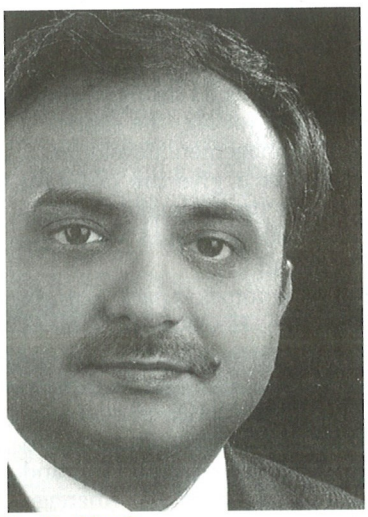
Q & A



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I work in a company in Vishakhapatnam. I have been on my maternity leave but now I have been diagnosed with pregnancy induced saroilits and advised further bed rest which would extend two weeks beyond my sanctioned period of twelve weeks. I have produced the certificate from my doctor but the HR Manager of my company says that only after their company doctor verifies that I have pregnancy induced saroilits, will I get additional leaves with wages. Can you please explain the law on this and whether the stand of the HR Manager is valid. I want to know if I can be fired during such leave or if my salary or other benefits be reduced. Further, I was suppose to receive confirmation as per my appointment letter within six months but I have not received the same even after one year of employment. When the HR Manager was asked for the same, he stated that I have not completed regular 1 year of service as I am on my maternity leave though maternity leave is supposed to be continuance of the service.

The law regarding maternity benefits in India is postulated in the Maternity Benefits Act, 1961 ("Act"). You may note that as per Section 5(3) of the Act the maximum period for which any woman is entitled to maternity benefit is twelve weeks of which not more than six weeks shall precede the date of her expected delivery. Accordingly, you are entitled to take paid leave for a maximum period of twelve weeks.

Further, as per Section 10 of the Act in the unfortunate event of illness arising out of pregnancy, delivery, premature birth of child or miscarriage, you are entitled to, in addition to the aforesaid period of twelve weeks, leaves with wages at the rate of maternity benefit for a maximum period of one month. However, such additional paid leaves under Section 10 of the Act could only be availed upon production of such proof as may be prescribed in the relevant Rules framed by the State Government under the Act.

In your case, the relevant rules would be the local maternity benefit rules enacted by the Government of Andhra Pradesh. I could not come across the said rules, however similar rules enacted by other States provide that a certificate from a Registered Medical Practitioner

stating that the woman is suffering from illness arising out of pregnancy is a sufficient proof under Section 10 of the Act. Accordingly, you may note that as long as the provisions of the said rules applicable to the State of Andhra Pradesh provide that a woman suffering from illness arising out of pregnancy can prove her illness by production of a certificate to that effect from a Registered Medical Practitioner, you would be legally entitled to the additional two weeks period of maternity leaves with wages at the same rate. Consequently, the stand of the HR Manager of your company would be deemed wrong and invalid in law.

Now, moving on to the other part of your query, you may note that the provision regarding dismissal or varying of service conditions during pregnancy or maternity leave are provided under section 12 of the Act. The said provision is reproduced herein below for your reference:

"12. Dismissal during absence or pregnancy -

(1) Where 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.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge of 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 benefits or medical bonus or both, shall be final.

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

The above provision clearly states that once the maternity leave of an employee of a company has commenced, the said employee cannot be discharged or dismissed. Further, the provision also postulates that during the duration of such maternity leave, even the terms of her service cannot be varied to her disadvantage. Therefore, your company is neither allowed to terminate your employment or reduce your salary (or other benefits) during the term of your maternity leave. For the sake of clarification, you may also note that the additional two weeks of leave on account of 'pregnancy induced saroilits' would also fall within the definition of maternity leave. Thus, you would continue to be protected from termination of employment or reduction in salary during the said period as well.

The last part of your query pertains to the confirmation of employment. I confirm that your understanding is correct. Maternity leave is considered as continuance of employment and therefore the stand taken by your HR Manager on the aspect of completion of one year of service is wrong. However, in so far as your right to be confirmed is concerned, it is not possible to opine on the same without review of your appointment letter. Any such rights or claims will depend on the terms and conditions of your appointment letter and employment agreement, if any. HC

Law on minimum wages in India

India was amongst the first developing countries to introduce a law on minimum wages i.e. the the Minimum Wages Act, 1948 ("Act"). The Act was introduced as a consequence of both internal and external factors, one of the primary factors amongst them being the adoption by the International Labour Organization in 1928 of Article 1 of Convention No. 26 on minimum wage fixing in trades in which no effective collective bargaining takes place and where wages are exceptionally low.

As the name suggests, the Act was enacted to fix minimum rates of wages for employees to check over exploitation of the employee class in the country. The Act provides for the fixation of (i) a minimum time rate, (ii) a minimum piece rate, (ii) a guaranteed time rate and (iii) an overtime rate appropriate to different occupations and different classes of workers. As per Section 4 of the Act, the minimum wage fixed or revised by the appropriate government may include the following:

a) A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number3 applicable to such workers; or

b) A basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorized; or

c) An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

In respect of the above, the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate is to be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

The Act further lays down that wages should be paid in cash, although it empowers the appropriate government for the payment of minimum wages wholly or partly in kind. While, all seems right up till here the Act is not free from its own drawbacks.

It may be noted that the appropriate government could either be the Central Government or the state governments. According to the definition of "Appropriate Government" under Section 2(b) of the Act, Central Government sets the minimum wage rate in central government owned enterprises, while state governments set minimum wages for other type of employments.

The setting of minimum wages by respective state governments has led to a huge disparity in the wages persons with similar employment earn in different states. For instance, the minimum daily wage for a person employed in Automobile Engineering/ Auto Body Fabrication/Automobile Repairing is Rs. 220/- in Maharashtra, Rs. 147/- in Rajasthan and Rs. 130/- in Sikkim. A comparison of minimum wage rate across states would reflect difference of up to hundred percent for persons in similar employments. In order to have a uniform wage structure and to reduce the disparity in minimum wages across the country, the concept of National Floor Level Minimum Wage was mooted on the basis of the recommendations of the National Commission on Rural Labour (NCRL) in 1991. Keeping in view the recommendation of NCRL and subsequent rise in price indices, the National Floor Level Minimum Wage ("National Wage") was fixed at Rs. 35/- per day in 1996. Since then, National Wage has been revised several times by the Central Government to increase it to Rs. 115/- per day. However, the National Wage lacks any statutory backing and has a mere persuasive value on state governments.

Further, the preamble to the Act provides for fixing minimum rates of wages in certain employments. Typically, these employments tend to include those where labour is ignorant or less organized and is vulnerable to exploitation. However, the Act contains a restriction on fixing of minimum rates of wages in respect of any scheduled employment in which there are less than 1,000 employees engaged in such employment in the whole state. Thus, the Act does not cover all employments under its ambit and is applicable only to those employments for which a minimum rate of wage has been prescribed by the appropriate government. Again, since the applicability of the Act is also left to the hands of the respective state governments, several employments that have a defined minimum wage rate in one state do not have any such rate in another. For instance, while Assam has 104 scheduled employments, Himachal Pradesh has as less as 12 with Mizoram having only one . It could be argued that such a disparity may well be a result of the relations of the respective state governments with industrialists in their state to decrease the cost of labor for them or to incentivize industrialists to operate from their state. In any case, the cost of such disparity is borne by poor employees who are made to work on minimal wages.

Considering the fact that even for scheduled employments with prescribed minimum wages, employers often construe these wages to be the maximum wages payable to the class of employees under that employment, it is important that there is a minimum wage in respect of every kind of employment. A country like India where the exploitation of labor class has always been rampant, it is imperative that a welfare legislation like the Act is made applicable to all types of employment across India and minimum wages across states for similarly placed employees is made uniform. HC

[1] As on December 31, 2012

[2] As on December 31, 2012