

On the House? Personal Use of Office Supplies

Secular journalists in Israel were recently introduced to the way the other half lives, and discovered that there is more to “chareidim” (ultra-Orthodox Jews) than the hostile media reports. Yerachmiel Toker, parliamentary aide to Knesset member Moshe Gafni, invited groups of secular journalists to chareidi population centers to actually meet and observe the community firsthand. On one occasion, journalists from Haaretz, a paper with little love of chareidim, visited Bnei Brak. They spoke to the mayor, stopped in at a number of religious schools, and went to see a hi-tech company staffed by kollel wives. Rabbi Toker related that “they were very impressed by [the employees’] quiet modesty and the confidence they radiated that what they’re doing [working to support their husbands’ Torah study] is the best thing in the world.

“But I think what impressed them most was what the non-religious boss had to say about her workers. She told the journalists how the women come and ask for permission before they use the fax machine for something not work-related, so it shouldn’t be gezel [theft], and other examples of their high ethical standards regarding their work and the use of other people’s property. This made a tremendous impression on the journalists... they’d encountered another civilization.” (Mishpacha Magazine, “Mind-Cleansing Encounters,” Rabbi Moshe Grylak, February 22, 2012)

Personal Use

The women working at this company undoubtedly make a *kiddush Hashem* with their careful avoidance of any trace of theft, even as minimal as the occasional use of an office fax machine. Are these simply idealistic practices, or are they actually required by *halachah*?

This is a question with obvious ramifications in any workplace. For example, are workers allowed to use office machinery, stationary, telephones, or any other supplies or equipment for personal needs? Does company policy in this area affect *halachah*? Does *halachah* differentiate between a Jewish and non-Jewish employer, or a private individual and a corporation?

I was visiting my brother in Boston, Massachusetts. I needed to print out about two hundred pages of material for my return trip to Israel, but he was out of toner for his printer at home. I asked about company policy at Harvard, where he is employed as a professor – would it be legitimate to do the printing there? He told me that while many staff members routinely used office printers and the like for non-work related purposes, he personally avoided it. Instead, he drove me to Kinko’s, and I did the printing there.

Pennies Count

Chazal say that the majority of people sin with theft, the minority with forbidden intimate relations, and everyone with *avak lashon hara*¹ (*Baba Basra* 165a). The *Maharsha* explains that these three sins cover three main categories. Theft is

¹ Talk which is not actual *lashon hara* (forbidden gossip) but which leads to *lashon hara* (see *Shaarei Teshuvah*, *Shaar Shelishi*, 226).

dishonesty in monetary matters; intimate relations refers to sins committed by the physical body; and gossip is related to speech, associated with the soul.

Practically speaking, the possibility of theft is a very pressing issue in the workplace.

Chazal tell us that when man faces his Heavenly judgment, he is asked a number of questions. First on the list is, “Did you deal honestly in business?” (*Shabbos* 31a). Stealing from one’s employer is an obvious example, and for most employees, the most relevant aspect of honesty in the workplace.

How much would we actually have to take from an employer for our action to be considered theft? Surprisingly little: “According to Torah law it is forbidden to steal, even an insignificant sum... One who steals a *prutah*’s worth² transgresses the prohibition of ‘Do not steal’ (*Vayikra* 19:11), and is obligated to make restitution. This is equally true of stealing the money of a Jew or of a non-Jew” (*Shulchan Aruch Choshen Mishpat* 348:1-2; see also 359:1). *Chazal* rate stealing from a non-Jew as even worse than stealing from a Jew, because of the additional element of *chillul Hashem* (*Tosefta Baba Kama* 10:15; see also *Rabbeinu Bechayye, Vayikra* 25:50).

Honesty does not begin big – it begins small, with pennies. The Torah tells us, “If (*ekev*) you will listen to these laws and keep and do them, Hashem your G-d will keep the covenant and the kindness which He swore to your fathers” (*Devarim* 7:12). The Torah’s use of the unusual term *ekev* (literally ‘heel’), rather than a more common word like *im*, teaches a profound lesson. Rashi comments, “If you will obey the ‘minor’ *mitzvos* that a person tramples with his *ekev*.” We earn Hashem’s blessings by being careful precisely with the small things that we might otherwise brush aside as unimportant.

*Dayan Aharon Dovid Dunner*³ of London related the following story about his father, *Rav Yosef Tzvi Dunner, Rosh Beis Din of the Union of Orthodox Hebrew Congregations (Kedassia)*. *Rav Dunner would never drink a cup of coffee at the offices of the Beis Din. He maintained that the coffee had been purchased for the secretaries who worked there all day long – not for him, who was not there all day.*

On one occasion, a secretary told him that she had bought coffee and sugar specifically for the rav, from her own funds. Rav Dunner still would not drink the coffee, because it was prepared with electricity paid for by the Beis Din office!

Improper use even of small items is theft. Making the personal phone call on the company cell phone, taking home the pen or paperclip from work, and the like are a major testing ground of our honesty and integrity as Jews. They are also an unparalleled opportunity for us to make an ongoing *kiddush Hashem* by being quietly, consistently honest.

My brother-in-law Joel heard the following story at a weekly Choshen Mishpat shiur in Chicago. After an Orthodox Jew attended a number of shiurim on the topic of geneivah (theft), he asked his boss how he felt about personal use of office supplies

² According to *Rav Chaim Na’eh’s Shiurei Torah* (p. 277), a *prutah* is equal to the value of 1/40th of a gram of pure silver. Based on the price of silver in 2015, a *prutah* would be equal to approximately 1.30 cents.

³ *Dayan Dunner* is a senior *dayan* and *rav* in London, and a world-renowned speaker.

like paper clips, pens and paper – what bothered him, and what did not? At first the boss thought it was a joke. Once he realized that the employee was dead serious, they sat down together and had a very meaningful discussion, with the boss gaining new respect for his employee.

Employer Obligations

Industry Standard

Does this mean that every cup of tea or sip of water taken in the office is theft? Is an employee forbidden to even jot down a phone number or sign his name with a company pen, if it is not for work? Is an employer justified in being so very strict over minor issues, or is he within his rights? In contemporary terms, what type of benefits or perks should an employer be providing for his workers?

The *Mishnah* establishes a major principle in workers' rights. *Chazal* discuss the case of an employer who "hires workers and [later] instructs them to come in early and stay late. In a locale where it is not customary to come [to work] early or stay late, he is not permitted to force them to do so. In a place where it is customary to provide food [for the workers] – he should provide food. [Where it is customary to supply] sweets – he should supply [them]. Everything is in keeping with *minhag hamedinah* (local custom)" (*Baba Metzia* 83a). Once an employee has been hired, an employer can no longer dictate different terms – longer or even simply different hours, or withholding of accepted benefits – which contradict the established norm in the area.

Minhag hamedinah, literally "the custom of the country" or "national custom," is the definitive criteria cited by the *Mishnah*. Practically speaking, in a country like the United States there is no one local custom which covers all fields of business and employment. The deciding factor, then, would likely be the industry standard. Law firms may have their own accepted policies, as may investment banks, accounting and consulting firms, hospitals, non-profit institutions or schools. These range from the provision of medical benefits (available plans, the employer's contribution, and the like) and the number of allowable vacation days, to use of the coffee machine. For example, if industry standard is for an employer to supply coffee and sugar, they should be provided. If this is not the norm, and an employee still uses the coffee at the employer's expense, he is stealing from the employer. However, for a certain practice to govern as the industry standard, it must be very clear and well established.

The Jerusalem Talmud makes an interesting observation: "This means that the custom supersedes *halachah*" (*Baba Metzia* 7:1). Even when there are halachic requirements concerning certain terms of employment, they are set aside in favor of local custom – or in our times, industry standards.

At the New York law firm where I worked after graduation in 1995, employees who stayed on to work until 9:00 p.m. were provided with a generous allowance to order in dinner, and car service home. When I transferred to the firm's Los Angeles branch, I was surprised to find that geography played at most a minor role in establishing employee benefits – the real criteria were industry, rather than local, standards.

By Prior Agreement

Tosfos (Baba Metzia 83a, “hasocheh”) explains that if the employer and employee reach their own agreement about the terms of employment, their personal agreement will override custom. For example, if the worker agreed from the outset to work earlier or later hours than is customary, he must abide by that agreement, and the employer can hold him to those terms. If there was no such prior agreement, the employer cannot unilaterally change the worker’s hours once he has been hired; he must adhere to the industry norm.

The *pesak* of the *Shulchan Aruch* is the same: an employer is obligated to provide terms consistent with local custom. If there was no prior agreement to work unusual hours, the employer cannot compel his worker to work those hours, even if he is willing to pay for the extra time. If it is standard practice for an employer to provide food or refreshments – in the time of the *Mishnah*, items like dried figs or dates, in our times, more likely coffee and sugar – it is his duty to make them available to his staff (*Choshen Mishpat* 331: 1-2).

The *Aruch HaShulchan (Choshen Mishpat 331:6)* adds an additional point. If there is no prior agreement between the employee and employer and also no established practice, the employer has no obligation to provide any benefits, perks or extras beyond basic salary, in keeping with the halachic principle that the burden of proof rests with the party demanding payment.⁴ It is up to the employee to prove that the employer owes him something more than his wage. In other words, in the absence of an agreement between the parties, or unless local custom dictates otherwise, the employer does not have to supply any benefits or perks to the employee.⁵

It is worth mentioning that “everyone does it” does not constitute *minhag hamedinah* when it comes to using company property, any more than “but the boss never said not to” would count as a prior agreement. Employees may be taking unfair advantage of an employer who is too busy or too trusting, or who feels uncomfortable about making an issue of petty items. In addition, an employer may not even realize just how much these “extras” are actually costing him.

While an employer may be overly stingy, employees may also be causing significant loss by careless handling of company supplies. In 2004, I worked for a company that urgently needed to cut costs. A little investigation into operating expenses showed that an impressive \$250,000 yearly was spent on office supplies (pens, paper, paper clips, folders, binders, staples and the like), which the company’s one hundred and fifty employees picked up from an open cabinet in the company kitchen. This did seem a bit excessive, so we took an interesting step: the cabinet, still open, was moved into the COO’s office. Without a word spoken about curtailing usage, this minor change saved the company over \$100,000 a year!

From the employee’s standpoint, he may simply be doing what all his coworkers do, without considering how much it actually costs the employer. In another instance, “Dave,” a business consultant, was called in to help a major Jerusalem institution cut costs. Dave soon realized that some staff members had been issued cell phones, with

⁴ This concept is mentioned in numerous places in the *mishna* and *gemara*, see for example *Baba Kama* 35b and *Baba Metzia* 153a.

⁵ There may be other variables that need to be considered, for example government laws requiring an employer to supply certain benefits, like medical benefits, and the applicability of *Dina DeMalchusa Dina*.

no explicit agreement about making personal calls. The results showed up every month on the institution's inflated phone bills. Dave asked a staff member what he considered to be reasonable use of the phone for non-work related calls. The employee suggested three calls home per day, each five minutes or less. Dave showed him the bill for his phone: he was averaging not three but five daily calls, each lasting not three to five minutes, but twenty.

What Defines *Minhag*?

In the absence of an existing agreement, industry standard prevails. What defines “industry standard”?

The *Shulchan Aruch* rules that “[A practice] is only considered an established standard (*minhag*) if it is common and has been implemented many times. Something which has only been done once or twice is not considered a *minhag*” (*Choshen Mishpat* 331:1, citing the *Rivash* 475).

The *Darkei Moshe* cites the *Rivash's pesak* concerning a *chazan* (cantor) employed by the community who wanted an exemption from community taxes as a community employee. The *Rivash* ruled that it depends on the custom in that particular city. If *chazanim* are exempt from the tax as a matter of policy, this *chazan* would be no exception, because workers' terms of employment, including benefits, are set by the prevailing custom.

However, the *Rivash* continued, it must be clear that the reason a previous *chazan* was not taxed was in fact due to an existing *minhag*. If it only happened to be that the preceding *chazan*, and even the one before him as well, were exempt from taxes, that would not suffice to define this policy as an established custom. A practice is only considered a *minhag* if it is followed consistently (*Darkei Moshe, Choshen Mishpat* 331:2).

A responsa written by the *Chavos Yair*⁶ in 1674 provides an interesting look at employer-employee relations in earlier times. He ruled on the case of a maid who fled her employer's home, maintaining that the employer was overworking her unreasonably. The employer, on the other hand, had some complaints of her own. The maid had left before the agreed upon term of employment had ended, and as a result the employer had been forced to hire a more expensive replacement. She had kept some of the first maid's clothing to cover the extra costs, and was also holding her responsible for items broken during her stay in the house. The *Chavos Yair* was asked to rule on this dispute.

The *Chavos Yair's pesak* is based on the principle of local custom/industry standard. He writes that it is a question of what is customary among those who employ maids in that city – were this employer's demands the local norm, or was she going overboard? If the majority did expect these standards, majority practice sets the norm. If it could not be established that this was majority practice, the employer would be unjustified in overworking her maid.

⁶ The responsa of Rav Yair Chaim Bachrach (1639-1702), an important German *rav* and *posek*.

Another aspect of the very harsh work environment in this home was that the pantry was kept locked – the maid, who lived in the house, was given nothing to eat on the job. Was this fair treatment, or was the maid entitled to something better?

The *Chavos Yair* ruled that it depended on whether or not the maid was a local girl, and whether or not it was common knowledge in town that this woman locked the household help out of the pantry. If the maid was local and knew about it in advance, taking the job would be considered tacit acceptance of this term on her part, even if it was not the local norm (or industry standard). If, on the other hand, there was no prior knowledge of the employer's behavior, the terms would be determined by whatever was the norm for women of the employer's standing. If it was not in keeping with the customary standards, it was unacceptable to withhold food from the maid, even if the employer's own children were denied access to the pantry (Responsa *Chavos Yair* 106, cited in *Pis'chei Teshuvah, Choshen Mishpat* 331:2).

Apparently, the *Chavos Yair* addresses the same three levels mentioned by the *Aruch HaShulchan*. The first question would be whether there was a preexisting agreement, explicit or even unspoken. If the maid was a local girl and knew about the working conditions with this particular employer, and she still took the job, that would be considered the unspoken agreement between them. Second, in the absence of an agreement, what was the industry standard in that locale? Was the employer unduly demanding, or were her expectations no more than those of any other employer? If there was an industry standard in that area, she could not work the maid harder than the norm. Also, she would be obligated to provide items, including food, in keeping with the accepted norm, regardless of her personal preferences. Third, in the absence of an agreement between the parties, and in the absence of an industry standard requiring the employer to supply certain benefits or extras, the employer is not required to supply them.

What Can You Use?

We discussed what an employer should be supplying. What is an employee allowed to use, even in the absence of an explicit agreement? The *Gemara* mentions two standards. The first depends on the specific employer's wishes; the second, on local custom or industry norms (*Baba Kama* 119b).

The *Gemara* discusses the case of materials provided by the “*baal habayis*” (defined as the owner, customer or employer) to a tailor who sews a garment for him. After the cutting and sewing, there are some remnants: a small snip of thread, or a scrap of fabric roughly the size of a small patch. Who keeps these leftovers?

The *Gemara* rules that if the customer is particular about them, they belong to him. If he does not care, the tailor can keep them. The *Gemara* goes on to mention other laborers who work with materials belonging to the *baal habayis*, such as stonecutters, and gardeners who trim and prune branches, vines and vegetable patches. If the owner cares about the shavings or cuttings, they belong to him. If not – the laborer can keep them.

On the other hand, the *Gemara* seems to bring a second standard: not the specific employer's wishes, but local custom. The *Gemara* specifies two agricultural products which the worker is allowed to keep – hops and green grain. However, even in the case of these two items, in a locale where the owners object to the worker keeping

them, it is considered theft if he does. In other words, the *Gemara* tells us that industry standards apply, and not the particular desires of the individual employer. The same principle prohibits buying combed wool from a wool comber. Unless it is local custom for the comber to keep the scraps, they belong to the owner, and it is forbidden to purchase such wool, because it may be stolen merchandise.

A more contemporary example based on this second standard is a worker in a food establishment. If industry norm allows him to help himself to food while on the job, he may do so. If this is not the norm, and he still snacks or has meals at the owner's expense, he is stealing from the owner.

Practically speaking, what is the difference between the two standards? If an employer is stricter than industry norms about benefits or the use of company supplies, can the employee disregard his employer's preferences, and avail himself of benefits and supplies in keeping with industry norms? For example, industry norms may permit use of company cell phones for a reasonable amount of personal time, while one's own boss does not allow it. Can the employee use the company cell phone for personal calls, or would that be considered stealing from the employer?

The Rambam rules according to the second standard: local custom, and not the wishes of an individual employer, determines ownership of cuttings, scraps, and leftover materials (*Hilchos Geneivah* 6:8). This is also the ruling of the *Shulchan Aruch* (*Choshen Mishpat* 358:11). Based on this second standard, if industry norm allows eating on the job at food establishments or personal use of company cell phones, these benefits are permitted, even if the employer does not approve.

The *Maggid Mishnah* points out that this *pesak* does not ignore the first standard, the specific employer's personal preference. His understanding of the Rambam's *pesak* is that the *baal habayis* referred to in the *Gemara* does not mean the specific employer, and whether or not he personally cares about the remnants or shavings. It refers in general to employers in a given locale – or in modern terms, to industry standard.

However, the *Rema* rules in accordance with the first standard: the determining factor is one's own employer. In other words, even if the industry standard is more lenient about a given item or benefit, but one's own employer does care, that is what counts. Rav Shmuel HaLevi Vosner, author of Responsa *Shevet HaLevi*, ruled on a related contemporary question in keeping with the *Rema*'s understanding of this *halachah*.

Rav Vosner was asked if it is permitted for factory workers to take home various items from the factory for personal use, if they do not have explicit permission to do so. These were items which the factory owners frequently replaced in any case. Can an employee assume that he is allowed to take them? Citing this *Rema*, Rav Vosner writes that it is clearly a question of the employer's preference (Responsa *Shevet HaLevi*, vol. IV, 220:2).

On the other hand, *Halachah L'Moshe*⁷ cites the Rambam and the *Maggid Mishnah*. He writes that the Rambam's *pesak* means that local custom (or industry standard) is the determining factor, even if it is contrary to the wishes of an individual employer (*Hilchos Geneivah* 6:8). The *Shulchan Aruch HaRav* writes that “even if this

⁷ A commentary on the Rambam by Rav Chaim Moshe Amareli (1698-1748), *rav* of Salonika and author of Responsa *Devar Moshe* and the homiletic work *Yad Moshe*.

[specific] employer is strict, his opinion is disregarded” (*Choshen Mishpat* 22). It is legitimate for a worker to assume that he was hired on terms in keeping with industry standard, and he need not be concerned with the personal whims of an employer who wants to impose policies stricter than the norm.

The Bottom Line

Policies, preferences and actual practice concerning the use of office supplies, telephones, or the postage meter, as well as other company property, may vary greatly with geography, and with different industries, companies, and employers. A few suggested guidelines:

1. Ideally, a clear stipulation in the employment agreement or a written company policy, for example, in the employment manual, is first choice, but it is not essential. A verbal agreement is also sufficient. A good time to clarify these issues with the employer is after the employee has been hired, and before he begins making use of company property.
2. In the absence of any prior agreement or discussion, *halachah* recognizes two standards: the preferences of the individual employer, and the industry norm. Because there are different opinions among the *poskim* concerning an employer who is more particular than the industry standard, it is preferable in such cases to abide by the stricter approach, and go along with the wishes of the employer.
3. If an employer is more generous than the industry standard, his personal policy governs.
4. Practically speaking, it is very difficult to establish an “industry standard” for many benefits. Some companies supply cell phones and allow personal use; others do not. Some provide chocolates, coffee, medical benefits, and car allowances; others do not. Some allow five vacation days, others, ten days, and others still, fifteen or twenty. Some permit carrying over vacation days; others do not.
5. The employee’s position within the organization is a very relevant issue. The higher his level, the more benefits he will usually receive.
6. In the absence of an agreement between the parties, and in the absence of an industry standard which requires the employer to supply certain benefits or extras, the employer is not required to supply them, and the employee should not take them on his own without first obtaining the employer’s consent.
7. “The employer’s consent” need not be consent from the owner of the company himself. Permission from someone who is authorized to make such decisions, usually the employee’s direct boss, is sufficient.
8. According to some *poskim*, if an employee is unsure about the industry standard or his employer’s policy, he can fall back on the following assessment: would he feel comfortable making personal use of company property or equipment in front of his employer? If he would, he may do so without first asking permission. However, if the employee would *not* feel comfortable about it, he should not use company property without the employer’s explicit permission (see *Mishpatei HaTorah* by Rav Tzvi Spitz, vol. I, 49:4).

Some stories make their point with no need for further comment.

Chacham Salman Mutzafi (1900-1974), a rosh yeshivah and Mekubal in Jerusalem, was born in Baghdad. For eighteen years, before moving with his family to Eretz Yisrael, he had helped manage the affairs of a prominent Baghdadi Jew. When he prepared to leave Baghdad, he was concerned that he might have misused company funds – perhaps he had occasionally served refreshments to personal visitors at the office over the years, or possibly overspent on refreshments for business callers. He was certain that if he asked, his employer would easily forgive any possible extra expenditures, but that was not enough for Chacham Mutzafi. Instead, he calculated how much it would have cost had he served refreshments to personal guests every single day of his entire tenure, and arrived at the figure of roughly one hundred gold dinars. He knew that if he put that amount into the till, the discrepancy would immediately be apparent. Instead, he purchased one hundred gold dinars worth of postage and revenue stamps and slipped them into the mail drawer, where they would go unnoticed (Olam Shel Tzaddik, p. 75).