
The Living Wage

A Jewish Approach

Jill Jacobs

As of 2003, more than one hundred communities around the country have passed “living wage” ordinances that require businesses holding government contracts to pay their workers enough to be economically self-sufficient. Dozens more communities are considering similar legislation.

The living wage movement, which began in Baltimore approximately ten years ago, responds to the growing disparity between the minimum wage and the earnings necessary to keep a family out of poverty. A person who works full-time at the national minimum wage of \$5.15 an hour will earn only \$10,712 over the course of the year—less than the national poverty line of \$11,610 for a family of two.¹ A minimum wage worker who pays payroll taxes and receives federal and state child and earned income tax credits earns \$11,657 a year—barely over the national poverty line.² Living wage laws tie wages to the local cost of living or to the national poverty line, in the interest of guaranteeing that even the lowest-paid workers earn enough to be economically self-sufficient.

As many have pointed out, the national poverty line does not accurately reflect the cost of food, clothing, shelter and other necessities. A September 2000 report by the New York State Self-Sufficiency Standard Committee estimates that in Brooklyn, where the cost of living is mid-range for New York City, a single parent with one pre-schooler must earn \$35,460 in order to afford adequate housing, food, child care, health care and transportation. The New Jersey Poverty Research Institute estimates that in New Jersey, to be economically self-sufficient, a single adult with one pre-school age child must earn between \$25,792 and \$35,401 a year, depending on the county.

The nation’s first living wage law, which went into effect in Baltimore in July 1995, established an initial minimum wage of \$6.10 per hour for work-

ers on city contracts, and stipulated annual increases that, within four years, would raise wages to a level sufficient to lift a family of four over the poverty line.³ As of July 2003, the living wage in Baltimore will be \$8.70 an hour.⁴ The success of the Baltimore living wage ordinance has sparked hundreds of other city, state and campus campaigns, generally spearheaded by coalitions of labor unions, community groups and religious organizations. Current ordinances mandate wages that range from \$6.15 an hour in New Orleans to \$12.92 an hour in Richmond, California.⁵

The living wage issue has long been controversial, both in America as a whole, and within the Jewish community in particular. Proponents of the living wage consider it an essential tool for lifting workers out of poverty. Opponents argue that market forces should set wages and that the imposition of a living wage will lead to the loss of jobs. In the Jewish community, some argue that living wage laws offer a means of fulfilling the Jewish imperative to eradicate poverty. Others worry that rising wage rates will result in increased costs for Jewish non-profits that rely on minimum wage workers and will thereby impair the ability of these organizations to serve the community.

This Jewish communal tension came to a head in 1999 when the Jewish Community Council of Greater Washington helped to defeat a Montgomery County, Maryland living wage bill, citing concerns that paying workers the proposed living wage of \$10.44 an hour or \$9 with benefits would cost Jewish organizations up to \$1 million and force the cancellation of some programs. Other Jewish groups, including Jews United for Justice and a coalition of local rabbis, supported the bill and sponsored a series of community forums to discuss the proposal. Abe Pollin, the majority owner of the Washington Wizards basketball team and father of Robert Pollin, author of a book on the living wage movement, placed ads supporting the legislation in the *Washington Jewish Week*. In the end, two Jewish council members cast the deciding votes in defeating the proposed legislation.⁶ During the same time, the Jewish Community Council of Greater Washington led opposition to a resolution in support of living wage laws adopted by the Jewish Council for Public Affairs in February 2000.⁷

In June 2002, the Montgomery County Council approved a compromise living wage ordinance that exempts non-profit organizations from paying the set wages of \$10.50 an hour⁸ to those working on county contracts. This time, the JCC, whose programs would no longer be affected, encouraged the Jewish council members to support the bill.⁹ One of the Jewish members sponsored this compromise bill, and the other voted for it.

This article will propose a Jewish approach to the living wage issue. This will not be a formal teshuvah, but rather, an exploration of the ways in which halakhah governing employer-employee relationships is and is not relevant to the contemporary living wage debate. Given the enormous body of Jewish literature on employer-employee relations, we expect to find direct discussion of appropriate wages within the traditional sources. Our texts, however, pay little attention to this question. We must therefore approach the issue

through a more general examination of Jewish assumptions about labor and wages. This paper focuses on three principles of Jewish labor law: the concept of *minhag hamakom* (the legal force of local custom), the responsibilities of an employer to an employee, and the responsibilities of an employee to an employer. Finally, I will discuss the tradition of rabbinic interference in determining and changing local labor laws.

Principles of Jewish Labor Law

Jewish law differentiates between two types of workers—the *poel*, who is paid by the day, and the *kablan*, who is paid by the task. We will focus on the *poel*, whose situation more closely parallels that of the contemporary workers on whom our discussion centers. Though not the task of this piece, a precise delineation of the distinctions between the *poel* and the *kablan* would be an important topic for further research, particularly as many companies excuse themselves from paying health benefits by classifying certain workers as contractors, rather than as permanent employees.

Most Jewish employment law revolves around the concept of *minhag hamakom*—the idea that the custom of a place determines workers' salaries, as well as other working conditions. This principle is laid out most clearly in Mishnah Bava Metziah 7:1:

One who hires workers and instructs them to begin work early and to stay late—in a place in which it is not the custom to begin work early and to stay late, the employer may not force them to do so. In a place in which it is the custom to feed the workers, he must do so. In a place in which it is the custom to distribute sweets, he must do so. Everything goes according to the custom of the land.

A story about Rabbi Yoḥanan ben Matya, who told his son, “Go, hire us workers.” His son went and promised them food (without specifying what kind, or how much). When he returned, his father said to him, “My son! Even if you gave them a feast like that of King Solomon, you would not have fulfilled your obligation toward them, for they are the children of Abraham, Isaac and Jacob. However, as they have not yet begun to work, go back and say to them that their employment is conditional on their not demanding more than bread and vegetables.” Rabbi Shimon ben Gamliel said, “It is not necessary to make such a stipulation. Everything goes according to the custom of the place.”

Many have understood the principle of *minhag hamakom* as evidence of halakhic support for a controlled free market system. According to this understanding, wages, hours and other working conditions are determined primarily by local custom and not by halakhic considerations. No individual employer may depart from the accepted business practice of the area, but there are few halakhic limitations as to what this practice is. While prohibiting employers from forcing employees to work long hours, the mishnah cited above leaves open the possibility that an employer may stipulate long hours

in the initial contract. In the Talmud Bavli, the gemara on this mishnah goes on to suggest that Torah law technically permits long hours, but that local custom may be more lenient.¹⁰

The Yerushalmi commentary on the mishnah supports our initial suggestion that rabbinic law prefers a controlled free market system. In the Yerushalmi, Rabbi Hoshea concludes that “the *minhag* overrides the halakhah”—even though the Torah allows employers to insist on long working hours, local *minhag* takes precedence.¹¹ The Yerushalmi then offers the story of the people of Beit Maon who, unlike the people of Tiberius, were accustomed to starting work early and ending late. According to the Yerushalmi:

The people of Beit Maon who came down to Tiberius to hire themselves out would hire themselves according to the custom of Tiberius. However, when one went from Tiberius to hire workers in Beit Maon, he could say to them, “Do not think that I could not find workers to hire in Tiberius. Rather, I came here to hire workers because I heard that you will start work early and end late.”¹²

From this story we might infer that market forces are the only factor governing working conditions and that employers may demand any conditions that workers will accept. Disturbingly, this story also seems to justify the current practice of employing workers in developing countries at wages that would be illegal in America.

However, a few elements within the mishnah and its accompanying gemara in the Bavli challenge our initial conclusion. We are first struck by the number of apparently superfluous details in the mishnah. Instead of simply offering the concise statement that “everything goes according to the custom of the land,” the mishnah offers numerous examples of conditions determined by the accepted *minhag*. We are told, seemingly redundantly, that an employer must follow the *minhag hamakom* in regard to hours, food, and even treats for workers.

The gemara notices the expansive nature of the mishnah and questions the necessity of specifying that an employer may not force workers to begin early and stay late. The Talmud responds that “we need [this statement] for the case in which the employer raises the workers’ wages. In the case in which he says to them, ‘I raised your wages in order that you would begin work early and stay late,’ they may reply, ‘you raised our wages in order that we would do better work.’”¹³ With these words, the gemara establishes wages and hours, and presumably other working conditions, as separate categories that do not inherently depend on one another. Raising a worker’s salary does not necessarily obligate this worker to work longer hours, or to accept new responsibilities. Employers and workers presumably may stipulate longer hours when they negotiate a contract, but an employer who fails to make such a stipulation before raising wages may not, post facto, demand a longer workday.

The Talmud is surprising in its suggestion that workers may adjust their production rate to salary levels. The gemara implicitly permits an employee

who earns low wages to work less hard than one who earns a higher salary. In this allowance, the text calls to mind the common labor tactic of a “work to rule” strike, in which workers refuse to exceed the precise job requirements. In first encountering this talmudic text, I read it as a personal chastisement for the many times I have complained about slow cashiers in grocery stores and other establishments. Instead of blaming cashiers for working slowly, we can perhaps say that these employees perform as well as might be expected of those who earn \$6 or \$7 an hour. The gemara suggests that increasing production rates and improving work quality requires first raising wages.

In the mishnah’s story of Rabbi Yoḥanan ben Matya, we find a challenge to the idea that the local *minhag* governs all workplace conditions. Rabbi Yoḥanan assumes not only that the employer must stipulate the exact working conditions, but also that vague statements should be interpreted in favor of the worker. Presumably, no manual worker would expect to receive a feast like that of a king. Still, according to Rabbi Yoḥanan, a worker who is not told otherwise may expect the best possible meal.

With the comment that the workers are “the children of Abraham, Isaac and Jacob,” Rabbi Yoḥanan ben Matya simultaneously asserts the dignity of these workers and emphasizes the lack of distance between himself and his son and those they employ. Many employers fail to recognize the humanity of their workers and, accordingly, show little interest in the workers’ history or personal situation. In contrast, Rabbi Yoḥanan forces his son to confront the humanity of the workers, and to acknowledge the shared narrative of employer and employee. Although the gemara does not eventually accept Rabbi Yoḥanan ben Matya’s demand for clear stipulations regarding food quality and quantity, the inclusion of this aggadah problematizes our acceptance of *minhag hamakom* as the sole determinant of worker contracts.

The specification that the workers in Rabbi Yoḥanan’s story are Jewish presents a difficulty, both because our modern sensibilities resist legal separations between ethnic and religious groups, and because most low-wage workers in America are not Jewish. We can read this text either as evidence that the rabbis imagine a separate body of law for Jewish and non-Jewish workers, or as a reflection of the rabbinic inability to conceive of non-Jews working for Jews. The absence of a separate body of rabbinic law for non-Jewish workers supports the latter possibility. However, we acknowledge that biblical law recognizes separate categories for Jewish and Canaanite slaves, and that the rabbis may consider this fact a precedent for creating separate labor laws for Jews. While we are inclined to argue that the rabbis simply cannot imagine a situation in which Jews employ members of other ethnic groups, we admit that the question of the interpretation of this text remains open.

The talmudic texts we have thus examined leave us with questions and paradoxes. On the one hand, some textual evidence points to a bias in favor of workers. On the other hand, the texts assume the principle of *minhag hamakom* to be the basis of all Jewish labor law. Additionally, we have no clear statement about appropriate wage levels, beyond the necessity that these levels conform to the regional *minhag*. Furthermore, it is not clear whether

halakhic labor laws apply to non-Jews as well as to Jews. To sort out these issues, we must expand our inquiry and examine the assumptions upon which the relevant halakhah is based.

Two biblical verses provide the foundation for much of Jewish labor law:

“Do not oppress your neighbor and do not rob him. Do not keep the wages of the worker with you until morning” (Leviticus 19:13).

“Do not oppress the hired laborer who is poor and needy, whether he is one of your people or one of the sojourners in your land within your gates. Give him his wages in the daytime, and do not let the sun set on them, for he is poor, and his life depends on them, lest he cry out to God about you, for this will be counted as a sin for you” (Deuteronomy 24:14–15).

These verses are significant in their acknowledgment of the essential power and wealth imbalance between employer and employee. The texts understand both the employer’s power to rob the employee and the employee’s dependence on the wages. From these verses, we understand workers to be a protected category, perhaps similar to widows, orphans and sojourners. The Deuteronomy verses further include sojourners among the protected workers, thereby prohibiting us from distinguishing between Jewish and non-Jewish workers. From the biblical text, we therefore derive a few general principles. First, workers are understood to be poor and deserving of our protection. Second, both Jews and non-Jews are considered to be included in the category of protected workers. Third, the texts assert the need for specific legislation to prevent the oppression of workers.

Still, these biblical verses offer little assistance in determining appropriate wages or other labor conditions. While tardy payment of wages may have been an important labor issue in biblical times, most contemporary labor negotiations focus on wage levels and working conditions. There certainly continue to be instances of employers failing to pay workers, or of workers’ checks bouncing, but low-wage workers are generally most concerned about securing higher wages, benefits and safe working conditions.

Two rabbinic texts do explicitly legislate against the gross underpayment of workers. One mishnah forbids an employer from telling an employee paid to handle straw, “take the result of your labor as your wages.”¹⁴ The Tosefta considers a case in which an employer hires someone to bring fruit to a sick person. If the employee goes to the home of the sick person and finds that this person has died or recovered, the employer must pay the worker’s wages in full and cannot say, “take what you are carrying as payment.”¹⁵

While it might be tempting to compare straw and fruit with today’s low wages, we must acknowledge the difference. The current minimum wage of \$5.15 an hour may not buy much, but we cannot equate it with straw and fruit, which are not even forms of currency. Furthermore, we assume that the rabbinic texts refer to a case in which the employer originally agreed to reasonable wages and now wishes to break the contract.

As in the biblical verses, these early rabbinic texts are most significant in

their understanding of the employer's inherent power over the employee. Because the employee may not have the power to refuse the straw and fruit and to demand monetary compensation, the texts legislate against the attempt on the part of the employer to take advantage of the employee. Second, while the examples of straw and fruit are extreme, the texts may set a precedent for some sort of minimum wage. Still, we must investigate further to determine whether Jewish law requires anything of the employer beyond complicity with local labor practices.

To understand the biblical and rabbinic texts, we must ask why these texts focus on delayed payment and broken contracts rather than other types of labor concerns. In responding to this question, we are guided by Nahmanides' comment on Deuteronomy 24:15 that "the text speaks in the present." According to Nahmanides, the biblical text addresses the issue of timely payment, because this was the issue most of concern to workers of the time. In singling out one labor law, the text does not imply that delayed payment is the only issue worthy of our consideration. Rather, in addressing the issue most relevant to workers of its own time, the Bible invites us to consider ways to ameliorate the situation of workers in our own time. Paying workers promptly constitutes only one means of fulfilling the more general commandment, "do not oppress the hired laborer." Today, adherence to this commandment may take many other forms.

Rabbinic commentary on the biblical verse further helps us to understand the emphasis on prompt payment of wages, rather than on the amount of the wages themselves. Like Nahmanides after them, the rabbis of the Talmud understand the biblical prohibition against delaying wages to be a general command to respond to the actual needs of workers. Interpreting the phrase, "his life depends on [the wages]," the Talmud explains, "Why does he climb a ladder or hang from a tree or risk death? Is it not for his wages?" Another interpretation: "his life depends on them" indicates that anyone who denies a hired laborer his wages, it is as though he takes his life from him.¹⁶

This talmudic comment is surprising in its suggestion that the employer assumes responsibility for the health and well-being of his workers. Even more radical is the statement of Jonah Gerondi, the medieval author of the *Sefer HaYirah*:

Be careful not to afflict a living creature, whether animal or fowl, and even more so not to afflict a human being, who is created in God's image. If you want to hire workers and you find that they are poor, they should become like poor members of your household (*aniyim b'nei beytekha*). You should not disgrace them, for you are commanded to behave respectfully toward them and to pay their wages.¹⁷

Given this emphasis on the employer's responsibilities toward the worker, we are puzzled by the absence of specific legislation about appropriate wages. Even Gerondi assumes that prompt payment will guarantee the workers' well-being. While we still have no clear statement about appropriate wages,

this text hints at an assumption that wages, when paid on time, will be sufficient to lift a person out of poverty.

This point becomes even clearer in Nahmanides' commentary to Deuteronomy 24:15, alluded to above. In reference to the hired worker, Nahmanides writes, "For he is poor—like the majority of hired laborers, and he depends on the wages to buy food by which to live . . . if he does not collect the wages right away as he is leaving work, he will go home, and his wages will remain with you until the morning, and he will die of hunger that night." Like Gerondi, Nahmanides holds the employer responsible for the health and sustenance of the worker. If the worker and/or his family die of hunger as a result of non-payment of wages, Nahmanides implies, fault for the death lies with the employer.

With his assertion that a person who does not receive wages on time will "die of hunger that night," Nahmanides takes for granted that a person who *does* receive payment on time *will* be able to provide sufficiently for himself and his family and will not die of hunger. This assumption is also reflected in Maimonides' designation of the highest level of *tzedakah* as "the one who strengthens the hand of his fellow Jew by giving him a gift or a loan or entering into partnership with him or finding him work in order to strengthen his hand so that he will not need to ask in the future."¹⁸ For Maimonides, a person who has permanent employment or a share in a business will never find it necessary to ask for *tzedakah*.

The assumption that an employed person will be able to support him or herself and a family may respond to the medieval experience, but does not reflect our current reality. In a time when 22 percent of homeless people and 38 percent of those who apply for emergency food relief are employed, we can no longer assume that providing jobs will eradicate poverty.¹⁹ According to Robert Pollin, the original living wage campaign in Baltimore began when a church group noticed an increased number of employed clients in its soup kitchens.²⁰

We find ourselves then in a reality that differs from that upon which biblical and rabbinic wage laws are based. The rabbis are familiar with workers who live "check-to-check," but do not imagine that a day's wages might prove insufficient to buy food or other necessities for that day. Our challenge, then, is to determine the appropriate way of applying employment law that assumes one set of conditions to our new reality.

Employees' Obligations

Halakhic discussions of the employees' obligations toward their employers offer additional insight into the assumptions of Jewish labor law. Traditional sources compel employees to work diligently, to be precise in their work and to avoid wasting the employer's time. Workers may even recite abbreviated prayers and excuse themselves from certain religious obligations in order not to detract from their work.²¹ According to Maimonides:

Just as the employer must be careful not to steal the salary of the poor [worker], so too must the poor person be careful not to steal the work of the owner by wasting a little time here and there until the entire day is filled with trickery. Rather, he should be careful about time. For this reason, the rabbis specified that workers do not need to recite the fourth blessing of *Birkat Hamazon*. Similarly, the worker is obligated to work with all of his strength, for behold, Jacob the righteous said [to Laban,] “ I have served your father with all my might.”²²

Workers are also prohibited from working both a day job and a night job, as working double shifts interferes with one’s ability to perform either job well. Furthermore, workers must care for their own health, and are not permitted to starve themselves, as this, too, is considered stealing work from the employer.²³ An employer, these laws teach us, should know exactly what to expect from his/her workers. If the contract specifies that the workers work eight hours a day, the employer should expect the workers to perform at full capacity for the entire eight hours. Unlike the *kablan*, who is paid for completing a job, the *poel* is paid according to the time worked. If the *poelim* are lazy or unable to complete their jobs, the employer loses money, as s/he will need to employ additional workers, or will need to hire the current workers for additional days. In an agricultural setting, inefficient workers may cause the employer to lose crops, which are potential sources of profit.

The obligations placed on the employee indicate that the relationship between employer and employee is meant to benefit both partners and to favor neither. The employer agrees to pay workers on time and to adhere to the initial contract, and workers agree to work as hard as they can and to refrain from behavior that will impair their ability to work. In theory, the employer receives the best work possible, and the workers receive reasonable compensation for their efforts.

As we found in our discussion of wages, the assumptions that generate laws about employees’ obligations do not reflect our current reality. The prohibition against taking multiple jobs assumes that a worker will be able to support him/herself by working a single job, and that this worker takes on a second job only out of greed, or out of a desire to cheat one employer. Today, in contrast, for many Americans, holding multiple jobs is an economic necessity. The Bureau of Labor Statistics estimates that 5.6 percent of Americans (7,556,000) hold multiple jobs, with 300,000 working two full-time jobs.²⁴ Some have suggested that the actual rate of second jobs may be closer to 15 or 20 percent.²⁵ As with any labor statistic, the number of undocumented workers and “under-the-table” jobs makes it difficult accurately to determine the frequency of multiple employment, particularly among low-wage workers. Anecdotal evidence suggests that a high percentage of the lowest paid workers supplement their primary jobs with weekend and evening work. When I worked on a campaign to raise wages for office cleaners in New Jersey, virtually all of the workers I encountered held second jobs to supplement the 5 to 6 dollar an hour they earned as janitors. One living wage organizer reports coming to grips with the frequency of this phenomenon only when he asked a worker in Alexandria, VA

what he planned to do with his higher wages after the passage of a living wage ordinance. The worker's reply? "Quit my third job."²⁶

A strict reading of the *Shulhan Arukh* and other sources might suggest that these workers cheat their employers when accepting second and third jobs. However, given the virtual impossibility of supporting a family on a few hundred dollars a week, we can not reasonably expect low-wage workers to confine themselves to a single, 40-hour a week job. Again, we find ourselves caught between the halakhic ideal and the contemporary reality.

Given the discrepancy between halakhic obligations on workers and the contemporary reality, we find ourselves with two possibilities. We can either reconsider the halakhic prohibition against taking multiple jobs and the requirement that employees work at full capacity, or we can accept the current reality as a challenge to traditional halakhah and, in turn, use halakhah to critique the present-day situation. In his analysis of Jewish labor issues, David Schnall, the dean of Yeshiva University's Azrieli Graduate School of Jewish Education and Administration, takes the former approach. He suggests that in American society, multiple employment may have assumed the status of *minhag hamakom*, and therefore may be acceptable.²⁷ He also cites evidence that those who work second jobs "appear no more likely to underperform or to behave in an undesirable fashion [than those who work only one job]." Furthermore, Schnall classifies as "substantial" the argument that permitting multiple employment "is a means of retaining and satisfying talented workers when an employer cannot continue to raise salary or benefits."²⁸

Schnall's analysis may appropriately respond to certain instances of multiple employment, including the examples he cites of teachers who tutor after school or during the summer, and professionals who consult in their free time.²⁹ However, it does not seem reasonable to assume that a low-wage employee working between sixty and eighty hours a week at two or three jobs will be as productive as a person working only one full-time job. Furthermore, other factors, including the lack of access to health care and unreasonable production expectations, make it even more difficult for many workers to perform their assigned tasks adequately.

As we have seen, the traditional obligations placed on the employer and on the employee presuppose a situation that differs significantly from the contemporary work environment. In the halakhic ideal, a person who works full-time and receives wages promptly will be able to buy food and other necessities and maintain his/her health.³⁰ In return, this person is expected to work efficiently and reliably. In the current situation, then, our halakhah does not work as intended. Our challenge, then, is to create a system that allows halakhah to be operative without violating the fundamental principle of *minhag hamakom*.

Rabbinic Interference

Until this point, we have assumed that the *minhag hamakom* is to create a universally-accepted wage rate, determined primarily by market forces. As we have seen in our time, allowing market forces to set wages creates a situation

in which halakhot related to employer-employee relations cannot operate. To restore a workable halakhic system, we must consider the possibility for interference in creating or changing the *minhag hamakom*.

While most texts assume that the *minhag hamakom* develops naturally, a few texts do allow civic and/or religious bodies to determine wages and other working conditions. Tosefta Bava Metzia 11:23 permits the “people of the city” to stipulate workers’ wages, as well as prices and measurements.³¹ Here, we have an explicit break with the controlled free market system that some other texts seem to describe. In granting individual communities the authority to determine wages, the rabbis indicate an understanding of the failures of a free market system. While certain economic conditions might enable such a system to succeed, other conditions will make this system unworkable. To maintain stability, the local authority must have the power to adjust wage rates according to economic realities.

The Tosefta also extends to groups of artisans permission to make binding stipulations amongst themselves.³² A number of contemporary halakhic scholars, including Moshe Feinstein and Eliezer Waldenburg (Tzitz Eliezer) have understood this text as a precedent for contemporary labor unions.³³ Medieval halakhic debate about the ability of individual communities or artisans to determine wages and other working conditions primarily concerns the question of whether an “*adam hashuv*” or a “*hakham*”—an important or wise person who holds a position of communal leadership—must approve such stipulations. Rabbi Asher ben Yehiel (the Rosh) defines the “*adam hashuv*” as “a rabbi who is the head and leader of the city” and rules that “when there is such a person, even all of the people of the city together do not have the authority to make stipulations without the consent of this important person.”³⁴ Similarly, Maimonides permits self-regulation only in “a country in which there is no wise authority figure responsible for setting the laws of the country and making its citizens successful.”³⁵ As our own political reality does not include leaders with such unilateral authority, we may assume that the restrictions specified by Maimonides and the Rosh no longer apply.

Other texts similarly emphasize the need to adapt employment laws to current conditions. The laws concerning a worker’s right to quit a job in the middle of the day, as enumerated in the Talmud and later codes of law, change according to the availability of other workers. The principle that “the children of Israel are [God’s] servants and not servants to servants”³⁶ grants the worker permission to quit midday without penalty and not to be beholden to his/her employer as a slave is to a master.³⁷ However, in a case in which the work in question will be lost if not completed immediately and in which no other workers are available, a worker may not be allowed to quit early, or may face penalties for doing so.³⁸ Here, the texts stipulate one law for an ideal situation, then offer alternate laws for different economic conditions. These laws also suggest a general principle that the law should favor the person in the more precarious position. Most commonly, the law protects the worker, who stands in danger of becoming like a servant to the employer. However, when economic conditions favor the worker, the law benefits the employer.

The texts we have discussed offer us a number of principles of employment law. First, work should allow for the fulfillment of the promises of Maimonides and Nahmanides that a worker should be able to provide for the basic needs of his/her family and lift him/herself out of poverty. Second, employment law must enable employees to fulfill their obligations toward their employers without putting themselves or their families at risk. Third, employment law must change according to the economic reality. Finally, communal authorities have the power to adapt employment law to the needs of the time.

In our day, it is clear that the *minhag hamakom*—the current minimum wage—neither enables workers to lift themselves out of poverty nor allows them to fulfill their responsibilities toward their employers. Our current *minhagim*, therefore, have created a situation in which our halakhic norms cannot operate as intended. Rabbinic sources, understood formalistically, may not mandate the establishment of a living wage, but these sources are predicated on an assumption that even the lowest wages allow for economic self-sufficiency. Instituting a living wage is the first step toward creating a labor situation in which halakhah can work.

Given the emphasis by Maimonides and others on creating sustainable jobs, we cannot conclude without addressing the concerns raised by some opponents of the living wage that such legislation will lead to a loss of low-wage jobs. Without offering an in-depth economic analysis, we will say that these fears generally appear to be unfounded. Extensive studies on the effects of living wage legislation in Baltimore and Detroit, conducted by the Economic Policy Institute and the Wayne State Center for Urban Studies and Labor Studies Center respectively, conclude that living wage legislation in these two cities has not contributed to job loss or to price increases.³⁹ According to the Wayne State study:

In terms of contracts alone, approximately 2300 workers would likely benefit from the living wage. Of these 85% would see immediate wage gains whose average ranges from \$1,312 to \$4,439 a year. Additionally, 50% would gain full family health coverage. These figures do not include the likely large number of workers covered through financial assistance received by their employer. For covered workers, substantial gains in overall income, the proportion of income coming from wages, and family medical coverage are far greater than the small possible losses in public assistance . . . The research results are consistent with the findings from studies of Baltimore, Los Angeles, and Miami-Dade County and with the overall record of the living wage laws passed by 35 municipalities. The maximum potential costs to both the city and employers is quite modest. In return, a modest number of workers will experience clear wage and health care gains. Concerns of job loss, price increases, or loss of investment or contract bidding do not appear justified. While most non-profit organizations do not receive enough yearly public funds to be covered by the law, the impact for those that are range from small to modest.⁴⁰

In New York City, most owners of commercial buildings have, during the past five years, signed union contracts that have significantly raised salaries for

janitors and other service workers, and have not experienced a commensurate loss of profit. Increased salaries instead seem to lead to a reduced employee turnover and a higher level of productivity.⁴¹ If any factor contributes to increased business costs, it is the rise in CEO salaries, which increased by 535% in the 1990s, in contrast to average workers' salaries, which increased 32% during the same period.⁴² We might further wonder whether opponents of the living wage cite the possibility of job loss out of true concern for workers or out of a desire to couch their own economic interests in more altruistic terms.

As we have seen, the underlying assumption of Jewish labor law is that the *minhag hamakom* will create wages that allow workers to afford basic necessities, and that enable workers to do the best work they can. As long as the *minhag hamakom* accomplishes this end, there is no reason to interfere with it. However, in situations such as the one in which we find ourselves, in which the *minhag hamakom* effectively prevents the attainment of other halakhic requirements, there is halakhic permission—and even halakhic imperative—to change the *minhag hamakom* so as to guarantee the viability of the system as a whole.

NOTES

1. Robert Pollin and Stephanie Luce, *The Living Wage: Building a Fair Economy* (New York: The New Press, 1998), p. 2. In Alaska and Hawaii, the poverty line is higher, \$14,510 and \$13,360 respectively for a family of two.

2. Diana Pearce with Jennifer Brooks, *The Self Sufficiency Standard for New York* (September, 2000).

3. Pollin, pp. 46–53.

4. Baltimore Wage Commission (www.ci.baltimore.md.us/government/wage/), July 30, 2002.

5. Economic Policy Institute, 2002.

6. Stephen T. Dennis, "Pollins Rally Support for Living Wage Law," *The Gazette*, February 23, 2000.

7. John Rivera, "American Jewish Liberalism Waning," *The Baltimore Sun*, February 26, 2000.

8. Part of these wages may be taken as benefits. Thus, a worker who receives health benefits may actually earn less than \$10.50/hour.

9. Eric Fingerhut, "After Opposing Wage Bill, Council to Study Compromise," *Washington Jewish Week*, March 7, 2002.

10. B. Bava Metzia 83b.

11. J. Bava Metzia 7:1.

12. Ibid.

13. B. Bava Metzia 83a.

14. B. Bava Metzia 10:5.

15. T. Bava Metzia 6:4.

16. B. Bava Metzia 112a. cf. *Sefer HaHinukh* 588.

17. *Dibur haMathil*, "hishamer mil'tzaer."

18. *Mishneh Torah, Matanot l'Aniyim*, 10:7.

19. U.S. Conference of Mayors, *Report on Hunger and Homelessness* (2002).

20. Pollin, 9.

21. B. Berakhot 17a; 46a.

22. *Mishneh Torah, Hilkhot Skhirut* 13:7, cf. *Shulhan Arukh, Hoshen Mishpat* 337:20.

23. T. Bava Metzia 8:2, cf. *Shulhan Arukh, Hoshen Mishpat* 337:19.

24. Bureau of Labor Statistics, 2000.

25. Stephen C. Betts, *An Exploration of Multiple Jobholding (Moonlighting) and an Investigation into the Relationship Between Multiple Jobholding and Work Related Commitment* (New Brunswick, NJ: Rutgers, 2002).

26. Bobbi Murray, "Living Wage Comes of Age: An Increasingly Sophisticated Movement Has Put Opponents on the Defensive," *The Nation* (July 23, 2001).

27. David Schnall, *By the Sweat of Your Brow* (New York: Yeshiva University, 2001), p. 141. Schnall's statement assumes an acceptance of the general principle "*haminhag m'vatel et hahalakhah*," suggested by Rav Hoshea in Y. Bava Metzia 7:1. The question of the general applicability of this principle is a matter of much debate. The *Or Zarua* understands this principle to apply only to an accepted *minhag*, certified by a recognized authority (2:393). Similarly, *Masekhet Sofrim* permits only a "*minhag vatikin*" to override halakhah (14:16) The Rashba softens the necessity for earlier precedent, requiring only an "agreed-upon *minhag*" (*She'elot u'Teshuvot*, part II, no. 43). Joseph Caro, however, seems to accept the principle, "*haminhag m'vatel et hahalakhah*" as a general rule (*Beit Yosef and Shulhan Arukh, Hoshen Mishpat* 232:19).

28. *Ibid.*, p. 130.

29. *Ibid.*, pp. 127–143. As Schnall notes, the statistic that teachers are among the most likely to take supplementary jobs corresponds with the fact that most halakhic discussion around multiple employment has concerned teachers. There has been a general halakhic tendency to prohibit teachers from working after hours (pp. 135–136).

30. The definition of "full-time," of course, changes according to the time and place. The rabbis understand the biblical definition of "full-time" to be dawn to dusk, though by talmudic times, the workday appears to be shorter than this (B. Bava Metzia 83a). In America, we can define full-time as approximately forty hours a week, with an appropriate number of sick days and vacation days. In other countries, this definition may be different.

31. Cf. B. Bava Batra 8b. Later halakhic authorities permit the community not only to set wages, but to force community members to comply with the stipulated wages. The Rashbatz even extends the power of *harem* to communities in this regard (*Tashbetz*, part I, no. 159).

32. T. Bava Metzia, 11:24–26.

33. Moshe Feinstein, *Ig'rot Moshe, Hoshen Mishpat*, Part I, nos. 58–59; Eliezer Waldenburg, *She'elot and Teshuvot of the Tzitz Eliezer*, Part II, no. 23.

34. Commentary to B. Bava Batra 9a.

35. *Mishneh Torah, Hilkhot Mekhira* 14:11.

36. Leviticus 25:55, cf. Rashi on Exodus 21:6.

37. B. Bava Kamma 116b.

38. B. Bava Metzia 86b, cf. Maimonides, *Mishneh Torah, Hilkhot Skhirut* 9:4; *Shulhan Arukh, Hoshen Mishpat* 333:3.

39. Christopher Niedt, Greg Ruiters, Dana Wise, and Erica Shoenberger, *The Effects of the Living Wage in Baltimore* (Economic Policy Institute Working Paper 119, February 1999). David Reynolds, Rachel Pearson and Jean Vortkamp, *The Impact of the Detroit Living Wage Ordinance*, Center for Urban Studies and Labor Studies Center (Wayne State University: College of Urban, Labor and Metropolitan Affairs, 1999).

40. Reynolds, p. 2.

41. Jared Bernstein, "Higher wages lead to more efficient service provision" (Economic Policy Institute, August, 2000).

42. Sarah Anderson and John Cavanaugh, et al., *Executive Excess 2000* (Institute for Policy Studies, 2000), p. 5.