

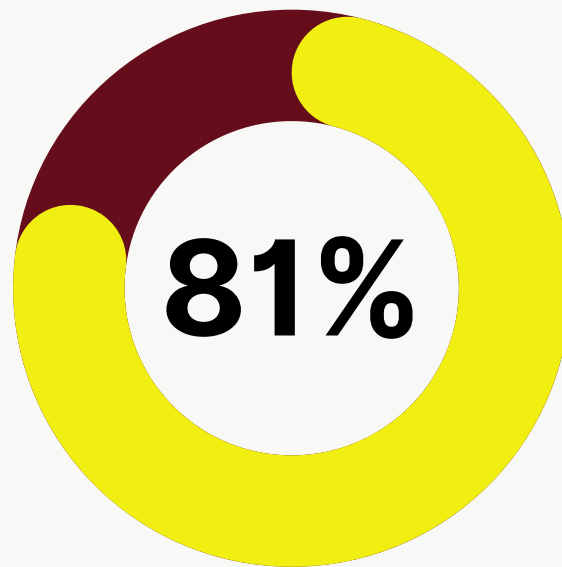
Poll Report – Maternity Benefit

“You never understand life until it grows inside of you.” - Sandra C. Kassis



There are conflicting opinions on whether women employed on contractual basis or as retainers should be entitled to maternity benefits under the Maternity Benefit Act, 1961. Therefore, we conducted a poll on this pressing issue.

And guess what???



**of the voters voted
for a Yes.**

Giving birth to a child is a journey altogether and that journey is full of new experiences and challenges.

A baby is someone you carry inside you for nine months. Is it too much to ask for some time to spend with the baby and to cherish this wholesome experience for a working woman?

For this purpose, the Maternity Benefit Act of 1961 was enacted. The Act is applicable to every establishment and shop in which ten or more people are employed or were employed on any day of the proceeding twelve months.

To avail the maternity benefit from the employer, a woman must have worked in that respective establishment for a period of not less than 80 days in the twelve months immediately preceding the date of her expected delivery. Nowhere in the act it is mentioned that the act is only applicable to permanent woman employees.

Further, in 2017, the Maternity Benefit (Amendment) Act, 2017 introduced some provisions thereby amending the Maternity Benefit Act, 1961. Following changes were introduced through 2017 amendments:



- Time period of maternity leave was increased from 12 to 26 weeks for working women with less than two surviving children.
- Work from home can be assigned on conditions mutually agreed by the employer and woman depending upon the nature of the work assigned to a woman.
- The crèche facility must be provided by establishments having fifty or more employees following by allowing four visits a day to the crèche.
- Woman who legally adopts a child below the age of three months or a commissioning mother will be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over

The Ministry of Labour through a clarification dated 12th April 2017, MANU/LABR/0053/2017 stated that “the Act is applicable to all women who are employed in any capacity, directly or through any agency either on contractual or as a consultant”.



Even the **Supreme Court in the case of Deepika Singh v. Central Administrative Tribunal and Ors. (MANU/SC/1056/2022; 2022 INSC 834)** has observed that employer cannot deny maternity benefit to a woman who is having her first biological child and have two surviving children born out of her husband's first marriage.

Also in the **Secretary, Managing Committee of Loreto Convent Tara Hall School v. Sharu Gupta and Ors. (MANU/HP/2472/2023; 2023 HHC 14597)**, the Himachal Pradesh High Court observed that to conceive, to give birth and take care of a child is not only the fundamental right of the woman but also a pious role to be performed by her for existence of Society. Keeping in view the arduous nature of this duty, she must be provided with facilities to which she is entitled. The right to become a mother is one of the most important human rights and must be protected at all costs; therefore, provisions of Maternity Benefit Act must be enforced strictly enforced

However, even after the precedents and no specific exclusion of contractual women in both 1961 and 2017 Acts, **Delhi High Court in Delhi State Legal Services Authority (DSLISA) v. Annwasha Deb (MANU/DE/2951/2024, 2024:DHC:3146-DB)** has denied the benefit of Maternity Benefit Act, 1961 (Act) to a female advocate appointed in a professional capacity with Legal Service Authority on the ground that she cannot be considered as employee who is appointed as per the Recruitment Rules of the Authority.



Therefore, it can be inferred from the results of the poll and the precedents laid down by the courts that every woman is entitled to receive Maternity benefits irrespective of their nature of employment or any other conditions.