

# Q & A



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**W**e are a pharmaceutical company. Two of our employees unfortunately met with a fatal accident last week. One of the employees was riding a two-wheeler and another was sitting behind him when an unknown vehicle hit them while they were traveling from one hospital to another hospital. Kindly let us know our legal obligations to compensate them given that one of the employees was a medical representative and another was an employee looking after distribution.

I gather that you wish to understand whether each of the two deceased employees are covered or not by the Employees' Compensation Act, 1923 ("Compensation Act"). The work of a medical representative as well as a person employed to deal with distributors of a pharmaceutical company would entail visiting various hospitals. Thus, it is not a dispute that the accident arose out of and in the course of the employees' employment. Therefore, one of the primary conditions for award of compensation under the Compensation Act has been met in this case. We need to now examine whether or not the two deceased employees would fall within the definition of 'employee' under the Compensation Act.

## Medical Representative

As per Section 1 of the Sales Promotion Employee (Conditions of Service) Act, 1976 ("Sales Promotion Act"), the Sales Promotion Act applies to establishments engaged in pharmaceutical industry. Further, we note that a medical representative employed for promotion of sales

would fall under the definition of a 'sales promotion employee' as per the Sales Promotion Act provided that such employee is not engaged in managerial, administrative or supervisory capacity. Section 6 of the Sales Promotion Act provides that the provisions of the Compensation Act would apply to every sales promotion employee as they apply to 'workmen' (now 'employee') under the Compensation Act. Accordingly, the concerned employee is entitled to compensation from the employer under the Compensation Act.

## Other employee - looking after distribution network

Please note that the definition of a 'sales promotion employee' as is provided under the Sales Promotion Act has a fairly broad scope. For an employee to fall within the domain of the said definition, he/she need not be explicitly carrying out sale promotion activities but may also be impliedly involved in such activities related to promotion of sales.

We understand that the work of an employee engaged in looking after distribution is a work related to promotion of sales or business and the employee may therefore be covered under Section 2 of the Sales Promotion Act.

In this regard, you may note that in the case of H.R. Adyanthaya vs. Sandoz (India) Ltd., AIR 1994 SC 2608, while elaborating on the definition of 'sales promotion employee' the Hon'ble Supreme Court observed that:

"It will be noticed that under the SPE Act, the 'sales promotion employee' was firstly, one who was engaged to do any work relating to

promotion of sales or business or both, and secondly, only such of them who drew wages not exceeding Rs. 750 per mensem (excluding commission) or those who had drawn wages (including commission) commission not exceeding Rs. 9,000 per annum whether they were doing supervisory work or not were included in the said definition. The only nature/type of work which was excluded from the said definition was that which was mainly in managerial or administrative capacity.

The Sales Promotion Act was amended by the Amending Act 48 of 1986 which came into force w.e.f. 6.5.1987. By the said amendment, among others, the definition of sales promotion employee was expanded so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600 per mensem and those employed or

engaged mainly in managerial or administrative capacity."


Thus, the question of exclusion of the other employee from the Compensation Act would only arise if the employee was mainly engaged in managerial, administrative capacity or supervisory capacity. Otherwise, the dependants of the employee in question would also be entitled to compensation under the Compensation Act.

**We are running a factory in Delhi. We want to hire new employee in our technical division, please advise us whether we are required to impose any probation period on such employees? If yes, what is the period of probation that has to be imposed on such employees?**

Please note that an employer is not legally required to impose a probation period on its employees. However, depending upon the nature of industry, position and

responsibilities of the employee and the organizational policy etc., the employer may provide for a probationary period. The employer is also free to decide upon the duration of such probation, as also, to retain the right to extend the probation period.

You may note that the labour and employment laws in India do not treat employees on probation as a separate category of workers. In other words, their rights and obligations under the laws would not change upon confirmation / extension of their probation as such.

Thus, as an employer, you are free to determine the time duration for probation. However, the same should be commensurate with the nature of work and the training required by the worker to perform the job responsibilities. It is advisable to include clear provisions regarding probation in the employment agreement. 

# *Skill Development legal framework in india*

**P**ractical and theoretical training given to fresh learners to develop their professional or technical skill is called apprenticeship. The Indian apprenticeship system which is well established and supported by legislative and administrative arrangements regulates the training and protects the rights of apprentices in India. The rights of apprentices are protected under the Apprentices Act, 1961 ("Apprentices Act"). The Apprentices Act which surrounds the operation of apprenticeships in India is highly significant as it sets out the ways in which recruitment, training, conditions of work, contractual arrangements and compliances are

organized.

The Apprentices Act in India was drawn up based on the principles of 'learning while earning' and 'learning by doing'. It envisaged to fully utilize the facilities available in the Indian industry for practical training with a view to meet the skilled manpower requirements of the industry. The apprentices under the Apprentices Act are categorized into four categories i.e. trade apprentices, graduate apprentices, technician apprentices and technician (vocational) apprentices. For each category of apprentices, educational prerequisites as prescribed under the Apprentices Act apply for undertaking apprenticeship training. For an apprentice to undergo

apprenticeship training in India, he/she has to enter into a contract with the employer which is to be registered with the Apprenticeship Advisor appointed under the Apprentices Act. The contract so entered lays down the terms and conditions of the training including the monthly stipend to be paid during the training period.

Despite the Apprentices Act being measured as a comprehensive legislation for safeguarding the interests of apprentices in India, certain issues like employment of apprentices on completion of training, low participation of both employers and workers in comparison to other countries, low stipend rates for apprentices, high

levels of regulatory requirements for employers and shortage of trained teachers and trainers still persist in Indian apprenticeship system. Recently, the government by passing the Apprentices Amendment Act, 2014 has made significant efforts to reduce the level of regulatory barriers by doing away with penal provisions regarding imprisonment of the employer, simplifying registration of apprenticeship contracts by introducing online portal and giving employers the privilege of deciding the holidays, leaves and the working hours of training. But these efforts are not enough as apprentices working in unorganized sector or industries still remain largely deprived of these rights for want of enforcement of laws regulating their working conditions. Furthermore, the removal of penal provisions from the Apprentices Act can give rise to exploitation of apprentices.

In view of the above, one of the issues which has been under constant debate and discussion concerns the right of employment of the apprentices on completion of their training. Although the Apprentices Act does not cast any obligation on the employer for recruiting apprentice subsequent to the completion of his or her training, however, several cases have come up for adjudication before various courts and tribunals, where the apprentices have demanded legal right to employment after completion of their training. One of the significant reasons for claiming such right is because of employment of workers by the employers on a large scale under the guise of apprentices. Certain employers believed that deployment of workers under the guise of apprentices will benefit the employer as apprentices cannot claim permanency or protection given to the workmen. It was alleged that employees/workmen were dubbed as apprentices so as to resort to summary termination and deny their legitimate benefits. The courts while dealing with such cases have given their decisions on the basis of facts

and circumstances of each case. In this regard, reference may be made to the judgment of the Hon'ble Madras High Court in the matter of *Workmen of Pmp Textiles vs. Management of Pmp Textile* (2011 LLR 731). In the said matter no regular workers were employed by the management and all the persons working with the management were apprentices. The Hon'ble Court after going into the facts of the case observed that it would be impossible to believe that the entire production activity was being carried without any regular employee. Though the regular employees, all of whom were involved in the production activities, were called apprentices, the Hon'ble Madras High Court while relying



upon the judgment of the Hon'ble Supreme Court in the case of *Trambak Rubber Industries Ltd. Vs. Nashik Workers Union and Ors.* took the view that the apprentices in question were to be treated as workmen.

However, the Hon'ble Allahbad High Court while dealing with the situation that whether an apprentice is a workman or not has held that the apprentice cannot claim employment on the basis of the nature of the work performed by him/her. In this regard reference may be made to the judgment of the Hon'ble Court, in the matter of *Tannery & Footwear Corporation of India Limited vs Labour Court Kanpur* [(1994) II LLJ 1186 (All.)], where the court held that an apprentice merely by discharging a function of a regular employee cannot turn around and say that he

has become a regular employee. Accordingly, the question whether a trainee is a workman or not entirely depends upon the facts and circumstances of each case and no specific criteria can be defined to determine the same.

Another issue surrounding the apprenticeship is regarding the social benefits which have been often demanded by apprentices in India. Although the Apprentices Act is clear regarding non-applicability of provisions with respect to labour laws to apprentices, there have been several cases where the apprentices have demanded social security benefits from the employer provided under the said laws. In this regard, reference must be made to the Judgment of the Hon'ble Supreme Court in the case of *R.P.F Commission Mangalore vs. Central Aercanut and Coca Marketing and Processing Co-operative limited* [2006 I LLJ 995 (SC)], where the apex court held that the apprentices engaged under Section 2(aa) of the Apprentices Act are excluded from the definition of employee under Section 2(f) of the Employers Provident Fund and Miscellaneous Provisions Act, 1952 and thus, are not entitled to any benefits granted under the said Act. Therefore, it is evident that apprentices working under the Apprentice Act are not covered under the provision of any labor law and are not entitled to any benefit granted under the labour welfare legislations.

Indian apprenticeship legislation has a powerful influence on the way the apprenticeship training is conducted in the country. Though, the government by passing the Apprentices Amendment Act, 2014 has taken steps to reduce the regulatory barriers, but even today the apprentices/trainees working in the unorganized sector are deprived of the rights granted to them. Therefore, there is a need of legislative responsiveness to change the demography and the voices of the industry as it is a crucial factor in the continuing success of apprenticeships as a way of providing skilled labour for the country. **HC**