



India Makes Significant Changes to Maternity Benefit Entitlements

Insights

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This year, India became one of the most generous providers of maternity benefits in the world when it extended the period of maternity leave available to eligible working mothers from twelve (12) weeks to twenty-six (26) weeks – a drastic jump. In addition to other changes, India introduced maternity benefits for eligible adoptive and commissioning mothers (the biological mother of a child carried by a surrogate).

It is hoped that the longer leave period, along with new provisions relating to child care facility provision and remote working arrangements, will encourage more women to return to the workforce after the birth of a child. Organizations want to retain the qualified female employees in whose development and potential they invest, and anticipate that more attractive maternity benefits will aid in fulfilling this goal, which in turn might offset the increase to operating budgets resulting from the more generous maternity leave allowances.

Concerned primarily for the health of mothers and young infants, the Government of India affected this expansion of maternity benefits through amendments to several labor laws, including the Maternity Benefits (Amendment) Act, 2017 and the ESI (Central) Amendment Rules, 2017, and by the introduction of the Pan-India Maternity Benefits Program, a financial assistance program for mothers ineligible for maternity benefits under India's labor laws.

The regulation of maternity benefits in India are principally governed by the Maternity Benefits Act 1961 ("Maternity Benefits Act") and the Employees' State Insurance Act 1948. There are several other labor laws regulating this area, including: The Factories Act 1948, The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and the Unorganised Workers' Social Security Act, 2008. The maternity benefits afforded in the above labor laws are not uniform, thus workers in different sectors are not entitled to the same coverage and benefits.^[1]

On April 1, 2017, the Maternity Benefits (Amendment) Act 2017 ("Amendment") came into force, extending maternity benefit eligibility and benefits under the Maternity Benefits Act. This Act regulates the employment of women in covered establishments^[2] before and after child-birth. Eligible women include employees and agency workers in a covered establishment who have worked at that establishment for a period of eighty (80) days within the preceding twelve (12)

months. Women eligible for maternity benefits under the Employees' State Insurance Act 1948 are not covered by the Maternity Benefits Act.

The key elements of maternity leave and benefit provisions under the Maternity Benefits Act, as amended, are as follows:

- The Amendment extends maternity leave from twelve (12) to twenty-six (26) weeks of which not more than eight (8) weeks (previously six (6) weeks) may be taken prior to the expected date of delivery (mothers with two or more children are only entitled to twelve (12) weeks' maternity leave).
- The Amendment allows a woman who adopts a child under the age of three (3) months, or a commissioning mother (the biological mother who uses a surrogate to carry and bear her child), twelve (12) weeks' leave from the date the child is in their care.
- The Amendment provides that if the nature of the mother's work allows her to work from home, then the employer may allow her to do so for such period of time and conditions as mutually agreed upon by the employer and employee.
- Six (6) weeks leave immediately following a miscarriage or medical termination.
- A maximum of one (1) months' leave for illness arising out of pregnancy, delivery, premature birth of a child, or miscarriage.
- Maternity pay for the period of the leave, plus a medical bonus if free ante-natal and post-natal care is not provided by the employer.
- The Amendment provides that every covered establishment with fifty (50) or more employees shall provide crèche/child care facilities or shared crèche/child care facility within a prescribed distance, and to which the mother is permitted four (4) visits each day (effective July 1, 2017).
- The Amendment provides that mothers are entitled to two (2) nursing breaks per day, in addition to rest breaks, to nurse a child up to the age of fifteen (15) months.
- The Amendment requires employers to advise new female employees of their right to maternity benefits under the Maternity Benefits Act.
- Women are protected from dismissal during the period of maternity leave and during pregnancy.
- Penalties for non-compliance by the employer may include fines and imprisonment.

Similar maternity benefit expansions for women working in establishments registered under the Employees' State Insurance Act, 1948 became effective on January 1, 2017.

Another Government initiative to aid the health of first-time mothers is the Pan-India Maternity Benefits Program. This program targets women who are ineligible for maternity benefits under any labor laws, and came into effect across India on January 1, 2017. Financial assistance (5,000 Rs.) is given to eligible women with the aim of partially compensating them for any lost wages, encouraging them to receive adequate support and health care, and ensuring the newborn child receives

recommended immunizations. The compensation is paid in installments, each becoming payable upon the satisfaction of the following conditions: (i) the early registration of the pregnancy, (ii) expectant mother receives at least one ante-natal check-up, and (iii) the registration and immunization of the newborn child.

According to commentators, many large companies vying to retain and/or attract talented individuals have introduced or increased maternity, paternity, or parental leave entitlements. And although the significant expansion of maternity benefits in the private sector has been welcomed in India, the introduction of paternity leave or parental leave remains a hot topic for discussion in the public forum.

[1] The draft Labor Code on Social Security & Welfare published on March 16, 2017, is an attempt by the Government to simplify, consolidate, rationalize and amend several existing labor laws, including the Maternity Benefits Act, 1961; the Employees' State Insurance Act 1948, and the Unorganised Workers' Social Security Act, 2008. This draft Code is still in the consultation period.

[2] An establishment includes: factories, mines, plantations, shops, circuses or other performance industries, and any establishment employing ten (10) or more employees.