

THE KHYBER PAKHTUNKHWA MATERNITY BENEFITS ACT, 2013.

(KHYBER PAKHTUNKHWA ACT NO. XVIII OF 2013)

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**AN
ACT**

to consolidate and rationalize the law pertaining to the employment of women, under certain natural conditions, in establishments in Province of the Khyber Pakhtunkhwa.

WHEREAS it expedient to consolidate and rationalize the law pertaining to the employment of women, under certain natural conditions, in establishments in Province of the Khyber Pakhtunkhwa.

It is hereby enacted as follows:

1. Short title, extent, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Maternity Benefits Act, 2013.

(2) It shall extend to the whole province of Khyber Pakhtunkhwa.

(3) It shall apply to women workers, under certain natural conditions, employed in establishments in the Province of the Khyber Pakhtunkhwa.

(4) It shall come into force at once.

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 for the purpose of this Act;

(b) “Court” means the Labour Court established under the Khyber Pakhtunkhwa Industrial Relations Act, 2010;

(c) "Director Labour" means the head of the Directorate of Labour of the Province, by whatever name called;

(d) “employer” means any person who has ultimate control over the appointment of a woman;

- (e) “establishment” means an organization, whether industrial establishment or commercial establishment as defined in the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968;
- (f) “Government” means Government of the Khyber Pakhtunkhwa;
- (g) “Inspector” means a person appointed as Inspector under section 8 of this Act;
- (h) “maternity benefit” means the amount payable under the provisions of this Act to a woman employed in an establishment, under certain natural conditions associated with a woman;
- (i) “medical practitioner” means a registered medical practitioner nominated for the purposes of this Act by the employer with the approval of the Inspector;
- (j) “prescribed” means prescribed by rules made under this Act;
- (k) “Province” means the Province of the Khyber Pakhtunkhwa;
- (l) “still-born child” means any child which has issued forth from its mother after the, twenty-eight weeks of pregnancy and which did not at any time after being completely expelled from its mother, breathe or show any other signs of life;
- (m) “wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behavior of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include-
 - (i) the value of any house accommodation, supply of light, water, medical attendance or other maternity, or of any service excluded by general or special order of Government;

- (ii) any contribution paid by the employer to any pension fund or provident fund;
- (iii) any travelling allowance or the value of travelling concession;
- (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (v) any gratuity payable on discharge.

(n) “woman” means a woman worker.

(2) Expressions used in this Act but not defined herein shall have the meaning respectively assigned to them in other labour laws.

3. Employment of, or work by, women in factories prohibited during certain periods.--- ¹[(1) No employer shall knowingly employ a woman and no woman shall engage in employment in any factory or, industrial or, commercial establishment during the six weeks following the day on which she is delivered of a child.

²[(2) No employer shall ask any employed woman to do any work which is of an arduous nature or which involves long hours of standing or which is likely to adversely affect her health for a period of one month immediately-

- (a) preceding the period of six weeks, before the date of her expected delivery; and
- (b) succeeding six weeks after the date of her delivery.]

4. Right to and liability for payment of maternity benefit.---(1) 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 day on which she delivers the children for each day of six weeks succeeding the 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.

¹Re-numbered vide Khyber Pakhtunkhwa Act No. VIII of 2015

²Inserted vide Khyber Pakhtunkhwa Act No. VIII of 2015

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; and
- (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 day 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 the 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 period, within six weeks of the production of such proof; and
- (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 sub-section (1) of section 5 for the benefit of all her legal representatives, or, if she has made no such representatives 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 up to and including the day of her death, provided that any sums 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, 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 women 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) 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.

(3) If any question arises as to whether any notice of dismissal is one to which sub-section (1) applies, such question shall be referred to the Inspector and an appeal from the Inspector's decision shall, within sixty days thereof, lie to the Director Labour, whose decision shall be final.

8. Appointment of Inspector.---Government may appoint Inspector for the purposes of this act through notification in the official Gazette and his territorial jurisdiction be determined therein.

9. Penalty for working or payment during permitted period of absence.---If a woman does any work in an 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.

10. 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.

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

(2) Where the Inspector 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 Labour against such decision and the decision of the Director Labour on such appeal shall be, final and shall not be liable to be contested by suit or otherwise.

12. Appeal against refusal to prosecute or grant sanction thereto.---Where on an application by an employer or a women or the person nominated by her or any of her legal representatives, the Inspector 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 thereto appeal to the Director Labour against such order; and the decision of the Director Labour on such appeal which shall be taken after affording, to the applicant, an opportunity of being heard, shall be final.

13. Limitation.---No Court shall take cognizance of any offence against this Act or any rule made there-under unless complaint thereof has been made to the Inspector within six months of the date on which the offence is alleged to have been committed.

14. Protection against discrimination.---No discrimination shall be made on the basis of religion, sect, colour, cast, creed, ethnic back ground in considering and disposing off issues relating to the enforcement of this Act.

15. Powers to frame 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 a combined muster roll and register and the particulars to be entered in such master roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the Khyber Pakhtunkhwa Factories Act 2011;
- (b) the inspection of establishments for the purposes of this Act by the Inspector;
- (c) the exercise of powers and the performance of duties by the Inspector 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 (3) of section 7 or sub-section (2) of section 11 or section 12.

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

16. Exhibition of Abstract.---An abstract of the provisions of this Act and the rules there under 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.

17. Removal of Difficulties.---If any difficulty arises, in giving effect to any provisions of this Act, the Government may, by notification in the official gazette, make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

18. Repeal.---The West Pakistan Maternity Benefits Ordinance, 1958 (Ordinance No. XXXII of 1958) is hereby repealed in its application to the province of the Khyber Pakhtunkhwa.

19. Savings.---(1) Notwithstanding the repeal, anything done, action taken, rule made, and notification or order issued under the repealed Ordinance, shall, so far as

it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made or issued, under this Act, and shall have effect accordingly.

(2) Any document referring to the repealed Ordinance shall be construed as referring to the corresponding provisions of this Act.