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India: India's New Maternity Benefit Laws Take Effect

07 April 2017

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A significant part of India's new maternity benefit laws have taken effect from April 1, 2017. The Maternity Benefit (Amendment) Act, 2017 ("**MB Amendment Act**") received the assent of the President of India on March 27, 2017, and has now been notified into law by the Government.

India already provided for maternity benefit through the Maternity Benefit Act, 1961 ("**MB Act**"). The MB Act, applicable to an establishment with 10 or more employees, *inter alia* provided for paid maternity leave of 12 weeks to a female employee who has worked for 80 days in the preceding 12 months with the employer. The law also envisaged paid leave to be provided in other specified cases, including a medical termination of pregnancy, a miscarriage or pregnancy-related illness, along with payment of a medical bonus in case the employer is not providing any free pre-natal confinement or post-natal care.

The following provisions of the MB Amendment Act have come into effect from April 1, 2017:

- i. Paid maternity leave has been increased from the previous 12 weeks to 26 weeks. Out of the 26 weeks, a female employee cannot take more than 8 weeks preceding the expected delivery date of the employee.
- ii. However, if a female employee has 2 or more surviving children, then she is entitled to only 12 weeks paid maternity leave, out of which she cannot take more than 6 weeks before her expected delivery date.

- iii. The concept of a "commissioning mother" and an adopting mother has been included. A commissioning mother is a biological mother who uses her egg to create an embryo implanted in a surrogate. Such a commissioning mother is entitled to paid maternity leave of 12 weeks from the date the child is handed over to her. A female employee who has legally adopted a child below 3 months is also entitled to paid maternity leave of 12 weeks from the date the child is handed over to her.
- iv. A provision for "work from home" has been introduced, whereunder if the female employee's work profile is such that she can "work from home", the employer may allow her to do so after the statutory paid maternity leave period, subject to mutual agreement on the terms and conditions for any such option.
- v. The employer is required to provide written intimation, including electronically, of all benefits under the MB Act to each female employee at the time of her initial appointment.

The MB Amendment Act also includes a provision for setting up a crèche facility. An establishment which has 50 or more employees is now required to set up a crèche facility within a prescribed distance, either separately or along with common facilities. A female employee covered under the MB Act can visit her child at such a crèche 4 times a day, including during any rest interval provided to the employee. It may be noted that this provision comes into effect from July 1, 2017, which gives some time for companies to determine how to comply with the same.

Overall, the amendments are progressive in nature, covering a far wider ambit of "mothers" and also giving a female employee more maternity leave and time to spend with the child. This is broadly in consonance with WHO recommendations whereunder a baby should be breastfed exclusively for the first 6 months. The "work from home" option will also give greater flexibility for women employees to remain in the workspace.

From an employer's perspective, there will be greater financial implications due to the increased paid maternity leave payment and also as the benefits will need to be paid to the new categories of eligible female employees.

Another aspect with financial and logistical implications for an employer is the requirement to set up a crèche facility. As of date, there are no statutory notifications/rules dealing with the setting up of the crèche unit, such as space, amenities to be included in the unit, security, etc. The law is also silent on the age of the children who can use the crèche facility. Companies will accordingly need to wait for further clarifications on this issue.

The MB Amendment Act is also silent on how many times leave can be availed in case of a commissioning mother and an adopting mother, unlike the case of biological children, where a woman employee is entitled to less leave after 2 children.

It is expected that the amendments will reduce attrition rates amongst female employees who conceive, as the enhanced benefits will encourage them to remain

with the organization. It is hoped that employers will not reduce their hiring of female employees because of the added costs.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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