



Workplace Requirement for Vaccination

Question: *[This question was sent by a European rabbi.]* A business owner demands that his employees be vaccinated against Corona due to the type of work done and makes them sign a waiver of claims for damages stemming from the vaccine. Can an employer make such a demand and transfer risk to a reluctant employee?

Answer: *[The answer (written on Jan. 15, 2021) is a short, general, fundamental one and should not be seen as giving the whole picture regarding claims in a specific case. It also can be impacted significantly by local law and health policies, which may differ by location and by changes in the situation and scientists' knowledge on the subject. Our general instruction is for all to follow public health guidelines and consensus (see Shulchan Aruch, Orach Chayim 328:10). At this point (with 30 million given worldwide), vaccination appears safe and effective and enjoys medical consensus.]*

Regarding the morality of requiring a theoretically risky action, many jobs include risk, e.g., exposure to contagion, chemicals, extensive driving. It is legitimate for an employer to put his worker in necessary, responsibly assumed risk (Bava Metzia 112a). If, based on scientific consensus (which in many workplaces worldwide appears likely), the workplace will be safer overall if all members vaccinate, it is morally prudent to protect the staff as a whole. Should the other worker's be forced into working with people who are endangering them?! Would the unvaccinated worker agree to be sued if he causes death or serious harm to a co-worker whom he infected (some 5% of the vaccinated are presently expected to be vulnerable)?!

We now turn to the efficacy of the waiver. The rule is that conditions on monetary obligations are binding (Ketubot 56a), and written commitments are a strong way of formalizing commitment (see Ketubot 101b; Rama, Choshen Mishpat 12:7). Sometimes a conditional agreement is not binding because the one committing may not have believed the situation would occur (*asmachta* – see at length in Shulchan

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Aruch, CM 207). This is apparently not a problem here (analysis is beyond our scope).

On the other hand, one who is coerced into a one-sided commitment (e.g., waiving damage claims) is not bound to it if either he made a *moda'ah* (a formal statement nullifying the step taken due to another's coercion) or he has proof of coercion (Shulchan Aruch, CM 242:1). It would not be coercion if the employer had the legal/moral right to force the worker to take a vaccine if he wanted to be or remain employed. (This can depend on too many factors to discuss here, including governmental regulations employed to deal with the health crisis, which fall under *dina d'malchuta* powers (see Rama, CM 369:11).) When the employer has the right, it is worker's decision whether he wants the job enough to accept dictates he opposes, and a decision based on a difficult situation rather than coercion initiated by a person is not halachic coercion (see Bava Batra 47b).

There is some chance of late-emerging bad news on coronavirus vaccine safety, and a given person can end up being the "one in a million" with a serious reaction. However, our mentor, Rav Zalman Nechemia Goldberg z.t.l., taught an important idea about medical malpractice (see Techumin vol. XIX, p. 320). The discussion of malpractice applies only when there

was a mistake, considering the situation. When a doctor recommends/performs a procedure that is correct based on benefits vs. risks, and it failed based on no clear mistake, there is no basis to sue. Claims must be based on *p'shi'ah* (negligence). When a patient is part of the minority of people for whom the risks come to fruition, the one giving the medical advice is not culpable. Therefore, in our case, the waiver is unnecessary, as the boss should not be culpable. If the waiver makes the boss feel good or protects him from a non-halachic legal suit, so be it. If the FDA and its counterparts turn out, *chas v'shalom*, to have done their job poorly, suits can be made against governments. ■

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