

# **Primer for Non-profit Organizations on the Maternity Benefit Act, 1961**



# Why a Primer on Maternity Benefit Act for Non-profits?

The Maternity Benefit Act is a key legislation that recognises the gender skewed dynamics of care giving for children in India and provides maternity entitlements to women and commiserating mothers, vis-à-vis their employers in India.

In our role as attorneys for non-profits in India, we at Pacta perceived a general misunderstanding and underestimation of applicability of the Maternity Benefit Act to non-profit institutions. So, we created this primer as a ready to use resource for non-profits to proactively support women employees and integrate maternity benefits as part of their organisational culture, fostering equitable workplaces that value both professional and personal responsibilities.

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Pacta is a social sector exclusive law firm and policy think tank bridging gaps in law and policy implementation through rigorous research.

**Disclaimer -** This primer aims to provide general guidance on navigating compliances under the Maternity Benefit Act for non-profits. For detailed advice, non-profits are encouraged to refer to the full text of the Act and its amendments and consult legal experts as needed. The authors are not liable for any errors or omissions.

# Introduction

The Maternity Benefit Act, 1961 (the “MB Act”) aims to protect the employment of women during and after childbirth and provides them with maternity benefits. It ensures that women employees are entitled to paid leave and other benefits during this crucial period, allowing them to care for their child without fear of losing their jobs or income. The MB Act has been amended over the years, with significant changes introduced in the Maternity Benefit (Amendment) Act, 2017, to further enhance the benefits available to women employees

This primer is divided into four parts:

- **01 Part A: Eligibility**– Understanding the Scope and Applicability of the Maternity Benefit Act
- **02 Part B: Entitlements** – Rights and Benefits Under the Maternity Benefit Act
- **03 Part C: Compliance** – Employer Responsibilities and Implementation Guidelines
- **04 Part D: Miscellaneous** – Additional Provisions, Exemptions, and Special Cases

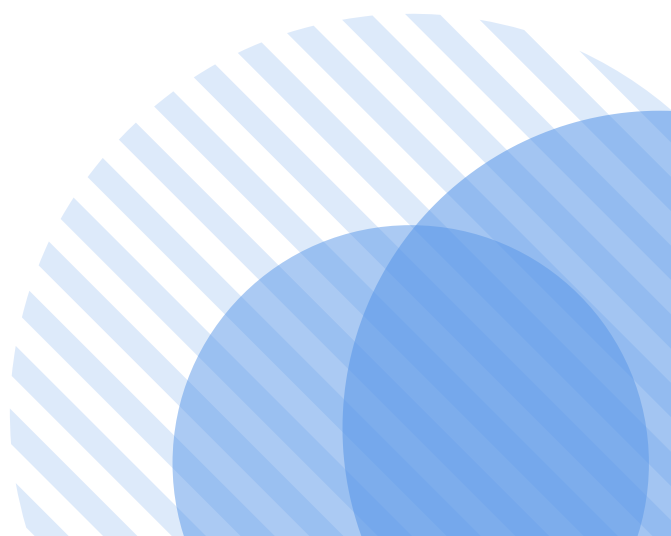


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## **Part A: Eligibility –**

Understanding the Scope and Applicability of the Maternity Benefit Act to non-profits and Employees of non-profits



## 1. Who does the MB Act apply to?

The MB Act, inter alia, applies to:

- Every shop and establishment employing ten or employees on any day of preceding twelve months;
- Every factory, mine or plantation including factories, mines and plantations belonging to the government
- Establishments where persons are employed for the exhibition of equestrian, acrobatic and other performances; and
- Such other shops or establishments notified by the appropriate government.

## 2. Does the MB Act apply to non-profits?

Yes, the MB Act is applicable to any establishment, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. Therefore, the MB Act will be applicable to non-profits, including trusts, societies or Section 8 companies that have 10 or more persons employed in their organisation.

### Illustration 1:



Anita, works at X Foundation, a non-profit trust with 12 staff members. She is pregnant.



She applies for maternity leave but the organization hesitates, assuming the MB Act doesn't apply to non-profit organizations.



The law mandates that any establishment with 10 or more employees—be it a trust, society, or Section 8 company—must provide maternity benefits. Foundation grants Anita her rightful benefits.



### 3. Does the MB Act apply to part-time employees or consultants?

Yes, the MB Act applies to part-time employees and consultants. It extends to women employed, whether directly or through any agency, for wages in any establishment. This includes contractual, casual, fixed-term employees, and consultants. However, eligibility for maternity benefits under the Act requires a woman to have worked with the same employer for at least 80 days in the 12 months preceding her expected delivery date. The Delhi High Court in the case of **Neelam Kumari vs The University Of Delhi & Ors** emphasized that maternity benefits cannot be denied to a female employee solely because her employment is contractual.

#### Illustration 2:



Y Foundation employs 30 staff members, including Priya, a contractual graphic designer.



She becomes pregnant. Having worked for over 4 months in the past 12 months with the foundation, she applies for maternity benefits.



Under the MB Act all women employees—whether regular, contractual, or casual—are entitled to maternity benefits if they meet the 80-day work requirement. Foundation grants Priya her rightful benefits.

### 4. How long must a woman have been working with a non-profit organization to be eligible for maternity benefits?

To be eligible for maternity benefit, a woman must have worked for the employer for at least 80 days in the 12 months preceding the expected delivery date. Days when the woman was laid off or on paid holidays are counted towards these 80 days. The Delhi HC in the case of **Dr. Baba Saheb Ambedkar Hospital Govt. of NCT of Delhi & Anr. vs. Dr. Krati Mehrotra**, clarified that maternity leave must be granted even to employees on ad-hoc contracts, such as the respondent, who served for 89 days with multiple extensions.

#### Illustration 3:



Teena, who works as a full-time legal associate at X Foundation, is pregnant.



Her expected date of delivery is on August 15th, 2024. She has been working with the organization since January 1st, 2024. As of July 30th, 2024, she has already worked for 227 days in the 12 months preceding her due date.



She is eligible for maternity benefits provided by her employer.



## 5. Can non-profits provide maternity benefits to employees even after the contractual period?

Yes, maternity benefits can extend beyond the contractual period, and non-profits are legally required to provide them if the employee meets the eligibility criteria under the MB Act, which is 80 days in the 12 months preceding the expected delivery date.

### Illustration 4:



Y Foundation, a non-profit focused on women's empowerment, hired Rina on a one-year contract from January to December.



In October, she was six months pregnant and applied for maternity leave starting in November.



Though her contract ended in December, she had already completed the required 80 days of work and was entitled to all the maternity benefits under the MB Act.

**Part B: Entitlements –**  
Rights and Benefits Under  
the Maternity Benefit Act?



## 6. What are the benefits available under the MB Act?



Maternity leave (before and after the pregnancy); (Q 7-8)



Payment of maternity benefits (wages); (Q 9)



Accommodations for working; (Q 10-12)



Medical bonus; (Q 13)



Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage; and (Q 14-16)



Post birth accommodations. (Q 17-18)

## 7. What is the time period for which maternity leave and benefits can be availed?

- Maximum Maternity Leave Period: The maximum period for maternity leave is 26 weeks.
- Pre-Delivery Leave: Out of the total 26 weeks, 8 weeks can be taken before the expected delivery date.

### Illustration 5:



Kavya, a Research Analyst at X Foundation whose expected date of delivery is March 1, 2025, can take up to 8 weeks of maternity leave before her due date, allowing her to start her leave on January 5, 2025.

After delivery on March 1, 2025, she can avail the remaining 18 weeks of maternity leave, extending her leave until June 25, 2025.

## 8. For how many children can a woman avail maternity benefit leave for?

A woman is eligible to avail 26 weeks of maternity benefit leave for her first two children. If she has two or more living children, maternity leave is limited to 12 weeks only. Out of these 12 weeks, only 6 weeks can be taken before the expected delivery date.

**Note –** The limitation of two living children applies only to the 26 weeks of maternity benefit leave. Other entitlements, such as wages during the 12-week leave and accommodation benefits, are still available to a woman who already has two or more children.

### Illustration 6:



Dhiya, a Communication Manager at Y Foundation, is pregnant with her third child. She had given birth to twins previously and applied for maternity leave under the MB Act.

Since she already has two living children, her maternity benefit is limited to 12 weeks.

She is eligible to take 6 weeks before her expected delivery date, and the remaining 6 weeks after childbirth.



## 9. Are women employees entitled to payment of their wages while on maternity benefit leave?

Every woman is entitled to her wages from her employer during her period of absence due to childbirth. This payment is based on her average daily wage for the days she takes leave before and after delivery, including the day of delivery. The average daily wage is calculated based on her earnings in the three months prior to her leave, or the minimum wage under the Minimum Wages Act, 1948, whichever is higher.

### Total Earnings before Leave:

Over the three months before her leave, her total earnings amount to:  
 $\text{₹}20,000 + \text{₹}25,000 + \text{₹}25,000 = \text{₹}70,000$

### Average Daily Wage Calculation:

The average daily wage is calculated by dividing her total earnings from the preceding three months by 90 days  
 $\text{₹}70,000/90 = \text{₹}777.78$  (average daily wage)

### Daily Maternity Benefit:

Since Shreya's daily wage of ₹777.78 is likely above the minimum wage set under the Minimum Wages Act, she is entitled to receive this amount as her daily maternity benefit. She will receive payment for the 26 week duration of her absence at the rate of ₹777.78 per day.

### Illustration 7:



Shreya, who is a content writer in X Foundation earns INR 20,000 per month from January to March 31, 2025. Thereafter, she gets a raise and starts earning INR 25,000 per month from April 1, 2025 onwards.

Shreya plans to avail her maternity leave starting June 1.

Her **Total Earnings (Over the three months before her leave):**  
₹70,000  
**Average Daily Wage :**  
₹777.78

### **10. What protections does the MB Act provide to women during pregnancy and after delivery that non-profits need to be aware of?**

A woman cannot work or be employed for six weeks following delivery, miscarriage, or medical termination of pregnancy. During pregnancy, she can request lighter duties that avoid physical strain, long hours of standing, or tasks that could harm her health or the foetus. This right applies one month before the expected delivery and during the six-week postpartum period if she does not take leave.

### **11. What are the maternity benefit provisions for adoptive and commissioning mothers?**

A woman who adopts a child below the age of three months or a commissioning mother (a mother through surrogacy) is entitled to 12 weeks of maternity leave. This period begins from the day the child is handed over to the adoptive or commissioning mother, ensuring they have time to bond with and care for the child.

### **12. Should a non-profit organization permit a woman to work from home after maternity leave?**

Yes, if the nature of the woman's work allows, the employer must permit her to work from home after completing her maternity leave. The terms and duration of work-from-home arrangements are decided mutually between the woman and the employer, providing flexibility for the woman to balance her professional and personal responsibilities.

### **13. Does the provision of providing medical bonus apply to non-profits?**

Yes, non-profits are required to pay medical bonus. The term "medical bonus" refers to a specific, legally mandated payment intended to support women during pregnancy and childbirth. If a woman is entitled to maternity benefits and her employer does not provide free medical care during pregnancy and after childbirth, she is eligible to receive a medical bonus of [INR 3,500]. This bonus is intended to compensate for the lack of medical support and is revised by the relevant State Government or Central Government. *Please confirm the latest bonus with a local counsel or through government notifications.*

### **14. Can women be entitled to leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage?**

Yes. A woman suffering from illness due to pregnancy, delivery, premature birth, miscarriage, medical termination of pregnancy, or a tubectomy operation is entitled to one month of leave with wages at the rate of maternity benefit. This leave is in addition to the maternity benefit leave available to her. This extra leave is available upon production of prescribed proof and is intended to cover any illness specifically arising from the conditions mentioned above.

## 15. Are women entitled to any maternity benefit in the event of a miscarriage?

Yes, maternity benefits can extend beyond the contractual period, and non-profits are legally required to provide them if the employee meets the eligibility criteria under the MB Act, which is 80 days in the 12 months preceding the expected delivery date.

### Illustration 8:



Sunita, a school teacher, experienced a miscarriage and submitted the required medical proof to her employer.

She was granted six weeks of paid leave at her regular maternity benefit rate, allowing her time to recover without financial stress.

## 16. What maternity benefits is a woman entitled to in the case of a neonatal death?

If a woman gives birth to a stillborn child or the child dies upto 28 days after birth, special maternity leave of 60 days shall be granted to the woman. These 60 days shall be in addition to the maternity leave already taken by the woman upto the date of death of the child.

### Illustration 9:



Priya is due to give birth on May 15 and has availed her maternity benefit leave since April 1.

She delivers a still-born child. Priya is entitled to 60 days of special maternity leave from May 15.

## 17. Are there any provisions for nursing breaks?

Women returning to work after delivery are entitled to two nursing breaks a day, in addition to their regular rest periods, for up to 15 months after childbirth. These two nursing breaks are in addition to the woman's regular lunch break.

## 18. Is there any provision for a crèche facility?

Yes, establishments with 50 or more employees must provide a crèche facility and allow women four visits to the crèche per day, including rest breaks. For the purposes of calculating 50 employees, permanent, contract, daily wages and temporary employees are included. The creche facility is provided for employees with children older than 6 years. The employer is obligated to provide one crèche for every 30 children availing the facility. The law is however unclear on whether an employer is to provide the creche on a free basis or paid basis. A common practice is for non-profits to provide the creche facility at subsidised rates.

### Parameters for creche facility -

The crèche should be built within the establishment or within 500 meters from the entrance of the establishment with materials such as lime plaster, cement, etc. The crèche is to be built on the basis of 5 sq.ft. of floor area for each child in the crèche with a minimum of 150 sq. feet in aggregate. Each crèche facility is also required to have a kitchen, space for washing/drying and an adjacent washroom in the ratio of 1 to every 20 children. The crèche should not be situated where there are establishments emitting obnoxious gases, dust, odour or loud noise. The amenities that need to be made available within the crèche such as milk, refreshments, uniforms, soap, etc. The creche must also have an attendant.



**Part C: Compliance –**  
Employer Responsibilities  
and Implementation  
Guidelines



## 19. How does a woman claim benefit from the non-profit institution?

A notice of claim for maternity benefit serves to formally inform the employer that a woman is entitled to claim maternity benefits as per the law. By submitting this written notice, the employee can designate a person to receive the benefits, if she prefers not to receive them directly. It also confirms her intention not to work during the maternity benefit period, ensuring that the employer is aware of her absence and can make necessary arrangements to cover her role during this time. This notice is served in Form D (attached as Annexure I) under Section 6 of the MB Act.

## 20. When should a pregnant woman submit her notice for maternity benefits?

A pregnant woman should submit her notice of maternity benefits at least six weeks before her expected delivery date. This notice must specify the date from which she will begin her maternity leave. However, if she fails to provide this notice during her pregnancy, she is still permitted to submit it as soon as possible after giving birth.

**Note** - In the case of *The Secretary, Managing Committee of Loreto Convent Tara Hall School vs. Sharu Gupta and Ors.*, The Himachal Pradesh High court emphasized Section 6 of the MB Act, which allows pregnant employees to remain absent starting 6 weeks before delivery, even if written notice is delayed, ensuring maternity leave as a substantive right. In the case at hand, the complainant was terminated after verbally informing her employer of her pregnancy but before submitting formal notice. This was reversed by the High Court.

## 21. What obligations does an employer have upon receiving the maternity benefit notice?

Upon receiving the notice of maternity benefit, the employer is obliged to allow the employee to take leave for the duration of her maternity benefit period. Additionally, the employer must pay the maternity benefit **in advance** for the period leading up to the expected delivery, contingent upon the woman providing proof of pregnancy. After childbirth, the employer is required to disburse the benefits **within 48 hours** of receiving proof of delivery, ensuring prompt financial support during this critical time. Even informing through e-mail is treated as a notice.

In practice, we often see employers continue to pay wages out on a monthly basis to maintain liquidity. While the law requires advance payment of maternity benefit for the period leading up to the delivery, non-profits with cash flow concerns may speak with their women employees to continue payments monthly if they are agreeable.

## 22. What happens if a woman does not provide the notice on time?

If a woman does not submit her notice in a timely manner, she is still entitled to receive maternity benefits, provided she meets the eligibility criteria. The law protects her rights by allowing her to claim these benefits despite the lack of notice. In such instances, an inspector has the authority to intervene, either on their own or at the woman's request, to ensure that the benefits are paid within a specified timeframe, thus safeguarding the woman's entitlements.



### 23. What happens to maternity benefits if a woman entitled to them dies before receiving her payments?

If a woman entitled to maternity benefits dies before receiving her payments, the employer must disburse the benefits according to her wishes. If she has designated a nominee in her notice, the benefits will be paid to that person. If no nominee was specified, the payments will go to her legal representative.

If the woman dies after giving birth but leaves behind the child, the benefit continues for the full period of entitlement (26 weeks). However, if the child also dies during this period, the benefit is provided only until the day the child passes away.

### 24. Are non-profits obligated to inform women about the benefits under the MB Act?

Yes, every establishment must inform each woman, both in writing and electronically, about all the benefits available under the MB Act at the time of her initial appointment. Typically, maternity leave is part of the leave policy of an organization.

#### Illustration 10:



Lina is hired as a Human Resources Manager at X Foundation. Upon her initial appointment, she is provided with written notice about the benefits available under the MB Act.



The communication includes:

- Detailed information about maternity leave entitlement, including duration, eligibility, and how to apply.
- An explanation of the medical bonus to cover any pregnancy-related medical expenses.
- Information on nursing breaks once she returns to work after maternity leave.
- A clear process to apply for maternity leave, including required documentation and the timeline for submission.

Lina must also be informed electronically through e-mail or by sharing a copy of the employer's policy regarding maternity benefits compliance.

## 25. Can an employer dismiss a woman during pregnancy and maternity leave?

No. Women who are absent from work due to maternity leave cannot be unlawfully dismissed or have their employment terms negatively altered. If dismissed during pregnancy, they retain their right to maternity benefits or a medical bonus unless the dismissal is due to gross misconduct. Additionally, women who are deprived of these benefits or dismissed can appeal the decision within 60 days to a designated authority, whose ruling will be final.

In ***Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department & Ors.*** the Supreme Court upheld that an employee's right to maternity benefits remains protected even if the employment contract expires during maternity leave. ***The employer cannot terminate employment based solely on the contract's expiration during this period.*** Once the employee qualifies, she is entitled to full maternity benefits, and any attempt to limit these due to contract expiration is a violation

## 26. Can wages be deducted during nursing breaks or light duties?

A woman's wages cannot be deducted for two key reasons: if she is assigned different work due to maternity leave, and for breaks taken to nurse her child. This ensures that women are not financially penalised for taking necessary time off or adjusting their work responsibilities.

## 27. What other reporting or recording obligations does a non-profit have?

Under the MB Act, employers are required to maintain the following records to ensure compliance with maternity benefits provisions.

- **Muster roll** - The employer must prepare and maintain a muster roll in Form A (attached as Annexure II) and shall enter therein particulars of all women workers;
- **Receipt of payment** - A receipt shall be obtained by the employer in Form E (attached as Annexure III) from the person to whom the payment is made;
- **Annual Returns** - In the annual return that an employer submits to the relevant labour authority (under the local shops and establishment act, if applicable), details of the number of women who availed maternity benefits, the nature of benefits provided, and the duration of leave granted must be specified.

The records kept must be preserved for a period of 2 years from their preparation. State specific rules may differ with respect to reporting obligations. Please confirm the applicable obligations with a local counsel.



# **Part D: Miscellaneous – Penalties, Exemptions, and Special Cases**



## 28. What are the penalties for failing to provide maternity benefits by any establishment or non-profits?

Employers who fail to pay maternity benefits or dismiss a woman due to maternity leave can face imprisonment up to 3 months to 1 year and a fine ranging between ₹2,000 and ₹5,000. The court may reduce the imprisonment or impose only a fine if justified. For other violations, the penalty can be up to 1 year of imprisonment, a fine up to ₹5,000, or both. If benefits remain unpaid, the court will recover them and ensure payment to the woman.

## 29. Does the MB Act override internal company policies on maternity leave?

The MB Act establishes a minimum standard for maternity benefits, ensuring that its provisions take precedence over any conflicting terms in other laws, agreements, or contracts, regardless of when they were made. However, if a woman is entitled to more favorable maternity benefits under a separate agreement or law—such as longer leave or better pay—she will still receive those enhanced benefits. Additionally, the MB Act allows a woman to negotiate with her employer for improved maternity benefits beyond the minimum provided by the law. This ensures that the MB Act sets a baseline, while promoting opportunities for better arrangements wherever feasible.

### Illustration 11:



Y Foundation has an internal policy stating that maternity leave is unpaid beyond 12 weeks.



An employee who recently gave birth requests 26 weeks of paid leave as per the MB Act. The company initially denies her request, stating that its internal policy does not allow paid leave beyond 12 weeks.

In this case, Section 27 of the MB Act takes precedence over any inconsistent company policies. As per the Act, she is entitled to 26 weeks of paid maternity leave, regardless of the company's internal policy.

## 30. Can an establishment be exempted from the provisions of the MB Act and what are the conditions for such an exemption?

Yes. The government can excuse certain workplaces from following the Act or parts of it. This happens when the government is sure that these workplaces already give their women employees better maternity benefits than the law requires. To make this official, the government issues a notice in the Official Gazette.



# Annexure



**Annexure I****Maternity Benefit (Karnataka) Rules  
FORM 'D'  
[See Rule 5 (1)]**

Notice under Section 6 of the Maternity Benefit Act, 1961

\_\_\_\_\_(Name of establishment) I, \_\_\_\_\_ (name woman) wife/daughter of \_\_\_\_\_ employed as \_\_\_\_\_ at \_\_\_\_\_ (name of establishment), hereby give notice that I expect to be confined within six weeks next, following from the date of this notice/have given birth to a child on \_\_\_\_\_ (date) and shall be absent from work from \_\_\_\_\_ (date) on \_\_\_\_\_ I shall not work in any establishment during the period for which I receive maternity benefit.

2. For the purpose of Section 7, I hereby nominate \_\_\_\_\_  
\_\_\_\_\_ (here enter name and address of the nominee) to receive maternity benefit and/or any other amount due to me under for the Act in case of my death.

Date

Signature of an attestor in case the woman is not able to sign and signature or thumb-impression affix thumb-impression of woman.



**Annexure II****FORM A [See Rule 3]  
MUSTER-ROLL**

1.	Serial Number.
2.	Name of woman and her father's (or, if married, husband's) name.
3.	Date of Appointment.
4.	Nature of Work.
5.	Dates with month and year in which she is employed, laid off and not employed.

<b>Month</b>	<b>No. of days employed</b>	<b>No. of days laid off</b>	<b>No. of days not employed</b>	<b>Remark</b>
1	2	3	4	5

6.	Date on which the woman gives notice under section 6.
7.	Date of discharge/dismissal, if any.
8.	Date of production of proof of pregnancy under section 6.
9.	Date of birth of child.
10.	Date of production of proof of Delivery/miscarriage/2 [Medical termination of Pregnancy/tubectomy operation/death.]
11.	Date of Production of proof of illness referred to in section 10.

12.	Date with the amount of maternity benefit paid in advance of expected delivery.
13.	Date with the amount of subsequent payment of maternity benefit.
14.	Date with the amount of bonus, if paid, under section 8.
15.	Date with the amount of wages paid on account of leave under section 9.
<sup>1</sup> [15A.	Date with the amount of wages paid on account of leave under section 9A.]
16.	Date with the amount of wages paid on account of leave under section 10 and period of leave granted
17.	Name of the person nominated by the woman under section 6.
18.	If the woman dies, the date of her death, the names of the person to whom maternity benefit and/or other amount was paid, the amount thereof, and the date of payment.
19.	If the woman dies and the child survives, the name of the person to whom the amount of maternity benefit was paid on behalf of the child and the period for which it was paid.
20.	Signature of the employer of 2[the mine or circus] authenticating the entries in the muster-roll.
21.	Remarks column for the use of the Inspector.

**Annexure III**  
**Maternity Benefit (Karnataka) Rules**  
**FORM 'E'**  
**[See Rule 5 (3)]**

Form of receipt of Maternity Benefit

(Name of establishment) I, \_\_\_\_\_ the undersigned, a woman employee / the nominee of \_\_\_\_\_ woman employee/legal representative of woman employee deceased in \_\_\_\_\_ (name of establishment) at in \_\_\_\_\_ District received maternity benefit/ and / or other amount due under the Maternity Benefit Act, 1961, from the employer of the establishment referred to above as detailed below:-  
Rs., being the first instalment of maternity benefit paid on \_\_\_\_\_  
Rs., being the second instalment of maternity benefit after delivery paid on \_\_\_\_\_  
Rs., being the medical bonus under Section 8 of the Act paid on \_\_\_\_\_  
Rs., being the wages for the leave period from \_\_\_\_\_ to \_\_\_\_\_  
Mentioned under Section 9 or 10. My / her confinement / miscarriage took place on \_\_\_\_\_ or I / she fell ill because of pregnancy, delivery, premature birth of a child or miscarriage on \_\_\_\_\_ in consequence I \_\_\_\_\_ her nominee / legal representative have received the aforesaid amounts prescribed in Section 5,8,9 and 10 of the Maternity Benefit Act, 1961.

Date

Signature or thumb impression  
of \*Women employee or her  
nominee or legal representative,  
Signature of an attester in case the  
woman is not able to sign and  
affixes thumb impression.