THE Sephardic HALACHA CENTER

The Sephardic Halacha Weekly

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BEHAR-BEHUKOTAI 5777

Separating *Hallah* FAQ's

Adapted by Rabbi Ariel Ovadia[1]

I forgot to separate *Hallah* before *Shabbat* from the bread that I baked. What should I do? Am I permitted to separate *Hallah* on *Shabbat*?

The *Shulhan Aruch* (OH 339:4) writes that one is not permitted to separate *Terumot* and *Ma'asrot* (various tithes) on *Shabbat*. Included in this prohibition is separating *Hallah*. The *Mishna Berura* (261:4) explains that *Hachamim* forbade separating tithes on *Shabbat* and *Yom Tov* since this "fixes" the foods and makes them useable. "Fixing" food is forbidden on *Shabbat* and *Yom Tov*, since it resembles the *Melacha* of *Tikun Manna* (the creative act of fixing a vessel). However, outside of *Eretz Yisrael*, one may eat bread before *Hallah* is separated, provided that *Hallah* will be separated later. Therefore, if on *Shabbat* one realizes that they did not separate *Hallah*, they should make sure to leave over a slice of bread, so they can separate *Hallah* after *Shabbat*.

I separated a piece of dough for *Hallah*, but it was accidentally mixed back with the rest of the dough. What should I do?

According to *Maran* (*Bet Yosef*, YD 323:1) there is a special leniency regarding *Hallah* of *Hutz La'Aretz* (outside of *Eretz Yisrael*), that as long as the piece of *Hallah* that was mixed back with the rest of the dough was smaller or of equivalent size to the rest of the dough, the entire mixture is permitted. *Sefaradim* may follow the ruling of *Maran* and eat this bread with no concern.

Ashkenazim follow the ruling of Rama who writes that if the piece of *Hallah* gets mixed back with the other dough, it is nullified only if the rest of the dough is one hundred times the volume of the *Hallah*. In a case where there is not enough dough to nullify the *Hallah,* one can annul his *Neder* (vow) and separate a new piece of *Hallah.*

I was given a loaf of bread by a neighbor and I am concerned that she did not separate *Hallah*. Is there anything I can do?

There is no need to ask the neighbor if she has already separated *Hallah*, especially if one understands that this might cause embarrassment. *Hallah* can be taken even after the loaf has been baked (*Shulhan Aruch,* YD 327:5). One should simply remove a piece from the loaf and, without reciting the *Beracha,* say "this shall be *Hallah*." Although it is questionable if anyone aside from the owner of the loaf or their proxy can separate *Hallah* (see *Yad Avraham,* YD 328:3), in this case there is no need to ask permission. The loaf

was given as a gift. You are now the owner and may take *Hallah*. In *Hutz La'Aretz* (outside *Eretz Yisrael*) one may even eat some of the loaf and separate *Hallah* afterwards (ibid. 323:1). However, one must leave over a piece which is large enough that there will still be something left over after separating the *Hallah*.

May *Hallah* today be eaten by a *Kohen*?

In *Eretz Yisrael*, where the obligation of *Hallah* mirrors the Torah obligation, it is forbidden in all situations for *Kohanim* to eat *Hallah*. This is because *Hallah* is *Kodesh* (holy) and may only be eaten by *Kohanim* who are *Tahor* (ritually clean). All Jews today are assumed to be *Tamme* (ritually unclean), and we lack the means to purify ourselves from *Tum'at Met* (impurity of the dead). Furthermore, in – almost – all situations, the *Hallah* itself is *Tamme* and must be burned.

Outside of *Eretz Yisrael*, the laws of *Hallah* are less stringent and, strictly speaking, a *Kohen* under the age of nine, or one who has immersed in a *Mikve* is permitted to eat *Hallah*. However, the *Rama* (OH 457:2) writes that some hold that it is best not to give *Hallah* to any *Kohen*, since there might be doubts as to the precise lineage of the *Kohen*. The *Shach* (YD 322:9) writes that the general practice year-round was not to give the *Hallah* to *Kohanim*, with the exception of *Erev Pesah* when *Hallah* was given to young *Kohanim* (see *Magen Avraham* 457:9 for explanation)[2].

SOURCES:

[1] Based on the OU Kosher bulletin **[2]** The *P'ri Megadim* (457:9) writes that in his days, he never saw anyone give *challah* to a *Kohen*

Welcome Aboard!

The Halachic Considerations of Hiring

By Dayan Yehoshua Wolfe

As giddy graduates enter the workforce, employers are not only tasked with finding the best match for their businesses, but also with determining how to structure their employment. *Parashat Behar* is a most fitting time to discuss employment-related issues, as the *Torah* issues the guiding principle of employer-employee relations: *"Ki li Bene Yisrael avadim"* – *"For the Bene Yisrael are servants unto me"* – which the *Gemara* understands to imply that a Jew's service of another cannot be structured in a manner resembling slavery, as we are the servants of the One and Only. In these upcoming articles, we will discuss various aspects of employer-employee relationships in *Halacha.*

Employee or Independent Contractor?

Recently, Uber, the popular ride service, agreed to settle two class action lawsuits by paying as much as $100 million to the drivers represented in the cases, while being allowed it to keep categorizing them as "independent contractors", rather than "employees". American law distinguishes between independent contractors (ICs), who produce goods or provide services but are not integrated into the employer's business, and employees, who do become absorbed into the employer's corporation.

Hiring ICs is probably more appealing to many because of the financial benefit for the employer: whereas he must pay an unemployment tax (FUTA), workers' compensation insurance and a portion of the employee, the employer does not have to pay payroll taxes for independent contractors. Hiring ICs, then, relieves the employer from the heavy burden of these expenses. Despite these tax benefits, employers are still

left with the question of whether it is worthwhile to employ ICs, and this article will attempt to examine some of the costs and benefits of each position-type within a *Halachic* framework.

To appropriately address this topic, it is imperative to set forth the basic structure in which Jewish labor laws function. The concept of independent contractors vs. employees parallels the *Halachic* employment relationship between an employer and service-provider. An employer can hire either a *S'chir Yom* – lit. day-laborer or "employee", or a *Po'el Kablan* – contractor, or "independent contractor". Employment status in *Halacha*, is determined by applying the following test: when the contract allows a worker the independence to work on a self-determined schedule, he is *Halachically* considered a contractor. If however, he is required to work designated hours, he will usually be regarded as an employee.

This distinction between a contractor and an employee goes to the core of Jewish labor laws. Expounding on the *Passuk* "*Ki li Bene Yisrael Avadim*", the Talmud declares that the Jewish people are exclusively servants of Hashem and not of other people, who themselves are servants of *Hashem*.

Though one may engage in employment, in theory this is forbidden for longer than three consecutive years, as permanent employment is viewed as a type of servitude. Furthermore, from this *Passuk* the *Gemara* derives that an employee is given an inalienable right to terminate his contract at any time, granted there is no harm to the employer. Since an employee has the liberty to release himself from his duties, short-term employment is not a form of slavery.

Although this freedom is only available to an employee and not to a contractor — because a contractor does not resemble a servant – nevertheless, a contractor can't always physically be forced to finish the job. That said, if a contractor does not perform his duties, earned wages can be withheld to offset the cost of hiring a replacement.

In reality, the similarities between halachic and secular employees are deeper than a mere conceptual comparison. The structure of tax and civil labor laws (*l'havdil*) strongly resembles that of *Halacha*. Just as *Halacha* reflects respectively diverse employees and contractors, so too does common secular law recognize the difference between them. Nonetheless, secular law differs from *Halachic* laws in regard to the exact guidelines distinguishing ICs from employees. The IRS advises that a service provider is considered an independent contractor for tax purposes if *"the employer retains only the right to control or direct only the result of the work and not the means and methods of accomplishing the result."* If however, the employer *"can control what will be done and how it will be done,"* the service provider will generally be considered an employee.

Unlike a secular independent contractor, a *Halachic* contractor doesn't necessarily boast complete autonomy over the job, only of his work hours. Consequently, although by and large *Halachic* contractors align with ICs and *Halachic* employees with employees as defined by secular law, it is important to examine each situation on a case-by-case basis.

Accordingly, sometimes a *Halachic* contractor will be viewed as an employee rather than an independent contractor in the American legal system, because the employer has the right of control over the job. Likewise, independent contractors in the American legal system will be judged as *Halachic* employees when the worker is constrained to specific work hours. Consider, for instance, a journalist: No newspaper can operate without a writing staff, and the employer certainly retains the "right of control" over his employees' work, yet, often times journalists have the liberty to work on their own timetable. Hence, in

Halacha a journalist will frequently be viewed as a contractor.

It is equally fascinating that sometimes even a conforming *Halachic* contractor, can be viewed in *Halacha* as a "vendor" and not a "service-provider". There are several significant differences between vendors and service-providers, with the employer's payment obligation topping the list. While service providers are compensated for their labor, vendors are paid for their ownership of a certain product; therefore even after all of the work is complete, an employer can still technically back out of the deal until a proper *Kinyan* (transactional act) on the object is performed. Service providers on the other hand, must always be paid for their finished labor.

In any case, if the employer opts to back out, he might be liable for damages caused to the worker, such as, his expenses (which includes the value of his efforts) as well as missed employment opportunities. Thus, it is important to establish whether a *Halachic* contractor is a service-provider or a vendor. As a rule, when the principal materials that are being used for the job belong to the employer, the worker will be considered a service-provider, but if the contractor is to furnish all supplies, his status is subject to debate among the *Poskim*.

The application of this series of *Halachot* significantly impacts common commercial practice, as is demonstrated by the following clause of an everyday building contract: *"The owner does hereby employ the contractor to do all the work and provide all the materials, tools, machinery and supervision necessary for the construction of a (description of work) in the (property description), for the total sum of (amount of contract) all in accordance with the drawings, and specifications which are attached etc."* Since there is no explicit mention of a sale, this contract would fall into the abovementioned argument, and may be viewed as a sale of goods rather than a contract to provide a service. This *Halacha* applies only to *Halachic* contractors, as *Halachic* employees are always considered to be service-providers. Indeed, when the contractor's materials are used, hiring a worker as a contractor and not an employee may prove beneficial to the employer.

***Be'Ezrat Hashem,* we will continue the discussion of these *Halachot* in our upcoming article.**