

THE AJ&K MATERNITY BENEFIT ACT, 2015

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THE AZAD JAMMU & KASHMIR MATERNITY BENEFIT ACT, 2015.

[1ST MAY 2015]

*An Act to consolidate the law relating to employment and maternity benefits of
women in establishments in the State of Azad Jammu & Kashmir .*

Preamble.– WHEREAS it is expedient to consolidate the law relating to employment and maternity benefits of women in establishments in the State of Azad Jammu & Kashmir;

1. Short title and extent.– (1) This Act, may be called the Azad Jammu & Kashmir Maternity Benefit Act, 2015.

(2) It shall extends to the whole of Azad Jammu & Kashmir.

2. Definitions.– (1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say–

- (a) “child” includes a still-born child;
- (b) “Director of Labour Welfare” means the head of the Labour Welfare Directorate of the Government of the State of Azad Jammu & Kashmir by whatever name called;
- (c) “employer” means any person who has ultimate control over the appointment of a woman;
- (d) “Establishment” means an organisation, whether industrial, commercial, or otherwise;
- (e) “Government” means Government of the State of Azad Jammu & Kashmir;
- (f) “Inspector of Factories” means a person appointed as Inspector of Factories under **section 10 of the Factories Act, 1934** as enforced in AJ&K;
- (g) “maternity benefit” means the amount payable under the provisions of this Act, to a woman employed in an establishment;

- (h) “medical practitioner” means a medical practitioner nominated for the purposes of this Act, by the employer with the approval of the Inspector of Factories;
- (i) “prescribed” means prescribed by rules made under this Act;
- (j) “still-born child” means any child which has issued forth from its mother after the twenty-eighth week of pregnancy and which did not at any time after being completely expelled from its mother, breathe or show any other signs of life;
- (k) “wages” means wages as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936; and
- (l) “woman” means a woman worker.

(2) Expressions used in this Act, but not defined herein shall have the meanings respectively assigned to them in the Factories Act;

3. Employment of, or work by, women in an establishments prohibited during certain period.— No employer shall knowingly employ a woman and no woman shall engage in employment in any establishment during the six weeks following the date on which she is delivered of a child.

4. Right to and liability for payment of maternity benefits;

Subject to the provisions of this Act, every woman employed in an establishment shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of her wages last paid during the period of six weeks immediately preceding and including the days on which she delivers the child and for each day of six weeks succeeding that day:

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the establishment of the employer from whom she claims maternity benefit for a period of not less than four months immediately preceding the day on which she delivers the child.

5. Procedure regarding payment of maternity benefit.— (1) Any woman entitled to maternity benefit,—

- (a) who is pregnant may, give notice either orally in person or in writing in the prescribed form to the employer that she expects to be confined within six weeks next following and may therein nominate a person for the purposes of section 6;
- (b) who has not given the notice referred to in clause (a) and has been delivered of a child, shall within seven days, give similar notice that she has been delivered of a child.

(2) When such notice is received, the employer shall permit the woman to absent herself from the factory from the date following the date of notice in the case mentioned in clause (a) of sub-section (1) and from the day of delivery in the case mentioned in clause (b) thereof, until six weeks after the day of delivery.

(3) An employer shall pay maternity benefit for twelve weeks to a woman entitled thereto in any of following ways selected by the woman, namely:-

- (i) for six weeks before delivery within forty-eight hours of the production of a certificate signed by the medical practitioner stating that the woman is expected to be confined within six weeks of the date of the certificate, and for the remainder of the period for which she is entitled to maternity benefit within forty-eight hours of the production of the proof that she has been delivered of a child; or
- (ii) for the period of six weeks before delivery and including the day of delivery, within forty-eight hours of the production of proof that she has been delivered of a child and, for the remainder of the said period, within six weeks of the production of such proof; or
- (iii) for the whole of the said period of twelve weeks, within forty-eight hours of the production of proof that she has been delivered of a child:

Provided that a woman shall not be entitled to any maternity benefit or any part thereof, the payment of which is dependent upon the production of proof under this sub-section that she has been delivered of a child, unless such proof is produced within six months of the delivery.

(4) The proof required to be produced under sub-section (3) shall be either a certified extract from a birth register or a certificate signed by the medical practitioner or such other proof as may be accepted by the employer.

6. Payment of maternity benefit in case of a woman's death.– (1) If a woman entitled to maternity benefit under this Act, dies on the day she is delivered of a child or during the period thereafter for which she is entitled to the maternity benefit, the employer's liability under sub-section (1) of section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, to the person nominated by her under subsection (1) of section 5 for the benefit of all her legal representatives, or, if she has made no such nomination, to all her legal representatives.

(2) If a woman dies during the period for which she is entitled to maternity benefit but before she is delivered of a child, the employer shall be liable only for the period upto and including the day of her death, provided that any sum already paid to her in excess of such liability under clause (i) of sub-section (3) of section 5 shall not be recoverable from her legal representative ; and any amount due at the woman's death shall be paid to the person nominated by her under sub-section (1) of section 5, or, for the benefit of all her legal representatives, or, if she has made no such nomination, to all her legal representatives.

7. No notice of dismissal to be given to a woman in certain cases.— (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

(2) (a) No notice of dismissal given without sufficient cause by an employer to a woman within a period of six months before delivery shall have the effect of depriving her of any maternity benefit to which but for such notice she may have become entitled under this Act.

(b) If any question arises as to whether any notice of dismissal is one to which clause (a) applies, such question shall be referred to the Inspector of Factories; and an appeal from the Inspector's decision shall, within sixty days thereof, lie to the Director of Labour Welfare whose decision shall be final.

8. Penalty for working for payment during permitted period of absence.— If a woman does any work in any establishment for which she receives payment in cash or kind after she has been permitted by her employer to absent herself under the provisions of section 5, she shall be liable to a fine not exceeding five hundred rupees.

9. Penalty for contravention of this Act, by an employer and application of fine in payment of compensation.— (1) If any employer contravenes any provision of this Act, he shall be liable to a fine which may extend to ten thousand rupees.

(2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, it may, when passing judgment order the whole or any part of the fine recovered to be applied in the payment of compensation to the woman concerned for any loss or damage caused to her.

10. Cognizance of offences.— (1) No prosecution under this Act, shall be instituted except by, or with, the previous sanction of the Inspector of Factories and no such prosecution shall be instituted until the expiry of the period of appeal under sub-section (2) or, if such an appeal is preferred, unless the Director of Labour Welfare by his order thereon, sanctions a prosecution.

(2) Where the Inspector of Factories decides either to institute a prosecution under this Act, or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal to the Director of Labour Welfare against such decision; and the decision of the Director of Labour Welfare on such appeal shall be final and shall not be liable to be contested by suit or otherwise.

(3) No Court inferior to that of a magistrate of the first class shall try any offence against this Act, or any rule made thereunder.

11. Appeal against refusal to prosecute or grant sanction thereto.— Where on an application by an employer or a woman, or the person nominated by her or any of her legal representative the Inspector of Factories refuses either to institute a prosecution under this Act, or to grant sanction thereto, he shall without delay communicate to the applicant his order of refusal, and an applicant aggrieved by such order may, within thirty days of the date thereof appeal to the Director of Labour Welfare against such order; and the decision of the Director of Labour Welfare on such appeal which shall be taken after affording to the applicant an opportunity of being heard, shall be final.

12. Limitation.— No Court shall take cognizance of any offence against the Act, or any rule made thereunder unless complaint thereof has been made to the Inspector of Factories within six months of the date on which the offence is alleged to have been committed.

13. Rules.— (1) Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the preparation and maintenance of a muster roll or register or combined muster roll and register and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the Factories Act, 1934, as enforced in AJ&K;
- (b) the inspection of establishments for the purposes of this Act, by the Inspector of Factories;
- (c) the exercise of powers and the performance of duties by the Inspector of Factories for the purposes of this Act;
- (d) the method of payment of maternity benefit in so far as provision has not been made in this Act;
- (e) the forms of notice under clause (a) and clause (b) of sub-section (1) of section 5; and
- (f) procedure to be observed in the disposal of appeals under sub-section (2) of section 7 or subsection (2) of section 10 or section 11.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to ten thousand rupees.

(4) All rules made under this Act, shall be laid before the Government for approval, but must be duly vetted by Law Department having financial concurrence of Finance Department of GoAJ&K.

14. Exhibition of extracts.— An abstract of the provisions of this Act, and the rules thereunder in the regional language shall be exhibited in a conspicuous manner by the employer in every part of the establishment in which women are employed.
