

1 **URJ BIENNIAL 2019**

2  
3 **Resolution on U.S. Labor in the Early 21st Century**

4  
5 **Submitted by the Commission on Social Action**

6  
7 *Background*

8  
9 Inspired by ancient biblical teachings on worker dignity, Talmudic-era labor laws, and the  
10 Jewish community’s participation in the labor movement throughout the 20th century, the  
11 Union for Reform Judaism and the Central Conference of American Rabbis have consistently  
12 spoken out for just and fair labor practices. The Reform Jewish Movement’s labor advocacy  
13 dates to the CCAR’s 1918 [resolution](#) calling for a fair minimum wage, recognition of the right to  
14 organize and to bargain collectively, and workers’ compensation for industrial accidents.  
15 Throughout 1960s-1980s, the [URJ](#) passed a series of resolutions extending support to  
16 agricultural workers seeking better working conditions and the right to organize. In 1999, the  
17 [URJ](#) adopted a resolution supporting living wage campaigns, and in 2005, the URJ passed a  
18 resolution on [Workers’ Rights in the United States](#), affirming our support of collective  
19 bargaining and workers’ right to organize. The URJ has also affirmed the importance of [equal](#)  
20 [pay for women](#) and ending [wage discrimination](#).

21  
22 Such resolutions are grounded in both text and tradition, as noted above. The Torah is replete  
23 with teachings about the connection between workers’ wages and workers’ dignity.  
24 Deuteronomy 24:14-15 instructs, “You shall not abuse a needy and destitute laborer, whether a  
25 fellow countryman or a stranger in one of the communities of your land. You must pay out the  
26 wages on the same day, for the worker is needy and urgently depends on it.” The Talmud warns

27 that “One who withholds the wages of a hired laborer, it is as though he takes his soul from  
28 him” (Bava Metzia 112a). The Talmud also provides clear guidance regarding the sacred  
29 relationship between employers and those they hire. Bava Metzia instructs, “If one engages an  
30 artisan to labor on his [work], but directs him to his neighbor’s, he must pay him in full, and  
31 receive from the owner [of the work actually done] the value whereby he benefited him.”

32

33 These ancient texts, embodied in the Reform Jewish Movement’s rich history of support for the  
34 labor movement, in combination with emerging trends and practices in the workplace  
35 necessitated a review of our positions in this area and the renewal of our commitment to  
36 workers’ rights in the early 21<sup>st</sup> century.

37

38

### 39 *Alternative Staffing*

40 The U.S. National Labor Relations Act of 1935 (NLRA) guarantees employees in the private  
41 sector the right to form unions, engage in collective bargaining, and take collective action,  
42 including strikes and lawsuits. However, classic definitions of employment under these laws do  
43 not reflect 21<sup>st</sup> century changes in the labor market that have led to alternative staffing and  
44 employment arrangements. As a result, a large group of today’s workers, including domestic  
45 workers, agricultural workers, independent contractors, and government employees, are not  
46 protected by the NLRA.<sup>1</sup> These workers do not have the ability to negotiate the terms and

---

<sup>1</sup> [Frequently Asked Questions. National Labor Relations Board](#)

47 conditions of their employment. These circumstances suppress economic opportunity and open  
48 the door for unjust working conditions and worker exploitation.

49

### 50 *Wage Theft*

51 The same workers excluded from the NLRA are also disproportionately impacted by “wage  
52 theft,” a term that refers to a variety of infractions resulting in workers not receiving their  
53 legally or contractually promised wages. Common types of wage theft include failure to pay the  
54 minimum wage, failure to comply with overtime pay requirements, stealing tips, worker  
55 misclassification, or requiring employees to work off-the-clock. Wage theft is particularly  
56 prevalent among low-wage workers and workers in the restaurant, construction, retail, and  
57 caregiving industries. By some estimates, 3 million U.S. workers are not paid the minimum  
58 wage, and at least \$19 billion in overtime goes unpaid each year, bringing total estimates to  
59 \$20-\$50 billion a year owed to workers, but not paid.<sup>2</sup> In a 2014 survey, the National  
60 Employment Law Project found that across the U.S., nearly 90 percent of fast-food workers and  
61 82.7 percent of home care workers reported some sort of wage theft on the job.<sup>3</sup>

62

### 63 *Overtime*

64 The Fair Labor Standards Act of 1938 (FLSA) provides that full-time, non-exempt employees  
65 covered by the law must receive overtime pay for hours worked over 40 in a workweek, at a

---

<sup>2</sup> [An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year. Economic Policy Institute. Sept 11th, 2014.](#)

<sup>3</sup> [WHO'S THE BOSS: Restoring Accountability for Labor Standards in Outsourced Work. National Employment Law Project. May 2014.](#)

66 rate of at least time and a half. Workers are exempt from receiving overtime pay if their salary  
67 exceeds the Department of Labor’s salary threshold, which was set at \$35,568 annually under a  
68 new rule from the Department of Labor in September 2019. Employers can also determine that  
69 a worker is exempt from overtime if the employee fulfills a role that is either executive,  
70 administrative, or professional. Such classifications are subjective and open to interpretation  
71 and this exemption, known as the “duties test,” has sometimes been improperly used by  
72 employers. In some cases, lower wage workers who would otherwise qualify for overtime are  
73 given a managerial title and expected to work more than 40 hours weekly without overtime  
74 pay. As a result of these and other related factors, only 7 percent of workers qualified for  
75 overtime in 2016. In contrast, more than 60 percent of salaried workers qualified for overtime  
76 in 1975. <sup>4</sup>

77

### 78 *Tipped Workers*

79 The federal tipped minimum wage is currently set at \$2.13, assuming that qualifying workers,  
80 typically in the restaurant, hospitality, and salon industries, will take home at least \$7.25 per  
81 hour (the current federal minimum wage) when tips and wages are combined.<sup>5</sup> If wages and  
82 tips together do not reach \$7.25 per hour, employers are supposed to pay the difference, so  
83 that every worker takes home at least the federal minimum wage. In reality, there is weak  
84 enforcement of this practice, and workers often do not receive the wages to which they are  
85 entitled.<sup>6</sup> Even when tipped wages are provided, the tipped minimum wage itself has not

---

<sup>4</sup> [Overtime pay may become reality for more US workers. AP News. May 17th, 2016](#)

<sup>5</sup> [Minimum Wages for Tipped Employees. US Department of Labor. January 1st, 2019](#)

<sup>6</sup> [Broken Laws, Unprotected Workers. National Employment Law Project. 2009](#)

86 increased since 1991, losing 40 percent of its value in that time.<sup>7</sup> Women make up more than  
87 two-thirds of tipped minimum wage workers and are disproportionately impacted. Some  
88 workers also assert that the tipped minimum wage forces them to tolerate harassment, gender-  
89 based discrimination, and racial discrimination, since they are dependent on tips from happy  
90 customers.<sup>8</sup> Advocates have called for phasing out the tipped wage until it is replaced by the  
91 standard minimum wage.

92

### 93 *Outsourcing and Independent Contracting*

94 As the business world changes, companies are increasingly moving away from hiring employees  
95 and towards hiring independent contractors, particularly in the construction, janitorial, delivery  
96 service, and truck driving industries. The use of independent contracting is not inherently  
97 problematic and may well reflect more efficient ways of producing goods and services. Problems  
98 arise, however, when workers are misclassified as independent contractors as a way of evading  
99 labor and employment standards to which employers would otherwise be held.<sup>9</sup> Although under-  
100 the-table negotiation and contracting makes it difficult to document the prevalence of worker  
101 misclassification with absolute certainty, a 2016 report from the National Employment Law Project  
102 found that 10 to 30 percent of U.S. employers intentionally or unintentionally misclassify their  
103 employees as independent contractors.<sup>10</sup> Independent contracting is often combined with  
104 subcontracting, another rising form of outsourcing in which an employer inserts an intermediary

---

<sup>7</sup> [What Should Waiters and Bartenders Earn? The Debate Over the Tipped Wage. The Wall Street Journal. June 14th, 2018](#)

<sup>8</sup> [Restaurants Flourish with One Fair Wage. Restaurant Opportunities Centers United. February 13th, 2018](#)

<sup>9</sup> [Misclassification of Employees as Independent Contractors. Department for Professional Employees. 2016](#)

<sup>10</sup> [Independent Contractor vs. Employees: Why Independent Contractor Misclassification Matters and What We Can Do to Stop It. National Employment Law Project. May 2016](#)

105 between itself and the workers, designating the intermediary as the worker’s employer. This may  
106 lead to dueling claims, with the lead and intermediary employer each claiming that the other is  
107 the “true” employer. The result is neither party taking responsibility for employees’ wages and  
108 working conditions.<sup>11</sup> Because of the lack of transparency, employees are unable to meaningfully  
109 engage on these issues.

110

### 111 *Forced Arbitration*

112 Workers experiencing these and other issues are finding fewer avenues to air their disputes due  
113 to increased use of forced arbitration clauses in contracts. These clauses bar employees from  
114 taking to court any conflicts with their company. According to the Economic Policy Institute  
115 (EPI), the share of workers subject to forced arbitration had risen from just over 2 percent in  
116 1992 to over 55 percent today.<sup>12</sup> EPI also found that 30.1 percent of employers who require  
117 arbitration also include class action waivers in their procedures. As a result, workers not only  
118 lose the right to file a lawsuit on their own behalf, but they are barred from engaging in  
119 collective legal action to address widespread violations of workers’ rights in a workplace.  
120 Especially as the current #MeToo movement<sup>13</sup> spotlighting gender-based discrimination has  
121 widely revealed, workers who experience harassment, assault, or discrimination and implicit  
122 bias at work do not have the proper avenues available to them to address such violations.

123

---

<sup>11</sup> [WHO’S THE BOSS: Restoring Accountability for Labor Standards in Outsourced Work. National Employment Law Project. May 2014](#)

<sup>12</sup> [The growing use of mandatory arbitration. Economic Policy Institute. April 6th, 2018](#)

<sup>13</sup> [After One Year Of Headlines, #MeToo Is Everywhere.](#) NPR. October 6, 2018.

124 THEREFORE, the Union for Reform Judaism resolves to:

125

126 1. Reaffirm its longstanding commitment to supporting worker dignity and morally just  
127 labor and compensation practices;

128 2. Reaffirm its support of the rights of workers to organize and bargain collectively, and  
129 encourage governments at all levels to pursue solutions that would expand collective  
130 bargaining to all workers, regardless of worker classification status or job sector;

131 3. Support the rights of all workers to enforce their rights in courts of law, including by  
132 limiting the use of forced arbitration and class action waivers as conditions of  
133 employment;

134 4. Continue to advocate for policies at all levels of government that ensure workers are  
135 treated justly, including:

136 a. The phasing out of the inequity between the tipped minimum wage and  
137 standard minimum wage;

138 b. The expansion of overtime coverage to include more workers eligible for  
139 overtime pay such as expanding the salary threshold and/or strengthening the  
140 duties test;

141 c. The creation and implementation of policies and laws to prevent other forms of  
142 wage theft;

143 d. Policies that provide all workers with transparency about their employment  
144 status and classification, and ensure that workers are not denied full rights and  
145 protections in the workplace based on employment classification; and

- 146 e. Policies that maintain workplace owners' responsibility for ensuring compliance  
147 with labor laws, rather than shifting responsibility to contractors or franchisees;
- 148 5. Call upon employers to:
- 149 a. Properly classify workers (e.g. as employees, contracted workers, or  
150 independent contractors), and ensure they are paid justly regardless of status;  
151 and
- 152 b. Ensure transparency around worker wages, compensation, and other rights;
- 153 6. Encourage the Reform Movement, its congregations and congregants, as well as  
154 affiliated institutions, to re-examine and adopt employment and contracting practices to  
155 ensure that they reflect the values set forth in this resolution; and
- 156 7. Encourage the Reform Movement, its congregations and congregants, as well as  
157 affiliated institutions, to prioritize doing business with organizations that comply with  
158 the labor practices stated above.
- 159
- 160
- 161

## **Resolution on U.S. Labor in the Early 21st Century - Q and A**

### **What was the impetus for this resolution?**

This resolution was drafted in response to increasing organizational shifts in the 21st century North American workplace. Some of these changes include the growth in “alternative” staffing that leaves many workers in certain industries, such as domestic, agricultural and government workers, as well as independent contractors, unprotected by existing labor laws. These shifts have elicited concerns over the current state of workers’ rights and the role of the labor movement more broadly.

### **What is the Jewish basis for this resolution?**

Judaism has a rich legacy of support for labor rights. The Reform Movement’s participation in the labor movement is rooted in both ancient Biblical teachings on worker dignity and early labor laws created during the Talmudic era. Deuteronomy 24:14-15 instructs, “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 out the wages on the same day, for the worker is needy and urgently depends on it.” Furthermore, the Talmud warns that “One who withholds the wages of a hired laborer, it is as though he takes his soul from him” (Bava Metzia 112a).

### **What is the National Labor Relations Act (NLRA) and what types of workers are covered under the Act?**

The National Labor Relations Act of 1935 (NLRA) is foundational to United States labor law. At its core, the NLRA protects the rights of private sector employees by guaranteeing a right to form and join unions, engage in collective bargaining, and take collective action such as strikes and lawsuits. Most private sector employees are covered under the NLRA. The law does not cover public sector workers and government employees, agricultural laborers, domestic workers, incarcerated workers, or independent contractors, among others.

### **What is the Fair Labor Standards Act (FLSA) and what types of workers are covered under the Act?**

The Fair Labor Standards Act of 1938 (FLSA) is a United States labor law that established a federal minimum wage and the concept of overtime pay for non-exempt employees who work more than forty hours a week at a rate of time-and-a-half times the employee’s regular rate. FLSA also established child labor standards.

Not all employees are guaranteed minimum wage and overtime pay under FLSA. Employees may be exempt from overtime pay if they make more than \$455 per week or \$35,568 annually, under a new rule established by the Department of Labor in September 2019. Employees may also be exempt from overtime coverage if they fulfill a role that is considered *executive*, *administrative*, or *professional*. However, descriptions of such roles are subjective and open to interpretation. As a result, this exemption has historically been used by employers to bypass paying lower wage workers (whose salaries may hover just above the current cut-off threshold of \$23,660) overtime for their work by giving them a managerial title.

### **Who is considered an independent contractor under current labor law?**

The independent contractor classification once primarily referred to workers who left the traditional employment structure to become entrepreneurs (ex: consultants and freelancers). However, the term “independent contractor” is being used more often to refer to people outside this definition. Businesses are increasingly moving away from hiring employees and moving towards hiring “independent contractors” to complete jobs. Outsourcing in the construction, janitorial, delivery service, and truck driving industries, among others, has led to an increase in the hiring of independent contractors in place of the traditional employee, as well as the expansion of subcontracting and franchising practices. Independent contractors are not covered under the NLRA or FLSA.

### **What is the tipped minimum wage and what are the concerns about it?**

Tipped workers, including restaurant wait staff, hotel housekeeping, and salon employees, are not subject to the same federal wage standard as other workers. The federal tipped minimum wage is set at \$2.13/hour, with the requirement that workers will take home at least \$7.25 per hour in wages plus any extra tips. If wages and tips together do not reach \$7.25 per hour, employers are supposed to “top off” and pay the difference, so that every worker takes home at least \$7.25 per hour.<sup>1</sup> In practice, there is no enforcement of this practice, and workers often do not receive even the minimum wage to which they are entitled.<sup>2</sup> The tipped minimum wage of \$2.13 has [not been raised in 27 years](#)<sup>3</sup> and has lost 40 percent of its value in that time.<sup>4</sup> Women, who make up nearly two-thirds of minimum wage earners and more than two-thirds of tipped minimum wage workers, are disproportionately impacted.<sup>5</sup>

### **What do supporters of the tipped minimum wage argue?**

---

<sup>1</sup> <https://webapps.dol.gov/elaws/faq/esa/flsa/002.htm>

<sup>2</sup> <https://www.nelp.org/wp-content/uploads/Basics-Tipped-Minimum-Wage.pdf>

<sup>3</sup> <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>

<sup>4</sup> <https://www.wsj.com/articles/what-should-wait-staff-earn-the-debate-over-the-tipped-wage-1528988400>

<sup>5</sup> [https://nwlc.org/wp-content/uploads/2015/08/tipped\\_minimum\\_wage\\_worker\\_wage\\_gap\\_may\\_2015.pdf](https://nwlc.org/wp-content/uploads/2015/08/tipped_minimum_wage_worker_wage_gap_may_2015.pdf)

Restaurant associations and some tipped workers contend that a change to the tipped minimum wage will harm tipped workers. With rising costs, business owners will see reduced profits, likely leading to cuts in staff sizes. Ultimately, they argue, workers will lose employment as businesses close or move.<sup>6</sup>

### What have past URJ resolutions said about workers' rights?

- [Resolution on Migrant Workers \(1961\)](#)
- [Farm Workers and the Grape Strike \(1969\)](#)
- [Full Employment \(1977\)](#)
- [Living Wage Campaigns \(1999\)](#)
- [Worker's Rights in the United States \(2005\)](#)
- [Worker Rights, and Ethical Consumerism in the Kosher Food Industry \(2008\)](#)
- [Ethical Employment Practices \(2008\)](#)
- [Paid Sick Days \(2013\)](#)
- [Paid Family Leave \(2015\)](#)

### Additional Resources

[An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year.](#) Economic Policy Institute.

[Wage Theft Study Guide: A Jewish Perspective.](#) Interfaith Worker Justice.

[Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work.](#) National Employment Law Project.

[One Fair Wage: Women Fair Better in States with Equal Treatment for Tipped Workers.](#) National Women's Law Center.

[Labor Department Seeks to Make More Eligible for Overtime.](#) The New York Times.

[Supreme Court Deals a Blow to Workers.](#) The New York Times.

---

<sup>6</sup> <https://washingtoninformer.com/williams-african-american-tipped-employees-need-d-c-council-to-repeal-initiative-77/>