



## Sanctions for Vaccine Refusal

As distribution of vaccines against SARS-CoV-2 proceeds throughout the world, many people have voluntarily been vaccinated in the hope of returning to normal life. Others, however, have refrained from doing so, generally due to one of two reasons:

1. Hesitancy and uncertainty about the vaccine, but not an opposition to vaccination
2. Antivaccine beliefs, whether attributed to purported health reasons or other considerations.

In Israel, a great deal of effort is being made to encourage the population to be vaccinated. Among other measures, significant incentives have been offered to those with a "green card" indicating that they have received both doses of the vaccine, such as permission to visit certain stores and restaurants, and to attend large gatherings.

There is some consideration as to whether to penalize individuals who refuse the vaccine. While this is not being considered for the public at large, it is possible that the government may apply sanctions to medical personnel and teachers who refuse to be vaccinated (for example, leave without pay until they have received the vaccine). In this essay, we will discuss these sanctions from the Halachic perspective.

The medical establishment considers the vaccine to be the only existing path to halt the pandemic and to return life to normal. Widespread vaccination should prevent those who do contract the virus from becoming seriously ill and drastically decrease morbidity.

This estimation is based on clinical studies of the efficacy and safety of the vaccine, with full transparency and external oversight and approved by the majority of medical experts. However, on Internet sites and social media, anti-vaxxers are propagating other positions and theories, some of which oppose all vaccines (a position roundly debunked by the medical establishment for many years), and others which have raised specific concerns about the COVID-19 vaccine. Health agencies and authorities around the world say that these arguments have no basis.



Contemporary Poskim, including *Moreinu haGaon* Rav Asher Weiss *Shlit"a*, have stated categorically that it is highly appropriate and strongly advisable for every person to be vaccinated, both for the sake of his own health and the health of others. However, this doesn't mean that people can be coerced to do so. Though Halacha sometimes dictates that a person must receive medical treatment against his will, this does not apply in this case for two reasons:

1. For most individuals, the COVID-19 vaccine does not constitute *Hatzalas Nefashos*. Halacha does not even permit us to treat a *sick patient* against his will (unless he is dangerously ill), and it would certainly not permit coercing a *healthy* person to undergo preventive treatment for a disease which is unlikely to endanger his life. Though widespread vaccination will save lives, this does not justify coercion of individuals, notwithstanding the Halachic imperative to receive the vaccine.
2. The *Gedolei haPoskim* rule that a person cannot be coerced to receive lifesaving medical treatment if he is relying on the opinion of a medical authority who claims that this treatment is untested or not certain to work. Although it is logical that one may not choose to follow a lone opinion against medical consensus, in the case of the vaccine, even though it has been demonstrated to be safe and efficacious, and has been accepted worldwide, perhaps there is not yet medical "consensus". Therefore, if a person refrains from vaccination because he is relying on the view of a certain medical authority, he cannot be vaccinated against his will.

Regardless, coercive medical treatment should only be used as a last resort at the discretion of medical and public officials in extenuating circumstances. It is certainly not suitable as public health policy.

[If a person who refused the vaccine was *highly likely* to infect others, forcible vaccination may be appropriate. The near-certain danger to others would override the usual Halachic issues of coercive treatment. However, it is reasonable to assume that this is not the case in our scenario. A single individual who refuses the vaccine does not present a significant danger to others, particularly if he is careful to observe social distancing and wears a mask at all times in public. Therefore, even though the public benefit of universal vaccination justifies the use of tax revenues to incentivize individuals to receive the vaccine, there is no basis to coerce anyone.]



Thus far we have discussed active coercive measures (i.e. forcibly vaccinating individuals against their will). What about financial penalties for medical staff or teachers who refuse the vaccine?

This is essentially a matter of *Dinei Mamon* (monetary Halacha), or, more precisely, a question of *Hilchos Sechiras Poalim* (the laws of hiring workers). The Gemara (*Bava Metzia* 83a) and *Shulchan Aruch* (*C.M.* 331) clearly rule that terms of employment are subject either to the contract or the local custom ("*Minhag haMedina*", which usually also takes secular law into account). An employer cannot infringe upon the usual and customary rights of his employee, nor can the employee make demands which exceed those of workers in his trade.

Our case is unusual in that there are no employment laws or local customs regarding COVID vaccines, as they are entirely new. Therefore, the question of sanctions against those who refuse the vaccine must depend on other factors.

One possible factor is that refusing a vaccine may contradict the very nature of the employment of doctors and teachers. Every occupation has an essential definition, without which an employee has no rights to a salary, or at least to a full salary. For example, if an accountant arrives every day to work and faithfully executes many of his tasks, but does not complete his clients' year-end tax returns, he is certainly not entitled to his full salary, as he has not completed the work for which he was hired. This would be true even if it is not stipulated in his contract or dictated by the local custom – it is simply a question of producing the work for which he is paid.

A similar argument can be made regarding doctors. The doctor is not only expected to be present to receive patients, diagnose and treat them based on his knowledge, experience, and conventional medical protocols and standards of care, but he is also expected to be concerned for his patient's health – and, if he doesn't, he wouldn't be considered negligent.

If a doctor comes to work while sick and risks infecting his patients, he cannot be considered to have fulfilled his duties, even if he provides correct diagnoses and exemplary treatment. Since he has placed his patients' health at risk, he has contradicted the very essence of medical practice.



This is an obvious point, but we will cite one further example. *Shu"t Sho'el uMeishiv (Mahdura Kama, 1:185)* discusses an unfortunate episode regarding a teacher who was rumoured to have been sexually abusing children. The question was whether to disqualify him from his post. The *Shevus Yaakov* ruled that he should certainly be disqualified, despite the fact that he was an expert teacher, because, *"a teacher needs to be fearful and frightened of the word of God – more so than regular people. In this case we see that he is a frivolous person – we therefore need to dismiss him until he repents fully."*

In other words, this teacher was unsuitable not only because of the terrible harm he would cause to his victims, but because such heinous acts are contradiction of his very mandate as a teacher, namely, to inculcate his students with Torah and fear of Heaven. Therefore, even if he performs his teaching duties well, he is disqualified.

It is reasonable to assume that the same would apply to our case. Doctors are obligated to conform to the standard of care and the policies and protocols of their institutions, governmental agencies, and licensing authorities. They have no authority to disregard their directives in their medical practice. Since these agencies have declared that doctors who fail to be vaccinated risk the health of their patients, doctors who ignore this fact are contradicting their very mandate as health providers to look out for the health of their patients. Therefore, their pay should be withheld or reduced until they agree to be vaccinated.

This argument could also be extended to teachers. The role of teachers is not only to impart knowledge to their students but to take a broader responsibility for their welfare. They are expected to be concerned for their mental wellbeing, to notice if they appear to be suffering from abuse, neglect, or food insecurity, to ensure that they are not being bullied, and attend to numerous other aspects of their development. Therefore, they are most certainly expected to avoid risking their students' health. Since medical authorities have determined that failing to vaccinate will harm others, disregarding the risk is an act which undermines their role as teachers, and is a valid reason to withhold their pay or reduce it.

Aside from the above, the simplest basis for withholding the salary of medical personnel or teachers, will depend on whether these measures are passed into law<sup>1</sup>.

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<sup>1</sup> This is currently under discussion in Israel.



Generally, reforms in public employment agreements are structured so that each employee is entitled to decide whether he wants to accept the changes or whether he prefers to keep his existing terms. This is due to existing laws that respect an employee's employment rights. A law requiring employees to be vaccinated would be highly unusual, and not usually accepted (aside from the fact that it relates to matters that are not usually addressed in employment regulations).

In our case, we also need to address a basic question. Is an employee bound by laws that were passed after the onset of his employment? This question may well depend on the reason that employment agreements are subject to *Minhag haMedina*.

One possibility is that although the two parties did not stipulate that they should be bound by *Minhag haMedina*, it can be assumed that they entered the agreement with the local laws and custom in mind. The employment contract therefore exists implicitly in the context of *Minhag haMedina*. If this is the case, they should only be bound by laws that were in place at the time of the agreement, else they cannot be *assumed* to have agreed to them.

On the other hand, obedience to *Minhag haMedina* could be understood differently. The two parties perhaps agreed to **ongoing compliance** with local laws and custom. The "contract" is predicated upon compliance with all applicable local laws and customs throughout the term of employment, and it is not limited to the laws and customs in effect at the time the original contract was executed. If so, they would even be bound by laws that are passed after their agreement.

There is a dispute among contemporary Dayanim in this regard - there appear to be three approaches:

1. The two parties are only bound by those laws and conditions that were in place **at the time of their agreement**.
2. It depends whether the law in question is merely a modification of an existing law, or entirely new. For example, if at the time of their agreement, the law required the employer to pay for the employee's sick days, and at a later stage it was broadened to also include lost work days due to the illness of a spouse or child, the employer would be obligated to comply with the newly established practice. They are understood to have agreed to the existing laws in a general sense – in other words to pay for



sick days – and the alterations to the law were included in their agreement. However, if the law did not exist in any form at the start, they would not be bound by it.

3. The third approach is that the two parties are bound by all laws – even those that are enacted following their agreement and even if they are entirely new. Their basic agreement is to be compliant with *Minhag haMedina* at all times.<sup>2</sup>

In our case, it would seem that according to the third approach, one may withhold the salary of a medical professional or teacher who refuses to be vaccinated if this becomes enshrined in law. According to the first approach, one would likely be prohibited from doing so (setting aside the arguments made above, which are independent of *Minhag haMedina*). According to the second approach (which is accepted by many contemporary Dayanim), it is also likely to be unwarranted as it would be a brand-new law. However, one could argue that since it relates to the very essence of the mandate of medical personnel and teachers (as stated above), it could be said to be a broadening of basic employment agreements, and should not be considered entirely new.

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<sup>2</sup> We should point out that according to this approach, *Minhag haMedina* obligates the two parties, even if they were unaware the *Minhag*. This is, in fact, subject to a dispute among the Poskim, but is the accepted practice.