

May an Employer Fire an Employee In The Middle of a Contract?

By Rav Eliezer Cohen

Question: In the middle of the school year, an educational institution finds itself in a difficult financial situation. They currently employ an experienced secretary, who has been with the school for a number of years and is being paid a substantial salary. They realize they can cut costs by laying off this secretary and hiring a younger, cheaper replacement, whom they feel could do the job almost as well. Is this permissible?

Answer: If the secretary is under contract for the entire year, the school definitely is not allowed to fire her in the middle of the year. While the secretary has the status of a *po'el*, and, as we explained in previous *shiurim*, is allowed to leave in the middle of a contract, the employer does not have the right to terminate her without cause while she is under contract. Hiring a cheaper replacement is not considered a justified cause to fire her, and the school would, therefore, still be obligated to pay her if they lay her off. How much an employer has to pay a worker who is laid off in the middle of a contract is a matter of discussion in the *Poskim*. The Gemara says that a worker who loses his job and now has to sit at home with nothing to do, is paid like a "*po'el batul*". This means that you calculate how much of a pay cut the employee would be willing to take to be able to sit idly, rather than do his work. That amount is deducted from his salary, and the employer must pay him the difference.

On a practical level, there are different formulas suggested by the *Poskim* to calculate this amount. The *Taz* rules that the worker should be paid half of his salary. Rav Mendel Shafran *shlita*, one of the biggest *Choshen Mishpat* experts in Eretz Yisroel, says that the *Taz* is only speaking about a manual laborer, whose job involves a lot of physical work. For such a worker, there is a big difference between doing his job and sitting idly at home; therefore, he would be willing to take a 50% pay cut to not have to do his labor.

A secretary, however, does not have to perform strenuous, physical labor. Of course, she has to do work, but there is not as much of a difference for her between working in an office and sitting at home as there would be for a blue-collar laborer. Rav Shafran rules that she would need to be paid almost her full salary if she is fired in the middle of the year. It is, therefore, obvious that terminating her would not be a very wise financial decision for the school.

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