



This week's article discussed the halachic angle on quitting a job. Does an employee have a basic right to right to quit, and when does this right apply? What happens if an employee is under contract? Does he need to compensate the employer for losses caused by his quitting? Does the length of employment agreement make a difference? These questions, among others, are discussed in this week's article.

This week's Q & A addresses the question of davening Mincha and Maariv together on Friday night.

The Halachic Approach to Quitting a Job

Parashas Re'eh includes the instructions for treating a Jewish servant, an *eved ivri* (*Devraim* 15:12-15:18). The final verse of the passage tells the master that once the six years of work are up, he should not feel distressed at releasing the servant: "Do not consider it a hardship to set your servant free, because his service of six years is double that of a hired hand."

Commentators offer a range of interpretations concerning the "doubled" nature of the six-year service. The Gemara (*Kiddushin* 15a), cited by Rashi on the Pasuk, explains that the *eved ivri* works by day and even by night since his master has the right to wed him with a non-Jewish maidservant, and the resultant children belong to the master.

Another explanation, which is mentioned by Ibn Ezra, Rashbam, Chizkuni and others, is that while the servant works a full six years, a regular laborer works only for three years. This time period for a laborer is noted in Yeshayahu (16:14), where the Pasuk mentions that "three years, as the years of a laborer."



Dear Reader!

Read as the month of Elul beckons, this week's parashah opens with words of blessing and curse: "Behold, I place before you today, a blessing and a curse ... It shall be when Hashem your G-d brings you to the Land to which you come, to possess it, you shall place the blessing on Mount Gerizim and the curse on Mount Eibal."

The symbolism of placing blessings and curses on the mountaintops of the Chosen Land is perhaps related to the concept of din, the Divine attribute of strict judgment. The harsh cliffs, combined with their severe climate, barely provide a dwelling place fit for man. They represent a tight boundary, an extreme of din in which it is hard to survive.

Yet, the blessings, as well as the curses, are

placed on the mountains. What is the meaning of this placement?

It appears that the placement of blessings and curses on the mountains present a fundamental lesson.

Hashem created the world for the benefit of man, to bestow Divine goodness upon the elect creature. The initial creation was ‘for free,’ an act of loving-kindness that was performed as pure goodness. Yet, the Divine wish is for us to earn the good He offers, and not to receive it for free.

All the recompense of the World to Come – all the good that Hashem has to offer humankind – is given with the attribute of *din*. In the final analysis, we get precisely that which we deserve. Thus, blessings and curses alike are directed on the mountaintops.

Both are given with *din*.

This short lesson offers us an important insight as we enter the month of Elul. The day of Rosh Hashanah, which is the climax of the month of Elul, is the Day of Judgment. As the Day of Judgment, latent in the day is all the blessing that we are able to gain for the

The Torah Temimah explains that Chazal did not interpret the Pasuk in this way, because the pasuk is describing why a servant should receive extra payment. Although it is true that he worked longer than an ordinary worker, he also received payment for those extra years, since the master’s initial payment for the *eved ivri* is for a full six years (unlike payment for a regular laborer, which is proportional to the period of his employment). The extra value of the *eved ivri* is therefore not the number of years he works, but the fact that his employment includes the day and the night.

While *eved ivri* is not found today, laborers are, and many laws of laborers are related to the idea of the *eved ivri*, the Jewish servant. In the present article we will reflect on these laws, and specifically on the laws of an employee who wishes to quit his job.

Does an employee always have the right to quit? What if he is under contract? Does he need to compensate the employer for losses? Does the length of the employment agreement make a difference? These questions, among others, are discussed below.

Quitting One’s Job

The Pasuk in Vayikra (25:42), explaining the release of slaves at Yovel, says: “For they are My servants, whom I took out of the land of Egypt; they shall not be sold as slaves.”

This Pasuk teaches us the value of freedom. We are servants of Hashem—Hashem alone. Even the slavery that extends beyond the first six years must ultimately come to an end, at the Yovel year when all Jewish servants and their families are released (Vayikra 25:40). The special relationship between Hashem and the Jewish People does not allow for Jews to be permanent slaves.

Even outside the framework of slavery, the Torah sages knew that the working schedule of a regular day laborer can resemble slavery (an observation that receives multiple expressions today). Therefore, they derived (Bava Metzia 77a) from the same Pasuk that a worker has the right



to quit his job whenever he wishes to do so: His employment agreement does not prevent him from leaving his job. “They are My slaves—and not slaves of slaves.”

This basic halachah is ruled by the Shulchan Aruch (*Choshen Mishpat 333:3*) as follows: “After the worker has started his work, and he wishes to leave his job, he can do so. Even if he has received his wages and he does not have a means of repaying the employer, he may quit his job and the money becomes a loan.”

A Kinyan is Binding

The right of workers to quit does seem to place employers at risk. This is especially true of skilled workers who have become so common in modern times. Given high levels of specialization, and intense competition between companies and employers for quality labor, the matter of quitting laborers can be a very thorny issue. Yet, as we will see, it has its limitations.

First and foremost, it is not clear that the basic right to quit applies even to workers under contract. According to the *Ritva* (*Bava Metzia 76*), when a legal *kinyan* is made between the parties, workers do not retain the right to leave their jobs at will. This, of course, will make a huge difference: employers will be able to secure operational stability by making a legal *kinyan* with workers.

The *Shach* (*Choshen Mishpat 333:14*), however, disputes the ruling of the *Ritva*, citing the *Rivash* that a worker always retains the right to leave his job, no matter what *kinyan* was made. The *Mabit* (1:132) sides with the *Ritva*, and moreover writes that had the *Rivash* seen the ruling of the *Ritva*, he would surely not have disputed his opinion.

The *Pischei Teshuva* (333:5) cites a number of later authorities who agree with the *Ritva* that a *kinyan*, properly executed, is binding upon workers. He adds that in his own opinion this is the halachic ruling, and this is also the common custom in contemporary *batei din*.



coming year. All that must be given in din is present on Yom Ha-Din.

And like earthly judgment, the Day of Divine Judgment requires preparation. From the first day of Elul, we begin to blow the Shofar, which calls upon us (as the Rambam writes) to awaken from our spiritual slumber, to inspect our deeds and to return to Hashem.

These days of Elul, days on which Moshe Rabbeinu climbed upon Sinai to procure forgiveness for the nation in preparation for receiving the Torah (as the Tur explains), provide us with the perfect opportunity for doing so.

Moreover, danger (in all senses of the word) is never far from the Jewish people, and it is a time when we require much Divine compassion. Surely, the time of Elul, when Hashem draws close to us and we to Him, is an appropriate time to mend our deeds, and pray for the assistance we so require.

Let us make the most of the month-long preparation, and seek to arrive at the Day of Judgment in the best possible shape.

Workers Under Contract

Does signing a contract, as common today for many skilled workers, constitute a legal *kinyan* from which workers will be unable to resign according to these poskim?

Several Poskim have addressed the concept of a contract, and many have ruled that a signed contract has the status of a legal *kinyan*. This is based on the fact that the common custom is to see contracts as binding instruments, giving them the status of a *situmta*—a binding contract by force of common custom.

Thus, *Shut Maharashdam* (*Choshen Mishpat* 380), *Shut Maharshach* (Vol. 3, no. 8, concerning an agreement among creditors), *Shut Beis Yehuda* (Vol. 1, no. 23 & 40, concerning a type of promissory document), *Shut Chasam Sofer* (*Choshen Mishpat* 66), and others—and in their wake contemporary authorities—agree that a contract has the status of a *kinyan situmta*.

Based on this, it follows that somebody who works under a legally binding contract is unable to quit at will, but has to follow the procedure outlined in the contract (see Rav Tzvi Shpitz, *Hilchos Shecheinim* 16:5). It is interesting to note that Rav Ovadya Yosef (*Shut Yabia Omer*, Vol. 6, *Choshen Mishpat* 6:6) raises the possibility that a signed contract is fully binding, yet does not give a concrete ruling on this.

Where no procedure is noted, it stands to reason that sometimes the default procedure will be the law of the land if that is the accepted custom.

Causing a Loss to the Employer

Although a worker is generally free to quit his

job at will, he is not free to quit when quitting will cause a tangible loss, known as *davar ha'aved*. An example is a caterer who was hired to provide meals at a function, who wishes to back out at the last minute. It is forbidden for such an employee to quit his job (*Choshen Mishpat* 333:5). Another example is a teacher in a school who quits in the middle of the year, in cases where there is nobody to replace him.

The *Maharit* (*Yoreh De'ah* 50) goes so far as to rule that in cases of a clear and unavoidable loss, Beis Din can force the worker to return to his job and prevent him from quitting. However, most authorities reject this approach, and rule that even where a concrete loss is involved, the worker cannot be forced to work against his will (see *Pischei Teshuva* 333:4).

If a worker decides to quit his job anyway, the employer is within his rights to promise the worker extra money and better terms, and to ultimately pay him according to the initial agreement. He can also hire other workers, and pay part of their salary from the salary owed to the first worker.

When the case is not a *davar ha'aved*—for example there is sufficient time to order from another caterer or find a replacement teacher—yet the replacement is more expensive than the original, the employee does not have to compensate the employer, and he has the right to receive his already earned salary in full.

However, if the worker is not a laborer (*po'el*) but rather a contractor (*kablan*)—somebody who works in his own time, and is responsible for the final product rather than for hours worked—he will be responsible for the added costs of the employer, which the employer can

deduct from his salary. A caterer is usually in the latter category.

The halachos pertaining to liability for losses when a worker quits a job are complex, and are also contingent on the reason for his quitting his job (see *Rema, Choshen Mishpat 333:4*). A competent authority should be consulted for concrete cases.

Working for More Than Three Years

The Rema (*Choshen Mishpat 333:3*) rules that it is forbidden for a worker to hire himself out as an employee for more than three years. Beyond three years, we move from the definition of a worker to that of a slave, thereby invoking the above instruction: “They are My slaves—and not slaves of slaves.”

This, too, seems to present a significant challenge to modern employment patterns, where it is common for people to sign a contract to work for more than three years. Does this constitute a halachic problem?

Shut Chavas Yair (140) considers a case in which a Chazan was employed by a certain community for three years, after which he contracted with them to remain in the community for another ten years. The contract was sealed with a *tekias kaf*, a handshake that gives halachic authority (similar to an oath) to the agreement. After some time the Chazan wished to leave for a new community. Could he do so?

The first claim raised by the Chazan was that it is not permitted to work for more than three years, so that the agreement is null and void, allowing him to quit his job at will.

The *Chavas Yair* dismisses this claim. He explains that many authorities (including *Tosafos*, the

Mordechai, and others) write that there is no prohibition against remaining in a single job or occupation for over three years, and cites the *Shach (333:17)* that this appears to be the halachic ruling. This will mean that in general, the restriction of the Rema is not binding halachah, and it is permitted to work continually for more than three years.

In addition, the *Shach (16)* writes that the prohibition against employment for over three years only applies to somebody who has the wherewithal to refrain from this. For somebody who is poor and destitute, it is permitted to sell oneself into slavery—and so it is all the more so permitted to enter into a labor contract for more than three years. This rationale might be generally applicable today, since for many occupations somebody who stipulates that he will work for no more than three years is one who is experiencing difficulty in finding a job.

Another consideration mentioned by the *Chavas Yair* is that the prohibition of not working for over three years is surely no more than rabbinic, while the *tekias kaf* invokes a Torah prohibition.

Changing Jobs

A worker generally has the right to quit his job as we mentioned. Does he have the right to change jobs, moving from one employer to another?

This question is discussed by the *Pischei Teshuva*, who notes that according to some authorities (he cites *Maamar Kadishin* and *Ateres Tzvi*) where the worker wishes to simply change employers, he cannot quit at will, since he is not claiming his freedom but only changing masters.

Yet, as the *Pischei Teshuva* notes from *Shut*

Chavas Yair and others, the general consensus seems to be that even when an employee wishes to quit one job for another, he is in his rights to do so. This, too, is a part of his basic freedom—

we might call it freedom of occupation—to choose between jobs. While similar, in a certain sense, to slavery, an employer is not, at the end of the day, a full master.

Halachic Responsa to Questions that have been asked on our website dinonline.org



Question:

On Friday, is it okay to daven Minchah and Maariv back-to-back, after Pelay HaMinchah (if this is the minhag in shul)?

If this is not okay, would it be better to daven Minchah alone at home before Pelag?



Answer:

It is permitted to daven in shul if this is the custom of the place.

Some prefer to daven Maariv later (after nightfall), at home, or to daven Minchah at home before Pelag – but the common custom is to daven with the congregation and according to the local custom.

Please see sources below for further details.

Best wishes.



Sources:

The Magen Avraham (233:7) implies that one should daven in this case with the congregation, and not wait to daven Maariv alone after nightfall.

This is the ruling given by the Aruch Ha-Shulchan (235), and by others (see Shut Me'at Mayim no. 67), the Aruch Ha-Shulchan explaining that the great virtue of tefillah be-tzibbur is not deferred even under these circumstances.

However, there is room to defer the proof from his statement, and several poskim write that under circumstances where both Mincha and Maariv are davened after pelag ha-mincha, one should not daven Maariv with the congregation, but rather wait to daven later, alone.

This is the ruling given by Zichron Yehudah (p. 25, in the name of Maharam Ash), and this is clearly implied by he Mishnah Berurah (see Shaar Ha-Tzion 235:16).

Therefore, both options are valid, and a person has the right to choose between them.

In places where the custom is to daven Mincha and Maariv together, there might be an issue of yuhara in showing that one does not daven with them, and one should be careful of this (see the above-mentioned Shut Me'at Mayim, who writes that somebody in a shul who plans to daven later (with a minyan) should pretend that he is davening with them).

Although the discussion above refers to the option of davening Maariv later, the same reasoning will apply to the option of davening Mincha earlier; this option is perhaps preferable in that it avoids the issue of yuhara, but less attractive in that it remains better to daven Maariv after nightfall..