

Lesson 12

Selling Ethics & Sales Promotion in Employees Act 1976.

Selling Ethics: Meaning, Sales Promotion in Employees Act 1976.

Selling Ethics

- Meaning and Importance of Selling
- Problem and ethical situation facing by the sales persons
- Definition of different terms used in sales promotion employees act
- Different provision of this act

OBJECTIVES

After studying this lesson, you would be able to understand-

- Meaning and importance of selling ethics
- Different problems of selling ethics

SELLING ETHICS

Webster's New Collegiate Dictionary defines Ethic as "the science of moral duty or the sciences of ideal human character. Ethics are moral principles or practices. They are professional standards of conduct. Thus, to act in an ethical fashion is to conform to some standard of moral behaviour.

A broad definition of ethics is: ***Individual, organizational or cultural beliefs about what is right and wrong, good and bad, in actions that affect others.*** The difference between morals and ethics is clarified by considering morals as principles of right and wrong conduct, and ethics as a system of morally correct conduct. The principles you live by are morals, and the system by which you act on those principles is ethics.

Sales manager have important ethical responsibilities with regard to their own actions as well as the actions of their salespeople. Sales manager often faced with ethical dilemmas in hiring, setting quotas, evaluating, and many other aspects of their managements tasks. They are also responsible for establishing, communicating, and enforcing the ethical standards which they expect their sales people to follow.

Sales people are exposed to greater ethical pressures than individuals in many other jobs. They work in relatively unsupervised settings, they are primarily responsible for

generating the firm's revenues, which at times can be very stressful; they are continually faced with problems that require unique solutions, which is also stressful; and they are often evaluated on the basis of short-term objectives. Being evaluated on the basis of short-term objectives can cause salespeople to promote short-term solutions to customer's problems, which may not be in the customers' best interests.

The Pressure to Compromise Personal Ethics:

Most of us have our own personal codes of ethics-what we will do and will not do. Often we would prefer not to do certain things, but if pressed sufficiently hard our ethical codes may bend. A person's true ethical code surfaces when tested under difficult conditions. It is easy to be ethical when no hardship is involved-when one is winning and life is going well. The test comes when things are not going so well-when competitive pressures build up. The pressure brought on by quotas, pay plans, and a fierce competitive environment breeds unethical behaviour.

Some business executives' believes that in order to advance in an organisation, a person must occasionally do something that he or she would prefer not to do.

For executives who ignore the unethical activities of their sales representatives, the consequences are serious-lawsuits, fines, careers ended, and imprisonment. So, regardless of the pressure to compromise personal standards, all of the recent evidence suggests that it is not in the best interest of sales people and sales managers to do so.

The Problem of Determining Ethical Standards:

As individuals, sales managers usually have their own standards of ethical conduct. And they usually abide by these standards in managing their sales forces. Most of us believe we act ethically by our own standards. However, ethical standards are set by a group-by society-and not by the individual. Thus the group evaluates what you as an individual think is ethical.

The problem is that the group (society) lacks commonly accepted standards of behaviour. What is considered ethical conduct varies from one country to another from one industry to another and one situation to another. Looking to the law or corporate

policy for guidance often leads only to more gray areas rather than to clearly defined, specific guidelines.

Ethical Situation Facing Salespeople and Sales Executives:

Ethical questions are involved in many of the relationships that sales managers have with their salespeople, their companies, and their customers. Some few of these situations are as follows.

(a) Relations with the Sales Force:

A substantial portion of sales manager's ethical problems relates to their dealings with the sales force. Assume for instance, that a salesperson has built a territory into a highly profitable district. The representative even have worked under a straight commission compensation plan and paid his or her own expenses. An executive who sees this salesperson's relatively high earnings may decide there is too much territory and split it. Is this ethical? On the other hand, is it sound management not to split the district if the sales executive believes there is inadequate coverage of an overly large district?

Ethical questions often arise in connection with promotions, termination, and references. If there is no likelihood that a sales representative will be promoted to a managerial position, should the representative be told? If the sales manager knows that the representative is working in expectation of such a promotion, to tell him mans to lose him. In another instance, when a managerial position opens up in another region, a sales manager may keep a star sales representative in his/her present territory despite the representative's qualifications and desire for promotion. And what is management's responsibility in giving references for a former salesperson? To what extent is a manger ethically bound to tell the truth or give details about former employees?

(b) Relation with the Company:

Changing jobs and handling expense accounts illustrate the ethical problems involved in sales executive's relations with companies. When changing positions, a manager may want to take key customers to the new employer. Ethical and legal questions may arise if this executive tries to move those customers to the new firm.

Many times a sales manager possesses information that could be highly useful to a competitor. Naturally, it is difficult to control the information a manager gives to a new employer. But beyond certain limits such behaviour is clearly unethical

(c) Relation with Customers:

Perhaps the most critical set of ethical questions facing sales managers is associated with customer relations. The major problem areas involve information, gifts, and entertainment.

Information:

It is important that salespeople provide their customers with all of the information that enables them to make informed decisions. Sometimes salespeople make recommendations that are not in the best interests of their customers. For example, they may neglect to give the customers complete information. To cite one example, a group of insurance representatives were trying to sell new policies to their current policyholders. In doing so the representative failed to tell their customers that the new policies seemed less expensive than they really were because they were paid for in part by using up the cash value of the older policies.

Sometimes salespeople knowingly sell a higher priced product when a lower priced product would have fulfilled the customer's need just as well. The "Journal of the American Medical Association" claims that pharmaceutical sales representatives are pushing higher priced calcium channel blockers for high blood pressure when cheaper diuretics and beta blockers are just as effective.

Gifts:

The practice of giving gifts to customers, especially at the holiday season, is time-honored in American business. But today, perhaps more than ever before, the moral and ethical climate of giving gifts to customers is under careful scrutiny. The practice is being reviewed by both the givers and the receivers of gifts. Some firms put dollar limits on the business gifts they allow their employees to give or receive. It is unfortunate that gift giving to customers has become so complicated and so suspect. A reasonably

priced, tastefully selected gift can express appreciation for a customer's business. Today the problem lies largely in deciding what constitutes "reasonably priced" and "tastefully selected." The following examples illustrate this problem:

Example-It is a legal and acceptable practice for a manufacturer to give a department store's sales clerks "push money" to promote the manufacturer's brand. But can this manufacturer rightfully give the head buyer a little something extra for first getting the product into the store?

Fortunately, sales executives have some time-tested guidelines to help them avoid gift giving that is unethical or in bad taste.

- A gift should never be given before a customer does business with the firm.
- Do not give gifts to customer's spouses
- The value of gifts should be kept low to avoid the appearance of undue influence on future purchase decisions.

Entertainment:

Business entertainment is definitely a part of sales work, and a large portion of the expense money is often devoted to it. Representatives who spend this money unwisely on accounts with little potential waste time, and their selling costs will be out of line. Indeed, a contributing factor in salespeople's success may be their ability to know the right person to entertain and the nature of the entertainment called for.

Over the years, some useful generalizations have been developed in customer entertainment:

- Entertainment to develop long term business relationships, not one order.
- Keep the entertainment appropriate to the customer and the size of the account
- Be sensitive to customer attitudes toward types of entertainment
- Do not rely on entertainment as one of the foundation of the selling strategy-use it only to complement the strategy.

SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT 1976

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

This Act regulate certain conditions of service of sales promotion employees in certain establishments. It enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:--

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 date^{1*} 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.

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 employee" 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 include any such person –
 - (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;

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 a notified industry for the purposes of this Act.

Leave.

1. In addition to such holidays, casual leave or other kinds of leave as may be prescribed, every sales promotion employee shall be granted, if so 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.
2. The maximum limit up to which a sales promotion employee may accumulate earned leave shall be such as may be prescribed.
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 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.]

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.

Maintenance of registers:

Every employer in relation to an establishment shall keep and maintain such registers and other documents and such manner as may be prescribed.

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 Indian 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.

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.

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.

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.

Effect of laws and agreements inconsistent with this Act:

(1) The provisions of this Act or of any rule made there under 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 favorable 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 favorable 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.

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 in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the 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 this rule.

SELF CHECK QUESTIONS

1. What do you understand by the term "Selling Ethics?"
2. Discuss the important provision of Sales Promotion in Employees Act 1976.