

LAW AREA NAME : WOMAN
SECTION NAME : SPECIAL LAWS
SUB SECTION NAME : MATERNITY BENEFIT ACT

LAW IN BRIEF

The Universal Declaration of Human Rights, 1948, in Article 25(2) says that Motherhood and Childhood are entitled to special care and assistance. It is imperative for the Government to extend special benefits to women during the maternity period for general social well-being. The Maternity Benefit Act, 1961 is a significant piece of labour legislation for women employed in certain establishments of certain periods before and after childbirth and to provide maternity benefit and certain other benefits.

LAW IN DETAIL

Women working in certain establishments as prescribed under the Act are entitled to certain Rights at the time of maternity

Before the due of delivery, her rights are as follows:

- A woman who is closer to her due date of delivery by 10 weeks shall not be given any work of arduous nature.
- She is entitled to paid maternity leave for 6 weeks before her due date of delivery.
- She shall receive maternity benefit at the rate of average daily wages for such period of actual absence before delivery.
- Such amount of maternity benefit before delivery shall be paid to her in advance if she had given notice of her pregnancy and of the date from which she would be going on leave to her employer in advance.

After delivery, she is entitled to the following rights :

- A women shall not be employed in any establishment during the 6 weeks immediately following the day of her delivery / miscarriage / medical termination of pregnancy.
- The amount for such period of six weeks shall be paid to her or to a person nominated by her within 48 hours of production of proof of the delivery.
- The maternity benefit shall be at the rate of the average daily wages.
- If she had not utilized the 6 weeks of leave before delivery, she can avail them after delivery up to a maximum of 12 weeks including those availed before delivery.
- She is also entitled to receive medical bonus of Rs. 250 from her employer if no prenatal confinement and postnatal care is provided by the employer free of charge.
- If she is suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation,

in addition to the leave availed under section 6 and section 9, she is entitled to leave with wages for a maximum period of 1 month.

- When a woman returns to work after delivery, in addition to the interval for rest allowed to her, she must be allowed two breaks of the prescribed duration in the course of her daily work, for nursing the child until the child attains the age of 15 months.
- When she absents from work in accordance with the provisions of the Act, the employer cannot discharge or dismiss her on account of such absence.
- Further, no deduction shall be made from the normal and daily wages for taking nursing breaks or for not doing arduous work in accordance with section 4 of the Act.

In other cases,

- For miscarriage or medical termination of pregnancy or for tubectomy operation, or production of adequate proof, she is entitled to leave with wages for 2 weeks immediately following the day.

PROCESS FOR SOLUTION

Complaint Under which Section ?

Section 17 talks of complaint that can be made to the inspector appointed under the Act. Section 23 talks of complaint that may be lodged in a court of law after exhausting the remedies provided under the Act.

Whom to complain / where to complaint?

Normally, for any grievance under the Act, the aggrieved woman may approach the Inspector appointed under the Act. However, where she is dissatisfied with the orders passed by the Inspector or where a larger question of law is involved she may approach the Metropolitan Magistrate or a First Class Judicial Magistrate of the competent jurisdiction. However, such a case must be filed within 1 year from the date of commission of offence.

Any office bearer of a registered Trade Union of which such a woman is a member or A voluntary organization registered under the Societies Registration Act, 1860 or any Inspector may also file a case in a court of law on behalf of the aggrieved woman.

In some cases, the Inspector may enter any place where women are working, in exercise of powers given to him under the Act and examine any registers, records or notices required to be maintained under the Act. He may examine any employee of the establishment and require them to give him information regarding particulars of employees, payments made and application or notice received from them. If he finds any discrepancies in the matter or payment of maternity benefits, he may direct such payments to be made.

How to file the Case ?

The woman should have put 80 days of work before in a delivery period of 1 year to be able to claim the benefits under the Act.

It is the duty of the woman claiming maternity benefit to give notice in writing in the prescribed form to her employer claiming her benefit and the period of leave. Such a notice maybe given immediately after delivery also.

Where she has failed to give such a notice, she may apply to the Inspector who shall make the necessary orders of payment under the act. Appeal against the orders of the Inspector lies to the appellate authority which must be made within 30 days from the date the decision of the Inspector is communicated to her. The decision of the appellate authority is final.

If she is dissatisfied with the orders of the inspector or the appellate authority or if a larger question of law is involved, she may approach the court of the competent jurisdiction. The case will proceed according to the established procedure of law.

Where the employer is guilty of payment of maternity benefit or dismissing or discharging the employee on account of her absence in violation of the Act, he is punishable with imprisonment of not less than 3 months to one year and with fine for not less than Rs. 2000 to Rs. 5000.

What Next ?

There is provision of appeal against the decision of the Inspector.

In a court of law, the normal procedure of filing appeals may be followed.

ALTERNATE REMEDIES

The Act itself has provided for an alternative judicial recourse by appointing Inspectors under the Act and for an appellate authority above him. Only where the complainant is dissatisfied with their decisions that she has to approach a court of law for judicial remedies and for instituting penal action against her employer. Certain questions of law like the period to be included while calculating the amount of maternity benefit etc., are also decided by a court of law.

The aggrieved woman may also approach the registered trade union of which she is a member or a voluntary social organization who may help fight her case.