

“Responsum on Equal Pay”

Rabbi Jonathan Cohen on behalf of the CCAR Responsa Committee

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Sh'eilah (the question):

Is there an obligation under Jewish law to pay men and women the same for comparable labor?

Quotes from the *T'shuvah* (the response)

“In responding to your question we must recognize that the formulators and proponents of halachah throughout the centuries have recorded, defended, and in many instances also promoted distinctions and inequalities between men and women, including ones that have occurred in the realm of work and its remuneration”. (p.19)

“However, our response to your question is shaped by two assumptions: (1) that women *are* paid for their work, and (2) that women and men do *comparable* work. On this basis we turn to the question of pay regulation and equity”. (p.19)

“We note a tendency to level, or render equal, payment and protect workers among Talmudic Sages”. (p.19) Cohen cites the following sources to support this statement: BT *Bava M'tzia* 87a; BT *Bava Batra* 8b; *Tosefta Bava M'tzia* 11:34; Rashba 4:185; Rosh 55:10; Rashi to BT *Bava Batra* 9a, *Beit Yosef Choshen Mishpat* 231:20.

“In addition, generations of *poskim* identified certain matters as subject to the rule of *dina d'malchuta dina* – in other words, matters that fall under the recognized jurisdiction of non-Jewish law”. (p.20)

“Recognizing the complexity of this issue, we suggest that *dina d'malchuta dina* would apply to most aspects of employment legislation and regulation in general and the principle of equal pay for comparable work in particular”. (p.21)

“It bears noting that the Hebrew word *sachar* touches upon notions of reward and merit that the words “payment” and “remuneration” do not necessarily denote. Thus, to cite a famous example, R. Elazar and R. Tarfon’s dictum, “[Recognize that] the master of your work is trustworthy to pay the *sachar* of your actions” refers to the divine reward for the engagement in mitzvot.” (p.21) Cohen cites here Mishnah Avot 2:14, 16.

“Indeed, we learn that the *sachar* for Rachel’s modesty was the reward of ancestry to Israel’s first king Saul, and that, in turn, the *sachar* for Saul’s modesty would be the merit of being the forefather to Queen Esther. These demonstrate that the quality of one’s character and actions is the divine criterion for the setting of *sachar*, as opposed to gender identity”. (p.21) Cohen here cites BT *M’gillah* 13b.

“In addition, we learn that in reward, *sachar*, for the righteousness of women entire generations of Israel were saved and redeemed, reminding us that the very survival of our tradition has depended on divine recognition and reward offered on account of women’s actions”. (pp.21-22) Cohen here cites BT *Sotah* 11b and Rashi cf. “שאף הן היו באותו הנס” and the Tosafot citing Rashbam cf. “היו באותו הנס”, BT *Pesachim* 108b.

BT *Sotah* 11b as well as Rashi cf. and the Tosafot citing Rashbam cf. BT *Pesachim* 108b.

“The Reform Movement has had a long record of advocacy on the issue of equal pay, and its repeated statements have fallen within the purview of the halachic mandate to promote regulation of wages for the sake of social repair and justice for employees regardless of gender identity and orientation”. (p.22)

Quotes from our Texts

תהילים קכ"ח:ב'

(ב) יִגְיעַ כְּפִיךָ כִּי תֹאכַל אֲשֶׁרֶיךָ וְטוֹב לָךְ:

Psalms 128:2

(2) You shall enjoy the fruit of your labors; you shall be happy and you shall prosper.

נדרים מ"ט ב:י"א

ר' יהודה כד אזיל לבי מדרשא שקיל גולפא על כתפיה אמר גדולה מלאכה שמכבדת את בעליה רבי שמעון שקיל צנא על כתפיה אמר גדולה מלאכה שמכבדת את בעליה

Nedarim 49b:11

§ The Gemara relates: When Rabbi Yehuda would go to the study hall he would carry a pitcher [*gulefa*] on his shoulder to sit on, saying: Labor is great, as it brings honor to the laborer who performs it. It brought him honor by enabling him to avoid sitting on the floor of the study hall. Similarly, Rabbi Shimon would carry a basket on his shoulder, saying: Labor is great, as it brings honor to the laborer who performs it.

