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National Minimum Guidelines for Crèches released

Summary

The National Minimum Guidelines for Setting Up and Running Crèches under Maternity Benefit Act 2017 seek to aid employers setting up crèches by prescribing requirements regarding multiple parameters.

The National Minimum Guidelines for Setting Up and Running Crèches under Maternity Benefit Act 2017 (**Guidelines**) were released by the Ministry of Women and Child Development on 2 November 2018. These Guidelines seek to provide the minimum standards to set up and run crèches for every establishment employing 50 or more employees as is mandatory under the Maternity Benefit (Amendment) Act, 2017 (**MBA Act**).

Overview

The Guidelines provide the following:

- a) **For whom:** The crèche facilities should be provided to all employees including temporary, daily wage, consultants and contractual personnel with children in the age group of 6 months to 6 years.
- b) **Location:** The crèche should be located within 500 meters of the work place *or of the employees' neighborhood*.
- c) **Working hours:** The timings of the crèche should be flexible based on the working hours and timings of the employees.
- d) **Infrastructure:** Concrete structure, *preferably at the ground floor*, well ventilated, with suggested features and built as per certain prescribed area specifications.
- e) **Staff:** Roles, selection criteria and a proposed training schedule for crèche staff have been provided.
- f) **Crèche Monitoring Committee:** A Committee to supervise and ensure the smooth running of the crèche comprising of the crèche in-charge (applicable if there are more than five children in the crèche) and a prescribed number of representatives from the parents, crèche workers, and HR/Admin officers

- g) **Child Protection Policy:** Establishments must create and follow a Child Protection Policy. The Guidelines provide a sample for reference.
- h) **Records:** Admission forms, attendance and stock registers to be maintained.
- i) **Other Facilities:** Details of crèche equipment, health and nutrition practices to be followed, hygiene and sanitation practices, norms for the safety of children at the crèche have been listed.

Some Concerns

- a) **Ambiguity regarding the nature of the Guidelines:** The Guidelines provide no clarity as to which sections of the Guidelines are absolute and which are merely guiding principles an employer may adapt as per its needs. Our discussions with the Ministry suggests that these are only for guidance and not mandatory in nature.
- b) **Costs:** There is no clarity as to who will bear the cost of the crèche, the employer or employee.
- c) **Scope of Crèche Monitoring Committee's powers:** Crèche Monitoring Committees are to be set up to ensure that the guidelines are followed, but, there are no details about the scope of their powers and the remedial measures they can take in case of failure of crèches to fulfil the norms laid down by the Guidelines.
- d) **Precedence as compared to State rules under the MBA Act:** The draft rules under the MBA Act, 2017 for Karnataka give priority to norms fixed by the Central or State Governments or their official agencies for crèches, while the Haryana draft rules are silent on this point. Hence, if the Guidelines are notified, it is possible that there may be different standards for setting up and running crèches in different states across the country, which can be problematic for employers who operate in multiple regions in India. While these Guidelines appear to be non-mandatory, they still have the potential to create confusion amongst organizations, especially suggestions that allow entities to provide creches within 500 m of the employee's neighbourhood.
- e) **Contradictions with State rules under the MBA Act:** While the Haryana draft rules and the Guidelines extend the provision of crèche facilities to temporary, daily wage, consultant and contractual workers, the Karnataka draft rules do not clarify the scope of the term employee. According to the Karnataka draft rules, crèche timings should depend on work timings of female employees only, but the Guidelines do not make a distinction based on employee gender. The height and area requirements of crèche structures as per the draft rules for Karnataka and Haryana and the Guidelines are also varied.
- f) **Difficulty in setting up crèches in employees' neighbourhoods:** The location requirement stating that crèches can also be set up within 500 meters in the employee's neighborhood can pose logistical and financial difficulties as establishments that have employees spread across a city may have to build multiple crèches to fulfil the distance and headcount requirement. We presume this only refers to the possibility of an employer offering to *reimburse* for a creche that is close to the employee's home.
- g) **Third-party service providers:** There is no clarity as to whether an employer can use a third-party service provider to fulfil its obligations under the Guidelines, as it may be

financially restrictive for small organizations to set up and maintain crèches on their own.

Conclusion

Since the amendments to the MB Act in 2017, organizations have grappled with the rules associated with creche facilities, and although these Guidelines seem to have been issued to assist organizations, they only seem to add to the confusion since they are at variance with what appear to be various draft rules (that will be formally binding) that various State governments are preparing.