

Sechiras Po'alim: Halachos of Employment - Part IV

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MINHAG HAMEDINAH - COMMON CUSTOM MUST BE UPHELD:

When an employee and employer commit to a work agreement without explicitly speaking out all of the terms and conditions, they are bound by a concept known as “*minhag hamedinah*”, the common custom of the land. If, for example, they do not clearly state what the worker's hours will be, he will be expected to work according to the schedule of a typical worker in that industry.

In the times of *Chazal*, the typical worker worked from sunrise until nightfall; therefore, that was considered the common custom. In our times, the typical full-time worker usually works from 9am to 5pm. Accordingly, if nothing was agreed upon to the contrary when the commitment was made, an employee is expected to work those hours.

The *Gemara* adds that even if the employer is paying a generous salary above the standard amount, he cannot claim that he agreed to this price with the intention that the worker would work extra hours; rather, we assume he intended for the extra money to provide an incentive for the employee to work harder and give his all for the job.

Rav Akiva Eiger adds that this is true even when the employer is a *muchzak*. Although usually, in any monetary dispute the halacha is that one who has the money in his possession has the upper hand, this does not override *minhag hamedinah*, and the employee would still need to be paid in full for working the

typical hours for that place and industry.

THE EMPLOYEE MUST DO HIS PART AS WELL:

The employee must conform to the common custom as well. While he certainly is permitted to take a lunch break and probably may take an occasional coffee break; however, he cannot take advantage by going out for frequent and extended breaks. Even if it was not explicitly discussed, since a worker taking long breaks at frequent intervals is not commonly accepted, he does not have the right to allow himself this liberty.

The *Mechaber* warns workers not to trim off minutes here and there from the work day by arriving late, leaving early or taking unwarranted breaks in the middle of the day. He notes that *Chazal* went so far as to rule that a worker [in earlier times] should recite an abbreviated version of *Birchas Hamazon* so as not to take off time from his job, which would constitute stealing from his boss. The *Gemara* further relates that one *Amorah* would not even say “*Shalom Aleichem*” to an acquaintance during his workday so as not to waste a moment of his employer's time. The *Mechaber* cites the *Rambam* who learns this idea from Yaakov Avinu. Yaakov Avinu proclaimed that he used all his energy to work for Lavan, never shirking his duty in the slightest. The *Rambam* learns from this that not only must one not waste any work time, he also must work with all his energy and not laze around when he is supposed to be working. He concludes that if a worker acts

properly, Hashem will handsomely reward him, as we see that Hashem repaid Yaakov with great wealth for his dedication to his work.

It is worthy of note, Lavan was the epitome of a crooked boss. He tried to cheat Yaakov whenever he could and constantly mistreated him. Despite this, Yaakov accepted his responsibility to do his job to the fullest. We see that having complaints against one's boss is not an excuse to shirk one's work obligations.

THE IMPORTANCE OF CLEAR CONTRACTS:

The Chofetz Chaim stresses the importance of an employer and employee writing out a clear contract before finalizing a work agreement. The contract should clearly state exactly what is expected from the worker and what his responsibilities will be.

He states that the employer cannot expect the worker to do anything extra if he did not overtly put it in the contract. In today's work environment, many employees are expected to multitask or perform tasks that are not part of their general job description. If it is not in the contract, an employer cannot expect his employee to do anything beyond the accepted custom for the actual job he was hired for and cannot have complaints against him if he refuses to do otherwise.

Writing out a detailed and clear contract can help avoid subsequent miscommunications and misunderstandings and helps prevent eventual ill will and malice.

CUTTHROAT TACTICS HAVE NO PLACE IN A JEWISH BUSINESS!

An employer is, of course, obligated to pay his employees, and he also is commanded by the Torah to pay them in a timely manner. The Torah indicates that people are willing to risk their lives to earn a livelihood. *Rashi*, citing the *Gemara*, explains that people will do dangerous jobs, such as climbing high trees to trim branches, in order to do their job and earn money. An employer should recognize that his workers are putting their lives on the line to earn a living, and it is a terrible transgression to try to get out of paying them.

Unfortunately, some of today's business schools

teach students that they have to run their businesses in a cutthroat manner. They teach that to get ahead, one must aggressively try to take whatever they can for themselves, even when it is at the expense of others. This ideology runs contrary to many Torah laws.

A dramatic example of this involves a practice some nursing homes unfortunately engage in, wherein they create many different company names and make purchases from vendors under these contrived names. All of the shell businesses then declare bankruptcy, leaving the nursing home exempt from paying their bills to the vendors. The perpetrators of this scheme may think they are being clever, but they actually are simple thieves.

So too, if one owes money to employees and chooses not to pay them on time – not because he doesn't have the money on hand, but simply because he wants to delay payment or he thinks he can pressure them to settle for less than the agreed-upon amount by withholding payment for a while – he is guilty of theft. The *Gemara* says, one who withholds payment from a worker has transgressed five Biblical prohibitions, as well as the positive commandment to pay workers on time.

Consider this: when one eats ham, he transgresses one Biblical commandment. When one doesn't pay his workers, he transgresses five!

In addition, there is also a Rabbinic prohibition for an employer to make a worker "run after" him to get paid. This would apply to someone who has money to pay his worker but keeps telling him to come back later, just to take advantage of him or to make him feel inferior.

THE PARAMETERS OF "LO SALIN":

The commandment to pay a worker on time goes according to 12-hour cycles of sunrise and sunset. In other words, if an employee works by day and finishes before sunset, he must be paid before sunset. If he works overnight and finishes before sunrise, he must be paid by sunrise.

It is very important for the employer to fulfill his obligation to pay on time, even if it is a bit difficult for him. If he has to run to the bank to get the money or has to run home to get his checkbook, it is incumbent on him to do so.

The Chofetz Chaim speaks at length about the importance to be strict regarding this commandment. He describes how most people are overjoyed when they fulfill a *mitzvah* such as shaking *lulav* or eating *matzah* but are not so happy when they pay their workers. If only people would realize what a great *mitzvah* it is to pay workers on time, their outlook would be completely different. They would be filled with joy as they hand over the paycheck to their employee!

The *Pischei Teshuva* relates that even if the *Arizal* didn't have any money in his possession, which exempts one from the obligation to pay on time, he would borrow money in order to have the opportunity to fulfill this great *mitzvah*.

EXCEPTIONS TO THE RULE:

There are a few instances when one is exempted from paying his worker on the day the job was finished.

As we mentioned, if one [literally] has no money, he is exempted from paying until he acquires the funds. Another exception would be an instance where a predetermined process has to be completed before a worker is paid. For example, if there is an accepted process wherein a salesman has to present his invoices and review them with his boss before he is paid, the boss does not have to pay him until the process is completed.

The *Gemara* also speaks of a place with a system where there is a specific market day when all workers are paid. In such a case, workers wouldn't have to be paid until that day.

Another exemption mentioned in the *Gemara* is a case when an employee is hired through an agent. In such a circumstance, since the employer never directly committed himself to the worker to pay him on time, he has no Biblical obligation to do so. The agent also has no commandment to pay him on time because he is not the one responsible for paying him. Of course, the employer has to pay him, but he has no commandment to pay him by a specific time. In all of these cases, the Rabbinic injunction of *lech vashov* would still apply, and should he have the funds, he would be required to pay the worker.

For a *kablan*, one who is paid by the job, the job is considered complete upon the delivery of the completed items. For instance, if a dry cleaners calls

someone and tells him that his suit has been cleaned and is ready to be picked up, there is no obligation to pick it up and pay the cleaners on the same day. Rather, he must pay on the day [or night] he actually picks it up.

In the beginning of *Hilchos Shabbos*, the *Biur Halacha* discusses a story where a cleaners delivers someone's laundered clothes to their home on erev Shabbos, and the man only has enough money to either purchase respectable Shabbos food or pay for the laundering. He says that although paying an employee takes precedence over *kavod* Shabbos, the individual has a solution of telling the cleaners that he does not want to accept the clothing now. Since he isn't taking the clothing, he does not have an obligation to pay for them yet.

One final *halacha* of *lo salin* is that the worker must ask for the money in order to obligate the employer to give it to him. If the worker leaves before paying time, the employer does not have to find him in order to pay him.

In any event, it is clear that both an employer and employee have obligations to the other side. It does not matter whether the other side is nice to them or treats them properly. No matter what, they have to fulfill their obligations. As we discussed in the past, they do have certain rights as far as quitting or firing, but as long as the job is not terminated both sides are required to fulfill their duties fully.

INJURIES ON THE JOB:

Another aspect of the laws of employment relates to injuries on the job. Today, most companies have insurance that covers worker's injuries; however, some smaller companies or some less formal work arrangements may not have insurance. If there is no insurance, is the employer responsible to pay for the damages?

The *Mechaber* speaks about a case where a messenger gets injured or has his property damaged while on a mission. He says that the one who sent him on the mission has no obligation to pay for the damages. The source of this ruling is the *Ramban*, who explains that, as mentioned above, workers willingly accept some amount of risk when they agree to do a job. The worker knows he is placing himself in some danger when he accepts the job, and

cannot blame his employer if he gets hurt or sustains property damage.

In this vein, the *Nodah B'Yehuda* was asked if it is permitted to accept a job as a hunter, noting that hunting large prey involves an element of danger. Based on the same reasoning, he rules that it is permitted. Rav Moshe Feinstein was asked if it is permitted, for pay, to play a ball game that involves danger. (Presumably the questioner was asking

about something along the lines of tackle football.) Rav Moshe uses the above reasoning to rule that it would be permitted if the person is doing it for employment.

Since we see that employees are permitted to take risks for a job, it is understood that they accept the risk of danger and the employer is not responsible if they get hurt (unless it was clearly through the negligence of the employer).



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