BLOGS

Maternity Leave in India: Laws, Rights and FAQs

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Introduction

India has developed comprehensive maternity laws designed to protect the rights of working women during pregnancy and after childbirth. The primary legislation governing maternity leave and other benefits is the Maternity Benefit Act, 1961. This Act has undergone significant amendments to address the evolving needs of women in the workforce.

Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961, aims to ensure that women in India can work without the fear of losing their jobs or income due to pregnancy and childbirth. The Act provides several benefits and protections, including:

- Maternity Leave: Women are entitled to maternity leave of 26 weeks, out of which up to 8 weeks can be taken before the expected date of delivery. This leave is paid leave, ensuring that women receive their full salary during this period. During maternity leave, women receive their full salary or wages, primarily to ensure that they do not experience a loss of income during this period.
- Adoptive and Commissioning Mothers: The 2017 amendment to the Act extended benefits to adoptive mothers and commissioning mothers (those using surrogacy). Adoptive mothers are entitled to 12 weeks of maternity leave if they adopt a child below 3 months of age. Commissioning mothers receive 12 weeks of leave from the day the child is handed over to them.

- Crèche Facilities: Establishments with 50 or more employees must provide crèche facilities within a prescribed distance from the workplace. The crèche must be easily accessible, and women should be allowed four visits during the day, including rest breaks.
- Work-from-Home Option: The Act allows women to work from home if the nature of their work allows, subject to mutual agreement between the employer and employee. This provision can be utilized after the period of maternity leave.
- No Termination of Employment: Employers cannot terminate a woman's employment during her maternity leave or issue a notice of termination during this period, except for misconduct or other lawful reasons unrelated to pregnancy.
- Health and Safety Measures: Employers must ensure that working conditions for pregnant women are safe and free from risks. They must also provide appropriate seating arrangements and avoid assigning tasks that could harm the health of the mother or child.
- Prohibition of Discrimination: Employers are prohibited from discriminating against women due to pregnancy, childbirth, or related reasons.

Additional Provisions

- Leave for Miscarriage or Medical Termination of Pregnancy: In case of a miscarriage or medical termination of pregnancy, women are entitled to 6 weeks of paid leave from the day of the miscarriage or termination.
- Leave for Tubectomy Operation: The Act also provides 2 weeks of paid leave for women undergoing tubectomy.
- Sickness Leave: If a woman experiences any illness due to pregnancy, childbirth, or related conditions, she is entitled to additional paid leave up to a maximum of 1 month.

Eligibility Criteria for Maternity Leave

The eligibility criteria for maternity leave in India are defined under the Maternity Benefit Act, 1961, along with amendments made in subsequent years.

- To qualify for maternity leave, a woman must be employed by an establishment covered under the Maternity Benefit Act. This includes both public and private sector establishments.

- The Act requires that a woman must have worked for the employer for a minimum of 80 days in the 12 months immediately preceding her expected delivery date.
- Women who adopt a child under 3 months of age are eligible for 12 weeks of maternity leave from the date of adoption.
- Women who have a child through surrogacy are also eligible for 12 weeks of maternity leave from the date the child is handed over to them.
- Women who experience a miscarriage or medical termination of pregnancy are eligible for 6 weeks of paid leave.
- Women who undergo a tubectomy (sterilization) are entitled to 2 weeks of leave.

To avail of maternity leave, a woman must give notice to her employer in writing, informing them of her pregnancy and the expected date of delivery. This notice typically includes her intended leave start date and end date.

Conclusion

Maternity laws in India represent a significant effort to protect the rights and well-being of women in the workforce during pregnancy and after childbirth. Maternity leaves in India are vital as they provide income security and the required time off for mothers to allow them to bond with their child which is crucial for the physical and emotional well-being of both. Maternity benefits also help create a more level playing field for women in the workforce. It reduces the disadvantages women might face due to pregnancy and childbirth, contributing to gender equality. By providing maternity leave, employers can encourage more women to enter and remain in the workforce, which is beneficial for the economy and workplace diversity.

Frequently Asked Questions

What is the rule for maternity leave in India?

Women are entitled to maternity leave of 26 weeks, out of which up to 8 weeks can be taken before the expected date of delivery. This leave is paid leave, ensuring that women receive their full salary during this period. During maternity leave, women receive their full salary or wages, primarily to ensure that they do not experience a loss of income during this period.

Is maternity leave in India for 6 or 9 months?

There isn’t a specific timeline for when an employee should start her maternity leave. However, for the first two children, she is entitled to a total of 26 weeks of leave. For any additional children, this leave is reduced to 12 weeks. The leave must be taken within six months following the date of childbirth.

Will I get full salary during maternity leave?

During maternity leave, women receive their full salary or wages, primarily to ensure that they do not experience a loss of income during this period.

Can Maternity Leave be denied?

No, maternity leaves cannot be denied. Employees can seek maternity leave even during probation. ***[Read more about it here!]***

Download Maternity Benefit Act, 1961

Download Maternity Benefit Amendment Act, 2017