

Is Paid Maternity Leave Mandatory?

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Case: As the sole secretary of a Yeshiva, I am their only female employee. When I mentioned to the principal my upcoming maternity leave, he breezily said “in our school we never give extended maternity leave”. Simply put, I don’t think that is fair, because all the girl schools here do give extended leave.

Question: Must a Yeshiva give extended maternity leave to their only female employee?

Answer: It is unfair. His basic assumption is true, that the rule of *minhag*, following common customs and practices, is of primary importance in monetary disputes. Unless specified to the contrary, everyone is presumed to be working with the ongoing “norms” of that industry or place. Even if something was not mentioned at all in a contract, the common custom still prevails.

The Poskim discuss whether *not* doing something is considered a minhag. The consensus is that it does indeed constitute a minhag, and if something is never done that becomes the standard; the one who *does* want to do it is going against the minhag and carries the burden of proof [see Rama CH”M 37:22].

However, Shiltai Hagiborim qualifies that *not* doing can only become a minhag if the situation that presumably would call for it commonly arises, and yet they *refrained* from doing it, only then can *not* doing be called a minhag. Shach [ibid] disagrees and broadens this rule a bit more, but even he agrees that the situation to do it had to have been somewhat common. In this case where the situation has never arisen before in the school, it certainly cannot be considered a minhag not to grant the extended leave. Consequently, we’d revert to the broader industry standard to give the regularly accepted maternity leave.