

22 (2) The Sales Promotion Employees (Conditions of Service) Rules, 1976

	THE SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT, 1976
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**THE SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT,
1976**

INTRODUCTION

Due to a judgment of the Supreme Court the persons engaged in sales promotion do not come within the purview of the definition of “workman” under the Industrial Disputes Act, 1947 and as such they have no protection regarding security of employment and other benefits under that Act. These persons, particularly the medical representatives in the pharmaceutical industry, have been demanding from time to time that they should be covered by the Industrial Disputes Act, 1947. The Federation of Medical Representatives Associations of India made a petition to the Committee on Petitions (Rajya Sabha). The said Committee came to the conclusion that the demand of the sales promotion employees is justified. Keeping in view the recommendations of the Committee it was considered more appropriate to have a separate legislation for governing the conditions of service of sales promotion employees, instead of amending the Industrial Disputes Act, 1947 to bring such employees within its purview. Accordingly the Sales Promotion Employees (Conditions of Service) Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

As a result of the Supreme Court judgment in the case of May and Baker (India) Limited and their Workmen (1961-II-LLJ. p. 94), the persons engaged in sales promotion do not come within the purview of the definition of “workman” under the Industrial Disputes Act, 1947 and as such they have no protection regarding security of employment and other benefits under that Act. These persons, particularly the medical representatives in the pharmaceutical industry, have been demanding from time to time that they should be covered by the Industrial Disputes Act. On a petition made by the Federation of Medical Representatives, Associations of India, the Committee on Petitions (Rajya Sabha) in its thirteenth report submitted on March 14, 1972, came to the conclusion that “the ends of social justice to this class of people will be met only by suitably amending the definition of the term ‘workman’ in the Industrial Disputes Act, 1947 in a manner that the medical representatives are also covered by the definition of ‘workman’ in the said Act”. The Committee also felt that other workers engaged in sales promotion should similarly be considered as workmen.

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2. Keeping in view the justification of the demand of the sales promotion employees, and the recommendation made by the Committee on Petitions, and taking other relevant aspect into consideration, it is considered more appropriate to have a separate legislation for governing the conditions of service of sales promotion employees, instead of amending the Industrial Disputes Act, 1947 to bring such employees within its purview.

3. The Bill seeks to achieve the above objects. **ACT 11 OF 1976**

The Sales Promotion Employees (Conditions of Service) Bill having been passed by both the Houses of Parliament received the assent of the President on 25th January, 1976. It came into force on 6th March, 1976 as THE SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT, 1976 (11 of 1976).

LIST OF AMENDING ACTS

1. The Sales Promotion Employees (Conditions of Service) Amendment Act, 1982 (69 of 1982).
2. The Sales Promotion Employees (Conditions of Service) Amendment Act, 1986 (48 of 1986).

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THE SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT, 1976¹

(11 of 1976)

[25th January, 1976]

An Act to regulate certain conditions of service of sales promotion employees in certain establishments.

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows;—

- 1. Short title, extent, commencement and application.**—(1) This Act may be called the Sales Promotion Employees (Conditions of Service) Act, 1976.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.
- (4) It shall apply in the first instance to every establishment engaged in pharmaceutical industry.
- (5) The Central Government may, by notification in the Official Gazette, apply the provisions of this Act with effect from such date as may be specified in the notification, to any other establishment engaged in any notified industry.
- 2. Definitions.**—In this Act, unless the context otherwise requires,—
- (a) “**establishment**” means an establishment engaged in pharmaceutical industry or in any notified industry;
- (b) “**notified industry**” means an industry declared as such under section 3;
- (c) “**prescribed**” means prescribed by rules made under this Act;
- ²(d) “**sales promotion employees**” means 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 does not including any such person,—

¹ Came into force on 6-3-1976, *vide* S.O. 176 (E), dated 6th March, 1976.

² Subs. by Act 48 of 1986, sec. 2, for clause (d) (w.e.f. 6-5-1987).

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- (i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or
- (ii) who is employed or engaged mainly in a managerial or administrative capacity.

Explanation. — For the purposes of this clause, the wages per mensem of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of his service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service.]

- (e) all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

3. Power of Central Government to declare certain industries to be notified industries.— The Central Government may, having regard to the nature of any industry (not being pharmaceutical industry), the number of employees employed in such industry to do any work relating to promotion of sales or business or both, the conditions of service of such employees and such other factors which, in the opinion of the Central Government, are relevant, declare such industry to be notified industry for the purposes of this Act.

4. Leave.¹[(1)]—In addition to such holidays, casual leave or other kinds of leave as may be prescribed, every sales promotion employee ²[***] shall be granted, if requested for—

- (a) earned leave on full wages for not less than one-eleventh of the period spent on duty,
- (b) leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.

³[(2)]The maximum limit up to which a sales promotion employee may accumulate earned leave shall be such as may be prescribed.

¹ Section 4 re-numbered as sub-section (1) thereof by Act 48 of 1986, sec. 3 (w.r.e.f. 8-3-1976).
² The words “drawing wages (being wages not including any Commission)” omitted by Act 48 of 1986, sec. 3 (w.r.e.f. 8-3-1976).
³ Ins. by Act 48 of 1986, sec. 3 (w.r.e.f. 8-3-1976).

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- (3) The limit up to which the earned leave may be availed of at a time by a sales promotion employee and the reasons for which such limit may be exceeded shall be such as may be prescribed.
 - (4) A sales promotion employee shall,—
 - (a) when he voluntarily relinquishes his post or retires from service, or
 - (b) when his services are terminated for any reason whatsoever (not being termination as punishment), be entitled to cash compensation, subject to such conditions and restrictions as may be prescribed (including conditions by way of specifying the maximum period for which such cash compensation shall be payable), in respect of the earned leave earned by him and not availed of.
 - (5) Where a sales promotion employee dies while in service, his heirs shall be entitled to cash compensation for the earned leave earned by him and not availed of.
 - (6) The cash compensation which will be payable to a sales promotion employee or, as the case may be, his heirs in respect of any period of earned leave for which he or his heirs, as the case may be, is or are entitled to cash compensation under sub-section (4) or sub-section (5), as the case may be, shall be an amount equal to the wages due to such sales promotion employee for such period.]
- 5. Issue of appointment letter.**— Every employer in relation to a sales promotion employee shall furnish to such employee a letter of appointment, in such form as may be prescribed,—
- (a) in a case where he holds appointment as such at the commencement of this Act, within three months of such commencement; and
 - (b) in any other case, on his appointment as such.
- 6. Application of certain Acts to sales promotion employees.**—(1) The provisions of the Workmen's Compensation Act, 1923 (8 of 1923), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act.

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- ¹[(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute.]
- (3) The provisions of the Minimum Wages Act, 1948 (11 of 1948), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.
- (4) The provisions of the Maternity Benefit Act, 1961(53 of 1961), as in force for the time being, shall apply to, or in relation to, sales promotion employees, being women, as they apply to, or in relation to, women employed, whether directly or through any agency, for wages in any establishment within the meaning of that Act.
- (5) The provisions of the Payment of Bonus Act, 1965(21 of 1965), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.
- (6) The provisions of the Payment of Gratuity Act, 1972 (39 of 1972), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.
- ²[(7) Notwithstanding anything contained in the foregoing sub-sections,—
- (a) in the application of any Act referred to in any of the said sub-sections to sales promotion employees, the wages of a sales promotion employee for the purposes of such Act, shall be deemed to be his wages as computed in accordance with the provisions of this Act;
- (b) where an Act referred to in any of the said sub-sections provides for a ceiling limit as to wages so as to exclude from the purview of the application of such Act persons whose wages exceed such ceiling limit, such Act shall not apply

¹ On the enforcement of section 24 of Act 46 of 1982, sub-section (2) of section 6 shall stand omitted.

² Ins by Act 48 of 1986, sec 4 (w.e.f. 6-5-1987).

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to any sales promotion employee whose wages as computed in accordance with the provisions of this Act exceed such ceiling limit.]

- 7. Maintenance of registers.**— Even employer in relation to an establishment shall keep and maintain such registers and other documents and in such manner as may be prescribed.
- 8. Inspectors.**—(1) The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits within which they shall exercise their functions.
- (2) Any Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act have been complied with in respect of an establishment,—
- (a) require an employer to furnish such information as he may consider necessary;
- (b) at any reasonable time enter the establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any registers and other documents relating to the employment of sales promotion employees:
- (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been a sales promotion employee in the establishment:
- (d) make copies of or take extracts from any register or other documents maintained in relation to the establishment under this Act;
- (e) exercise such other powers as may be prescribed.
- (3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the India Penal Code. 1860 (45 of 1860).
- (4) Any person required to produce any register or other document or to give information by an Inspector under sub-section (2) shall be legally bound to do so.

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9. Penalty.— If any employer contravenes the provisions of section 4 or section 5 or section 7 or any rules made under this Act, he shall be punishable with fine which may extend to one thousand rupees.

10. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was 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 and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this section, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of this section,—

(a) “**company**” means any body corporate and includes a firm or other association of individuals; and

(b) “**director**”, in relation to a firm, means a partner in the firm.

11. Cognizance of offences—(1) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

(2) No court shall take cognizance of an offence under this Act, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

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¹[11-A. Effect of laws and agreements inconsistent with this Act.—(1) The provisions of this Act or of any rule made thereunder shall have effect, 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 :

Provided that where under any such law, award, agreement, settlement or contract of service, a sales promotion employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the sales promotion employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a sales promotion employee from entering into an agreement with his employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.]

12. Power to make Rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the kinds of leave that may be granted to a sales promotion employee ²[the limit up to which he may accumulate earned leave, the limit up to which he may avail of earned leave at a time and the reasons for which such limit may be exceeded, the conditions and restrictions subject to which he may be entitled to cash, compensation] under section 4;

(b) the form of the letter of appointment to be furnished under section 5;

(c) the registers and other documents to be kept and maintained under section 7 and the manner in which such registers and other documents may be kept and maintained;

(d) any other matter which has to be, or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is

¹ Ins. by Act 69 of 1982, sec. 2 (w.e.f. 13-11-1982).

² Ins. by Act 48 of 1986, sec. 5 (w.e.f. 8-3-1976).

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in session, for a total period of thirty days which may be comprised in one session or in two or more Successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.