



WORKING MOTHERS OF INDIA

**LEGAL MANDATE
UNDER MATERNITY
BENEFITS ACT, 1961**

MAY 2020

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CONTACT US

For the past six years, Ungender and the team behind it, has built its expertise in the laws that impact workplaces and the genders engaging with them.

Our insights are produced in the form of simplified handbooks like the one you are accessing right now, where we simplify the complicated laws and their mandates for the stakeholders.

Our additional insights come out in the form of industry reports where we combine laws, data, and gender together to provide the nuanced reality of specific sectors.

To have access to the reports, write to us on contact@ungender.in

**To seek our advisory on
workplace gender laws
matters, write to us on
contact@ungender.in
Bangalore | Delhi | NCR**

About Ungender

Ungender Legal Advisory is a diversity and inclusion laws advisory firm – working on bridging the gender and inclusion divide at workplaces.

We believe that workplaces have a long way to go before they become “inclusive” for all the existing and prospective genders interacting as their internal and external stakeholders. However, this is a journey that has begun for a lot of companies and some are just beginning to walk the path. We partner with the companies and its leaders to help them reach inclusion.

Our dedicated efforts towards this have resulted in niche advisory on compliance and implementation of the Maternity Benefits Act, 1961, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and other diversity based laws such as the Rights of Persons with Disabilities Act, 2016 and the Transgender Persons (Protection of Rights) Act, 2019.

We believe that solutions, like their problems, exist in the form of an ecosystem, and we need to address it together as much as possible. While majority of our work in the six years has been in private sector and workplaces, we have accumulated advisory expertise on different on-ground, mass level implementation with State and District level of government. Our collective intelligence is an output of working with over 300 companies directly, educating over 10,000 companies leaders, 250+ case investigations, and sensitizing over a lakh individuals on diversity and inclusive laws.

In addition to the above, we believe in extracting data-based insights on the on-ground activities/realities of workplaces to in turn, shape the future activities within a workplace, in the industry as benchmarks, or in the legal ecosystem.

As a part of our learning and development efforts, we are happy to share our knowledge in the public domain for the benefit of all stakeholders. For this, we have a dedicated section on our website on blogs, legal updates and handbooks on diversity and inclusion laws. Additionally, we will also bring various industry insights, through the gender lens, for you, as a stakeholder, decision maker, and an advocate of inclusion and equity to build inclusive workplaces of future.

Disclaimer

This Handbook is a copyright of Ungender Legal advisory. The Handbook has been designed to provide basic information about the Maternity Benefits Act, 1961 and is in no manner construed to be professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this Handbook, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this Handbook.

Contact

For any help or assistance, please email us on contact@ungender.in or visit us at www.ungender.in

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Suruchi Kumar
suruchi@ungender.in

Rituparna Chatterjee
rituparna@ungender.in

Pallavi Pareek
pallavi@ungender.in

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1. WHAT IS THE LAW ABOUT

INTRODUCTION

Under the Constitution of India, Part IV sets out the Directive Principles of State Policy (DPSP). These DPSP are positive obligations on Government of India to implement welfare measures to eliminate inequalities in status, facilities and opportunities.

Articles 39(e) of the DPSP provides that, amongst other things, the Government, shall put in place measures for health and strength of workers, men and women. Furthermore, under Article 42 of the DPSP, a positive obligation has been put on the Government to secure just and humane conditions of work and for 'maternity relief'.

It is based on a combined reading of these articles enshrined in our Constitution that various laws were enacted to provide for maternity relief and measures to secure health and well-being of female employees.

It is pertinent to note that both State and Central Government have been given powers to enact laws on the subject of 'maternity benefits'.

50%

**of new mothers leave
their jobs and only 27%
return.**

Various State laws and Central Acts such as the Employees' State Insurance Act, 1948, Factories Act, 1948 and Mines Act, 1952 already provided for maternity leave and even crèche facilities.

However, the Maternity Benefits Act, 1961 (MB Act) was enacted as a dedicated piece of legislation on the subject of 'maternity benefits'. The MB Act extends to the whole of India.

It sets out maternity leave, various types of associated leave and other facilities such as crèche and nursing breaks.

The Hon'ble Supreme Court of India in the landmark judgement of **Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.**[1] held that "A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery."

[1] (2000) 3 SCC 224

The Apex Court further held that “A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood.

Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled.

To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth.

The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimised for forced absence during the pre or post-natal period.”

This Handbook endeavours to succinctly provide information to HR Managers and Legal Heads of companies regarding the provisions of MB Act.

We, at Ungender, hope that the information hereunder will be of use to implement and comply with the provisions of this law in its full letter and spirit.

2. APPLICABILITY

A. APPLICABILITY TO TYPES OF ORGANISATIONS

The MB Act is applicable to the following:

- a) Factory;
- b) Mine;
- c) Plantation;
- d) Any factory, mine or plantation belonging to the Government;
- e) Establishments where equestrian, acrobatic and other performances are exhibited; and
- f) Shops and commercial establishments in which 10 or more persons are employed.

It is pertinent to note that the MB Act becomes applicable to companies as soon as they employ 10 or more 'persons'. Therefore having a woman employee is not a criteria for applicability of this law.

B. APPLICABILITY TO WOMEN EMPLOYEES

The MB Act applies to 'women employees' engaged directly or through an agency i.e. either on contract or consultant basis.

In the case of **Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.**[2], the Supreme Court was deciding on the issue of applicability of MB Act to daily wage municipal workers.

It held that "there is no justification for denying the benefit of this Act to casual workers or workers employed on daily wage basis."

The Ministry of Labour and Employment in its notification dated 12th April, 2017 also clarified that the MB Act is applicable to women employees engaged on contractual and consultancy basis.

[2] (2000) 3 SCC 224