

May a Manager Leave During the Peak Season of the Business?

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Case: A certain business employs an essential worker, such as a manager or secretary, without whom the business cannot function properly. This worker is needed especially at busy times during the year when business is especially high.

Question: Is there any halachic problem with this employee deciding to leave or take a vacation whenever he chooses, even if it is during a busy season? Does it matter if he is leaving to take a new job or simply taking some time off?

Answer: The Gemara says that a *po'el* (loosely translated as a time-based worker who is paid hourly or weekly) has the right to leave his job at any point. The reason is that the Torah states "*ki li Bnei Yisrael avadim*," "the Jewish people are servants to Me" (Vayikra 25:55), and not *avadim* to other *avadim*, i.e., employees. Thus, the Gemara is saying that an employee always retains the right to desert his job whenever he chooses, since he is never considered a full-fledged servant to another human being. Nevertheless, there is an opinion that this halacha does not apply to someone who is simply changing jobs, since he will ultimately still be an "*eved*" to a different boss in that case. According to this opinion, such an employee would not be allowed to leave his first job against the will of his employer.

Another point that would need to be taken into account is if a contract had been signed or not. If the employer had signed a contract that he agrees not to leave or take off at certain times, then he might need to abide by the rules of the contract.

A third consideration is the concept of *davar ha'aved*, a financial loss. If an essential worker's leaving or taking vacation will cause a *davar ha'aved* to the company, then the halacha does not give the employee the right to leave whenever he chooses. In this context, an essential worker would be defined as someone who knows the company extremely well to the point that they are nearly running it and replacing such a person would be a very challenging task. This would be different than a worker that can be replaced more quickly and easily, for which the concept of *davar ha'aved* would not apply.

The Rema holds that if a person works for free or without a contract, he would be allowed to leave or take off even in a situation of *davar ha'aved*. Nevertheless, the Nesivos limits this allowance to doing it for free. But to leave the owner without any other option would still not be allowed according to the Nesivos.

What recourse does an employer have when an employee chooses to leave or take a vacation at an inopportune time for the business? The Mishna says that the employer may use the money intended for this employee to hire another employee at a greater cost if necessary. Alternatively, the Mishna states that one may act deceptively with the employee by offering him a

higher salary and then only paying him the original amount promised. Although this appears to constitute *genevas da'as*, deceiving another, which is generally *assur*, since in this case the employee is obligated to remain, it is permitted to employ deceptive tactics to cause him to fulfill his responsibility.

We will conclude with an application of the previous suggestion of deception mentioned by the Rema (C.M. 81). The Rema states that if a father-in-law notices that his son-in-law does not teach his son (the father-in-law's grandson) Torah, the father-in-law may offer his son-in-law payment for learning with his son, but later retract and inform his son-in-law that he was not serious about the payment (*meshateh ani bach*), since the father was obligated to teach his son Torah in any event.

Certainly one must analyze any such *shaila* on a case by case basis to determine the practical halacha, but these are the basic principles used to analyze and arrive at a halachic *psak*.