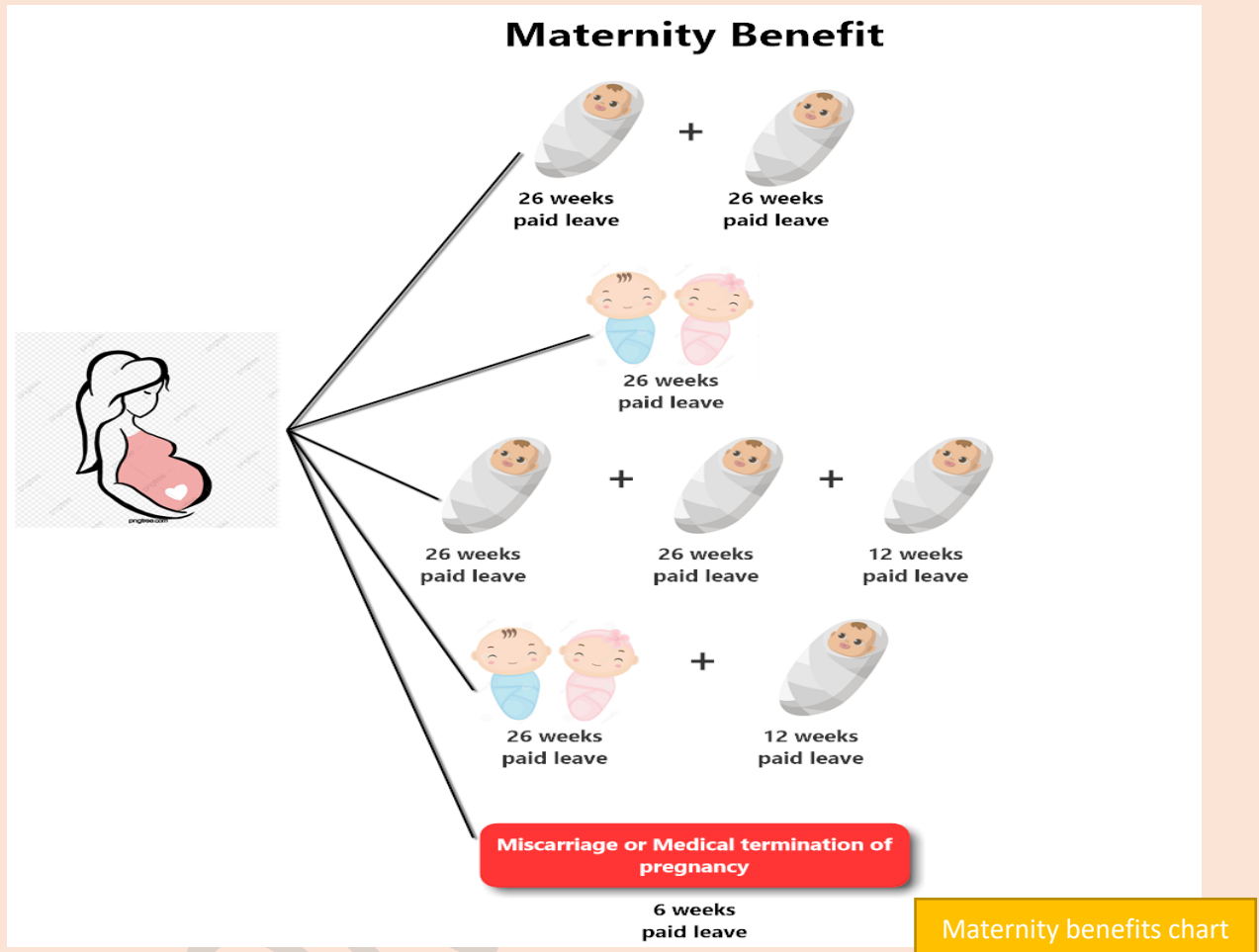


Maternity Benefit Act, 1961

Maternity leave and Eligibility,

(THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017)



The 44th Session of Indian Labour Conference (ILC), has recommended for enhancing maternity leave under Maternity Benefit Act, 1961 from existing twelve weeks to twenty-four weeks. This recommendation has been reiterated during 45th and 46th Session of ILC. The Ministry of Women and Child Development and other stakeholders has also requested to enhance maternity benefit under the Maternity Benefit Act, 1961.

Based on the recommendations of ILC and requests from the various quarters and the deliberations during the Tripartite Consultations with stakeholders, it has been decided to amend the Maternity Benefit Act, 1961.

Object

The Maternity Benefit Act, 1961, protects the employment of women during the time of maternity and entitles them to a full paid absence from work to take care for the child. The amendments in

2017 seeks to increase maternity leave period to 26 weeks in all establishments, including private sector.

THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017 NO .6 OF 2017

The amendment extends the period of maternity leave from 12 to 26 weeks. However, this increase in maternity leave does not apply to women with two or more surviving children. Such women will be entitled to 12 weeks of leave.

The government has stated that the amendment extend the period of maternity leave to 26 weeks to ensure maternal care to the child during early childhood. It has also noted that such early care is essential for the growth and development of the child.¹³ This objective could be defeated if sufficient maternity leave is not given in the case of a third born child. Currently under the 1961 Act, the minimum maternity leave of 12 weeks applies in all cases, regardless of the number of previous children.

Maternity benefit act 1961 salient features - Gist

Section 5 provides, inter alia, as under :

"5. Right to payment of maternity benefit - (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, 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.

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 absents herself on account of maternity, the minimum rates of wages fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

(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 eighty days in the twelve months immediately preceding the date of her expected delivery.

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 or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

Section 5 (3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery;

PROVIDED FURTHER that where 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:

[**PROVIDED ALSO** 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.]

Section 5A provides that if the Employees' State Insurance Act, 1948 is applied or becomes applicable to the establishment where a woman is employed, such woman shall continue to be entitled to receive the maternity benefits under this Act so long as she does not become qualified to claim maternity benefits under Section 50 of that Act.

It may be stated that Section 50 of the Employees' State Insurance Act, 1948 provides as under : "Maternity benefit - The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government."

Section 5B of the Maternity Act speaks of payment of maternity benefit in certain cases. Section 6 provides notice of claim for maternity benefit and payment thereof. Section 8 provides that every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of 1000 rupees, if no pre-natal confinement or post-natal care is provided by the employer free of charge.

Female workers working on casual basis or on muster roll on daily-wage basis should be given any maternity benefit: Supreme Court.

Municipal Corpn. of Delhi v. Female Workers (Muster Roll) Special Leave Petition (civil) 12797 of 1998

Case facts

The Municipal Corporation of Delhi, appellant herein, used to grant maternity leave only to its regular female workers and not to the female workers on muster roll. Female workers of the latter category raised a demand for grant of maternity leave and the union concerned espoused their cause.

The Corporation further contended that the benefits contemplated by the Maternity Benefit Act, 1961 could be extended only to workwomen in an "industry" and not to the muster-roll women employees of the Municipal Corporation.

Court held that

A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis. All female employees, who are appointed on regular basis, contractual basis, ad hoc or temporary basis entitled to maternity leave :

Allahabad High Court [*\[Read Judgement\]*](#)

Dr. Rachna Chaurasiya Vs. State of U.P. and others passed Civil Misc. Writ Petition No.24627 of 2017.

Division Bench of this Court directed the State Government to grant maternity leave to all female with full pay of 180 days, irrespective of nature of employment, i.e., permanent, temporary/ad hoc or contractual basis. State respondent was further directed to grant Child Care Leave of 730 days to **all female employees, who are appointed on regular basis, contractual basis, ad hoc or temporary basis** having minor children with the rider that the child should not be more than 18 years of age or older.

Maternity leave should not be kept apart or excluded from service period of woman employee: The High Court of Madras - ***U. Ishwarya Vs. Director of Medical Education, Directorate of Medical Education and Others*** W.P. No.12660 of 2017

Court decided and had also dealt with in great detail theory of motherhood. It is held in the aforesaid judgement that maternity leave cannot be denied and the period of maternity leave should not be kept apart or executed from service and maternity leave excluded from the period of service is “null and void”.

Imposed cost of ₹ 50,000 on employer for terminating an ad-hoc employee after applying maternity benefit: Delhi High Court

MANISHA PRIYADARSHINI Vs AUROBINDO COLLEGE - EVENING & ORS
LPA 595/2019 & C.M.Applns.49913-14/2019 [\[Read Judgement\]](#)

Facts of the case

- The appellant/petitioner was working as an ad-hoc Assistant Professor in affiliated college.
- She has requested the respondent College for grant of maternity leave along with all other eligible benefits under the Maternity Benefit Act, 1961, From 14.01.2019 till 24.05.2019. But the college did not respond to her request.
- she reiterated her request on 16.01.2019, seeking permission to proceed on maternity leave from 21.01.2019 onwards.
- On 03.02.2019, the appellant/petitioner was blessed with a daughter prematurely.
- However, on 24.05.2019, when she reported to the college for joining her duties.
- College informed her on 29.05.2019, that there was no question of her joining back on duty as she was stopped from service.

Court Held that

"We decline to accept that as a legitimate ground for denying extension of tenure to the appellant petitioner. Such a justification offered by the respondents for declining to grant an extension to the appellant / petitioner as she had highlighted her need for leave due to her pregnancy and confinement would tantamount to penalizing a woman for electing to become a mother while still employed and thus pushing her into a choiceless situation as motherhood would be equated with loss of employment.

This is violative of the basic principle of equality in the eyes of law. It would also tantamount to depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman.

Such a consequence is therefore absolutely unacceptable and goes against the very grain of the equality principles enshrined in Articles 14 and 16".

While directing the College to reinstate the Professor within one week, the Court imposed a cost of ₹50,000

In case of birth by **surrogacy** the parents who have lent the ova and the sperm would be entitled to avail leave: Bombay High Court. [\[Read Judgement\]](#) **Dr.Ms.Pooja Jignesh Doshi Vs The State of Maharashtra and another.**

WRIT PETITION NO. 1665 OF 2015.

Facts of the case

Petitioner chose the route of surrogacy and the surrogate mother gave birth to a baby girl on 5 November 2012.

Petitioner sought maternity leave to take care of the surrogate child, which was denied by the respondent on the ground that the Leave Rules and the policy governing the Rules do not permit maternity leave for a surrogate child.

Court Held that Referring to the judgements dated 22 July 2015 in Writ Petition No.3288 of 2015 *Dr.Mrs.Hema Vijay Menon vs. State of Maharashtra*, a Division Bench of this Court relying upon a decision of the Delhi High Court dated 17 July 2015 in the case of **Rama Pande vs. Union of India in WP(C) 844/2014**, held that even in case of birth by surrogacy the parents who have lent the ova and the sperm would be entitled to avail leave. The mother being entitled to maternity leave and the father paternity leave.

The Petitioner is held entitled to the relief sought for in terms of prayer clause [C]; being that the Earned Leave and Half-pay Leave availed of by her should be entered in the record as maternity leave for the purposes of the leave account and that the said leave availed by the Petitioner during various intervals be converted into maternity leave.

Deloitte declares 26 weeks of maternity leave for women employees; PWC, EY, KPMG to follow suit

The labour ministry is busy putting the amended Maternity Benefit Act together that would entitle working women in private sectors to 26 weeks of maternity leave from the existing 12, the big four consulting firms have already taken a leap. While Deloitte has declared 26 weeks of maternity leave for its woman employees, PricewaterhouseCoopers, EY and KPMG are in the process of finalising such policies. A severe crunch of woman employees at the top has pushed these companies to not only extend the maternity leave benefit, but also in introducing a slew of other initiatives to retain the valuable resource.

EY has decided to rate male and female employees on two separate bell curves from this year. "This would ensure that there is no unconscious bias as rating of women would be equated with men. Also,

we will have the same number of promotions for women as there are for men. To be piloted for the first time in India, EY is also working out a programme called 'Maternal Coaching', where all the women at the leadership and senior positions will be trained to coach other women in their teams before and after maternity leave on not quitting the job.

PwC is planning to retain women who leave for maternity with an 'umbilical cord' of up to seven years or so. This would allow women on maternity leave to be on the rolls of the company without actively working and without pay. "Though this is in the pipeline, they intend to offer all the training and updates to the women who go on maternity leave so that they are connected with the firm.

Labour Law applicable to women	Coverage	Maternity benefit provisions	Financing
Maternity Benefit Act, 1961	<ul style="list-style-type: none"> • Factories; mines; plantations. • Shops and establishments with more than 10 employees. • Other establishments notified by the state government. 	<ul style="list-style-type: none"> • 2 weeks (with full wages). 	<ul style="list-style-type: none"> • Employer.
<u>Employees State Insurance Act, 1948</u>	<ul style="list-style-type: none"> • All factories, other than seasonal factories. • Others establishments notified by the central or state government, and with employee salary at Rs 15,000 or less.* 	<ul style="list-style-type: none"> • 12 weeks (with full wages).* 	<ul style="list-style-type: none"> • Mixed. (Employer contribution: 4.75% of wages; Employee contribution 1.75% of wages)
All India Services (Leave) Rules, 1955	<ul style="list-style-type: none"> • Indian Administrative Service; • Indian Police Service; • The Indian Service of Engineers (Irrigation, Power, Buildings and Roads); • The Indian Forest Service; • The Indian Medical and Health Service. 	<ul style="list-style-type: none"> • Women: 24 weeks, if less than two surviving children (with full wages); • Includes adoptive mothers; • Child care leave up to 730 days, for 2 children, until they turn 18 years (with full pay); 	<ul style="list-style-type: none"> • Employer (central government).

		<ul style="list-style-type: none"> • Men: 15 days, if less than two surviving children (with full pay). 	
<p>Central Civil Services</p> <p>(Leave) Rules, 1972</p>	<ul style="list-style-type: none"> • Government servants appointed to the civil services and posts in connection with the affairs of the Union; • Railways servants, casual workers, industrial workers, etc. not covered. 	<ul style="list-style-type: none"> • Women: 180 days, if less than two surviving children (with full pay) • Adoptive mothers: 60 days, to be taken within one year, if less than 2 children. • Childcare leave up to 730 days, for 2 children, until they turn 18 years (with full wages); • Men: 15 days, if less than two surviving children (with full pay). 	<ul style="list-style-type: none"> • Employer (central government).
<p><u>The Factories Act, 1948</u></p>	<ul style="list-style-type: none"> • Workers employed in factories, as defined in the Act. 	<ul style="list-style-type: none"> • 12 weeks (with full wages). 	<ul style="list-style-type: none"> • Employer.
<p>Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957</p>	<ul style="list-style-type: none"> • Women journalists employed in newspapers. 	<ul style="list-style-type: none"> • 3 months (with full wages). 	<ul style="list-style-type: none"> • Employer.

<p>The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996</p>	<ul style="list-style-type: none"> • Building workers employed by an establishment with 10 or more buildings workers in any building or other construction work. 	<ul style="list-style-type: none"> • State welfare boards to make maternity benefit payments to female beneficiaries. 	<ul style="list-style-type: none"> • Mixed. [Payment through a fund with contributions from the central government, beneficiaries, and other sources.]
<p>Unorganised Workers' Social Security Act, 2008</p>	<ul style="list-style-type: none"> • Enterprises engaged in the sale of goods or services with less than 10 employees. 	<ul style="list-style-type: none"> • Directs the central government to formulate schemes for maternity benefits. 	<ul style="list-style-type: none"> • Central government.

Improved maternity benefits could prove counterproductive: Survey

A little over one year after India increased the maternity leave benefit to 26 weeks from 12 weeks, a survey said the move could be counterproductive to the cause of a diverse workplace in certain sectors unless other support measures are also undertaken.

According to a survey on the costs and benefits of the new regulations by leading employment services company TeamLease, at least 26 per cent of the 350 start ups and small and medium enterprises (SMEs) that responded said they will prefer hiring a male candidate, given the cost of the six-month maternity leave benefit. About 40 per cent of respondents said they will hire women but will consider whether such a cost is worth the candidate. However, 39 per cent of organisations said the move will have a positive impact and will lead to a happier workforce but 35 per cent of the respondents said that the six-month maternity leave will impact both cost and profitability.

“While many of the startups and SMEs are progressive, a significant number seems to be considering the consequences of this regulation.” Plus, even when organisations do have a policy of non-discrimination in hiring, the recruiting manager could take a short-term view. Therefore, just changing the law is not enough; reinforcements are needed at multiple levels. ET Bureau

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