



LEAVING THE CLASSROOM POORLY

NO PENSION FOR TEACHERS?

Rabbi Boruch Meir Levin, shlit"á; Dayan Bais HaVaad

After being a rebbe for over 20 years at a local elementary school, a rebbe is retiring at the end of this year. The administration was financially very supportive over the years despite the hardships they faced. However, they do not seem to be offering any sort of severance pay or pension plan, nor is there any mention of one in the contract. Would there be any halachic basis to request some sort of financial “package” upon retirement?

Strictly speaking, there is no requirement in *halacha* for an employer to offer any sort of compensation to an employee at the termination of his employment, beyond what is included in the contract. This would be so, regardless if the termination is initiated by the employee or the employer. While the Torah does obligate a master to give an extra payment to his Jewish slave upon being set free, which is the mitzvah of *ha'anaka*, this is only limited to slaves and not standard workers.

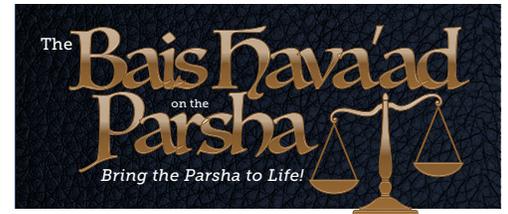
Nevertheless, the *sefer hachinuch* writes that one should heed to the underlying factor of this *halacha* and apply it to the standard worker as well. Therefore, he says, when one's

employee takes leave, he should reward him “severance pay” from that which he was blessed by *Hashem*. Although this act would be one of *lifnim mishuras hadin* - beyond the letter of the law, some poskim² maintain that since the concept of *lifnim mishuras hadin* is derived from the pasuk of *v'asisa hayasher v'hatov* - “you shall practice what is just and good”, it is in fact incumbent on one to act as such. According to this view, it would be within *bais din*'s realm to enforce some sort of severance payment.

In some industries or regions, it is in fact the accepted practice for companies to offer what is termed “severance pay” if and when they layoff an employee. In an industry where this is indeed so, it would become obligatory on any employer to offer this payment, even if it were not stated in the employment contract³. However, the whole concept of severance pay, would only apply if one is leaving his job because the school is no longer offering him the opportunity to continue it. It is in such an instance where many employers feel it only right, and indeed *lifnim mishuras hadin* so dictates, to offer some sort of compensation to the employee for not offering to renew his contract. If, however, the school is still offering the job, and rather it is the employee who is taking the initiative of leaving, the concept of *lifnim mishuras hadin* would not apply⁴ and neither could we draw parallel from any accepted practice. In such an instance the only compensation an employer would offer is a pension plan, but such a plan would have to be built into the employment contract as there doesn't seem to be any established practice of offering such compensation in the absence of a specific agreement.

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2 רמ"א (סי' י"ב ס"ב) בשם יש חולקין, והש"ך (שם) בשם הבי"ח.
 3 עיין במג"י ח"ו סי' קס"ז שכתב דכן הוא המנהג בא"י, ושעפ"ז מהיב"ם הבתי דינים שם בתשלומין זו.
 4 מג"י בתשובה הג"ל.



Rabbi Yosef Jacobovits, shlit"á

HEAR MY TESTIMONY: KRIAS SHEMA BY PROXY

What are the requirements for relying on another person's recitation of krias shema?

The pasuk of *vedibarta bam-*

Gemara: teaches that a person's primary speech should be Torah.

Yerushalmi- teaches that certain obligations can only be fulfilled by the person himself. It isn't sufficient to just listen to another person and discharge his obligation via *shomea ke'oneh*. E.g. *krias shema*.

Gemara Megila- one needs ten people in order to fulfill the halacha of *shomea ke'oneh* with regards to *krias shema*.

Magen Avraham-. Three conditions for *krias shema*: a] listening b] responding amen c] in the presence of ten people.

Why the extra condition for *krias shema*?

There are two types of *shomea ke'oneh*:

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GENERAL HALACHA

THE LEAST YOU CAN DO FOR ME: *Minimum Wage in Halacha*

By Rav Yitzchak Crossman, *Dayan at The Bais HaVaad*



Increasing the minimum wage is in the national debate again. In this article, we consider the basic idea of a mandatory minimum wage from various Torah perspectives and the attitude of Halacha towards the regulation of minimum wage.

NATIVE HALACHA

Halacha has no native minimum wage regulation. Indeed, *Halacha* has no general notion of “fair” pricing; the laws of *Ona’a* merely prohibit pricing goods (and, according to some, services) differently from the going market rate, but have nothing to say about the establishment of this rate, and in any event, the protections afforded by these laws can be waived by the participants in a transaction, insofar as they know the actual going rate and explicitly acknowledge that they are nevertheless diverging from it. In general, the *halachic* system is strongly *laissez-faire*, with parties to a contract having very wide latitude to set whatever terms they wish.

ENACTMENTS BY GUILDS AND MUNICIPALITIES

The Talmud states that “municipal residents are permitted to stipulate regarding measures, prices [of goods] and the wages of workers”. Although it may be anachronistic to understand this as referring to minimum wage legislation, some understand it to actually refer to maximum wage legislation, prohibiting employers from paying – and employees from receiving – daily wages above some ceiling. Some appar-

ently understand that the “stipulation” here is not even a regulation at all, but merely the establishment of a standard rate that governs transactions that are not otherwise specified, but the *halachic* consensus takes for granted the general right of communities to regulate prices.

IS MINIMUM WAGE LEGISLATION BINDING UPON JEWS?

Halacha recognizes the legitimacy and authoritativeness of temporal law under the principle of “*dina de malchusa dina*” (“the law of the government [lit. “kingdom”] is the law”), but there is considerable debate over the scope and application of this principle. In particular, some limit it to legislation involving a direct governmental interest, such as taxation or currency regulation, while many extend it to any legislation “for the benefit of the inhabitants of the state”.

This latter, more expansive interpretation of *dina de malchusa dina* would therefore cover minimum wage legislation insofar as such legislation is deemed to be “for the benefit of the inhabitants of the state” – a loaded question that depends on one’s political and economic convictions and assumptions. In various other contexts, we find widely different attitudes among the *Poskim* of the last century or so toward various instances of modern social legislation.

THE EXAMPLE OF RENT CONTROL LEGISLATION

A classic case study is rent control legislation. Some *halachic* authorities are strongly opposed to the recognition of such legislation, arguing that – barring emergency situations – such laws are grievously unjust takings of private property that unfairly favor the tenant class against the landlord class (as well as incumbent tenants against those in search of housing). These, they contend, are the product of “free-thinking representatives, holding the doctrines of the communists and the socialists, to squeeze the rich and take their money, whereas all these doctrines are contrary to *Da’as Torah*”.

Other authorities, however, are quite enthusiastic about rent control legislation, insisting that “it is fair, appropriate and acceptable, especially in big cities, for it is directed against price gougers and those who flay the hides of the poor”.

A third, compromise view distinguishes between prohibitions against eviction and rent stabilization provisions that compel the landlord to continue renting the property at be-

low-market rents: the former are binding, as they have precedent in the classic Talmudic rules governing landlord-tenant relations, while the latter are not, as they do not.

Similar arguments can be made with regard to minimum wage legislation: on the one hand, it certainly derives from a socialistic, egalitarian ideology and a concern with income inequality, and perhaps should be considered an unfair taking of private property, as it compels employers to pay more than market forces would naturally require. On the other hand, it is certainly directed against “price gougers” and “those who flay the hides of the poor”.

According to the third view mentioned above, the key question is whether there is *halachic* precedent for such legislation: on the one hand, as has been previously noted, there is ample precedent for price and wage regulations of various sorts, but on the other hand, these regulations were generally for the benefit of sellers, the general public, and employers, not employees! It would seem, however, that there is no real conceptual difference between protecting the livelihoods of sellers and workers – on the contrary, if protecting sellers is legitimate, *a fortiori* should protecting the typically less well-off workers be.

Even the first view discussed above might have no objection to minimum wage legislation, since, unlike rent control legislation, which deprives an owner of the free use of his property without any prior agreement thereto, minimum wage legislation merely restricts the types of employment contracts which can be legally enacted. One who does not wish to pay the minimum wage is perfectly free to keep his money, by refraining from hiring employees.

IS MINIMUM WAGE LEGISLATION AN ECONOMICALLY SOUND IDEA?

R. Aaron Levine has argued that due to “economic realities”, a mandated minimum wage will not achieve its stated goals, and is therefore “not in keeping with the principles of halakhah”:

Economists are almost unanimous in condemning the minimum wage concept as self-defeating. They point out that raising the wage level above what it would be if market forces were left to their own devices inevitable results in unemployment. While it is true that those who will be hired will be better off, the very existence of the higher wage requirement will encourage employers to substitute capital for labor and to utilize labor-saving devices in a variety of ways. ...

But economists are no longer “almost unani-

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MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

FILLING UP THE GAS TANK

Sometimes a person lending their car to a friend may request that the car be returned with the same amount of gas as when it was lent.

Is this an issue of ribbis (seah beseah)?

Contemporary *poskim* permit refilling the tank before returning a borrowed car, since it is obviously being done out of gratitude and not as an additional payment for a loan. The



same applies even if the borrower returned a full tank. When the lender *requires* that the gas be refilled, certain *poskim* require that one *specify* that the refill was in gratitude for use of the car. See also “Gifts of Gratitude.”

Note: *Renting* a car from a Jewish company

which requires the car to be returned with a full tank of gas, *may be a problem of ribbis*. The company should ask a *shailah* as to the best way to structure their rental agreement in order to avoid this issue.

YOU DAILY LIVING

Weekly Questions

HALACHOS OF TEFILAS HADERECH

I had just started out on a business trip and recited Tefilas Haderech, and then my boss called to cancel the trip. Am I obligated to travel a *parsah* out of the city so that the bracha should not be a bracha l'vatata?

Teshuvos Zichron Yehuda (OC 42) requires continuing the journey, so that the *bracha* should not be a *bracha l'vatata*. However, Rav Betzalel Stern, zt”l (B'tzeil Hachochma 5:66-67) disagrees. He writes that only regarding *berachos* recited on food and on *mitzvos* do we say that once the *bracha* is said, one may not change their mind. For example, after reciting a *bracha* on food one must take a bite, even if one realizes that they are no longer hungry. However, *Tefilas Haderech* is not a *birkas hamitzvah* but rather a prayer for success. The rules for *tefilos* are different than for *berachos*. For example, we recite the *tefilah* of *Aneinu* on a fast day even though there is no guarantee that we will be able to complete the fast. Moreover, if a public fast is declared during a time of drought and then before midday it begins to rain, the fast is not completed even though the *tefilah* of *Aneinu* was already said. Like-



wise, we are not concerned that the *Tefilas Haderech* will have been said in vain—since at the time when the *tefilah* was recited the traveler had already left the city and began the trip, it was a valid prayer. He concludes that though one is not required to continue the trip, it is proper to recite “*Baruch sheim kevod malchuso l'olam va'ed*,” just in case. However, if *Tefilas Haderech* had been recited prematurely, before having left the city, one would be required to exit the city and travel a *parsah*, because otherwise it would be a *bracha l'vatata*, since the *bracha* did not apply at the time it was said.

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- דף כ"ט Paying for the Prohibited: 2
- דף ל' Paying for the Prohibited: 3
- דף ל"א The Kashrus of Gelatin & Confectioner's Glaze
- דף ל"ב The Broken Pittam
- דף ל"ג Are my Chanukah Candles Treif?
- דף ל"ד Siyum: Release the Ashes

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Nevertheless, with regard to **rebbeim** and **menahilim** specifically, there does seem to be an established practice among schools, to offer them, upon their leave, one month's payment

per year of service, regardless of their basis for the termination. This practice, referred to as "**chodesh l'shana**", was initiated primarily by Torah Umesorah in the mid 20th century

to partially compensate for the inadequate "nest egg" a rebbe usually has (or does not have!) at the time of his retirement. As such, a Bais Din may require a school to follow this practice.

GENERAL HALACHA

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Fact Checker did give President Obama two Pinocchios for flatly declaring that "there's no solid evidence that a higher minimum wage costs jobs", but it also acknowledges that:

The [2013 Economic Report of the President] noted that most economists had once believed an increase in the minimum wage would reduce employment but that "the consensus view among economists has since shifted as more evidence has accumulated." It also cited a 2009 meta-analysis of 64 studies of the minimum wage that found "no evidence of a meaningful adverse employment effect" of the minimum wage.

On the other hand:

The problem is that while there may be a new consensus emerging on the left-leaning side of economic theory, there is an equally fierce response from other economists.

In 2006, economists David Neumark and William Wascher published a survey of more than 100 studies, and came to an opposite conclu-

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sion, directly contradicting the results of the so-called New Minimum Wage Research. They found that the majority of the studies showed that "raising the minimum wage leads to economic distortions and often has unintended adverse consequences for the employment opportunities of low-skilled

workers."

In the final analysis, it is probably fair to say that "objective", "neutral" economics will not settle this debate, and one's understanding of the Torah's view of minimum wage legislation will ultimately depend on the sorts of economic ideologies articulated in the rent control debate.

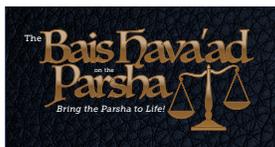
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listening to another person's recitation to discharge his own obligation where

the one listening is considered as if he himself actually articulated the **bracha**.

Possible answer: The Magen Avraham is of the

opinion that one is required to articulate himself the **krias shema**, and relying on someone else's recitation would necessitate, in addition to listening, the extra step of ten people and responding **amen**.

We find the same concept by the obligation to recite 100 **brochos** on Shabbos.

The Rosh: listen to others and respond amen to accumulate 100 **brochos**.

Ma'adanei Yom Tov asks: Why necessary to add the amen? Isn't **shomea ke'oneh** sufficient?

Answer-to be considered as if he articulated the **bracha** himself, one needs the added benefit of responding **amen**.



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