivery.
- () 4. The computation of maternity benefit in case of a female worker engaged on a daily wage basis has to be made for all the days excluding Sundays and rest days.

Answers:

1. False
2. True
3. False
4. False

26.11 FURTHER READINGS

Bare Act on the Maternity Benefit Act, 1961 (latest edition).

Kumar, H.L., *What Everybody Should Know About Labour Laws*, Universal Book Traders, Delhi, 1995.

Samant, S.R., *Employer's Guide to Labour Laws, Labour Law Agency*, Mumbai, 1999.