

Halachic Non-Compete Vs. Legal Non-Compete

Rav Shmuel Binyomin Honigwachs

Question: Is there a benefit to having a halachic non-compete document over a standard legal one?

Answer: One of most sensitive documents from a halachic perspective is a non-compete agreement. There are two reasons for that.

1. Legal documents usually have at least some halachic validity due to the concept of *situmta*, which means that the halacha follows the common legal practice; however, in the case of non-competes, the legal ramifications are very unclear. The court system generally does not support overly restrictive non-compete clauses, but individual judges are given quite a bit of leeway to determine what qualifies as overly restrictive. Since the law is very ambiguous, it is very difficult for a *bais din* to rely on *situmta* to validate such a document.
2. The goal a standard non-compete is trying to accomplish is not really extant in halacha. Non-competes seek to forbid someone from doing a certain thing - they try to command a worker not to work - and there is no real halachic mechanism that can be used to force someone not to do something in this manner.

The way halachic non-competes work, on the other hand, is that they place fines on employees for transgressing the terms of the deal. Charging someone money for doing a certain action is a halachically valid transaction, and, therefore, such a deal could be enforced.

If all the legal non-compete is stating is that an employee who leaves a company may not steal their employers contacts, or may not take trade secrets with them, it would be much easier to enforce. Such actions may be halachically forbidden even without the non-compete, and the document is simply reinforcing an existing prohibition. Since there already is a halachic basis to make such demands, and it is also very likely a judge would enforce such an agreement, it is a much more valid document.