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Labour Law Ministry Notifies Creche Facility Rules in The Mine Establishments

■ **Namrta Sudan Rai and Pragya Khaitan**

BACKGROUND

The mandate on employers to provide crèche facilities to their employees was made effective from July 1, 2017 following the amendments made to the Maternity Benefit Act, 1961 (“MB Act”) in April, 2017. The MB Act regulates employment of women in establishments before and after child-birth and is applicable to factories, mines, the circus industry, plantations and shops and establishments employing at least 10 employees, except such female employees who

are covered under the Employees' State Insurance Act, 1948. This Article focuses mainly on the Ministry of Labour and Employment, Government of India's notification dated February 12, 2018, which deals with the draft Maternity Benefit (Crèche in the Mine Establishments) Rules 2018 (“Draft Rules”) whereby the objections, comments and suggestions of all persons affected or likely to be affected thereby are invited on the proposed changes to the Mines Crèche Rules, 1966 issued under the Mines Act, 1952.

Provision	Heading	Details
Rule 2(b)	Definition of a Crèche/age-based threshold	A crèche comprises of a room or rooms where the essential accommodation is reserved for the children of the women employees, where the children are under 6 (six) years of age.
Rule 4	Types of crèches	There are 4 types of crèches based on the number of women employed. They are classified as Type 'A', Type 'B', Type 'C' and Type 'D'.
Rule 4	Standard requirements	The standards to be adhered to with respect to setting up of a crèche, such as: a. The crèche has to be adequately lit, properly ventilated and affording effective protection from all kinds of weather. b. The flooring should be of cement or stone and the ceiling should be at least 4 meters high. c. The interior walls should be lime-washed at least every six months while three years for the wood-work. d. Clean and sanitary conditions should be maintained.
Rule 8	Timings	The crèche facility shall be open throughout the day and will be open at night time when required as per the work hours of the female employees.
Rule 9	Use and access	Only children, the supervising staff, attendants and any such persons who may be concerned with the children in the crèche are permitted within the facility.
Rule 10	Medical Arrangements	Children at the crèche will undergo a medical examination every month, and the nursing mothers shall undergo medical examination every two months, and the same shall be done only by qualified medical practitioners.



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By way of background, the Government in view of the persistent demand to improve maternity benefits, made some key changes in the MB Act vide the Maternity Benefit (Amendment) Act, 2017 (the "MB Amendment Act"), which received assent of the President of India on March 27, 2017. In addition to other changes made to the MB Act, a newly inserted Section 11A inter alia provides that employers having 50 employees or more are required to provide crèche facility(ies) either individually or as a shared common facility within such distance as may be prescribed.

HIGHLIGHTS OF THE DRAFT RULES

The Draft Rules extend the provisions under the Mines Crèche Rules, 1966 ("Crèche Rules") mutatis mutandis to the rules made under the MB Act. Given the title of the Draft Rules, and a combined reading of section 28 and section 3 (a) of the MB Act, it is safe to presume that the extension of the Draft Rules is only in respect of mine establishments (Section 28 allows the appropriate authority to make rules in respect of the MB Act. Section 3 (a) provides that the appropriate authority in respect of mine establishments is the Central Government and for other establishments is the respective state government. The current notification is by the Central Government, and so it may safely be presumed that the extension is limited to mine establishments).

- The extension of the Crèche Rules to mine establishments under the MB Act shall however be subject to the following changes, as also to other changes recommended during the public consultation stage. As also provided by the MB Amendment Act, the applicability shall be limited to mines wherein 50 (fifty) or more people are employed;

- Scope of applicability has now extended to include children of daily wage/temporary/contractual/consultant workers employed by the mine;

- The Inspectors appointed under Section

14 of the MB Act will now, also be empowered to inspect the crèche;

- The crèche facility shall not be established more than 500 meters away from the entrance gate of the said establishment. It may be relevant to note that the MB Amendment Act does not specifically provide the distance within which the facility should be established.

KEY PROVISIONS

In light of the fact that the provisions under the Crèche Rules would mutatis mutandis extend to the rules made under the MB Act in this regard, it may be useful to note the following key provisions in the Crèche Rules:

CLOSING NOTE

The changes suggested to the Crèche Rules vide the Draft Rules are quite welcoming in light of the fact that besides making it mandatory for all mine establishments covered by the MB Act and employing at least 50 employees to provide crèche facilities to eligible employees; it also extends the use of the crèche which was earlier restricted to children, their attendants, the supervisory staff and other related and concerned staff, to now include children of daily wage/temporary/contractual/consultant workers employed by the mine.

Moreover, by specifying that the crèche facility shall not be established more than 500 meters away from the entrance gate of the said establishment, it can be ensured that every woman is in close proximity with her infant/child and has easy access in order to allow her to assist and take care of her child (including in case for nursing breaks), while at work. Further, by empowering the Inspectors appointed under Section 14 of the MB Act to inspect the crèche, the Draft Rules provide scope for proper inspection and monitoring of the crèche premises to ensure adherence to facility norms and standard, safety and security, etc. which are laid down in the Crèche Rules. [W](#)



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