

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

Paying Workers Shiur One

Mareh Makomos for this Shiur

Bava Metzia 111a-b

Bava Metzia 112a

Bava Metzia 110b

Nemukei Yosef (Bava Metzia 67b)

Rambam (Laws of Hiring 11:2)

Rif (Bava Metzia 62a)

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Delaying Payment of Wages (basis of the law)



Siman 339 Seif One

1 It is a mitzva to pay a worker's wages on time, and one who delays this violates a negative commandment. 2 This applies equally to wages for human labor, animal labor or for use of tools, but there is one who says that this transgression does not apply to payment for land.

Siman 339 Seif Two

2 Whoever withholds a worker's wages 3, it is as if he took away his soul [i.e., killed him], 4 and he transgresses five negative commandments and one positive commandment.

Siman 339 Seif Three

3 What does "his time" mean? 5 He has time to give him [his wages] all night. If he did not give it, he transgresses when it is morning, because of bal talin ("do not withhold") (Vayikra 19:13). A night worker — the time to pay him is all day. If he did not give him, he transgresses at night 6 the commandment 'on his day you shall give him his wages (Devarim 24:15).

Rama: And our workers, who do not work until the night, 7 once the sun sets one transgresses 'and on his day you shall give his wage' (Devarim 24:15). And if he did work until the night, he has time the entire night 8, even if he did not hire him (explicitly) with the intention that this is how he would pay him (Nemukei Yosef, Tosefos Perek Hamekabel).

Siman 339 Seif Four

4 One who works by the hour, if his term of work ends during the day 9 he can be paid any time that day. If he finished at night, he can be paid any time that night.

Siman 339 Seif Five

5 One who works by the week, month, year or seven-year period, if he completes his term during the day, he collects throughout that day. If he completes his term during the night, he collects throughout that night.

The Prohibition of delaying Payment of Wages

SIMAN 339: 1

The source of this *Halacha* is in *Sefer Devarim* 24:15. Here, the Torah states clearly that there is an obligation to pay a worker on time.

The Tur as well rules:

“IT IS A *MITZVA* TO GIVE A WORKER HIS WAGE ON TIME, AND ONE WHO DELAYS THIS TRANSGRESSES A NEGATIVE COMMANDMENT.”

In *Bava Metzia* 111a, the *Mishna* clarifies that this prohibition applies equally to,

- I. Paying for a person’s own work, his animal’s work or that of his tools or items. The *Genara* (111b) explains that this ruling comes from the verse: “You shall not cheat a poor or destitute hired worker among your brethren or a proselyte who is on your land...”
- II. The *Genara* explains the words ‘on your land’ as referring to everything that is on your land,
 1. Meaning human labor,
 2. Animal labor,
 3. Alternatively, Tools.

Does this law apply to paying for use of land as well?

For example, a person rents out his field to be farmed for a certain amount of time.

The **Ramah**¹ (brought in the **Tur**) writes,

- a. The ruling does not apply to land,
- b. This is because the Torah states on this “**All that is on your land,**”
- c. The *Genara* goes on to explain (ibid. 111b) “‘**all that is on your land,**’ but not all your land.”
- d. Meaning, **a person’s land is excluded from this teaching.**

The **Shulchan Aruch** rules like the above, writing,

IT IS A *MITZVA* TO PAY A WORKER’S WAGES ON TIME, AND ONE WHO DELAYS THIS VIOLATES A NEGATIVE COMMANDMENT.

This applies equally to,

1. Wages for human labor,
2. Animal labor,
3. Alternatively, for use of tools.

The **Shulchan Aruch** then adds that concerning payment for land, there is an opinion (i.e., that of the **Ramah**) that states that this transgression does not apply to payment for land.

The **Sma** (*Seif Katan 1*) raises a question: In *Seif 2*, we learn that a person who withholds wages transgresses five negative commandments.

¹ *Ramah* – **R’ Meir Ben Todros HaLevi Abulafia** - Born: Spain, c. 1170. Died: Spain, c. 1244. Talmudist. Av Bet Din in Toledo, he was regarded as one of the foremost halachic authorities of his time being consulted by the Ramban among others. He was one of the first rabbis to attack the Ramban on his views on resurrection etc and he was opposed to the study of philosophy. Author of *Peratei Peratim/Minute Details*, a compendium of Chidushim on the whole Talmud written in Aramaic, of which only *Bava Basra* and *Sanhedrin* are extant and are known as **Yad Ramah**.

Why, then, did the Shulchan Aruch only mention one?

The Sma replies,

- A person transgresses one commandment when he does not pay but has in mind that he will pay later.
- The other transgressions only apply if the violator does not intend to pay at all.
- Since the **Shulchan Aruch** was not referring to where the violator does not pay at all, he mentioned only one negative commandment.

Does a person who fails to pay rent for an apartment or house violate this commandment?

The **Pischei Teshuva** (*seif katan* 1) raises this question,

Asking whether a house has the status of something that is attached to the ground (and therefore has the legal status of land), or alternatively it has the status of something that is in essence detached from the ground but was attached to it, the difference being the above law.

The **Pischei Teshuva** brings the **Ketzos HaChoshen**, who writes,

THE OPINION OF THE *POSKIM* IS THAT CONCERNING NEGATIVE
COMMANDMENTS SUCH AS WITHHOLDING OF PAYMENT, A HOUSE IS
CONSIDERED TO BE SEPARATE AND NOT LIKE THE LAND ITSELF.

Afterwards, the **Pischei Teshuva** brings from the **sefer Shaar Hamishpat** and other works that differ with the above **Ramah**, who hold

THE PROHIBITION ON WITHHOLDING WAGES APPLIES TO LAND AS WELL,
AND THAT SINCE THIS IS TORAH LAW, ONE MUST NOT BE LENIENT.

One who withholds a Worker's Wages

The source of this *Halacha* is *Bava Metzia* 112a. There, the *Genara* states that a person who withholds a worker's wages is as if he has taken away his soul (i.e., killed him).

The *Gemara* also brings (111a) that a person who withholds wages violates five Torah prohibitions and one positive commandment:

1. You shall not cheat your fellow man (*Vayikra* 19:13).
2. You shall not cheat a poor or destitute hired worker among your brethren (*Devarim* 24:14).
3. A worker's wage shall not remain with you overnight until morning. (*Vayikra*, *ibid.*)
4. On that day, you shall pay his hire (*Devarim*, 24:15). This is a positive commandment.
5. The sun shall not set upon him (*ibid.*)
6. **Rashi** explains that he also transgresses “and you shall not rob” (*Vayikra* *ibid.*).

The *Gemara* asks:

It is impossible to transgress all of these commandments together, because some specify the time of transgression being by day and others specify the night. **How, then, can a person transgress all five commandments at once?**

Rav Chisda answers (based on Rashi's explanation):

The intent is that one transgresses the general concept of hiring. Meaning, it indeed is not possible to violate all the commandments at once. The *Gemara* meant that within the concept of withholding wages there are five potential transgressions, depending on when payment is withheld.

The Beis Yosef notes that the Tur writes,

A transgressor actually does violate five negative commandments and one positive commandment. The **Beis Yosef** then ventures an explanation as to how this is possible, in light of the fact that the specified times contradict each other:

The Tur understood Rav Chisda as meaning,

Even though some of the verses talk about paying by day and others by night, nevertheless, when he withholds payment either by day or by night, he violates all of them because the term “hiring” involves all of the relevant verses, and whenever transgresses in one case it is seen as violating all the related prohibitions as well.

The **Shulchan Aruch** brings the above law in short, also writing that whoever withholds a worker’s wages, it is as if he took away his soul, and he transgresses five negative commandments and one positive commandment.

When must a worker be paid?

SIMAN 339: 3

The source of this *Halacha* is the *Mishna, Bava Metzia* 110b, where it states that a day-worker collects his wages throughout the night. Meaning, his employer is allowed to pay throughout the night, but past that point he is considered to be withholding wages. A night worker collects all throughout the day, meaning his employer has the following day to pay his worker. Beyond that point, he is considered to be withholding wages.

The *Gemara* (ibid.) asks:

Where do we know that a day-worker collects the entire night?

- As it states: “You shall not retain the work [i.e. wage] of a worker with you until the morning” (*Vayikra* 19:13).
- In addition, where do we know that a night-worker collects the entire day?
- As it states: “On his day you shall give his wage” (*Devarim* 24:15).

We see that the Torah emphasizes **giving throughout the night** in one verse and **giving throughout the day** in another verse.

In all cases,

THE TORAH GIVES THE EMPLOYER AN ENTIRE HALF-DAY FOLLOWING THE DURATION OF A WORKER’S SERVICE IN ORDER TO FIND THE MONEY WITH WHICH TO PAY HIM.

The Gemara asks:

- ✓ Perhaps the Torah's intention is the opposite?
- ✓ Perhaps it is a day worker who must be paid at the end of the day, and a night worker who must be paid by the end of the night?

The answer given is that there is a known rule:

WORK IS ONLY PAID FOR AFTER IT IS FINISHED.

In other words, an employer's obligation to pay only begins once the work he ordered is completed. Therefore, it is illogical to say that a worker hired to work throughout the day must be paid *by the end of the day*.

- ✓ This implies that an obligation existed before the end of the day that the employer is allowed to postpone until a given duration.
- ✓ However, since the day worker has not completed his job at this time, there is no obligation to speak of until the day is over.
- ✓ Therefore, logic dictates that concerning a day worker, the employer has until the following night to pay him.

A Half-day Worker

Is there any difference between laws concerning payment of a worker who works a full day and one who works a half-day?

The **Nemukei Yosef** raises this question (*Bava Metzia* 67b) in the name of **Tosafos**. The understanding is:

If a worker is not hired to work until nightfall, the following verse applies.

“UNTIL THE SETTING OF THE SUN”

In other words,

- a. The employer must pay the worker by sunset and not until the end of the night.
- b. However, if a worker is hired to work half the day but he himself continues working until the night, the employer is not in violation if he does not pay him by the end of the day, even though he hired the worker to be finished before the night.

The Shulchan Aruch rules,

AN EMPLOYER HAS TIME TO PAY A DAY-WORKER HIS WAGES ALL NIGHT.

- If he did not give it, he transgresses when it is morning, because of *bal talin* (“do not withhold”).
- A night worker — the time to pay his wages is all day.
- If he did not give him, at nightfall he transgresses the commandment ‘on his day you shall give him his wages.’

The Rama adds the words of the Nemukei Yosef brought above, writing,

OUR WORKERS, WHO DO NOT WORK UNTIL THE NIGHT, ONCE THE SUN SETS THE EMPLOYER TRANSGRESSES ‘AND ON HIS DAY YOU SHALL GIVE HIS WAGE.’

If the employee did work until the night,

The employer has time the entire night to pay, even if he did not hire him (explicitly) with the intention that if he would work into the night, he would be paid by the end of the following day.

What is the Duration for Payment of an Hourly Worker?

SIMAN 339: 4

The source of this *Halacha* is the *Mishna, Bava Metzia* 110b, which states,

- A worker hired for several hours during the day and not until sunset collects his wage throughout the day and until sunset (the *Gemara* on this will be brought below).
- A worker paid by the week, month, year or 7-year cycle **is paid on the day he completes his term of service.**
- If he completes this by day, he is paid until the end of the day.
- If he completes it by night, he gets paid by the end of that night and the following day.

The *Gemara* (111a) brings two opinions on these workers.

- I. The first opinion brought is that of **Rav**. **Rav** holds that one who works for several hours by day collects until the end of the day, and one who works several hours by night gets paid by the end of the night.
- II. The second opinion brought is that of **Shmuel**, who holds that a person who works for several hours by day collects until the end of the day, but a person who works for several hours by night can be paid until the end of that night and also the following day.

The *Gemara* brings the statement of **Rav**, who holds that his difference of opinion with **Shmuel** on a night worker's collection is the same as a difference of opinion between the *Tannaim* **Rabbi Yehuda** and **Rabbi Shimon**. **Rabbi Yehuda** holds one who works for several hours by day collects until the end of the day, and one who works several hours by night gets paid until the end of the night. **Rabbi Shimon** holds that a person who works for several hours by day collects until the end of the day, but a person who works for several hours by night can be paid until the end of that night and also the following day.

How did the *Rishonim* rule concerning a night worker?

The **Rambam** (Laws of Hiring 11:2) and the **Rif** (*Bava Metzia* 62a) rule like **Rav**.

- Ø This is because of the principle that in *issurim*, prohibitions, the law is like **Rav** (the source for this principle is in *Nidda* 24b).
- Ø In addition, the rule is that in disagreements between **Rabbi Yehuda** and **Rabbi Shimon**, the law goes like **Rabbi Yehuda** (the source for this is *Eruvin* 46b).

Therefore, they rule that a night worker collects his wage throughout the night

The **Shulchan Aruch** rules like these *Rishonim*, meaning like **Rav**, writing,

- I. One who works by the hour, if his term of work ends during the day he can be paid any time that day.
- II. If he finished at night, he can be paid any time that night.

The **Sma** (*Seif Katan* 9) explains the above ruling,

Since the worker finished before sunset, the employer becomes obligated in,

- a. “On that day you shall pay his hire”,
- b. And also “The sun shall not set upon him.”

When must a Worker for an Extended period be paid?

SIMAN 339: 5

The source of this *Halacha* is the *Mishna* brought in the previous *seif*.

The **Shulchan Aruch** rules like the above, writing that one who works by the week, month, year or seven-year period, if he completes his term during the day, he collects throughout that day. If he completes his term during the night, he collects throughout that night.

Questions and Answers

1. Does the commandment of paying on time apply only to human labor?

No. It applies to the labor of one's animal or tools as well.

2. Does this commandment apply to payment for another's land?

The Ramah writes that the ruling does not apply to land, because the Torah states on this "All that is in your land," and the *Genara* explains "'all that is *in* your land,' but not all your land." Meaning, a person's land is excluded from this teaching. The *Pischei Teshuva* brings opinions that differ.

3. In *Seif* 1, the Shulchan Aruch writes that one who delays paying his workers violates "a negative commandment," while in *Seif* 2, he writes that one "transgresses five negative commandments and one positive commandment." Explain the contradiction.

The *Sma* explains that a person transgresses one commandment when he does not pay but has in mind that he will pay later. The other transgressions only apply if the violator does not intend to pay at all. Since the **Shulchan Aruch** was not referring to where the violator does not pay at all, he mentioned only one negative commandment.

4. Does a person who withholds rent payment transgress this commandment?

The **Ketzos HaChoshen** writes that the opinion of the *poskim* is that concerning negative commandments such as the prohibition against withholding payment, a house is considered to be separate and not like the land itself. Therefore, this commandment does apply.

5. What are the five Torah prohibitions and one positive commandment that one who withholds wages violates?

1. You shall not cheat your fellow man (*Vayikra* 19:13).

2. You shall not cheat a poor or destitute hired worker among your brethren (*Devarim* 24:14).

3. A worker's wage shall not remain with you overnight until morning. (*Vayikra*, *ibid.*)

4. On that day you shall pay his hire (*Devarim*, 24:15). This is a positive commandment.
5. The sun shall not set upon him (*ibid.*)
6. And you shall not rob” (*Vayikra* *ibid.*).
6. **The Tur writes that a transgressor actually does violate five negative commandments and one positive commandment. However, one could ask: how is this possible, since the specified times in the verses are mutually exclusive?**

The **Beis Yosef** offers a *dochak* (i.e., forced, speculative) explanation: The **Tur** understood **Rav Chisda** as meaning that even though some of the verses talk about paying by day and others by night, nevertheless, when he withholds payment either by day or by night, he violates all of them because the term “hiring” involves all of the relevant verses and whenever transgresses in one case it is seen as violating all the related prohibitions as well.

7. **According to the *Gemara*, by when must a day worker be paid, and when a night worker?**

A day-worker collects his wages throughout the night. Meaning, his employer is allowed to pay throughout the night, but past that point he is considered to be withholding wages. A night worker collects all throughout the day, meaning his employer has the following day to pay his worker. Beyond that point, he is considered to be withholding wages.

8. **Is there a difference in the mandatory time of payment of a worker who works until the end of the day and a worker who finishes in the middle of the day?**

The **Nemukei Yosef** writes in the name of **Tosafos** that if a worker is not hired to work until nightfall, the verse “until the setting of the sun” applies. In other words, the employer must pay the worker by sunset and not until the end of the night. However, if a worker is hired to work half the day but he himself continues working until the night, the employer is not in violation if he does not pay him by the end of the day, even though he hired the worker to be finished before the night.

9. What are the two opinions brought in the *Gemara* concerning a worker who works on an hourly basis at night?

Rav holds that one who works for several hours by day collects until the end of the day, and one who works several hours by night gets paid by the end of the night. **Shmuel** holds that a person who works for several hours by day collects until the end of the day, but a person who works for several hours by night can be paid until the end of that night and also the following day.

10. What is the *Halacha*?

The **Rambam** and **Rif** rule like **Rav**, due to the principle “*Halacha* is like **Rav** in *Issurim* (source: *Nidda* 24b). In addition, the rule is that in disagreements between **Rabbi Yehuda** and **Rabbi Shimon**, the law goes like **Rabbi Yehuda** (source: *Eruvin* 46b). Therefore, they rule that an hourly-based worker by night collects his wage only throughout the night.