

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #604 | Metzora - Hagadol | Friday, April 8, 2022 | 7 Nissan 5782

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

MA'OS CHITTIM

Pesach was fast approaching!

On Shabbos Hagadol, Rabbi Dayan's shul was making an appeal for *ma'os chittim*. He was asked to introduce it with a *drashah* (sermon).

"Pesach is a *Yom Tov* in which we celebrate the redemption of the Jewish people from slavery in Egypt," Rabbi Dayan began. "We want each individual to personally experience, once again, the freedom from bondage, so that we can dedicate our lives to the service of Hashem.

"Unfortunately, there are many needy people in the community who are not able to feel the sense of freedom. They do not have the necessary financial means to joyously celebrate the *Yom Tov* in a fitting manner! Some are not even able to afford the basic needs of the Seder night - matzah, wine, etc.

"The *Mishnah*, at the beginning of *Perek Arvei Pesachim*, teaches that it is the community's responsibility to provide the necessary Pesach provisions to the needy people of the community. We must ensure that they have even enough wine to fulfill the four cups - the symbol of freedom!

"*Shulchan Aruch* opens the laws of Pesach with the generations-old practice of collecting money for Pesach needs, known as *ma'os chittim*. In olden times, grain or flour would be distributed to needy families; nowadays we distribute money for Pesach purchases.

"Our *gabbai tzedakah* has a list of needy families in our community. We are hoping to raise at least \$20,000. Any excess money will be forwarded to an organization that provides for families in Eretz Yisrael.

"We ask each person to give generously, according to his ability, toward this important *mitzvah*!"

The shul *gabbai* stood up and started announcing pledges.

Mr. Goodman, who sat near Rabbi Dayan, turned to him. "We ourselves don't have much extra beyond our own Pesach needs," he said. "We do have *maaser kesafim* money, though, from this month.

"Can *maaser kesafim* money be used for *ma'os chittim*?"

"The rule is that you cannot use *maaser kesafim* for obligations that are incumbent on you," replied Rabbi Dayan. "This is true even when the money will be used for poor people. For example, the basic obligation of giving *matanos le'evyonim* to two poor people cannot be given from *maaser kesafim*, since it is an obligation. However, additional amounts

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לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

QUITTING WITHOUT NOTICE

Q. My supervisor in the organization I work for has belittled and embarrassed me numerous times, and I want to quit without giving the standard notice period or training my replacement. Is this prohibited?

A. If you cannot make peace with the situation, we will delineate the *halachah*, but we must preface our words with a recommendation that if you are able to act kindly toward the organization — even if this is *lifnim mishuras hadin* (beyond the letter of the law) — it is highly recommended that you do so.

A day worker (*sechir yom* — an employee paid for his time rather than for the completion of a task) is allowed to stop working for an employer at any point he or she chooses. Hashem said that we are His servants — *avadei heim* — and we are not enslaved to humans (*Shulchan Aruch*, C.M. 333:3). This is only true, however, if the employer will not incur a loss as a result of the worker quitting during a job. If the employer will sustain a loss, the worker is not allowed to quit mid-job (*ibid.* 4). Whether the worker quitting will cause such a loss or not depends on the exact circumstances, and a *dayan* must rule according to his best understanding of the matter (see *Rema* *ibid.* 5 and *Shach* 23).

These *halachos* relate to a day laborer who wants to quit in middle of his term of employment.

In some industries, employees are hired with a tacit agreement that they will work for a certain period. *Rebbeim*, for instance, are understood to be hired for an entire school year. Such workers, too, are not allowed to quit during their term of employment if it will cause a loss to the employer.

But what happens in circumstances such as yours? You were not hired for a prespecified period. Are you, too, required to continue working if quitting will cause a loss to your employer?

A precedent is cited from the case of a tenant who continued to live in a dwelling after his lease expired.



CASE FILE

distributed on Purim, beyond the basic obligation, can be given from *maaser kesafim* if you want to" (*Mishnah Berurah* 694:3).

"Similarly, *machatzis hashekel* and *kaparos* should not be given from *maaser kesafim*, even though the money will be used for needy people, since it is a defined requirement according to the *minhag*" (*Tzedakah U'mishpat* 6:[37]).

"In previous generations, the communities would often levy a set amount for *ma'os chittim* as a communal tax on the community members, in which case they could not give it from *maaser kesafim*. Nowadays, though, Harav S.Z. Auerbach, *zt"l*, rules that it is possible to give *ma'os chittim* from *maaser kesafim*, since there is no set amount required by the *minhag* and no imposed communal collection, so that it is not considered as paying a required debt" (*Halichos Shlomo, Pesach* 2:2).

"In our case, though, when you make a pledge in a *ma'os chittim* appeal, the *halachah* depends on your initial intent when making the pledge. If you pledge without intent to pay from *maaser kesafim*, the *tzedakah* pledge itself now becomes an obligation incumbent upon you due to your commitment, so that you cannot fulfill it afterward through *maaser kesafim*.

"However," concluded Rabbi Dayan, "if you initially intend to pay the pledge from *maaser kesafim*, or do so on a regular basis, or if that is the common practice in your community, so that your default intention is such – it is permitted" (*Taz, Y.D.* 249:1).

Verdict: Nowadays, *ma'os chittim* may be given from *maaser kesafim*, since there is no set amount required for the *minhag*. However, if you pledge a certain amount for *ma'os chittim*, giving it depends on whether this was your initial intent when making the pledge.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #20 Mechilah in Error

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

Q: I lent someone money, and later agreed to forgo the debt due to his supposed difficult financial situation. What if I find out that he actually had significant assets or subsequently won the lottery?

A: If your *mechilah* was clearly in error, you can retract, even if you made a *kinyan*. The same is true if you compromised in error. Nonetheless, the implication is that until you retract, the *mechilah* remains in force (*C.M.* 25:5; *Rama* 241:2; *Pischei Choshen, Halvaah* 12:[21]).

According to many authorities the same is true if you allowed someone to take from you because you thought that it was halachically required, but it turned out not so. Others disagree in this case, and maintain that such *mechilah* remains valid (*Knesses Hagedolah, Hagahos Beis Yosef* 241:6; *Pischei Choshen, Halva'ah* 12:[20]).

However, if there was no error at the time of the *mechilah*, but rather circumstances changed afterward, such as if the debtor won the lottery, the *mechilah* remains valid (*Pischei Teshuvah* 241:3).



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The *halachah* is that when he decides to vacate the apartment he must give the standard notice to his landlord so that he can find a tenant to replace him (*ibid.* 312:7).

Some *poskim* differentiate between real estate rentals and employment, pointing out that we find the *halachah* of giving notice mentioned only regarding real estate, not regarding cases of employment (*Divrei Malkiel* 3:151; see *Pischei Choshen, Sechirus*, ch. 11, fn. 1). Therefore, if an employer is concerned that he will incur a loss if his employee leaves without notice, he must have him sign a contract that includes a clause requiring him to give notice before resigning.

Other *poskim* maintain that the *halachah* regarding real estate does apply to employment, and they require an employee to give notice with ample time for a replacement to be found, even if there is no predetermined end date to the employment. This approach assumes that an employee leaving without giving notice will cause a loss to the employer, because the business will not run smoothly without the employee doing his job. The required timing of this advance notice depends on the circumstances (*Chazon Ish, B.K.* 23:2). [It is obvious, then, that if an employment contract requires that notice be given, the employee has no right to quit without notice. Even if there is no contract, if the standard practice is to give notice, that is tantamount to having a contractual clause requiring it. It is also possible that we will take *dina d'malchusa* (civil law) into account in determining whether the employee must give notice (*Chazon Ish* *ibid.*).]

Even according to the *poskim* who differentiate between real estate and employment in this regard, and do not require an employee to give notice if he hasn't signed a contract mandating it, it is still considered *yashrus* (proper) for him to give notice in order to spare his employer from financial loss if he has nothing to gain by quitting suddenly — especially since a person should have *hakaras hatov* (gratitude) toward their employer.

In your case, however, where your supervisor has caused conflict and hatred to fester, you are probably entitled to leave without notice, because a person is not required to "reside with a snake in one basket," and you certainly didn't agree to work for this organization under such circumstances (*Shu"t Chavas Ya'ir* 106, cited in *Pischei Teshuvah* 331:1). But this matter must be considered by a *rav* who is qualified to determine whether the insults are as egregious as the employee claims, and whether it's truly impossible to continue working — at least for the notice period (see *Mishpat Hapo'alim* 17:3, based on *Shulchan Aruch, C.M.* 312:9, with *Turei Zahav*).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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