

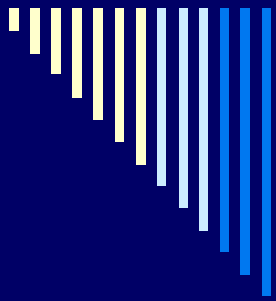

ENTITLEMENTS OF MEDICAL SALES EXECUTIVES

By

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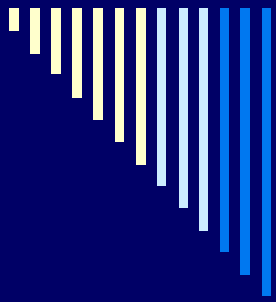


Introduction

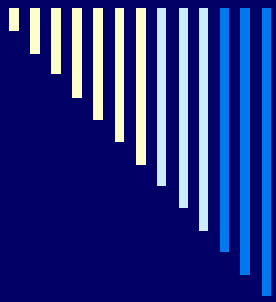
- India, the leading global player in the manufacture of pharmaceuticals, holds 4th position in terms of volume and 13th in terms of value of production.

-National Pharmaceuticals Policy, 2006

- Business in pharmaceuticals is not easy.
- Unlike other businesses, sellers are not in direct touch with customers- indirect selling
- Hence, the sellers are fully dependent on their employees including Sales Executives.



- Sales Executives are under various responsibilities as they are the link between Seller and customers through the channel of doctors.
- To supervise total business in addition to Medical Representatives (MRs).
- Presentation into two parts:
 - Rights of MRs
 - How to supervise business?



Medical Representatives (MRs)

- Appointed-
 - to represent the pharmaceutical company
 - for sale and promotion of products including drugs, instruments etc.
- On commission- As per terms and conditions of the contract.
- Salaried- Entitled for various benefits.



Constitution of India

- ❑ Art. 43- decent working environment
 - ❑ Law making power is divided in Seventh Schedule between Central and State Legislatures.
 - ❑ Concurrent List-
 - ❑ Industrial and labour disputes
 - ❑ Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
 - ❑ Both Legislatures entitled to make laws on subjects of concurrent list.
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Protection under Labour Laws

- ❑ Labour statutes-to protect the employees as they are not on an equal bargaining position.
 - ❑ MRs are not covered under Industrial Disputes Act, 1947
 - ❑ Two terms- industry and workman are important
 - ❑ Definition of 'industry' was amended in 1982 which includes
 - 'any activity relating to the promotion of sales or business or both carried on by an establishment.'
 - ❑ But this amended definition till date is not enforced.
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Are they Workman?

- "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--
 - (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
 - (ii) who is employed in the police service or as an officer or other employee of a prison; or
 - (iii) who is employed mainly in a managerial or administrative capacity; or
 - (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.



MRs are not workman

- *May and Baker (India) Limited v. Workmen* 1961 II LLJ 94
 - *Glaxo Laboratories (India) Ltd v. State of Kerala* 1992 1 LLN 822
 - *H. R. Adyarjuna v. Sandoz India Ltd.* 1994 II CLR 552 (SC)
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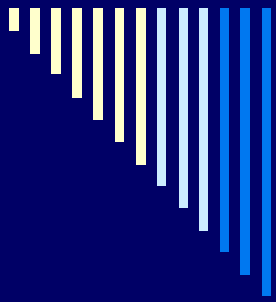
State Legislature Initiative

- If any State Legislature has made such provision to include MRs under labour laws, they may exercise such right.
 - Maharashtra Recognition of Trade Unions and Unfair labour Practices Act, 1971- Sales Promotion employees are included through amendment in 1999.
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Sales Promotion Employees (Conditions of Service) Act, 1976

- ❑ Enacted by Indian Parliament
 - ❑ To regulate certain conditions of service of sales promotion employees in certain establishments
 - ❑ As labour law did not have protection
 - ❑ Came into force on 6th March 1976
 - ❑ Applicable to every establishment engaged in pharmaceutical industry.
 - ❑ Central Govt. made- Sales Promotion Employees (Conditions of Service) Rules, 1976
 - ❑ Issuance of appointment letters in prescribed format is mandatory: non-compliance is punishable with fine upto Rs. 1,000/-
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Sales Promotion Employees

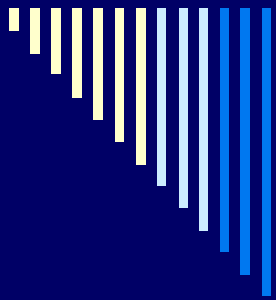
- Any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both.
- But, it **does not include** any such person-
 - (i) who, being employed or engaged in a supervisory capacity, draws wages exceeding Rs. 1600/- per mensem; or
 - (ii) who is employed or engaged mainly in a managerial or administrative capacity.
- Notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement, settlement or contract of service, whether made before or after the coming into force of this Act, this Act has overriding effect.



Leaves

□ Every MR is entitled for-

- **Casual leave** for fifteen days in a calendar year- entitled to wages as if he was on duty-any amount of casual leave at a time and may be combined with any other kind of leave.
 - 10 **holidays** in a calendar year- if on duty on holiday, compensatory holidays within 30 days immediately following the holiday- Wages are available for holidays
 - **EL** 90 days at a time on full wages for not less than one-eleventh of the period spent on duty. For not availing of EL, he is entitled for EL encashment when he voluntarily relinquishes his post or retires from service, or when his services are terminated for any reason whatsoever (not being termination as punishment).
 - **Medical Leave** on one-half of the wages for not less than one-eighteenth of the period of service.
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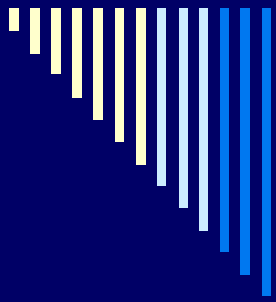


- Due to infectious disease, presence is hazardous to the health of other people **Quarantine Leave** for 30 days. These days shall be treated as he is on duty.
 - **Extraordinary leave** without pay.
 - **Study leave** with or without wages.
 - Recall before expiry of leave by employer but TA shall be paid by employer
 - Non-compliance is punishable with fine upto Rs. 1,000/-
 - Preparing & maintaining *registers and records*-
 - (a) a Register of Sales Promotion Employees in [Form B](#)
 - (b) Service Books for every employee in [Form C](#)
 - (c) a Register of Service Books in [Form D](#)
 - (d) Leave Account of each employee in [Form E](#)
 - Non-compliance is punishable with fine upto Rs. 1,000/-
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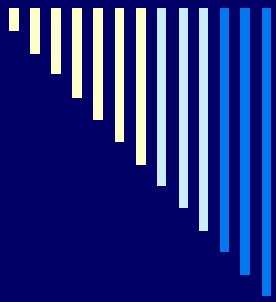


Questions before Authorities

- ❑ Not providing appointment letters to the sales promotion employees in prescribed Form A.
 - ❑ Not maintaining service books and registers.
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- For ascertaining whether any of the provisions of this Act have been complied with in respect of an establishment, the State Govt. is authorised to appoint **Inspectors**.
- This Act provides the benefits under following laws-
 - **Workmen's Compensation Act, 1923**
 - **Industrial Disputes Act, 1947**
 - **Minimum Wages Act, 1948**
 - **Maternity Benefit Act, 1961**
 - **Payment of Bonus Act, 1965**
 - **Payment of Gratuity Act, 1972**



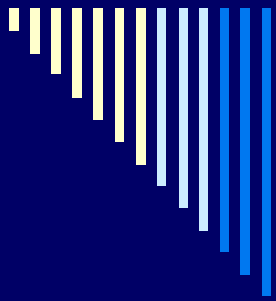
Offences

- ❑ Complaint should be made within 6 months of the date on which the offence is alleged to have been committed
- ❑ Triable by court not inferior to a Metropolitan Magistrate or a Magistrate of the first class
- ❑ If offence is committed by a company, the person in-charge of and responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence



Workmen's Compensation Act, 1923

- ❑ Compensation for workers injured in the course of duty.
- ❑ If there is fatal injury his dependants should be compensated.
- ❑ Compulsory registration under Employees' State Insurance Act of the establishment
- ❑ Injury should be during the course of work.
- ❑ Injury results in disablement- *Death, Permanent Total Disablement, Permanent partial disablement, Temporary disablement.*



- Where the disablement does not last for more than three days.
 - Where the disablement has arisen out of-
 - (a) Drugs or drink;
 - (b) Disobedience;
 - (c) Disregard for the safety measures prescribed.
 - **Occupational Disease**- employer is liable to compensate if worker was employed by him for a continuous period of six months.
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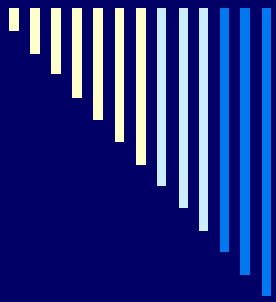
Minimum Wages Act, 1948

- ❑ In compliance of the ILO Convention on Minimum Wage Fixing Machinery
 - ❑ Workers' bargaining power is poor
 - ❑ To prevent exploitation of workers by ensuring that they are paid the minimum wages
 - ❑ State Govt. has to fix-
 - Minimum wage- for normal working days
 - Working hours-9 hours
 - ❑ One or more intervals
 - ❑ 1 day rest in every 7 days
 - For over time- additional payment
 - ❑ Review of minimum wages after every five years
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Industrial Disputes Act, 1947

- This Act is available until amended definition of industry is not enforced.
 - This Act is intended for-
 - Good relations between employer & employee
 - Settlement of industrial disputes
 - Prevention of strikes & lock-outs
 - Remedy for worker in the matter of lay-off & retrenchment
 - To restore and maintain industrial peace.
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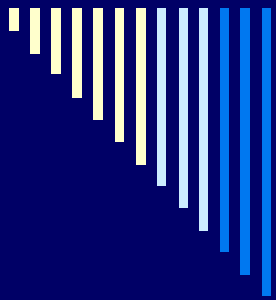
Modes of Settlement

- Conciliation- under guidance of a third party (Conciliation Officer or Board of Conciliation)- administrative remedy
- Voluntary Arbitration
- Adjudication by Labour Court, Industrial Tribunal and National Tribunal



Maternity Benefit Act, 1961

- ❑ To promote the welfare of working women
 - ❑ Prohibits the working of pregnant women before and after delivery
 - ❑ Woman must have actually worked for not less than 80 days in the twelve months immediately preceding the day of her expected delivery
 - ❑ Provides for maternity leave and payment of certain monetary benefits
 - ❑ Services of a woman worker cannot be terminated during the period of her absence on account of pregnancy
 - ❑ Maximum period of maternity benefit is 12 weeks . 6 weeks must be taken prior to the date of delivery of the child and 6 weeks immediately following that date
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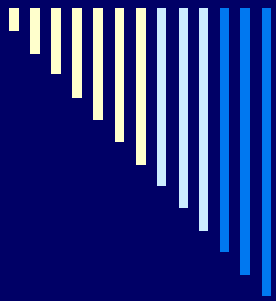


- ❑ If miscarriage takes place, woman worker is entitled to 6 weeks leave with pay from the day of miscarriage
- ❑ For illness arising-out of pregnancy, delivery, premature birth or miscarriage- extra leave up to a maximum period of 01 month
- ❑ After delivery is to be given two nursing breaks of prescribed duration, in addition to her regular rest intervals, to nurse the child until her child attains the age of fifteen months



Payment of Bonus Act, 1965

- ❑ Evolved annual profit bonus in cash or kind to motivate their efforts on important festivals
 - ❑ In *Mill Owners Association, Bombay v. Rashtriya Mill Mazdoor Singh, Bombay* (1950) 2 LLJ 247 Labour Appellate Tribunal issued a formula
 - ❑ Once the profits exceed a certain base, workers should legitimately have a share in them.
 - ❑ To be eligible to receive bonus, worker must have worked in establishment minimum 30 days
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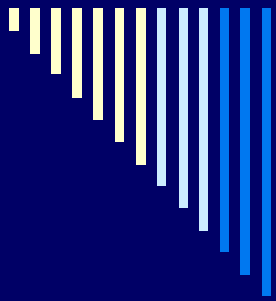


- Not eligible for bonus if he is dismissed from service for-
 - fraud; or
 - riotous or violent behaviour while on the premises of the establishment; or
 - theft, misappropriation or sabotage of any property of the establishment.
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Payment of Gratuity Act, 1972

- Additional retirement benefit
 - Payable to an employee-
 - on the termination of his employment after he has rendered continuous service for not less than 5 years
 - on his superannuation
 - on his retirement or resignation
 - on his death or disablement due to accident or disease.
 - For every completed year of service, gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the concerned employee.
 - Gratuity payable to an employee is not exceeding rupees three lakhs and fifty thousand.
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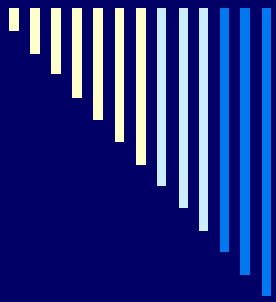
Provident Funds

- GPF:
- CPF: For Govt. employees
- EPF: Employees' Provident Funds and Miscellaneous Provisions Act, 1952- minimum 10% of the salary.
- PPF: savings-cum-tax-saving instrument- established by the Central Government.



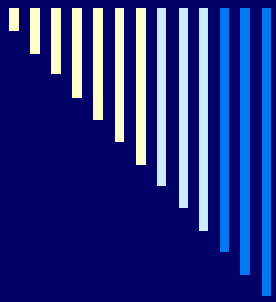
NPS: Corporate Model Tier-II

- ❑ For social security
 - ❑ It can be run parallel to superannuation, gratuity, provident fund and any other pension schemes offered to the employees of organised entities
 - ❑ Pension Fund Regulatory and Development Authority (PFRDA)- regulator of NPS
 - ❑ At individual level- no contribution by the employer
 - ❑ Entitled only for deposits and interests thereon.
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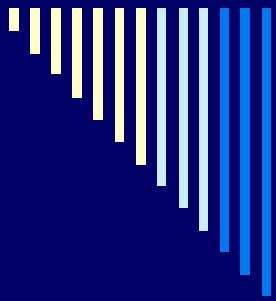


Regulating the Sales Promotion Employees

- Without discrimination, treat equally and properly
- Communicate in written having evidence
- If meetings are called, written intimation
- In case of indiscipline, intimate in written
- In case failure to reach at target, inform in writing
- At first hand, don't take action
- Ask for completing the job within stipulated time, provide an opportunity in writing



- If get any direction from authority to take action, may record in Cell phones.
 - Before taking action, comply with the principles of natural justice
 - Nemo judex in cause sua
 - Audi alteram partem
 - Speaking order
 - Not to adopt unfair labour practices
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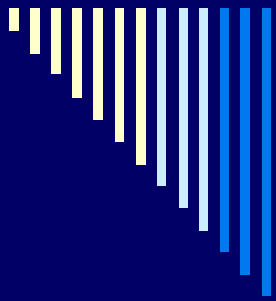


Nemo judex in cause sua

Rule against Biasness

- ❑ Don't decide the matter if interested any how in the matter
 - ❑ Personal biasness
 - ❑ Pecuniary biasness
 - ❑ Subject matter biasness

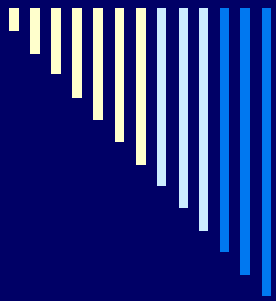
 - ❑ Principle of necessity
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Audi alteram partem

Speaking orders

- Issue notice with full, clear and proper information regarding charges, place & time of appearance
- If appeared, provide hygienic, stress-free environment
- Orders must contain reasons too
- Reason provides satisfaction

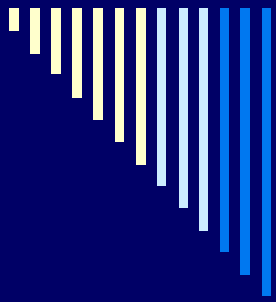


- ❑ After inquiry, issue letter stating the findings of inquiry and again give opportunity to be heard.
 - ❑ Accordingly action may be taken.
 - ❑ Maintain all records properly.
 - ❑ Non-compliance of principles of natural justice, action may be void.
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Management of Biddle Sawyer Pvt. Ltd. Chennai v.
Presiding Officer Additional Labour Court, Chennai
Madras on 31 January, 2012

- Terminating the services of MR without conducting inquiry is not allowed in Law. The Labour Court ordered to reinstate employees which was affirmed by Madras High Court also.
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Thank you
