בס"ד שרה רובינסון מרחשון תשע"ד, שבת פרשת נחראש חודש לנשים'סטרן קולג

Kavod LaPoel: What Halacha Demands of an Employer

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Uri L'Tzedek Immigration Shabbat 2013

Outline:

- 1. What does Labor law have anything to do with immigrants?
- 2. The Biblical Law
- 3. The Three- Way Machloket: Rashi, Ramban, Ibn Ezra
- 4. The Talmudic Law: It's a two way street

Thank you R'Josh Yuter who first taught me about this subject

What do labor laws have anything to do with immigrants?

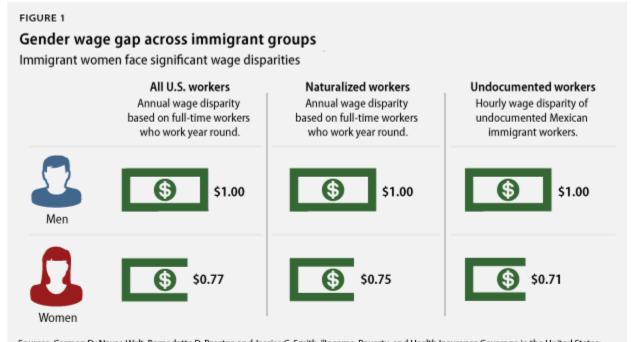
March for Dignity and Respect for Immigrants – http://octoberimmigration.org

"On October 5, 2013... [t]he broad movement for Dignity and Respect will march for immigration reform with legalization that leads to citizenship, legal immigration rules that promote family unity and <u>protect worker rights</u>. We will march to stop the attacks against our families through deportations. We will march to halt the massive wasteful spending on unneeded border militarization and for profit immigrant detention prisons.

It's time to raise our voices and make sure Congress hears our call for Dignity and Respect!"

- 2. Shifts in the employment outcomes among Mexican migrants to the Unites States, 1976-2009, Katherine M. Donato, Research in Social Stratification and Mobility, July 2011 "We find a worsening of conditions for both unauthorized and legal Mexican migrants in the years following the passage of the Immigration Reform and Control Act (IRCA)[in 1986] and that unauthorized status is associated with more unfavorable workplace conditions relative to legal immigrants."
- 3. Across the Spectrum: The Wide Range of Jobs Immigrants Do by the Fiscal Policy Institute, April 2010

"Overall, 48% of immigrants work in white collar jobs – managerial, professional, sales, and administrative support. By comparison, 52 percent work in service, blue-collar, or farming, fishing, and forestry jobs."



Sources: Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, "Income, Poverty, and Health Insurance Coverage in the United States: 2011" (Washington: U.S. Census Bureau, 2012), available at http://www.census.gov/prod/2012pubs/p60-243.pdf; CAP analysis of U.S. Census Bureau, 2012 March Current Population Survey (U.S. Department of Commerce, 2012); Katharine M. Donato and Blake Sisk, "Shifts in the employment outcomes among Mexican migrants to the United States, 1976–2009," Research in Social Stratification and Mobility 30 (1) (2012): 63–77.

The Biblical Law

יקרא יט:יג

תגְזֹל לא תַלִּין פָעַלַּת שַכִּיר אָתְרָ עַד בּקרלא תַעשׂק אֵת רֵעַךַ וִלא

Don't cheat your friend and don't steal; don't keep [your] worker's wages with you until morning

דברים כד:טו

בּשֵּאׁ אֵת נַפְשׁוֹ וָלֹא יִקרָא עַלֵיךָ אֵל ה וָהַיָה בָּךַ חֵטָאִיוֹמוֹ תִתֵן שָּׁכַרוֹ וְלֹא תַבוֹא עַלַיו הַשָּׁמֵשׁ כִּי עַנִי הוא וְאֵלֵיו הוא ב Pay his salary on that day and the sun should not set on him, because he is poor, and he set his heart to it, and he won't call out to God and you will have a sin.

The Three-Way Machloket: Rashi, Ibn Ezra, Ramban

רש"י על ויקרא יט:יג, ד"ה "עד בוקר"

ובמקום אחר הוא <u>.לפיכך זמן גבוי שכרו כל הלילה ,</u>שיציאתו מששקעה החמה , בשכיר יום הכתוב מדבר-עד בקר לפיכך ,שהשלמת פעולתו משיעלה עמוד השחר ,מדבר בשכיר לילה ,ולא תבוא עליו השמש (דברים כד טו)אומר :לפי שנתנה תורה זמן לבעל הבית עונה לבקש מעות , גבוי שכרו כל היוםזמן

"Until morning" – scripture is speaking of a day laborer who leaves his work when the sun sets, therefore he can collect his wages all night. And in another place [i.e. Devarim 24:15] it says, "the sun shouldn't set on him" in speaking of a night laborer because the completion of his work is at dawn. Therefore, [the night laborer's] time to collect wages is all day. For the Torah gave the employer a time-period to seek money [to pay his workers].

"אבן עזרא ויקרא יט:יד, ד"ה פעלת

והמעתיקים אמרו כי <u>.בבקר ובבקר אתן לך שכר שני ימים</u> ורבים פירשוהו על שכיר יום שיאמרו לו גם תעשה ... ".לא תבוא עליו השמש"הוא שכיר יום כי שכיר לילה

...And many interpreted it [to be about] a day laborer whose employer told him, "work for me tomorrow morning as well and in the morning I'll give you two day's wages." And Chazal said he is a day laborer because a night laborer [is written about in Devarim, as it says] "the sun should not set on him"

"רמב"ן דברים כד:טו, ד"ה "וטעם ביומו וכו

לא תליו " (ויקרא יט יג) <u>ביאור ממה שנאמר בתורה</u>על דרך הפשט ",ביומו תתן שכרו ולא תבוא עליו השמש"וטעם והמנהג לשכור הפועל ביום אחד ולערב הוא יוצא טרם , כי דרך הכתובים לדבר בהוה",פעולת שכיר אתך עד בקר כדי שיקנה בשכרו לו "שלא תבוא עליו השמש" ו. ויצוה הכתוב לפרעו ביומו בהשלים מלאכתו מיד.בא השמש <u>שיקנה בו מזון "הוא נושא נפשו"</u> ואל השכר הזה . כרובי הנשכרים"כי עני הוא"ולאשתו ולבניו מה שיאכלו בלילה . להחיות נפשו

שאם לא , הכונה בו שתפרענו ביומו".לא תלין פעולת שכיר אתך עד בקר"ילמד אותנו בכאן כי מה שאמר בתורה . וימות הוא ברעב בלילה"שכרו אתך עד בקר" הנה ילך לביתו וישאר ,תפרענו בצאתו ממלאכתו מיד

And the reason "in the day give his wages and the sun should not set on him," according to the straightforward explanation it is an elaboration of what was written in Vayikra "Don't withhold a workers wages with you until morning." Because the manner of scripture is to speak in the common case, and the common case is to pay the worker one day and he returns home before sunset. And the Torah commands to pay him on the day of his work. And "the sun should not set upon him" so that he should buy food for his wife and children, for "he is poor" like most hired laborers. And for these wages "his life depends" so he can buy food to sustain his life.

We learn from here what the Torah meant by "do not withhold the laborers wages with you until morning." The intention there is to pay the worker on the day of his work, for if the employer does not immediately pay when the employee finishes work, the employee will walk home and "his wages will be with you until morning" and he will die of hunger at night.

ד: טו, ד"ה "ואליו הוא נשא את נפשו"רש"י דברים כ

)בבא מציעא קיב: (עלה בכבש ונתלה באילן , אל השכר הזה הוא נושא את נפשו למות -ואליו הוא נושא את נפשו: (בא מציעא קיב: (עלה בכבש ונתלה באילן , אל השכר הזה הוא נושא את נפשו: (בא מציעא קיב: (בא And he risks his life for it – to recive his payment he carries his soul to die; [for example, he] went up a ramp or hung from a tree

The Talmudic Law – It's a two way street

תלמוד בבלי, בבא מציא פג.

Someone who hires workers and tells them to rise early and to stay until dark – if they live in a place where it is uncommon to rise early/ stay until dark, the employer cannot force his employees to do so. In the place where employers feed their workers – he must feed them. In a place where the employers provide relish – he must provide it.

תלמוד בבלי, בבא מציעא קיב.

כיר כאילו נוטל נפשו ממנוכל הכובש שכר ש

All who withhold an employee's wages – it is as though [they] took away his life

תלמוד בבלי, סוכה כט:

אמר רב בשביל ארבעה דברים נכסי בעלי בתים יוצאין לטמיון: על כובשי שכר שכיר, ועל עושקי שכר שכיר, ועל שפורקין עול מעל צואריהן ונותנין על חבריהן ועל גסות הרוח.

Rav said: On account of four things a homeowner's property is confiscated: On those who withhold their laborer's payment, those who steal their laborer's payment, on those who remove the yoke from their necks and put it on their friend's, and on being rude.

תלמוד בבלי, בבא מציא עג.

אמר להו ברע להנהו דמננורו בענו. פופו הפורו ברו דרו בי הירו דלע מועמלם שכירות דידכו עד ההיא שעתא, דשכירות אינה משתלמת אלא בסוף. וההיא שעתא אוזולי דקא מוזלי גבייכו.

Rava told the [workers who] guarded the fields: go out to the threshing floor and turn over the grain so that your wages will be payable at that time [i.e. after the harvest] because wages are only paid at the end. And at that time the employers are paying a good wage. [Rashi: field watchmen were paid only after the grain was threshed, even though they finished their job after reaping. They were given a bonus for waiting, which is ribit, which is assur. That's why Rava said they should remain employed at the farm.]

יד החזקה להרמב"ם, ספר משפטים, הלכות שכירות יג:ז

ויבטל ל הבית, כך העני מוזהר שלא יגזול מלאכת בע,שלא יגזול שכר עני ולא יעכבנו ל הבית ך שמוזהר בעכדר אלא חייב לדקדק על עצמו בזמן שהרי הקפידו על ברכה רביעית ,מעט בכאן ומעט בכאן ומוציא כל היום במרמה וכן חייב לעבוד בכל כחו .של ברכת המזון שלא יברך אותה

Just like an employer is careful not to steal wages from his poor employees, the poor employee is careful not to steal from the employer by wasting a little time here and a little time there – and he finds himself having spent the day in deceit. Rather, the employee is required to be exacting on himself in managing his time so that he does not recite the fourth bracha of berkat hamazon. And he is required to work with all his strength.