

HR Law Hotline

August 26, 2019

CRÈCHE FACILITY BY EMPLOYERS IN INDIA: RULES NOTIFIED FOR BANGALORE

- Bangalore – State of Karnataka notifies rules for setting up and running crèche facilities under the Maternity Benefit Act, 1961.
- The Karnataka Maternity Benefit (Amendment) Rules 2019 have come into effect on August 8, 2019.
- Karnataka becomes the first Indian state to notify crèche rules- this step is expected to pave way for similar action by other Indian states.

Karnataka (Bangalore) has become the first Indian state to implement rules for crèche facility to be provided to female employees as per the Maternity Benefit Act, 1961 of India (“**Maternity Act**”).

Employers in the technology capital of India will now not just be required to provide maternity leave of 26 weeks and related creche facility, but will also be required to comply with several additional requirements in terms of setting up and running a crèche facility.

BACKGROUND:

The Maternity Act was amended by way of the Maternity Benefit (Amendment) Act, 2017¹ (“**Maternity Amendment Act**”) to introduce various new requirements including the need to provide a crèche facility (if the establishment has employed at least 50 employees²). Please refer to our legal analysis on this subject [here](#).

While the provisions of the Maternity Amendment Act came into effect on April 1, 2017, the provision relating to crèche facilities came into effect three months later.

Although the Maternity Amendment Act requires establishments employing at least 50 employees to have a crèche facility within the prescribed distance, either separately or along with other common facilities, it failed to provide clarity on intricate aspects pertaining to the crèche facility including (a) the age of children for which such facility needs to be provided; (b) the distance within which the crèche facility needs to be located; (c) the infrastructure of the crèche facility; (d) facilities & amenities that need to be provided; (e) the manner of financing such crèche facilities; (f) appointment of crèche staff etc. In the absence of the requisite guidance, employers have been facing challenges in complying with the crèche facility requirement.

The Indian Ministry of Labour and Employment clarified in November 2017³ that the respective state governments are the ‘appropriate governments’ for the purpose of issuance of rules under the Maternity Act, except in the case of mines and circuses. The State Government of Karnataka was the first to release the draft crèche rules in July 2018 (“**Draft Rules**”), the Karnataka Maternity Benefit (Amendment) Rules 2019 (“**Karnataka Crèche Rules**”) however came into effect only on August 8, 2019.

In terms of progress in the other Indian states, the State Government of Haryana (Gurgaon) has also released its draft crèche rules on the 9th of July, 2019.

KEY FEATURES:

Some of the key compliances under the Karnataka Crèche Rules are as follows:

1. **Eligibility:** As per the Maternity Act, every establishment employing 50 or more employees is required to have a crèche facility. The Karnataka Crèche Rules further state that the crèche facility shall be provided to all employees irrespective of the type and nature of employment such as permanent, temporary, regular, daily wage, contract etc.⁴
Given that the provision on crèche facility under the Maternity Act uses the term ‘employee’ instead of ‘woman’ coupled with the fact that the Karnataka Crèche Rules also stipulate that the benefit shall be extended to ‘all employees’, there is ambiguity as to whether the crèche facility needs to be extended to both male and female employees. In this context, it is also pertinent to note that unlike the Draft Rules, certain provisions of the Karnataka Crèche Rules also refer to the term ‘parent’⁵ which reinforces the view that the creche facility may have to be extended to male employees as well. Having said that, looking at the larger objective of the law, one may argue that the benefits under the Maternity Act are meant only for women.
2. **Age of the child:** The crèche facility shall be made available for the use of children below the age of six years. This is consistent with the age prescribed under the Factories Act, 1948 (for factory employers), the Building & Other Construction Workers Act (Regulation of Employment and Conditions of Service) Act, 1996, the Mines Creche Rules, 1966 as well as the National Minimum Guidelines for Setting up and Running Crèches⁶.
3. **Location of the Crèche:** The Karnataka Crèche Rules stipulate that the crèche shall be located within the premises of the establishment or within 500 meters from the entrance gate of the establishment. The rules further

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state that the crèche shall be conveniently accessible to the mothers or parents of the children. The crèche facility shall not be situated in close proximity to an establishment where obnoxious fumes, dust or odours are given off or in which excessively noisy processes are carried on. There shall also not be any unsafe places like open drains or pits or dangers near the crèche facility. Employers are required to exercise due care in deciding upon the location of the crèche. Employers are also expected to avail expert advice from State or National support agencies as part of the decision-making process. The rules do not however define such 'State or National Support Agencies'.

4. Maximum headcount: There shall be one crèche for every thirty children. Unfortunately, this requirement would make it practically impossible for employers to tie up with large external crèche facility providers who have the necessary infrastructure to accommodate more than thirty children in a single crèche.
5. Operational Hours: The crèche facility shall be operational at all times (both day and night) when the mother or parents are working as per statutory norms. The working hours of the crèche shall correspond to the working hours of the mothers or parents of the children admitted in the crèche. The crèche shall have to work in two or more shifts if the women are employed in two or more shifts as per statutory norms⁷.
6. Building & Construction: The Karnataka Crèche Rules lay down the detailed terms and conditions with respect to the building and construction of the crèche facility including *inter alia* (i) the construction materials to be used both in rural and town areas, (ii) height of the rooms; (iii) kitchen facility, (iv) separate space for washing and drying; (v) adjoining bathrooms and latrines; (vi) floor area for each child; (vi) open air playground exclusively available for the use of children etc. Employers are also required to comply with all requirements pertaining to planning, building control, fire safety, health & safety legislation and all other relevant legislations in setting up of the creche facility⁸.
7. Facilities and amenities: The Karnataka Crèche Rules also lay down the facilities and amenities that need to be made available at the crèche facility including *inter alia* utensils, safe and portable drinking water, supply of clean towels and soap, equipments such as cradles/cots, blankets, toys/play materials, child friendly furniture, medicine and first aid kit, supply of milk and refreshments etc.
8. Additional Compliance: The Karnataka Crèche Rules stipulate that it shall be the responsibility of the employer to adhere to the standards and norms fixed by Central and State Governments or their official agencies for crèche, such as the National Minimum Guidelines for Setting up and Running Crèches as published by the Government of India.
9. Crèche Staff: The Karnataka Crèche Rules provide for appointment of crèche staff such as the crèche-in-charge or teacher-cum-warden, the creche attendants and female ayahs and prescribes the minimum qualifications for such personnel and the ratio at which such personnel need to be engaged.
10. Medical Examination & Records: The Karnataka Crèche Rules mandate that every child be medically examined before admission to the crèche. Monthly check-ups at a frequency of two months shall also be conducted and the records of such periodical check-ups shall be maintained at the crèche.

OUR ANALYSIS:

Although the Karnataka Crèche Rules have succeeded in settling the growing confusion amongst employers, the Karnataka Crèche Rules places onerous obligations upon employers. While employers are in general aligned with the larger objective of the government to provide necessary childcare solutions to employees, the provisions of the Karnataka Crèche Rules makes it difficult for employers to fully comply with the requirements and accordingly could be seen as a lost opportunity for the government to strike a balance between employer and employee interests. Although representations were made to the government in order to tone down the requirements including relaxing of the 500-meter distance requirement and allowing for a reimbursement model, it seems that the government has proceeded with implementing the Draft Rules.

The ground reality in crowded and thriving commercial cities like Bangalore is that there are employers who do not have the ability or infrastructure to set up an in-house crèche facility. Many employers also operate out of Special Economic Zones or leased premises and have long term commercial leases. Owing to multiple reasons including space constraints, employers do not have much choice but to approach external crèche facility providers in order to comply with the law. Several employers have also not been able to locate suitable service providers within the prescribed distance. Even if that is possible, female employees have not been fully utilizing the benefit given the logistical issues including the time taken to travel to the creche and back to office during traffic hours. Female employees have also been preferring to use a creche/day-care facility nearer to their homes.

There has also been adverse feedback on the fees being charged by some service providers, which at times has been more than the employee's salary itself. The creche facility providers on their part are facing increased costs given the commercials of running a crèche facility such as the cost for setting up the facility, medical checkups, salary/fee for the staff, rent for the leased space, cost of food, refreshments, furniture, electricity, other amenities to be provided and all overheads in relation to such facility etc. Employers are most likely to contractually pass on the obligations imposed by Karnataka Crèche Rules to their external service providers.

Replacing the term 'women employees' in the draft rules with the term 'employee' and 'parents' in the Karnataka Crèche Rules may be construed as the government's intention to extend the creche facility benefit to both genders, thereby making it even more challenging for some of the large employers. There remains serious doubts on the employers' ability to comply with the Karnataka Crèche Rules, even if they attempt to do so in good faith.

— Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

¹ <https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>

² Section 11A (1) of the Maternity Benefit Act, 1961

³ <https://labour.gov.in/sites/default/files/Reg.%20Creche%20Rules%20.pdf>

⁴ Rule 6 (A) of the Karnataka Maternity Benefit (Amendment) Rules 2019

⁵ Rule 6 (A) (1 and Rule 6 (A) (2) (vi) of the Karnataka Maternity Benefit (Amendment) Rules 2019

⁶ Available at: <https://wcd.nic.in/sites/default/files/National%20Minimum%20Guidelines.pdf>

⁷ Rule 6 (A) (4) of the Karnataka Maternity Benefit (Amendment) Rules 2019

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