Business weekly

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STORYLINE

free **lunch**

By Rabbi Meir Orlian
Halacha Writer for the Business Halacha Institute

The financial administrator of Derech HaTorah Elementary School sent out a memo: "The school must trim expenses across the board by 15%; please submit proposals."

The kitchen submitted a list of recommendations to trim its budget, among them:

"At present, many of the teachers and staff eat lunch in the Yeshiva lunchroom. This amounts to 30-40 additional servings daily. Restricting lunch to students alone would reduce food costs by approximately 5%. This step can be implemented immediately."

At the committee meeting, the faculty representative objected to this exclusion. "For years, the teachers have eaten in the lunchroom," he argued. "Changing this policy would place upon them an unnecessary burden and expense to bring their own lunch."

"The free lunch was a benefit we were happy to provide so long as we were able to," replied the financial administrator. "There is no stipulation in the contract that entitles you to a free lunch, so we are under no obligation to continue this practice. Furthermore, almost no other job provides this benefit."

"Although eating a free lunch is not stipulated in the contract, this has been the practice in Derech HaTorah for years," countered the faculty representative. "This is also the practice of most other schools that have a lunchroom; teachers are allowed to eat there."

"What other schools do is their business, but has no relevance for us," the administrator said. "We have no obligation to provide benefits not stipulated in the contract."

"Teachers here should be granted the same conditions as teachers in comparable educational settings," responded the faculty representative. "We view this benefit as a proper courtesy and a fair supplement to our meager salary. Certainly during the school year itself, you cannot change the terms of the employment."

"It does not seem to me that eating a free lunch is considered a term of employment," the administrator insisted. "We desperately need to curb expenses, and there is no reason not to implement this step now."

"The question of whether to continue the practice in future years should be finalized later," interjected the principal. "However, the question of whether there is an obligation under the current contract to allow the faculty to eat in the lunchroom is a halachic one. The question should be addressed to Rabbi Tzedek before we make a decision."

The principal called Rabbi Tzedek and ex-

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FROM THE BHI HOTLINE

co-owned **cabin**

Submitted by
T. C.

My friend Shloime and I share a bungalow. We decided that for this summer, I would use the bungalow for the first four weeks and Shloime would use it for the second four weeks.

We just received notification that due to numerous code violations, the bungalow will not be available for the first two weeks that I was scheduled to be there.

I called Shloime and told him that since there are now only six weeks available, we should each have the bungalow for three of those weeks. His response was that since we agreed to each use it for four weeks, it is my loss that the bungalow will not be available for two of my weeks. We decided to submit this shaila to your decision.

Q: Could you provide us with some guidance to resolve this matter?

A: Chasam Sofer (Choshen Mishpat #179) was asked a similar question about two people who shared a two-floor flat. The agreement between them was that Reuven would live on the bottom floor for two years while Shimon would live on the upper floor, and for the following two years, Shimon would live on the bottom floor and Reuven would live on the upper floor. It happened that the upper floor was rendered uninhabitable by a fire. The question was, should the one who was scheduled to live there now suffer the

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STORYLINE CONTINUED

plained the issue to him. "I'm putting you on speakerphone," he said. "Can you guide us?"

Rabbi Tzedek ruled: "If it is common for comparable educational institutions to allow faculty to eat in the lunchroom, the school is required to provide free lunch, unless they specifically stipulated otherwise in the contract."

Rabbi Tzedek then explained, "One of the most fundamental principles of employee-employer obligations is the rule, 'hakol k'minhag hamedina' – 'everything is according to the common practice.' It is impossible to stipulate every last point in a contract, so whatever is not explicitly addressed follows the common practice. The issue of providing a meal is mentioned in the Mishna (B.M. 83a) as an example of this rule: 'In a place where the practice is to provide a meal – [the employer] is obligated to provide a meal; to provide refreshments [e.g., coffee and tea] – he is obligated to provide refreshments... everything according to the common practice.'

"The notion of common practice also varies from profession to profession. Although almost all employers do not provide free lunch, in educational institutions with a lunchroom that serves meals to its students, the general practice is to allow teachers to eat there as well. Therefore, even though this benefit is not mentioned in the contract, the employer is obligated to provide it, in accordance with the common practice (C.M. 331:2). Furthermore, since this was the established practice in Derech HaTorah, the employment was taken under this condition, even if not explicitly mentioned.

"The principle of hakol k'minhag hamedina applies to all employers," concluded Rabbi Tzedek. "As we mentioned, if the common practice is to provide coffee and tea to workers, the employer is obligated to provide a machine for this. If it is standard to allow employees a half-hour lunch break, the employee is entitled to this break even if not stipulated in the contract."

"Can the school amend the contract next year to exclude this benefit?" asked the principal.

"Yes," replied Rabbi Tzedek, "since whatever explicit agreements the parties reach is binding in monetary matters (C.M. 337:17)."

FROM THE BHI HOTLINE CONTINUED

loss, or would both of them have to share it? Chasam Sofer cited Poskim who wrote that when two people make an arrangement to share an object by using it at different times, it becomes the property of the one whose turn it is to use that object. He then further differentiates between a case in which the jointly owned object is destroyed and a case in which the object is not usable. If the object is destroyed completely, the two partners share the loss; if the object remains intact but is unusable for a period of time, the one who was supposed to have use of the object will suffer the loss by himself. Thus, the cost of rebuilding the upper floor is shared by both partners, but the loss of use of the upper floor during the construction is to be suffered by the one whose turn it was to live on the upper floor.

When we apply these principles to your case, it seems that since the bungalow was intact and you are merely losing use of it, that is your loss and we do not recalibrate and divide the remaining weeks equally between the two of you.

There is, however, an important distinction between the case discussed by the Chasam Sofer and yours. In the Chasam Sofer's case, the two partners were already living on the property, so it is considered as though a kinyan (proprietary act) was done to lock the agreement in place. In your case, since neither party had moved into the bungalow, a kinyan was not yet performed.

Therefore, the two of you have six weeks of usage to share. Each of you has the right to live there for three weeks of the summer.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

payment of wages week #15

Q: We have a number of temps that were hired for us by an outside employment agency. Do the laws of prompt payment apply to them as well?

A: The Gemara (B.M. 110a-b) teaches that if someone hires an employee to work for another person, neither party violates the prohibition of "bal talin" if payment is delayed. The business owner does not violate, because he did not hire the worker, and the one who hired does not violate, because he is not withholding the wages. This is true even if the first person who hired the employee was an agent of the owner. However, there is a rabbinic obligation on the owner to pay as soon as possible, based on the verse, "al tomar l'reiacha" (C. M. 339:7).

If the agent who hired is also responsible for paying the worker, though, he would violate bal talin. Thus, if the temp is hired and paid through a human resources company, they would be in violation, since they are also withholding his pay (ibid). Similarly, if a business has a senior executive officer who has full authority for hiring and paying, he would be in violation (Ahavas Chesed 10:4).

IMPORTANT NOTICE

"Early Bird Specials" often involve serious ribbis (interest) issues.

This is especially true with day camps that offer perks or discounts for early payment.

For more information and to discuss your options for rectifying a halachically problematic situation, please speak to your Rav, or you may contact our Business Services Division at:

phone: 718-233-3845 x12 · email: ask@businesshalacha.com