

The Catering Salesman: When Does He Get Paid?

Payment requirements for the private salesman

By: Rabbi Dovid Grossman, Rosh Bais HaVaad

There is one *halachic* classification of work which can lend itself to confusion. A *poel* who works by the hour is a *schir yom*. An independent contractor, who is paid by the job, is a *kablan*. Each of these categories comes with its own set of rules and *halachos*.

The third category of employment is an arrangement which is neither by the hour nor by the job, but rather a sales job. This halachic designation of *mekach*, or sales, applies when a worker constructs something in his own time and with his own materials, and then sells it.

The worker who uses his own material to construct a cabinet, sew a garment, or even write a *Sefer Torah* does not have an employment arrangement with the buyer. Rather the buyer purchases the product once it is complete. There may be a requisite down payment, or some payments made along the way. But the worker is using his own materials and his own infrastructure. Therefore, he is considered as working for himself, as a *mekach*.

On Time Sales Payments

The *halachic* designation of the *mekach* makes a difference with regards to terms of payment. According to the *halacha* of *bal tolin*, an employer must pay his worker on time. In the case of a *poel* or a *kablan*, the employee is obviously working for the boss, and the boss must make sure to pay him. This may apply even if one is creating a cabinet or sewing a garment. If he is using the boss's material, or working on the boss's time, he still falls under the category of a *kablan* or *poel*.

In the case of the *mekach*, there is no *mitzvah dioraisa* of *bal tolin*, to pay the salesman on time. However, there is a *mitzvah dirabanan* to pay the *mekach* as soon as possible. This is based on the *possuk* in *Mishlei*, "Al tomar l'chavercha, lech v'shov umachar eten.." "Do not say to your friend, 'Go and return and tomorrow I will give', though you have it with you." If you have the ability to pay the *mekach*, do not send him away for another day. It is a *mitzvah dirabanan* to pay the *mekach* on the same day the goods are delivered or

services rendered.

Paying for the Party

The common application of this principle is in the case of wedding vendors. The *baal simcha* books a caterer, rents a hall, and hires a band. Is he obligated in the *mitzvah* of *bal tolin*, to pay these vendors that same day?

It depends on the nature of the product or service.

It is questionable if the hall rental falls under *bal tolin*. There is a question among the *poskim* if renting *m'taltalin*, moveable objects, is in the same category of renting a home or building. A home or building does not fall under the *halacha* of *bal tolin*, while there is a *shaila* if renting moveable objects, such as the tables and chairs, does fall in this category.

Waiter services and the like are a classic case of *schiras poelim*, a regular employment which is subject to *bal tolin* and must be paid that same day.

The caterer's fee, however, is for the food and that is considered a *mekach*. The *baal simcha* pays for the portions of food prepared for the wedding guests. As a *mekach*, the caterer does not fall under the *mitzvah dioraisa* of *bal tolin*.

Whether a product or service is designated as a *poel*, *kablan* or *mekach* can have halachic ramifications regarding payment. In every case, it is important to understand which category you are hiring.