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India: Proposed Amendments to The Maternity Benefit Act, 1961

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by [Stephen Mathias](#) (Bangalore) , [Suhas Srinivasiah](#) (Gurgaon) and [Debjani Aich](#) (Gurgaon)

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with the authors

India has strong maternity benefit laws through the Maternity Benefit Act, 1961 ("MB Act"). The MB Act, applicable to an establishment with 10 or more employees, *inter alia* provides 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 envisages 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.

In August 2016, the Maternity Benefit (Amendment) Bill, 2016 ("Bill") was passed by the Rajya Sabha, the Upper House of India's Parliament. This Bill has introduced various new provisions, summarized below:

- Paid maternity leave will be increased from the current 12 weeks to 26 weeks. As per the MB Act, out of the current 12 weeks paid leave, a female employee cannot take more than 6 weeks preceding her due date - this is now increased to 8 weeks preceding the expected delivery date.
- If a female employee has 2 or more surviving children, she will only be entitled to 12 weeks paid maternity leave, out of which she cannot take more than 6 weeks before her expected delivery date.
- The Bill brings in the concepts of a "commissioning mother" and an adopting mother, which widens the scope of the MB Act. The MB Act currently envisages benefits to be extended to a female employee who has been

pregnant and/or borne a child. Under the Bill, a commissioning mother is a biological mother who uses her egg to create an embryo implanted in a surrogate. Such a commissioning mother and a female employee who has legally adopted a child below 3 months are entitled to paid maternity leave of 12 weeks from the date the child is handed over to the commissioning mother or the adopting mother, as applicable.

- 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 paid maternity leave period, subject to mutual agreement on the terms and conditions for any such option.
- An establishment which has 50 or more employees is required to set up a creche facility within a prescribed distance, either separately or along with common facilities. A female employee covered under the law can visit her child at such a creche 4 times a day, including during any rest interval provided to the employee.
- 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.

As of date, the Bill needs to be introduced and passed by the Lok Sabha (the Lower House of India's Parliament) and then receive Presidential assent before it comes into effect as a law. The Government will also need to stipulate the date when the amendments come into effect and also whether there will be any retrospective effect in relation to eligible female employees.

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 a child. This is broadly in consonance with WHO recommendations whereunder a baby should be breastfed exclusively for the first 6 months weeks. 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. However, the amendments should reduce attrition rates amongst female employees who conceive, as the enhanced benefits will encourage them to remain with the organization.

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.

AUTHOR(S)



Stephen Mathias

Kochhar & Co.



Suhas Srinivasiah

Kochhar & Co.



Debjani Aich

Kochhar & Co.

