

Severance Pay with No Contract

Rabbi Boruch Fried

Case: *Our company is downsizing, and we needed to let a few employees go. One of them is demanding severance pay, despite there being no mention of it in the contract. Is there any reason for me to consider his request?*

Question: Can an employee demand severance pay if it isn't mentioned in the contract?

Answer: This is a very common dispute, particularly in cases of an acrimonious dismissal. Generally, the poskim take the position that common practice of that particular industry and locale will define whether and how much severance pay is called for. The rule of *hakol k'minhag hamedina*, everything [in monetary matters] follows the local customs can create unspoken commitments, even if there is nothing specified in the contract. There is a broad range in different industries, with some typically demanding generous severance packages depending on the length of employment, and others being at-will employment with no severance pay at all.

The halacha of minhag is based on presumptions, meaning that because everyone does [or doesn't do] something, anyone who didn't specify otherwise is assumed to be going along with it. Because of this, a minhag needs to be common and well-known. Anytime there is ambiguity as to what the common practice is, the employer would be exempt of anything more than what is definitely accepted.

Interestingly, the Chinuch [mitzva 422] finds a source to severance pay in the Torah commandment of *hanakah*, to give gifts to a Jewish slave upon emancipation. Although the mitzva of *eved ivri* doesn't apply nowadays, the Chinuch extends the concept to all Jewish workers as being the correct thing for an employer to do, even where it is not a *chiyuv*.