

# THE MATERNITY BENEFIT (AMENDMENT) ACT, 1988

No. 61 OF 1988

[30th November, 1988.]

An Act further to amend the Maternity Benefit Act, 1961.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short  
title  
and  
commen-  
cement.

1. (1) This Act may be called the Maternity Benefit (Amendment) Act, 1988.

(2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint.

Amend-  
ment of  
section  
2.

2. In section 2 of the Maternity Benefit Act, 1961 (hereinafter referred to as the principal Act), in sub-section (1), for the opening paragraph, the following shall be substituted, namely:—

53 of 1961.

“(1) It applies, in the first instance,—

(a) 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;

(b) to 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:”.

Amend-  
ment of  
section  
3.

3. In section 3 of the principal Act, in clause (e),—

(a) in sub-clause (iv), the word “or” at the end shall be omitted;

(b) after sub-clause (iv), the following sub-clause shall be inserted, namely:—

“(iva) a shop or establishment; or”.

Amend-  
ment of  
section  
5.

4. In section 5 of the principal Act,—

(a) in sub-section (1),—

(i) for the opening paragraph, the following shall be substituted, namely:—

“(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for,

1. 10-1-1989; vide Notification No. S.O. 47(E), dated 6-1-1989, Gazette of India, Extraordinary, 1989, Pt. II; sec. 3(ii).

11 of 1948.

the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.”;

(ii) in the *Explanation*, for the words “or one rupee a day, whichever is higher.”, the words and figures “the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.” shall be substituted;

(b) in sub-section (2),—

(i) for the words “one hundred and sixty days”, at both the places where they occur, the words “eighty days” shall be substituted;

(ii) in the *Explanation*, for the words “the days for which she has been laid off”, the words “the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages” shall be substituted;

(c) in sub-section (3),—

(i) for the opening paragraph, the following shall be substituted, namely:—

“(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.”;

(ii) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that where 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 for the maternity benefit for that 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.”.

5. In section 6 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.”.

Amend-  
ment of  
section  
6.

6. In section 8 of the principal Act, for the words “twenty-five rupees”, the words “two hundred and fifty rupees” shall be substituted.

Amend-  
ment of  
section  
8.

7. In section 12 of the principal Act, in sub-section (2), for clause (b), the following clause shall be substituted, namely:—

“(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of

Amend-  
ment of  
section  
12.

her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal 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, or discharged or dismissed shall be final.”.

Amend-  
ment of  
section  
17.

8. In section 17 of the principal Act,—

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) Any woman claiming that—

(a) 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;

(b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act,

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—

(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders;

(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.”;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.”.

Substi-  
tution of  
new  
section  
for  
section  
21.

9. For section 21 of the principal Act, the following section shall be substituted, namely:—

Penalty  
for con-  
traven-  
tion of  
Act by  
employer.

“21. (1) 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:

Provided that the court may, 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 this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this 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:

Provided that 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."

10. In section 22 of the principal Act, for the words "which may extend to three months, or with fine which may extend to five hundred rupees", the words "which may extend to one year, or with fine which may extend to five thousand rupees" shall be substituted.

Amendment of section 22.

11. For section 23 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 23.

"23.(1) Any aggrieved woman, an office-bearer of a trade union registered under the Trade Unions Act, 1926 of which such woman is a member or a voluntary organisation registered under the Societies Registration Act, 1860 or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction and no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.

Congnizance of offences.

(2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act."

16 of 1926

21 of 1860.