

CHAPTER 140

MATERNITY BENEFITS (AMENDMENT)

AN ACT TO AMEND THE MATERNITY BENEFITS ORDINANCE.

Acts

Nos. 6 of 1958.
24 of 1962.
1 of 1966.

[Act No. 6 of 1958—20th February, 1958.]

[Act No. 24 of 1962—16th June, 1962.]

[Act No. 1 of 1966—26th January, 1966.]

Short title.

1. This Act may be cited as the Maternity Benefits (Amendment) Act.

Amendment
of section 4
of Chapter
140.

2. Section 4 of the Maternity Benefits Ordinance, hereinafter referred to as the "principal enactment", is hereby amended as follows :—

[§ 2, 24 of 1962.]

(1) in subsection (1) of that section, by the substitution, for the expression "of the notice required by section 7 (2).", of the expression "of her confinement." ;

[§ 2, 24 of 1962.]

(2) by the insertion, immediately after subsection (1) of that section, of the following new subsection :—

" (1A) For the purpose of reckoning the one hundred and fifty days referred to in subsection (1), a woman worker shall be deemed to have worked on—

- (a) the days on which she was not provided with work by her employer ;
- (b) the holidays to which she was entitled under any written law ;
- (c) the days of her absence on leave granted by her employer or allowed by or under any written law ;
- (d) the days of her absence due to any injury to her caused by, or arising out of, or in the course of, her employment ;
- (e) the days of her absence due to any occupational disease specified in Schedule III of the Workmen's Compensation Ordinance ; and

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(f) the days, not exceeding thirty, of her absence due to any strike or lockout that is not illegal.”; and

(3) in subsection (2) of that section, by the substitution, for the words “any shop, mine, estate or factory”, of the words “any mine, estate, factory or prescribed establishment”. [§ 2, 6 of 1958.]

3. Section 5 of the principal enactment is hereby amended as follows:— Amendment of section 5 of the principal enactment.

(a) in subsection (3) of that section, by the substitution,— [§ 3, 24 of 1962.]

(i) for the expression “female labourers”, of the expression “women workers”; and

(ii) for the expression “female labourer” occurring in paragraphs (a) and (b) of that subsection, of the expression “woman worker”;

(b) in subsection (4) of that section, by the substitution, for the expression “female labourer”, of the expression “woman worker”; and

(c) in subsections (5) and (6) of that section, by the substitution, for the expression “female labourers”, of the expression “women workers”.

4. Section 8 of the principal enactment is hereby amended, by the addition, at the end of that section, of the following:— Amendment of section 8 of the principal enactment.

“The provisions of this section shall apply in relation to the woman whether or not she has given notice of her confinement to her employer under section 7 (2).” [§ 4, 24 of 1962.]

Insertion of new sections 10A and 10B in the principal enactment.

[§ 3, 6 of 1958.]

5. The following new sections are hereby inserted immediately after section 10, and shall have effect as sections 10A and 10B, of the principal enactment:—

“Employment not to be terminated because of pregnancy or confinement or of illness in consequence thereof.

10A. (1) The employment of a woman worker shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent on her pregnancy or confinement.

(2) Where an employer is prosecuted for the offence of acting in contravention of the provisions of subsection (1), the burden of proving that the employment of the woman worker was terminated by reason of some fact other than her pregnancy or confinement or any illness consequent on her pregnancy or confinement shall be upon the employer.

Work which is prohibited during pregnancy and after confinement.

10B. (1) Where a woman worker gives notice to her employer that she expects to be confined within such period (not exceeding three months), from the date specified in the notice, as may be so specified, she shall not be employed, or be caused or permitted to be employed, during the period commencing on that date and ending on the date immediately preceding the date of her confinement, on any such work as may be injurious to her or her child.

(2) A woman worker who is confined shall not be employed, or be caused or permitted to be employed, during the period of three months commencing on the date of her confinement, on any work referred to in subsection (1).”

Amendment of section 12 of the principal enactment.

[§ 4, 6 of 1958.]

6. Section 12 of the principal enactment is hereby amended—

(a) by the substitution, for the words “any shop, mine, estate or factory”, of the words “any mine, estate, factory or prescribed establishment”; and

(b) by the substitution, for the words "that shop, mine, estate or factory.", of the words "that m.ne, estate, factory or establishment."

7. The following new sections are hereby inserted, immediately after section 12, and shall have effect as section 12A and section 12B, of the principal enactment :—

Insertion of new sections 12A and 12B in the principal enactment.

[§ 5, 24 of 1962.]

" Establish-
ment and
maintenance
of creches.

12A. (1) The employer of more than a prescribed number of women workers in any mine, estate, factory or prescribed establishment shall establish and maintain, in accordance with regulations made in that behalf, a creche for children under six years of age, and shall allow any such worker who has in her care a child or children under six years of age, to leave such child or children in such creche during the hours when she is required to work for her employer.

(2) The prescribed number for the purposes of subsection (1) may differ in respect of different classes of mines, estates, factories or prescribed establishments.

(3) Regulations may be made for the purpose of securing the proper maintenance and administration of creches provided under this section, and generally for securing the health, safety and proper care of the children in such creches.

(4) Without prejudice to the generality of the powers conferred by subsection (3), regulations may be made prescribing the conditions which shall be complied with in relation to creches provided under this section, including conditions as to—

(a) the situation, construction, maintenance and cleanliness of such creches ;

- (b) the minimum size of the wards or rooms of such creches and the minimum floor space therein which shall be allowed for each child ;
- (c) the provision of adequate washing, latrine and other facilities for those using such creches ; and
- (d) the equipment and staff of such creches.

Provision of nursing intervals for nursing mothers.

12B. The employer of a woman worker in any mine, estate, factory or prescribed establishment shall, if she is nursing a child under one year of age, allow her, in any period of nine hours, two nursing intervals at such time as she may require. Each nursing interval shall, where a creche or other suitable place is provided by such employer to such worker for nursing such child, be not less than thirty minutes, and, where no creche or other suitable place is so provided, be not less than one hour, and shall be in addition to any interval provided to such worker for meals or rest under any written law and be regarded, for all the purposes of her employment, as time during which she has worked in her employment.”.

Amendment of section 13 of the principal enactment. [§ 6, 24 of 1962.]

8. Section 13 of the principal enactment is hereby amended as follows :—

- (a) in subsection (1) of that section, by the substitution,—
 - (i) for the expression “ Commissioner may ”, of the expression “ Commissioner or any special officer may ” ;

- (ii) for the expression "Ordinance, and", of the expression "Ordinance or a copy of the whole or a part of any such register of women workers as he may be required by any regulation to maintain, and"; and
- (iii) for the expression "return to the Commissioner", of the expression "return or copy to the Commissioner or that special officer"; and
- (b) in the marginal note to that section, by the substitution, for the word "information.", of the words "information or copies of registers of women workers."

9. Section 14 of the principal enactment is hereby amended as follows:—

Amendment
of section 14
of the
principal
enactment.
[§ 5, 6 of 1958.]
[§ 7, 24 of 1962.]

- (A) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:—

"(1) The Commissioner or any special officer shall have the power—

- (a) to enter and inspect at all reasonable hours by day or night, for the purpose of ascertaining whether the provisions of this Ordinance are being complied with, any factory, estate, mine or prescribed establishment where women workers are employed;
- (b) to examine any register of women workers required by any regulation to be maintained by the employer of such workers;
- (c) where any such register is not available for examination at the time of the inspection of such factory, estate, mine or prescribed establishment, to require the production of that register for examination at his office or at such

factory, estate, mine or prescribed establishment ; and

(d) to interrogate any person whom he finds in such factory, estate, mine or prescribed establishment and whom he has reasonable cause to believe is the employer of the women workers employed therein or is a worker employed therein." ; and

(B) by the insertion, immediately after subsection (1) of that section, of the following subsection :—

" (1A) It shall be the duty of the employer of women workers in any factory, estate, mine or prescribed establishment to furnish the information required by the Commissioner or a special officer in inquiries made from that employer, for the purpose of ascertaining whether the provisions of this Ordinance are being complied with, during an inspection of such factory, estate, mine or prescribed establishment."

Amendment
of section 15
of the
principal
enactment.
[§ 8, 24 of 1962.]

10. Section 15 of the principal enactment is hereby amended as follows :—

(a) in subsection (1) of that section, by the substitution, for the words "this Ordinance.", of the words "this Ordinance, or in respect of all matters for which regulations are required or authorized to be made under this Ordinance." ; and

[§ 6, 6 of 1958.]

(b) in subsection (2) of that section, by the substitution, in paragraph (c) of that subsection, for the words "mines, and shops ;", of the words "mines and prescribed establishments ;".

11. Section 16 of the principal enactment is hereby repealed and the following new section substituted therefor :—

Replacement
of section 16
of the
principal
enactment,
[§ 7, 6 of 1958.]

“Offences
and
penalties.

16. (1) Any person who, being an employer,—

- (a) acts in contravention of or fails to comply with any provision of this Ordinance or of any regulation made thereunder, or
- (b) makes or causes to be made any statement which he knows to be false in any return or information which is required under this Ordinance or a regulation made thereunder and which is furnished by him or caused by him to be furnished, or
- (c) makes or causes to be made any entry which he knows to be false in any record, register or book which is maintained by him under this Ordinance or any regulation made thereunder, or
- (d) hinders, obstructs or molests any officer in the exercise or performance of the powers or duties conferred or imposed on that officer by this Ordinance or any regulation made thereunder,

shall be guilty of an offence under this Ordinance and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees.

(2) On the conviction of any employer for the offence of failing to pay maternity benefits to any woman worker in accordance with the provisions of this Ordinance, the court may, in addition to any other sentence, order the employer to pay such sum as may be found by the court to be due as such benefits to such worker. Any sum ordered to be paid under this subsection may be recovered in the same manner as a fine."

Amendment
of section 21
of the
principal
enactment.
[§ 8, 6 of 1958.]

12. Section 21 of the principal enactment is hereby amended as follows:—

(a) by the insertion, immediately after the definition of "Commissioner", of the following new definition:—

"confinement" means labour resulting in the issue of a child whether alive or dead, or the issue of a viable foetus, and the expression "confined" shall be construed accordingly;'

[§ 8, 6 of 1958.]

(b) in the definition of "employer", by the substitution, in paragraph (a) of that definition,—

(i) for the words "a shop, mine or factory," of the words "a mine, factory or prescribed establishment," and

(ii) for the words "the shop, mine or factory;'", of the words "the mine, factory or prescribed establishment;";

[§ 8, 6 of 1958.]

(c) in the definition of "employment", by the substitution, for the words "a shop, mine, estate or factory;'", of the words "a mine, estate, factory or prescribed establishment;";

[§ 8, 6 of 1958.]

(d) in the definition of "estate", by the substitution, for the words "cardamoms or coconuts;'", of the words "cardamoms, coconuts, paddy or any other agricultural plantation;";

- (e) by the substitution, for the definition of "factory", of the following new definition:— [§ 8, 6 of 1958.]
 "factory" has the same meaning as in the Factories Ordinance;';
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- (f) by the insertion, immediately after the definition of "prescribed", of the following new definition:— [§ 8, 6 of 1958.]
 "prescribed establishment" means any establishment—
 (a) prescribed by name; or
 (b) in which any prescribed trade, business, industry or occupation is carried on;';
- (g) by the omission of the definition of "shop"; [§ 8, 6 of 1958.]
- (h) by the insertion, immediately after the definition of "special officer", of the following new definition:— [§ 2, 1 of 1966.]
 "viable foetus" means a foetus of at least twenty-eight weeks' gestation and, in the event of there being any doubt, one of the following conditions shall be satisfied for a foetus to be considered twenty-eight weeks old:—
 (a) the length of the foetus shall be at least twelve inches; or
 (b) the weight of the foetus shall be at least two pounds.'; and
- (i) in the definition of "woman worker", by the substitution, for all the words from "means" to "ten or more persons are employed," of the following:— [§ 8, 6 of 1958.]
 "means a woman (other than a woman employed in or about the business of the office or clerical department of any mine, factory, estate or prescribed establishment or a woman whose employment is of a casual nature) employed on wages in any mine, factory, estate or prescribed establishment in which five or more persons are employed,".