

You May Fire at Will

What does it take to terminate an employee?

Adapted from the writings of Dayan Yitzhak Grossman

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The New York Times reports:

SpaceX, the private rocket company, on Thursday fired employees who helped write and distribute an open letter criticizing the behavior of its chief executive, Elon Musk, said three employees with knowledge of the situation.

Some SpaceX employees began circulating the letter, which denounced Mr. Musk's activity on Twitter, on Wednesday. The letter called the billionaire's public behavior and tweeting "a frequent source of distraction and embarrassment" and asked the company to rein him in...

"The letter, solicitations and general process made employees feel uncomfortable, intimidated and bullied, and/or angry because the letter pressured them to sign onto something that did not reflect their views," Shotwell (SpaceX's president and chief operating officer) wrote. "We have too much critical work to accomplish and no need for this kind of overreaching activism."...

The open letter asked that SpaceX's leaders "publicly address and condemn Elon's harmful Twitter behavior" and "define and uniformly respond to all forms of unacceptable behavior."

In her email to staff, Ms. Shotwell wrote, "Blanketing thousands of people across the company with repeated unsolicited emails and asking them to sign letters and fill out unsponsored surveys during the work day is not acceptable." [1]

Many commenters have suggested that the termination may be perfectly legal, because the U.S. generally operates on "at will" employment laws, which allow an employer to fire workers for just about any reason except discriminatory ones. [2]

Until relatively recently, there was no explicit halachic discussion of whether employment is normally at will or not. In this article, we survey the rulings of the *poskim* of the last century and a half on this question, as well as the related question of what constitutes just cause for terminating an employee whose employment is not at will.

To the best of this author's knowledge, all *poskim* take for granted that an at-will employment arrangement is perfectly halachically acceptable. On the other hand, all *poskim* presumably agree that an explicit stipulation that an employee may not be terminated without just cause, or a clear, well-established custom to that effect [3] (in the absence of any stipulation to the contrary), would be binding upon an employer. What is a matter of debate is whether an employment arrangement without any explicit stipulation that the arrangement is either in perpetuity or for a limited period is construed to be at will, or to constitute a commitment by the employer to retain the employee indefinitely.

Many *poskim*, including R' Shlomo Drimer (the Bais Shlomo),[4] R' Malkiel Tannenbaum (the Divrei Malkiel),[5] and the Chazon Ish[6] maintain that employment is at will by default. Some of them maintain that the question is the subject of dispute among *Rishonim*, and thus the employer, who is considered the *muchzak* (in possession of the disputed property), may follow the opinion that allows him to terminate his employee. Others maintain that the default of at-will employment is undisputed by the *Rishonim*. [7]

R' Moshe Feinstein adopts the opposite view, arguing at length that according to all *Rishonim*, an employment arrangement is by default assumed to be for as long as the employer requires the service in question, which in certain scenarios means in perpetuity. [8]

Poskim generally agree that an employee may be fired for cause. Generally accepted examples of cause are theft[9] or other malfeasance by the employee, [10] although *poskim* disagree whether the burden of proof is upon the employer to demonstrate the theft or malfeasance, [11] or if a mere allegation is sufficient (provided that the allegation is of facts that a court agrees are valid grounds for suspicion of problematic behavior). [12] Similarly, there is an opinion that maintains that a mere rumor (*kol*) of theft is sufficient grounds for termination, since it is entirely clear (*umdena demuchach*) that the employer would never have hired and trusted an employee who is rumored to be suspected of theft. [13]

[1] Ryan Mac. SpaceX Said to Fire Employees Involved in Letter Rebuking Elon Musk. The New York Times.

<https://www.nytimes.com/2022/06/17/technology/spacex-employees-fired-musk-letter.html>.

[2] Micah Maidenbergl. SpaceX Fires Employees Involved in Letter Critical of Elon Musk, Company. The Wall Street Journal, cited here. For a different perspective, see Russell Brandom. SpaceX firings likely violate US labor law, experts say. The Verge. Andrew Terrell. SpaceX Employees Reportedly Fired After Involvement with Letter. The Dallas Express.

[3] See Shu"t Igros Moshe C.M. *cheilek 1 siman 75 anaf 3 s.v. Vehinei kol zeh* for a discussion of what constitutes a binding minhag in this context.

[4] Shu"t Bais Shlomo C.M. *siman 17*.

[5] Shu"t Divrei Malkiel *cheilek 3 siman 151*.

[6] Chazon Ish Bava Kama *siman 23 os 2*.

[7] In addition to the sources cited in the previous notes, other *poskim* who maintain that the default is at will (or at least that it's a *machlokes Rishonim*) include Shu"t Mayim Chaim C.M. *siman 6 s.v. Hinei* and Netzach Yisrael (R' Yisroel Grossman) *siman 8*.

[8] Igros Moshe *ibid.* (from the beginning of the responsum). Cf. Shu"t Tzitz Eliezer *cheilek 2 siman 26 from os 5*; Minchas Tzvi (R' Tzvi Spitz) *cheilek 2 siman 6 from os 3*; Mishpatai Tishmoru (R' Ezra Sarim) *siman 33*; R' Yehuda Warburg, Tenure Rights of an Employee and Rights to Severance Pay upon Termination or Non-Renewal of a Labor Agreement—The Beth Din Experience as a Case Study, Hakirah Vol. 12 (Fall 2011) pp. 93-94.

[9] Rama to Shulchan Aruch C.M. 421:6; Shu"t Shvus Yaakov *cheilek 1*

siman 174.

[10]See Bais Shlomo *ibid.*; Igros Moshe *ibid.* end of *siman* 75 s.v. *Umita'am zeh*.

[11]Erech Shai C.M. 421:6; Igros Moshe *ibid.*; Mishpat Hapo'alim (R' Yosef Rosner) pp. 288-89, and cf. Shvus Yaakov *ibid.*

[12]Divrei Malkiel *ibid.* *siman* 152.

[13]*Ibid.*