



news flash

April 2017



CORRIGENDUM

We refer to our news flash circulated on 3 April 2017 on the Amendments to the Maternity Benefits Act, 1961 (“**Newsflash**”).

The Ministry of Labour and Employment has issued a corrigendum notification bearing no. S.O. 1049 (E) dated 3 April 2017 clarifying that Section 4(1) of the Amendment Act which deals with crèche facility to be provided by establishments having 50 or more employees, shall come into effect from 1st July 2017 and not Section 3(5) which deals with working from home!

Please find annexed our revised news flash based on corrigendum issued by the Government.

DISCLAIMER

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. It is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash.

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 Shruti Tandon (Associate) at standon@almtlegal.com

ANNEXURE

Amendments To The Maternity Benefit Act, 1961

INTRODUCTION

The Maternity Benefit (Amendment) Act, 2017 (“**The Amendment Act**”) has been notified on 28 March 2017 to amend the provisions of the Maternity Benefit Act, 1961 (“**Maternity Benefit Act**”).

EFFECTIVE DATE

The Amendment Act is effective from 1st April 2017 except for section 4(1). Section 4(1) which deals with crèche facility to be provided by establishments having 50 or more employees (see point (4) below) shall come into effect from 1st July 2017.

AMENDED PROVISIONS

The Amendment Act has made the following amendments to the Maternity Benefit Act:

- (1) The period of maternity leave has been extended from 12 weeks to 26 weeks of which not more than 8 weeks (erstwhile 6 weeks) can precede the date of the expected delivery. However, a woman who has two or more surviving children will be entitled to a maximum of 12 weeks leave, of which not more than 6 weeks can precede the date of the expected delivery.
- (2) Women who legally adopt a child below the age of 3 months or a “commissioning mother”¹ will be entitled to maternity benefit for 12 weeks from the date on which the child is handed over to her.
- (3) Where the nature of work is such that the woman may work from home, the employer may allow her to do so after availing the maternity leave on such conditions and for such period as the employer and the woman may mutually agree.
- (4) Establishments having 50 or more employees are required to have a crèche facility within such distance as may be prescribed either separately or along with common facilities. Further, employers must allow the woman to visit the crèche 4 times a day which will also include the interval for rest allowed to her.
- (5) Every establishment is required to intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

¹ “**Commissioning mother**” has been defined to mean “*a biological mother who uses her egg to create an embryo implanted in any other woman.*”

CONCLUSION

The Amendment Act has made significant and welcoming changes to the Maternity Benefit Act, which include increase in the maternity leave period from 12 weeks to 26 weeks, extension of the provisions of Maternity Benefit Act to mothers who conceive a child through surrogacy as well as adopting mothers, crèche facility to be provided by establishments employing 50 and more employees.

Although, the Amendment Act is a step forward to providing job security and encouragement to women who wish to continue working after giving birth, the provisions are less beneficial to mothers having more than 2 children and are silent about paternity leave.

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