Introduction

The Ministry of Labour and Employment, Government of India (Ministry of Labour) vide Official Gazette notification dated 31 March 2017 has appointed 1 April 2017 as the date on which the Maternity Benefit (Amendment) Act 2017 (MB Amendment Act) has come into force. However, the relevant provision on the “work from home” option will come into effect from 1 July 2017.

The MB Amendment Act had received Presidential assent on 27 March 2017 and was published in the Official Gazette on 28 March 2017.

Key Amendments

The MB Amendment Act regulates paid maternity leave entitlement and other related benefits for women employed in factories, mines and shops or commercial establishments employing 10 or more employees.

For ready reference, we have summarised below key amendments introduced in the MB Amendment Act:

- **Increased Paid Maternity Leave**: The MB Amendment Act has increased the duration of paid maternity leave available for women employees from the existing 12 weeks to 26 weeks. Under the MB Amendment Act, this benefit could be availed by women for a period extending up to 8 weeks before the expected delivery date and remaining 18 weeks can be availed post childbirth. For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (i.e., 6 weeks pre and 6 weeks post expected date of delivery).

- **Maternity leave for adoptive and commissioning mothers**: The MB Amendment Act extends certain benefits to adoptive mothers as well and provides that every woman who adopts a child shall be entitled to 12 weeks of maternity leave, from the date of adoption.

- **Work from Home option**: The MB Amendment Act has also introduced an enabling provision relating to “work from home” for women, which may be exercised after the expiry of the 26 weeks' leave period. Depending upon the
nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.

- **Crèche facility:** The MB Amendment Act makes crèche facility mandatory for every establishment employing 50 or more women. Women employees would be permitted to visit the crèche 4 times during the day.

- **Employee awareness:** The MB Amendment Act makes it mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

**Khaitan Comments**

Various aspects of the MB Amendment Act need further clarity, for example, period up to which the crèche facility could be extended to the concerned woman as well as the aspect of availability, frequency and extent of nursing breaks. It is also unclear whether increased maternity benefits will apply to women who are presently undergoing maternity leave. Employers may have to wait until the rules are issued clarifying the position on the arrangements which could be made with third party service providers for crèche facilities with specific requirements in terms of distance from workplace, dimensions and other related aspects.

Moreover, the rationale for having separate effective date for implementing “work from home” option is also unclear, given the fact that work from home is an enabling provision to encourage the employers to provide such option to a woman depending upon nature of work being handled by her and not a statutory requirement under the MB Amendment Act. We expect the Ministry of Labour to shortly come out with rules clarifying these aspects.

The MB Amendment Act has come into force from 1 April 2017. All establishments covered under the MB Amendment Act would be required to amend their existing maternity benefit policies in accordance with the MB Amendment Act with effect from 1 April 2017.

- **Anshul Prakash** (Partner) and **Parag Bhide** (Senior Associate)

For any queries please contact: editors@khaitanco.com