



# news flash

April 2017



## CLARIFICATIONS TO MATERNITY BENEFIT (AMENDMENT) ACT 2017

We refer to our news flash circulated on 3 April 2017 as well as our corrigendum dated 6 April 2017 on the Amendments to the Maternity Benefits Act, 1961 (“Act”).

The Ministry of Labour and Employment has issued a notification bearing no. S- 36012/03/2015-SS-I dated 12 April 2017 clarifying certain queries relating to the Maternity Benefits (Amendment) Act, 2017 (“Amendment Act”).

Below is a summary of the clarifications provided by the Ministry:

Sr. No.	Query	Clarification
1.	Applicability of the Act to contractual or consultant women employees.	Since there is no amendment in Section 2 of the Act, hence the original provision will prevail. The Act is applicable to all women who are employed in any capacity directly or through any agency i.e. either on contractual or as consultant.
2.	Whether enhanced maternity benefit, as modified by the Maternity Benefit (Amendment) bill, 2016 can be extended to women who are already under maternity leave at the time of enforcement of this Amendment Act?	Yes
3.	Whether enhance maternity benefit can be extended to those women who have joined after Availing 12 weeks of the maternity leave?	Those women employee who had already availed 12 weeks of maternity leave before enforcement of the Amendment Act i.e. 1 <sup>st</sup> April, 2017, shall not be entitled to avail the extended benefit of the 26 weeks leave.
4.	Protection of women in case she is fired by the employer after learning her	Under Section 12 <sup>1</sup> of the Act it is emphasized that any dismissal or discharge of a women during the

<sup>1</sup> Section 12: (1) When 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 or 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:

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	pregnancy?	pregnancy is unlawful and such employer can be punished under Section 21 of the Act. <sup>2</sup>
5.	Whether benefits of this Act can be extended to the employed women in the unorganized Sector	The Act is applicable to all mines, plantations, shops and establishments and factories. Mines, plantations, shop and establishments could be either in organized sector or unorganized sector. Also, clarification at Sr. No. 1 may be seen.

## ANALYSIS

One of the important clarifications provided by the Ministry is that the benefits given under the Amendment Act are applicable to women who are on the maternity leave at the time of coming into effect of the Amendment Act.

*Example 1:* Mary has taken maternity leave which continues beyond 1<sup>st</sup> April 2017. Based on the clarification provided, she will be entitled to avail the benefits under the Amendment Act and get extended leave of 26 weeks.

*Example 2:* Mary has taken maternity leave which gets completed on 31<sup>st</sup> March 2017. She will not be entitled to the benefits of the Amendment Act.

## DISCLAIMER

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For further clarification and details on the above, you may write to the Labour & Employment team comprising of Kruti Desai (Partner) at [kdesai@almtlegal.com](mailto:kdesai@almtlegal.com) Shruti Tandon (Associate) at [standon@almtlegal.com](mailto:standon@almtlegal.com)

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*(2)(a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or 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.*

<sup>2</sup> Section 21: *If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees: Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment*