

Are Kickbacks Permitted According to Halacha?

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Question: A common question that arises with respect to employees relates to kickbacks. Kickbacks are cases where an employee directs business to a particular vendor, and certain benefits accrue to the employee as a result (e.g. the employee receives a portion of the profit). Is this ethically and halachically acceptable? If it is a problem, what is the proper way to rectify it?

Answer: The first point to note in this context is that the laws of *Choshen Mishpat* are unique in comparison to *Orach Chaim*, *Yoreh Deah*, and *Even Ha'ezer*. As opposed to the other three, *Choshen Mishpat* is malleable and one is permitted to negotiate. One can establish one's own rules, take a hard line, and set forth whatever principles one likes and attempt to convince the other party to accept it. However, the critical factor is that the person actually negotiates in a forthright manner, and not hide behind some sort of justification or *heter* (such as taking the industry standard without discussing it first).

As a result, it is a big *shaila* whether using kickbacks without first negotiating is permitted. Essentially, a person who uses a kickback makes money from someone else's profits (if they receive business from you, you receive some of that profit). The *pashtus* (simple understanding) is that according to the *Shulchan Aruch*, the strict halacha in this case would be *yachloku*, the parties split the profit.

A manager or employee who is not comfortable with splitting the profits in a kickback situation are certainly free to negotiate a different agreement. One can take a tough stand and tell one's boss, for example, that one only operates with kickbacks to vendors, or some other such rule. But one cannot simply decide for oneself what the operating rule should be without negotiating with the other party, as a person is ultimately extremely biased in his own favor, which is a conflict of interest, and may act dishonestly as a result.

As we mentioned in the previous sessions, the best indicator for identifying a potential halachic problem with regard to business ethics is when one is not comfortable divulging some piece of information, conflict, or relationship that is relevant to the other party involved. In such a case, one should preferably consult with a rav who is knowledgeable in the area of *Choshen Mishpat*. But in many cases, discussing the matter with anyone else who does not share one's bias is also helpful, as they will likely be able to immediately identify whether one's course of action seems unethical.