



Paying Wages On Time : בל תלין יהושע פוזנא

The שומרי תורה ומצוות, ספר אהבת חסד in חפץ חיים explain that many aren't careful about paying wages on time due to their ignorance of these הלכות and their failure to realise the severity of the איסורים involved. It is therefore worth spending time familiarizing ourselves with the basic הלכות of בל תלין. One can be עובר even for failing to pay rent on time, however in this shiur we will only have time for the basic הלכות regarding wages due to be paid to an employee.

The הלכות can be split into three categories :When is the deadline for paying on time? What other factors can prevent the employer from transgressing the לאו? Which employees are included in the איסור?

When is the deadline?

One is only עובר if one hasn't paid one's employee for work that has already been done. However even if one has agreed to pay up front for work that has been commissioned; failure to do so will not transgress the לאו or be a ביטול עשה.

The משנה in בבא מציעא דף ק"י : in משנה tells us that a worker who finishes his work at sunset; one has till sunrise to pay him. A worker who finishes at sunrise; one can pay till sunset. A worker who finishes his job in the middle of the day and payment is due; whether he's been working for a week, a month or a year; or it's a short job that took a few hours; it must be paid before sunset. Failure to do so would result in the employer transgressing the לאו of לא תבא עליו השמש and failing to keep the עשה of ביומו תתן שכרו! If payment was due sometime in the night; then it must be paid before dawn in order not to be עובר of לא תלין the לאו; and פעולת שכיר עשה the מבטל.

Therefore if an electrician finishes his work in the afternoon, and writes out an invoice; he must be paid before שקיעה!

Exceptions:

If the employee knew at the time of employment that he probably wouldn't be paid on time; either because the boss wouldn't have the money straight away (e.g. until he's sold the goods on Market day he doesn't have money), or because he can't pay till he receives an invoice, or because his boss is the type of person who probably pays late; then the employer isn't עובר the לאו. Similarly the worker can be מוחל his right to be paid on time.

Once the deadline has passed:

If the employee wasn't paid on time; whether the employer was עובר, or it was one of the exceptions when he wasn't; once the time has passed (sunset/sunrise) the employer can't be עובר מן התורה again for failure to pay this wage. However in מחבר שולחן ערוך חו"מ סי' שלטי סק"ח

Rabbi Yehoshua Posen "Bal Tolin-Paying Wages on Time" 04/8/2006, Page 2 בס"ד explains that intentional delaying to pay after this date, would transgress a לאו מדבריהם. The difference being, if one forgot to pay because one was busy with other things, one wouldn't be עובר לאו מדבריהם; as opposed to when one is faced with the התורה לאו מן התורה, failure to pay even due to genuinely forgetting about it, is still עובר.

If one's lawyer or accountant isn't paid till he sends an invoice; and that doesn't arrive on the day the work was finished, there will be no בל תלין. Therefore if one forgets to pay, there will be no איסור.

Paid according to the time, or for the job:

Till now we have been talking about a worker who's paid according to the amount of time that they work, e.g. monthly salary, due at 5 o'clock on the last day of the month. However the שו"ע tells us that a קבלן; someone paid for the job, irrelevant of how long it takes, e.g. a tailor or drycleaner etc. even if they've finished the job, one doesn't have to pay them till one picks up the item from them. Once one's picked it up he has till sunset/sunrise (whichever comes next).

Employing or Purchasing?

However the קצות points out that the לאו of בל תלין is specifically referring to not paying wages or rent owed. However if a person still owes money from a purchase he never paid for, or a debt; this has nothing to do with בל תלין, and even though one should of course pay money owed, this איסור doesn't apply. *Therefore if a person commissions a tailor to make him a suit and the tailor is meant to supply the fabric; the קצות explains this is a purchase of a tailor made suit, not an employment, and therefore there will be no איסור for failing to pay on the day one picked up the suit.*

Other conditions of בל תלין:

There are at least three more requirements for the employer to be עובר שליח: The employer has to hire the employee himself and not through a שליח. The employee has to ask for his wages; and the employer has to have money to pay him.

Not employed through a שליח

The גמרא explains that if one hires through a third party, there is no איסור מן התורה if one doesn't pay on time. Because of this, some אמוראים used to make sure they hired workers using a שליח, because as תוספות explains, that way even though there would still be the לאו מדברי סופרים; at least if they forgot to pay on time they wouldn't be עובר.

This means if a person gets his secretary or other employee, to hire the workers, and they state that they are acting on his behalf; there will be no בל תלין. Similarly הרב אלישיב שליט"א explains if a person calls e.g. a plumber or electrician and speaks to their secretary and she takes the order; this is considered hiring through a third party. However the השולחן explains, seeing as a general rule we say כגופו; a husband will be עובר if he doesn't pay on time a worker hired by his wife.

The **מחבר** in **שלייט סי"י** explains that one can only be **עובר** if one's been asked to pay the wage. The reason for this is that it is assumed if the employee doesn't ask for his wages, it's a sign that he doesn't mind, not being paid on time. With this in mind the **חפץ חיים** in his **ספר אהבת חסד** (כ"ט פרק ט') explains that even if the worker doesn't specifically ask for the money, but he comes to the employer, having completed the work; as is customary; it's as if he's asked for his wage. The reason is the **ח"ח** is of the opinion that a worker who doesn't ask for the money because he's too embarrassed; is considered as if he has asked! Furthermore if the employer is not there, so cannot be asked; he's **עובר**.

The employer has to have money:

The **גמרא** learns out from the word "**אתך**" that there is only an **איסור** if the employer has money. Having funds that one can access easily, for example by withdrawing from an "A.T.M"; is considered as having money. Similarly the **חפץ חיים** learns one is obliged to get change from a large bill, if one doesn't have. *Therefore telling the babysitter "I haven't got change, I'll pay you tomorrow!" is only allowed if one is sure that she really doesn't mind!* Even if one doesn't have enough cash to pay the whole amount, one has to pay what one has. The **מפרשים** explain if one has enough money to either pay one's worker on time or buy an **אתרוג**, he should pay his worker; because **עשה ולא עשה עשה דוחה**! The **פתיחי תשובה** quotes the **אריז"ל** who says that it's **מידת חסידות** to borrow money to pay ones worker, if he doesn't have.

Which employees does one have to pay?

We've already mentioned that the **איסור** doesn't apply to a worker hired through a third party, or one who has to send an invoice etc. What about When one hires a **גוי**? What about when one tells a child he will pay him to do some work for him?

Hiring a גוי:

As appears from the **משנה**, even though one who hires a **גר תושב** has a **מצות עשה** to pay him on time, however failure to do so isn't **עובר**! However if one delays paying a regular **גוי** (nowadays there's no such thing as a **גייט**), there isn't even a **מצות עשה** to pay him on time, and one only has to ensure that one doesn't make a **חילול ה'**.

Hiring a child:

Even though a child does not have **קנינים מן התורה**; the **חפץ חיים** says a person who hires a child and doesn't pay him on time, is **עובר** the **לאו**, and **מבטל** the **עשה**! *This would apply even if one told one's daughter that they would pay her if she babysat!* However something promised as an encouragement and incentive to one's child, is clearly not an employment.

Paying by cheque

Even though it is probable that paying a worker by cheque, is not considered as paying **ממון** (since he can't use it, in most cases, to buy food with on that day); nevertheless if the employee knew at the time of his hiring that there was a possibility that he would be paid for this job by cheque, and he didn't request to be paid in cash; we say that he's been **מוחל** his right to cash, if he's given a cheque on time.