

MATERNITY BENEFITS ORDINANCE

Ordinances

Nos. 32 of 1939,
35 of 1946.

AN ORDINANCE TO MAKE PROVISION FOR THE PAYMENT OF MATERNITY BENEFITS TO WOMEN WORKERS AND FOR OTHER MATTERS INCIDENTAL TO THE EMPLOYMENT OF SUCH WOMEN BEFORE AND AFTER THEIR CONFINEMENT.

Acts

Nos. 26 of 1952,
6 of 1958,
24 of 1962,
1 of 1966,
13 of 1978,
52 of 1981,
43 of 1985.

[28th July, 1941]

Short title.

1. This Ordinance may be cited as the Maternity Benefits Ordinance.

Women worker not to be employed for four weeks after her confinement.

2. No employer shall knowingly employ a woman worker at any time during the period of four weeks immediately following her confinement.

Period for which maternity benefits must be paid.

3. (1) The period for which any woman shall be entitled to the payment of maternity benefit shall be -

[§ 2.43 of 1985.]

(a) twelve weeks, that is to say two weeks up to and including the day of her confinement and ten weeks immediately following that day, if the confinement results in the issue of a live child, and such woman has, at the date of such confinement, no child or has one child;

(b) six weeks, that is to say two weeks up to and including the day of her confinement and four weeks immediately following that day -

(i) if the confinement results in the issue of a live child, and such woman has, at the date of such confinement, two or more than two children;

(ii) if the confinement does not result in the issue of live child:

Provided however, where such woman has worked in her employment for any number of days during the aforesaid period of two weeks referred to in paragraph (a) and paragraph (b), she shall be entitled to the payment of maternity benefit for that number of days immediately after her confinement commencing the day immediately after the date on which the aforesaid period of ten weeks or four weeks as the case may be, ends.

(2) If a woman dies during the twelve weeks referred to in paragraph (a) or six weeks referred to in paragraph (b) of subsection (1), the maternity benefit shall be payable only for the days up to and including the day of her death.

Liability of employer and rate of maternity benefit.

[§ 3, 52 of 1981.]
[§ 3, 43 of 1985.]

*5. (1) Subject to the provisions of subsection (3) and (4), the employer of a woman worker shall pay to such worker maternity benefit at the prescribed rate -

(a) for the entirety of the period of two weeks immediately preceding the confinement and of the period of ten weeks immediately following her confinement if such confinement results in the issue of a live child, and such worker has, at the date of such confinement, no child or has one child; and

(b) for the entirety of the period of two weeks immediately preceding the confinement and of the period of four weeks immediately following her confinement -

*Section 4 repealed by Act, No. 13. of 1978.

- (i) if the confinement results in the issue of a live child, and such worker has, at the date of such confinement, two or more than two children:
- (ii) if the confinement does not result in the issue of live child :

Provided however, where such woman worker has worked in her employment on any day during the aforesaid period of two weeks referred to in paragraph (a) and paragraph (b), immediately preceding her confinement, she shall be entitled to maternity benefit, for that day for that part of the period which precedes that day after her confinement.

[§ 3,24 of 1962.] *(3) Where the Commissioner has issued to any employer a written certificate which states that such employer is an employer who has made arrangements for providing for women workers employed on his estate such alternative maternity benefits as may be prescribed, such employer shall provide, in lieu of the maternity benefits referred to in subsection (1), those alternative maternity benefits -

[§ 3,24 of 1962.] (a) to every woman worker who is resident on such estate; and

[§ 3,24 of 1962.] (b) to every woman worker who is not resident on the estate and who has, prior to her confinement, given notice in the prescribed manner to such employer of her desire to receive those alternative maternity benefits.

[§ 3,24 of 1962.] (4) Any woman worker referred to in subsection (3) who refuses to accept from her employer the alternative maternity benefits referred to in that subsection shall not be entitled to receive the maternity benefit referred to in subsection (1).

[§ 3,24 of 1962.] (5) A certificate issued to any employer under subsection (3) shall be liable to be cancelled by the Commissioner, if the Commissioner is satisfied, after such inquiry as he may deem necessary, that the employer has ceased to make arrangements for providing for women workers on his estate the alternative maternity benefits referred to in that subsection.

[§ 3,24 of 1962.] (6) Where a certificate issued to any employer of an estate under subsection (3) is cancelled by virtue of the provisions of subsection (5), the employer shall pay to the women workers on his estate, the maternity benefit referred to in subsection (1).

(7) Where payment of money in cash is to be part of the alternative maternity benefits referred to in subsection (3), the Minister shall not prescribe as the amount of such payment any sum which exceeds, or any sums which in the aggregate exceed, four sevenths of the total amount payable as maternity benefit under subsection (1).

(8) In the computation of the periods in respect of which payments are made under this section, Sundays and holidays shall be taken into account.

Women not to claim benefits, in respect of the same confinement, from more than one employer.
[§ 4,35 of 1946.] 6. Nothing in the provisions of section 4 or section 5 shall be deemed to entitle any woman to claim either the maternity benefit or the alternative maternity benefits referred to in this Ordinance from more than one employer in respect of the same confinement.

Notice to the employer of confinement or expected confinement.
[§ 4, 43, of 1985.] 7. (1) A woman worker may, prior to her confinement, give notice to her employer that she expects to be confined within a month from the date of such notice.

(2) A woman worker who has been confined shall, within one week of her confinement, give notice to her employer of the date on which she was confined and for the purpose of ascertaining the number of days she will be permitted to absent herself from the employment specify the number of children she has on such date on which was confined.

*Subsection (2) repealed by Act, No. 52, of 1981.

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(3) A woman worker who gives notice under subsection (1) or subsection (2) may in such notice nominate some other person to whom her maternity benefit may be paid on her behalf; and any payment of any maternity benefit made to the person so nominated shall, for the purposes of this Ordinance, be deemed to be payment to the woman worker who nominated such person.

[§ 4,43 of 1985.]

*(4) The employer shall on receipt of a notice from a woman worker under subsection (1) or subsection (2), permit that woman worker to absent herself from employment-

(a) for two weeks immediately preceding, and ten weeks immediately following her confinement if the confinement results in the issue of a live child, and such woman has, at the date of such confinement, no child or has one child;

(b) for two weeks immediately preceding and four weeks immediately following her confinement -

(i) if the confinement results in the issue of a live child, and such woman has, at the date of such confinement, two or more than two children;

(ii) if the confinement does not result in the issue of a live child:

Provided, however, where such woman worker has worked in her employment for any number of days during the aforesaid period of two weeks referred to in paragraph (a) and paragraph (b), she shall be permitted to absent herself from employment for that number of days after her confinement commencing from the day immediately after the date on which the aforesaid period, ten weeks or four weeks, as the case may be, ends.

Payment of maternity benefit.

8. The amount of maternity benefit for the period up to and including the day of confinement shall be paid by the employer to the woman within forty-eight hours of the production of such proof of confinement as may be prescribed. The amount due for the subsequent period shall be paid to the woman in two instalments at the end of the second and the fourth week, respectively, after her confinement.

[§ 4,24 of 1962.]

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).

Payment of maternity benefit accrued due before death of woman.

9. If a woman worker entitled to maternity benefit under the provisions of this Ordinance dies during the period for which she is entitled to such benefit, the employer shall pay the amount of maternity benefit due to the person nominated in the notice given under section 7(3) or, if there is no such person, to her heirs-at-law.

Woman worker not to be given notice of dismissal during authorised absence from employment.

10. When a woman worker absents herself from work in accordance with the provisions of this Ordinance, 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.

Employment not to be terminated because of pregnancy or confinement or of illness in consequence thereof. [§ 3,6 of 1958.]

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. [§ 3,6 of 1958.]

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.

*Subsection (5) repealed by Act, No. 52. of 1981.

(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).

Right to maternity benefits unaffected by notice of dismissal in specified circumstances.

11 (1) No notice of dismissal given without sufficient cause by an employer to a woman worker within a period of five months before her confinement shall have the effect of depriving her of any maternity benefit or alternative maternity benefits to which but for such notice she would have been, or would on or before the date of her confinement have become, entitled under this Ordinance.

(2) If any question arises as to whether any notice of dismissal given under subsection(1) was or was not given for sufficient cause, it shall be referred to the Commissioner whose decision shall be final.

Liability to pay maternity benefit to be a first charge on assets.
[§ 13, of 1978.]

12. The liability of an employer to pay any sum of money as maternity benefits to a woman worker employed by him in any trade shall be a first charge on the assets of that trade.

Establishment and maintenance of creches.
[§ 4, 13 of 1978.]

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

[§ 4,13 of 1978.]

(2) The Minister may, for the purposes of this section, prescribe a number for a trade or a branch of a trade, having regard to the number of women workers employed in, and the nature of the work a woman worker is required to perform in, such trade or such branch.

[§ 5,24 of 1962.]

(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.

[§ 5, 24 of 1962.]

(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 of rooms of such creches and the minimum floor space therein which shall be allowed for each child;
- (c) the provisions 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.
[§ 5,13 of 1978.]

12B. The employer of a woman worker in any trade 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 times as she may require. Each interval shall, where 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 the purposes of her employment, as time during which she has worked in her employment.

Powers to obtain information or copies of registers of women workers.
[§ 6,24 of 1962.]

13. (1) The Commissioner or any special officer may at any time by notice communicated to any employer require him to furnish before a specified date a return containing such particulars as may in the opinion of the Commissioner be necessary for the purposes of this Ordinance or a copy of the whole or part of any such register of women workers as he may be required by any regulation to maintain, and it shall be the duty of such employer, when so required, to furnish such a return or copy to the Commissioner or that special officer before that date.

[§ 6, 24 of 1962.] (2) Any notice of the Commissioner under subsection (1) shall be deemed to have been duly communicated to any employer to whom such notice is applicable if it is -

- (a) published in the *Gazette*; or
- (b) sent by letter posted to such employer at his usual place of business or residence.

Powers of Inspection.
[§ 6,13 of 1978.]

14. (1) The Commissioner or any special officer shall have the power-

- (a) to enter and inspect at all reasonable hours by day and night for the purpose of ascertaining whether the provisions of this Ordinance have been complied with, any premises or place in which women workers are employed in any trade;
- (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 place or premises, to require the production of that register for examination at his office or at such place or premises; and
- (d) to interrogate any person whom he finds in any such place or premises and whom he has reasonable cause to believe is the employer of women workers in the trade carried on therein or is a worker employed therein.

[§ 6,13 of 1978.]

(1A) It shall be the duty of the employer of women workers in any trade carried on in any place or premises to furnish the information required by the Commissioner or a special officer inquires made from that employer, for the purposes of ascertaining whether the provisions of this Ordinance have been complied with during an inspection of such place or premises.

(2) The Commissions and every special officer shall be a public servant within the meaning of the Penal Code.

Regulations.
[§ 8,24 of 1962.]

15. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance, or in respect of all matters for which regulations are required or authorized to be made under this Ordinance.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:-

[§ 7,13 of 1978.]

- (a) any matter required by or stated in this Ordinance to be prescribed;
- (b) the preparation, maintenance and inspection of registers of women workers and the particulars to be entered in such registers;
- (c) the inspection of premises and places in which women workers are employed in any trade;
- (d) the manner of giving and serving notices under this Ordinance and the maintenance of notice-boards and notice-books;
- (e) the method of payment of maternity benefit in so far as provision has not been made therefor in this Ordinance;
- (f) the alternative maternity benefits required to be prescribed for the purposes of the exemption referred to in subsection (3) of section 5;
- (g) the duties and powers of a special officer under this Ordinance;
- (h) other matters incidental to or connected with the matters hereinbefore enumerated.

(3) No regulation shall have effect unless it has been approved by Parliament. Notification of such approval shall be published in the *Gazette*.

(4) Every regulation shall, on publication of the notification of the approval of that regulation under subsection (3), be as valid and effectual as if it were herein enacted.

Offences and penalties.
[§ 7, 6 of 1958.]

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.

Prosecutions not to be instituted except with sanction of Commissioner.

17. No prosecution for any offence against this Ordinance or any regulation made thereunder shall be instituted except by the Commissioner or with his written sanction.

Prosecutions to be instituted within six years of date of offence.
[§ 8,13 of 1978.]

18. No court shall take cognizance of or convict a person for, any offence against this Ordinance or any regulation made thereunder, unless complaint thereof has been made within six years of the date on which the offence was committed. In computing the period of six years aforesaid, the time, if any, taken for the purpose of obtaining the previous sanction of the Commissioner shall be excluded.

Contracting out.

19. Any contract or agreement, whether made before or after the 28th day of July, 1941, whereby a woman relinquishes any right under this Ordinance shall be null and void in so far as it purports to deprive her of that right or to remove or reduce the liability of any person to pay maternity benefit under this Ordinance.

Application of other written law.

20. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of any other written law relating to the employment or remuneration of women or women workers and the conditions of such employment.

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Interpretation.	21. In this Ordinance unless the context otherwise requires -
	“Commissioner” means the person for the time being holding the office of Commissioner of labour, and includes any person for the time being holding the office of Deputy Commissioner of Labour;
[§ 8, 6 of 1958.]	“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;
[§ 9, 13 of 1978.]	“employer” means any person who on his own behalf employs or on whose behalf any other person employs any woman worker; and includes any person who on behalf of any other person employs any woman worker;
[§ 13, of 1978.]	“employment” with its grammatical variations and cognate expressions means, when used with reference to a woman or a woman worker, employment in any trade;
	“maternity benefit” means the amount of money payable under the provisions of this Ordinance to a woman worker;
[§ 9, 13 of 1978.]	“office” has the same meaning as in the Shop and Office Employees (Regulation of Employment and Remuneration) Act;
	“prescribed” means prescribed by this Ordinance or by regulation;
	“regulation “ means a regulation made under this Ordinance by the Minister;
[§ 9, 13 of 1978.]	“shop” has the same meaning as in the Shop and Office Employees (Regulation of Employment and Remuneration) Act;
[§ 9, 13 of 1978.]	“special officer” means any Deputy or Assistant Commissioner of Labour, any inspector of the Department of Labour, or any person appointed by the Commissioner in writing for the purpose of enforcing the provisions of this Ordinance;
	“trade” includes any industry, business, undertaking, occupation, profession or calling carried out, performed or exercised by an employer or a worker, and any branch of ,or any function or process in, any trade, but does not include any industry, business or undertaking which is carried on mainly for the purpose of giving an industrial training to juvenile offenders or orphans or to persons who are destitute, dumb, deaf or blind;
[§ 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;
[§ 9, 13 of 1978.]	“woman worker” means a woman (other than a woman employed in or about the business of a shop or an office or a woman whose employment is of a casual nature) employed on wages in any trade, whether such wages are calculated by time or by work done or otherwise and whether the contract of employment or service was made before or after the commencement of this Ordinance, and whether such contract is expressed or implied, oral or in writing.