



Contracts 101: Employer and Employee Rights and Responsibilities

Parashat *Beha'alotcha*, Numbers 8:1-12:16 | by Mark Greenspan

“Contracts,” by Rabbi Jane Kanarek, (pp. 491- 550) in *the Observant Life*

Introduction

If you're looking for references to contracts and labor relations in the Torah you won't find them in *Parashat Beha'alotcha*. In assigning topics from The Observant Life to Torah portions there were some *parshiot* that did not fit any of the topics in this book. On the other hand there are several portions that could have served as the basis for many of the topics in The Observant Life. I have chosen therefore to digress from the weekly *Parashah* in order to explore an important topic in Jewish law: business and labor relations. At least four chapters in “The Observant Life & Parashat Ha-shavua: A Study Guide” source sheets are devoted to the business world: “Between Employees and Employers” (Cheryl Peretz), “Among Co-Workers” (Barry Leff), “Commerce” (Jacob Blumenthal) and “Contracts” (Jane Kanarek). The Torah has a great deal to say about the treatment of laborers as one can see from the verses and passages quoted below.

The *Mishnah* and *Talmud* have extensive discussions of the rights and responsibilities of employers and employees. Jewish labor relations could easily be the subject of many volumes and articles. And it is as timely today as it was 1500 years ago. Below you'll find three passages taken from the *Mishnah* (200 CE), a passage from Maimonides' (born in 1135) *Mishneh Torah*, and a contemporary responsum dealing with standards of behavior for Jewish employers. These statements are meant to whet the reader's appetite on a broad range of business topics. They are a reminder to us that God is present in a place of business as much as in a place of prayer.

The Torah Connection

You shall neither steal nor deal deceitfully or falsely with one another... You shall not defraud your fellow; you shall not commit robbery. The wages of a laborer shall not remain with you until morning.

-Leviticus 19:11-13

You shall not abuse a needy and destitute laborer, whether a fellow countryman or a stranger in one of the communities of your land. You must pay a worker's wages on the same day, before the sun sets, for he is needy and urgently depends on it; else he will cry to the Lord against you and you will incur guilt.

-Deuteronomy 24:14-15

He will cry out to the lord against you and you will incur guilt: *He may be powerless to compel you to pay him on time, but he can have recourse to God, who will punish you. Exodus 22:21-23 warns similarly against mistreatment of widows and orphans, as does Deuteronomy 15:9 regarding refusal of loans to the poor.*

Jeff Tigay, *The Jewish Publication Society Torah Commentary, Deuteronomy*

If one engages workers and they deceive each other [*i.e., the employer asks one of the workers to put together a team of workers for which he is willing to pay four dinar a day. The employee hired them for three dinar a day; since they accepted the work at the lower rate*], they only have a grievance against each other with no legal recourse. If he hires a donkey-driver or a wagon-driver to bring finished wood for a wedding couch, and flute reeds for a bride or for the funeral, or if he hired laborers to remove his flax from the soaking vat, or anything which would be irretrievably lost if not performed by a certain time, and the workers renege on their agreement: If it is a place where no others are available at the same wage, he may hire other workers at a higher wage and charge it against what he owes them or deceive them by telling them he will add to their wage, but only paying them that which they had previously agreed upon.

If he contracts employees for a complete job and they renege after doing some work, they are at a disadvantage [*if the price of labor appreciated, he may pay a higher wage to complete the job and deduct anything beyond the agreed upon price from the money he owes the first workers for their partially completed work. If the price decreases, he pays the cheaper price to the new workers and the former workers cannot demand the entire sum agreed upon less the cost of the new workers, to finish the job*]. If the employer retracts, he is at a disadvantage [*he must pay them for the work they did, even though, the price of labor appreciated and he must now pay more to finish the job; where the cost of labor depreciated, he pays them the agreed upon amount less that which he pays the new workers, to finish the job*]. He who alters [the contract] is at a disadvantage [*i.e., if one ordered his wool to be dyed red and the dyer dyed it black instead, he may not demand his usual fee; rather, he pays only the increased value of the wool or the dyer's expenses, whichever is less*] and he who retracts in a land deal is at a disadvantage [*if one gave a deposit of two hundred dollars on a thousand dollar field and the seller retracts, the buyer has the option of demanding either a refund or two hundred dollars' worth of land. If the buyer retracts, the owner has the option.*]

One who engages workers and demands that they commence early or work late — where local custom is not to commence early or work late [*if he did not stipulate this as a requirement before hiring them,*] he may not compel them to do so [*and even though he agreed to pay them more than other workers, he cannot say: It is because of the early or late work schedule; since he didn't specifically mention this, they can respond by saying: You pay us extra, because of the quality of our work*]. Where it is the practice to supply food [to the workers, he must so supply them; to provide a relish, he must provide it. It all depends on the local custom. [*If it was customary for workers to eat, yet he stipulated with them that he will feed them, he must add to the normal, customary amount*]. Once, Rabbi Yohanan ben Matia said to his son: Go out and engage some workers. He went and agreed to supply them with food but upon returning to his father, the latter stated: My son, should you even prepare for them a banquet like King Solomon's when he was in his glory, you could not fulfill your undertaking, for they are children of Abraham, Isaac and Jacob, but, before they start work, go out and tell them: I engage you on condition that you have no claim upon me, other than bread and legumes. Rabban Shimon ben Gamliel says: It was unnecessary to stipulate this since everything depends on local custom.

M., Bava M'tzia 6:1-2 and 7:1, *Chok L'Yisrael, Online translation and commentary*. Sections in italics are commentary and not part of the Mishnah text.

It is a positive commandment to pay a worker his wage on time, as Deuteronomy 24:15 states: "On the day it is due, pay him his wage." If an employer delays payment, he violates a negative commandment, as that verse continues: "Do not let the sun set without him receiving it." Lashes are not given for the violation of this prohibition, for he is liable to pay. This principle applies to the wage of a person or the fee for hiring an animal or a utensil. In all these instances, one is obligated to make payment when due, and if one delays payment, one violates a negative commandment. The obligation to pay a wage when due applies to a resident alien, but one does not transgress a negative commandment if one delays paying him. Whenever a person withholds the payment of a worker's wage, it is as if he takes his soul from him, as Deuteronomy 24:16 continues: "Because of it, he puts his life in his hand."

M. Maimonides, MT Hilkhos S'khirut 11:1

Conclusion: Our tradition upholds an ideal in which the workplace offers dignity both to employers and to employees. In our society the workplace instead often becomes a degrading place that fails to acknowledge the humanity of either the workers or their bosses. Workers often have no way of voicing their concerns and may not even be able to provide their families with food, housing, and medical care. Unfavorable conditions in turn prevent employees from doing their best work. The establishment of a workplace that takes seriously the dignity, welfare, and self-determination of all employees goes far toward making our institutions the models of halakhic and ethical behavior that we wish them to be. Based on the sources explored within this *T'shuvah*:

- 1. The halakhic system supports a controlled free-market wage system only when the market produces wages on which one can fulfill one's family with basic needs including food, housing, and health care. In order for the Halakhab relating to workers and employers to function as intended we must do what we can to restore a system in which people who work full-time are able to provide for their families' basic needs.*
- 2. Jewish employers are obligated to treat their workers with dignity and respect. This obligation should include but should not be limited to prohibitions against publicly yelling at, mocking, or otherwise embarrassing workers, forbidding employees from speaking their native languages at work, banning all bathroom breaks, changing work hours or adding shifts without advance notice, or making improper sexual comments or advances toward workers.*
- 3. Jewish employers must pay their workers on time according to an agreed-upon schedule and may not pay workers with bad checks. Employers must pay workers for the full time worked including mandatory preparation and clean-up hours. Employers who hire workers through a contractor should make every effort to ensure that these workers are being paid on time.*
- 4. Jewish employers may not knowingly put their employees' lives at risk by failing to provide appropriate safety equipment and training or by knowingly forcing workers to work under dangerous conditions.*
- 5. Jewish employers should strive to pay workers a 'living wage' defined according to any of the possibilities outlined in this T'shuvah. When deciding among the available options employers should not select a wage level that while technically considered a living wage (according to a local ordinance for example) is so low that employers know that workers will certainly need to take on additional jobs and/or to endanger their health by working an excessive number of hours.*
- 6. In most cases unions offer the most effective means of collective bargaining and of ensuring that workers are treated with dignity and paid sufficiently. Jewish employers should allow their employees to make their own independent decisions about whether to unionize and may not interfere in any way with organizing drives by firing or otherwise punishing involved workers by refusing workers the option for "card check" elections or by otherwise threatening workers who wish*

to unionize. When hiring low-wage workers or engaging contractors who supply low-wage workers Jewish employers should strive to hire unionized workers when possible.

7. *The principle of dina d'malkhuta dina (the local law is the prevailing standard) obligates Jewish employers to comply with federal labor laws even when these laws are inconsistently enforced.*
8. *Jewish employees are obligated to work at full capacity during their work hours and not to 'steal time' from their employers. Jewish union leaders should similarly strive to ensure that workers uphold the Halakhic obligations of employees to employers.*
9. *The ideal worker-employer relationship should be one of trusted partnership, in which each party looks out for the well-being of the other, and in which the two parties consider themselves to be working together for the perfection of the divine world.*

Jill Jacobs, "Work, Workers and the Jewish Owner." Responsa approved by the CJLS 2008

Reflections

Before we explore the sources for contractual relations in business it would be helpful to consider the role of contracts in Judaism in a more general sense. Although Jewish contracts may be different from the type of legal agreements used in American society they play an important role in Jewish life.

We have of course marriage contracts defining the economic responsibilities of a husband to his wife. We also have a contract of divorce which annuls the bond of marriage. Rabbis have contracts of sorts for the sale of *hameitz*. One might also say that Judaism is a contractual religion since it's built around a *b'rit*, a covenant or a contract between God and the Jewish people. According to the Encyclopedia Judaica a contract or a covenant is "a legally binding agreement between two or more parties, in terms of which one party undertakes for the benefit of the other to perform or refrain from a certain act." In other words the purpose of a contract (and the intent of our covenant with God) is to spell out clearly and unambiguously what the responsibilities and obligations are to one another. When a person takes a new job they sign a contract which clearly spells out what is expected of them and what they will receive in return for their labors. Contracts then are built on an assumption of fairness and just reciprocity. To an extent the expectations in a business contract will be based on the assumptions of a society and not on objective criteria. That is why local custom is so important in the *Mishnah*. But there is also an element of justice - or there should be an element of justice - in the way the contract works. The contract provides the employer with something he needs from the laborer but it also should protect the employee by spelling out his remuneration and benefits.

In the sources from the *Mishnah*, the *Mishneh Torah*, and in Jill Jacobs' contemporary *T'shuvah* (responsum), we see the rabbis trying to figure out not only how to define the laborer's responsibilities but also how to protect all parties in the agreement. There are times when the employer needs protection as much as the employee. And while employees are often in the position of powerlessness it seems to me that the rabbis were more concerned with fairness and mutuality rather than simply protecting either one party or the other. A shrewd negotiator, for instance, might be able to come to an agreement with laborers that allows him to keep part of the money that was set aside to hire workers. Both the laborers and the employer might have a grievance but they have no legal recourse. Local custom can protect a laborer from a demanding boss but there might be other times when the expectations of local custom are more demanding of the laborer.

However some of the laws in rabbinic literature were specifically composed to protect the laborer (particularly the day laborer) from unscrupulous employers. While one might argue that the laborer isn't

forced to take the job if he doesn't like the terms being offered the sages understood that there are times when the needy laborer has no choice but to accept unreasonable terms. In a society where all too many people earn wages that do not provide a livable salary we need to look more closely at how we might protect the working poor. I believe this is a question that the members of synagogues and other institutions should ask: Do we treat the people who work for us the way we would want to be treated?

Questions to Ponder

1. The two verses from Leviticus and Deuteronomy deal with the obligation to pay laborers in a timely manner. Leviticus identifies this infraction with robber' while Deuteronomy connects the infraction with abuse. What do these verses say about the relationship between an employer and an employee?
2. In what ways does the *Mishnah* provide the means of protecting the employer and in what ways does it protect the employees? Whom do you think these *Mishnayot* (plural for *Mishnah*) favor?
3. Should Jewish employers see themselves bound by a higher standard if the local custom is unfair to the employees?
4. Jill Jacobs offers a number of suggested standards for Jewish employees? To what extent are these applicable in today's society?

Adapted from Torah Table Talk by Mark Greenspan