

EMPLOYER - EMPLOYEE RELATIONSHIPS

by Rabbi Doniel Neustadt

A discussion of Halachic topics related to the Parsha of the week. For final rulings, consult your Rav.

QUESTION: An employer hires a worker on condition that he will not enter into competition with him at a later date. Years later, the employee wants to start a business on his own which may compete with his former employer. Does the halachah view this as "stealing" from his former employer? May Bais din protest his behavior?

DISCUSSION: The answer to the above question depends on the specific circumstances: If the employee was hired as an apprentice and the employer trained him, then the employee may not strike out on his own if he will be competing with his former employer. If, however, the employee was not trained by the employer but was hired as an experienced worker, then it is not considered "stealing" if he decides at a later date to open his own business(1).

The difference between the two cases cited above is as follows: When an employee is hired and paid for his services, the employer does not own his services forever. Once his employment is terminated, the former employer cannot control his opportunities indefinitely, or even for a specific period of time. Even if he made a pre-condition with him, it is not halachically binding(2) and bais din has no right to stop him from doing as he pleases(3). If, however, the employer trained him, then he may demand payment from the employee for teaching him the trade. His "payment" could be in the form of a promise that he will not compete with him in the future. If the employee breaks his promise, then he is "stealing" a form of "payment" from his former employer. This may be stopped by a bais din.

QUESTION: May a worker offer his services to a prospective employer knowing full well that he will cause another Jew to lose his job by replacing him?

DISCUSSION: It is prohibited for one to offer his services to an employer if he will be taking away another person's job, even if his intention is to replace him only after the current contract has expired. Bais din has the right and duty to object to his behavior and to stop him from doing so. If he disregards the halachah and does so anyway, he may be referred to as a rasha publicly(4). Bais din, however, does not have the power to forcibly terminate the newcomer's employment once he has

already obtained it

In certain well-defined cases, this restriction does not apply. Among them are the following:

If an employer asks him specifically to apply for the job⁽⁵⁾; If it is known that the employer is dissatisfied with his present employee and is looking for an opportunity to replace him⁽⁶⁾;

If the present employee was hired initially only for a limited period of time and was never really counting on long-term employment⁽⁷⁾; If he does not approach an employer directly but merely advertises his availability, even though his advertisement may result in the present employee losing his job⁽⁸⁾.

If, after spending time and effort looking for a job commensurate with his training and experience, he cannot find another job, then it is permitted for him to make himself available to an employer even though a current employee may lose his job⁽⁹⁾. A ba'al nefesh, though, should refrain from doing so.

A slightly different set of rules will apply when the current employee is long-term, has established a business relationship with his employer and has a well-founded assumption and expectation that the job is his for as long as he is interested in keeping it. In that case, many poskim maintain that it is prohibited for a newcomer to directly approach an employer to hire him, even if the newcomer cannot find any other job.

But this holds true only if other potential employees will also refrain from offering their services to that particular employer. If, however, this particular job will attract other candidates, then there is no obligation for the observant job-seeker to place himself at a disadvantage and limit his chances, even though the present long-term employee will lose his job.

QUESTION: Is it permitted for an employer to lure another company's employee from his present job?

DISCUSSION: It is prohibited for an employer to lure away an employee from his present job, even if he will not employ him until his current contract has expired - unless he feels that this particular employee is superior to any other available employee on the market.

In a case where an employer and employee have established a long-term business relationship, and the employer has a well-founded assumption and expectation that the employee will remain in his employ indefinitely, many poskim hold that it is prohibited for another employer to lure the employee away. However, this holds true only if other potential employers will not actively recruit this particular employee, as explained earlier.

FOOTNOTES:

1 Teshuvos Chasam Sofer C.M. 9. See Teshuvos Minchas Tzvi (Sechirus Poalim) 10.

2 There are, however, halachic means which an employer can ensure that his employer will not

compete with him in the future. For the exact method, a rav should be consulted.

3 He will, though, have to deal with the fact the he is breaking his word to the employer. We are concerned here only with the employer's legal rights, not the employee's moral obligation.

4 C.M. 237:2 as explained in Shulchan Aruch Harav (Hasogas Gevul 12).

5 Teshuvos Alshich 67.

6 C.M. 237:2.

7 R' Akiva Eiger C.M. 237 quoting Teshuvos M'harshal 36.

8 Pischei Choshen, Sechirus, pg. 161.

9 Shulchan Aruch Harav, ibid.; Igros Moshe C.M. 1:60.

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