

The Right to Work



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What is the Right to Work?

The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, which Israel signed in 1991, defines the **right to work** as follows:

- The right of everyone to earn a living by work which he freely chooses or accepts;
- The right to fair working conditions without discrimination of any kind (in wages, social conditions, safety), and promotion based only on merit and seniority;
- The right of workers to form trade unions, conduct negotiations, and strike – to be limited only by legal restrictions in the interests of national security or public order or for the protection of the rights of others;
- The obligation of the state to ensure steady economic, social and cultural development and full employment.

As Israel has not incorporated the directives of the international covenant into domestic legislation, they are not legally binding.

At the same time, Israel is a signatory to a long list of international agreements dealing with workers' rights: the 1946 Constitution of the International Labor Organization and its subsequent amendments; and conventions relating to the following issues: work and rest hours; child labor, forced labor and migrant workers; outlawing discrimination in wages and work; social security; and the right to organize. As a result, Israel has progressive labor laws, most of which were legislated over a period extending from before the establishment of the state (1948) to the late 1970s.

In the absence of a basic law of social rights, the right to work in Israel is not a constitutional right, with the exception of one aspect of it – the right to choose one's occupation, which is part of Basic Law: Freedom of Occupation of 1992. However, the main beneficiaries of this law are affluent citizens. The fact that of all others, this aspect was given constitutional status, is connected with socio-economic developments and

value changes occurring in Israeli society over the past twenty years. From a relatively egalitarian society assigning great importance to the value of work and the status of workers, Israel

has become a society characterized by a high level of income polarization, in which the values of competition and a free market economy are uppermost.

What is the Right to Work in Israel?

In recent decades, the status of workers' rights in Israel has undergone erosion. This erosion does not stem from the absence of laws designed to protect the right to work; rather, it is due to the fact that the number of workers protected by Israeli labor laws has been steadily declining. As the number of workers with full rights has decreased, the number of employed persons with a different employment status – those employed under individual contracts, through agencies, or those working part-time – has increased. Israel's labor laws have not been adapted to the changing

employment conditions. Moreover, enforcement mechanisms in Israel, notably that of the Ministry of Industry, Trade and Labor, are very lax. As a result, there is a huge gap between legislation and enforcement.

Below we discuss **the right to earn a living by work, the right to fair working conditions** and **the right to organize**.

The Right to Earn a Living

The right of everyone to earn a living by work which he freely chooses or accepts.

The right to work, as defined by the International Covenant on Economic, Social and Cultural Rights, is based on the assumption that work is necessary for human existence. It also distinguishes between work that is freely chosen and forced labor.

In 1950, Israel signed the international conventions outlawing forced labor and human trafficking. At the time, these phenomena were not common in Israel and therefore the terms of the agreements were not incorporated into Israeli law. However, the 1990s saw the development of trafficking in women for prostitution and the import of migrant workers under conditions in which they were bereft of freedom of movement and freedom of occupation. In 2001, Israel signed the amendments to international conventions dealing with human trafficking. Although the enforcement of violators of these agreements has improved somewhat, the phenomenon of trafficking in women still involves a few thousand persons annually, and the treatment of the victims of

trafficking still leaves much to be desired.

Regarding migrant workers (called “foreign workers” in Israel), up to 2006, every migrant worker with a working permit was bound to a specific employer for the duration of their stay in Israel. This so-called “binding arrangement” violated the right of workers to freely choose their work and made them captives of their employers. In March 2006, the High Court of Justice abolished the binding arrangement. However, the transition period accorded the State to implement the decision, originally set at six months, has been extended, with the result that the right to work continues to be violated.

Working Does Not Mean Earning a Living Wage

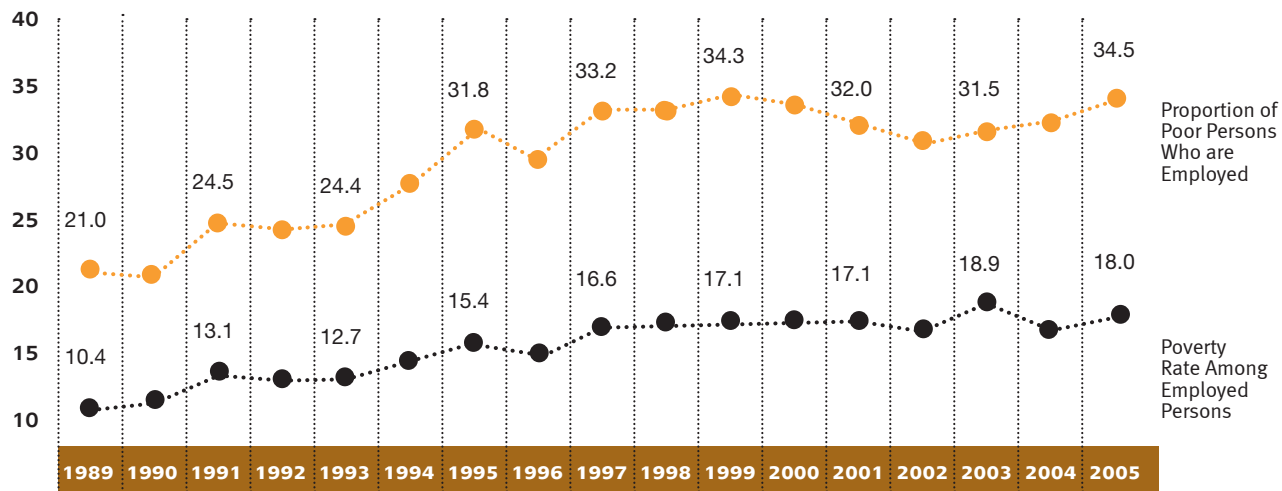
In 2006, work in Israel does not guarantee that the worker will earn a living wage and does not ensure against poverty. Increasingly, workers’ wages do not constitute a living wage and do not allow them to rise above the poverty line.

In 1989, 21 % of the poor were employed; in 2005, 34.5% of the poor were employed.

In 1989, 10.4% of working people lived below the poverty line; in 2005 18% of working people were living below the poverty line.

Increase in Poverty Among Employed Persons

1989-2005 • Before Taxes and Transfers • In Percentages



Note: The figures for 2000-2005 do not include the residents of East Jerusalem.

Sources: Shlomo Swirski and Ety Konor-Attias, *Israel: A Social Report – 2006*. December 2006, Adva Center.

Unemployment and Support for the Unemployed

The right of everyone to earn a living wage also relates to periods of unemployment. In Israel, this is handled through unemployment compensation, which is part of the social security system: workers and employers make monthly contributions and the state also chips in.

Although unemployment compensation is financed primarily by the workers themselves, the Cabinet and Parliament determine the size of the payment and the terms of eligibility.

For more than a decade, the State has been making cuts in unemployment compensation. The most significant cuts were made between 2001 and 2004, years during which drastic cuts were made in the State budget. This was done despite the fact that those were also years of high unemployment in Israel.

The result: since 2001, despite an increase in the number of unemployed persons, the number of recipients of unemployment compensation has declined, as well as the average daily payment. At the same time, the total amount of transfers for unemployment compensation has also decreased.

Recipients of Unemployment Compensation

2001-2005 • In absolute numbers

2001	2002	2003	2004	2005
104,707	96,874	70,840	58,644	58,915

Source: National Insurance Institute, *Statistical Quarterly*, No.36 (3), July-September 2006, October 2006.

Average Daily Unemployment Compensation

In Shekels • In 2005 Prices

2001	2002	2003	2004	2005
153	142	140	139	137

Source: National Insurance Institute, *Statistical Quarterly*, No.36 (3), July-September 2006, October 2006.

Total Transfer Payments for Unemployment Compensation

In NIS Billions • In 2005 Prices

2001	2002	2003	2004	2005
3.77	3.59	2.45	2.15	1.99

Source: National Insurance Institute, *Statistical Quarterly*, No. 36 (3), July-September 2006, October 2006.

The Right to Fair Working Conditions

The right to fair working conditions without discrimination of any kind (in wages, fringe benefits, safety), and promotion based only on merit and seniority.

Most of the components of the right to fair working conditions as set down in international agreements and in the covenants of the International Labor Organization, were incorporated into domestic legislation. Israeli labor laws constitute a minimum, which may be augmented but not reduced. Workers whose working conditions are set in collective agreements or in individual contracts generally have more rights than those articulated in the labor laws.

The following conditions are included in Israeli labor laws:

- Minimum wage, time and manner of payment;
- Hours of work and rest, paid sickness leaves and annual paid vacations;
- Severance pay for workers laid off; prior notice requirement for both workers and employers before quitting or laying off;
- Income maintenance payments for persons earning less than a

set minimum and for persons without any income;

- A demand for equality and the prevention of discrimination: in wages and retirement terms for women; in obtaining jobs and in terms of employment; the outlawing of sexual harassment; protection for workers exposing corruption.

Moreover, there are laws insuring working conditions for special groups, among them demobilized soldiers, youth, women and persons with disabilities.

Labor Laws are Out of Sync With New Employment Patterns

Laws regarding the right to work were legislated in a period in which full-time employment at a given workplace was the norm. However, that norm has been replaced by new patterns of employment: persons employed as “self-employed persons” or as “free-lancers” with individual contracts who are not considered “workers” for the purpose of labor laws; part-time and temporary workers; and employees of manpower companies and service contractors who are moved from workplace to workplace. In general, labor laws have not been adjusted to accommodate

the growing ranks of persons employed under new patterns. The only exception is the Law of Employment of Workers by Manpower Companies of 1996. This law articulates the working conditions for workers hired by manpower companies and requires licensing of those companies. While this law allows a certain degree of monitoring, it has led to the growth of another pattern of employment that eludes supervision – that of “service contractors” or “implementation contractors.”

Estimates are that about one-fourth of employed persons in Israel are, in fact, hired through third parties. About half of these workers are to be found in the public services in Israel, compared with negligible percentages in European countries. Reliable statistics are unavailable.

Missing Links in Labor Legislation

A. Pensions

The pension – a monthly payment after retirement, based on savings by both employee and employer during working years – is an important component of the right to fair working conditions. In Israel, there is no national pension law and therefore no obligation on the part of employers to contribute to their workers’ pensions.

While most collective labor agreements include pension rights, such agreements cover fewer than half of employed persons and thus they cannot serve in lieu of a pension law for all workers. As a result, Israel has a broad stratum of workers for whom retirement is certain to bring poverty and deprivation. As for workers for whom collective agreements ensure pensions, these pensions were adversely affected by the recent nationalization of many of the pension funds and their subsequent sale to insurance companies. Administration fees have been raised, at the expense of the pensions workers are to receive. Moreover, the directive to invest the lion’s share of pension fund monies in the capital market has created a situation in which workers no longer know how much they will receive as pensions after retirement.

B. Workers’ Rights in Cases of Privatization

Since the 1970s, Israeli policy has been to privatize government corporations and public services. In government corporations that underwent privatization, nearly all workers involved in the process were adversely affected. These included workers laid off following privatization, who found themselves negotiating for severance pay in a situation in which they had very little leverage; workers

who continued to be employed in the privatized company, who sometimes managed to preserve the working conditions stipulated by the collective labor agreement for a limited period of time, after which they had no choice but to sign individual contracts without the advantage of collective bargaining; and new workers hired following privatization under inferior working conditions.

In many other countries, it has become common practice to involve workers in the privatization process. The World Bank also recommends this. Such involvement can find expression in preparations for privatization, by offering special stock options – and indirect involvement in the affairs of the privatized company (as shareholders), by offering vocational training, alternative employment or compensation to employees laid off in the process of privatization. In Israel, not only is the involvement of workers absent from the process of privatization; during the last ten years, two laws whose purpose was to ensure workers' rights during privatization by conditioning the privatization deal on signing an agreement ensuring the rights of the workers, were proposed – and rejected.

The Right to Organize

The right of workers to form trade unions, conduct negotiations, and strike – to be limited only by legal restrictions in the interests of national security or public order or for the protection of the rights of others;

In present-day Israel, the right of workers to organize is at an all-time low. While Israel is a signatory to international covenants that guarantee the right to organize, no domestic legislation protects this right. In the past, when the Histadrut was at the height of its power, there was no need for domestic legislation. Today, the right of workers to organize is controversial and there is steady attrition in the legitimacy of trade unions. Between a third and 40% of workers are members of unions. The number of workers whose working conditions are determined by collective labor agreements is also on the decline: in 2000, collective agreements were relevant for slightly over half of the labor force, in comparison with about 80% in 1980.

Moreover, while in the past bargaining was done on the national level, bargaining is now done on the level of the factory or the individual. This is one of the factors contributing to the widening of wage gaps in the Israeli economy.

The Right to Organize: Legislation

The right to organize finds partial expression in the Law of Collective Agreements of 1957, which stipulates collective labor agreements and expansion orders as the frameworks for determining collective working conditions, and in the Law for Settling Labor Disputes of 1957, which recognizes a representative trade union as a partner to labor disputes. Above and beyond these laws, the main outlines of the right to organize were developed in court decisions. Court rulings have recognized three rights connected with the collective right to organize that complement one another: the right to organize, the right to collective bargaining, and the right to strike. These rights hold for all workers, with the exception of those employed in certain sectors like the armed forces and the police. Of these three rights, the right to collective bargaining underwent the greatest development through both legislation and court decisions. It is the only right not eroded by the legislation of basic laws in Israel.

What is a "Representative Union"?

According to the Law of Collective Agreements of 1957, in order for a trade union to be recognized as a "representative union," that is, one with the authority to represent workers in negotiations

with employers and to sign collective agreements on their behalf, it needs to be the union with the largest number of members for whom the agreement is relevant, and its membership needs to encompass at least one-third of the workers. Over the years the National Labor Court has stipulated additional conditions, the main ones being permanency, independence and democratic proceedings.

Following legislation of Basic Law: Freedom of Occupation, the National Labor Court ruled that workers could not be obligated to join unions. Today, the only acceptable form of trade unionism is an arrangement that allows the trade union that signs collective agreements on behalf of the workers to collect union dues from workers who benefit from the fruits of the union's struggle, even if they are not members. This is a model that allows every worker to decide whether or not they wish to join a union; at the same time, it makes it more difficult for trade unions to recruit members and to achieve the status of "representative union." Another disadvantage is that the arrangement allows union dues to be collected from unorganized workers who may benefit only partially, if at all, from the fruits of the union's work.

Rights Deriving from the Right to Organize: The Right to Collective Bargaining and the Right to Strike

The **right to collective bargaining** is anchored in the Law of Collective Agreements. A collective agreement is a work contract signed between an employer and a trade union, which stipulates the working conditions in a plant or in an economic sector. From the moment of signing, the Minister of Labor has the authority to issue expansion orders that make the entire agreement, or parts of it, effective for an entire economic sector or for the whole economy or large parts of it.

The **right to strike** is anchored in the International Covenant for Economic, Social and Cultural Rights, as part of the right to work, as well as in conventions of the International Labor Organization and its Constitution. In Israel, there is no formal right to strike, in the sense that there is no law granting that right; however, court decisions do recognize the right to strike.

The right to strike has undergone erosion over time. Among other causes is the transfer of labor disputes to the labor court, set up in 1969, and the weakening of the trade unions. The weakening of the right to strike has exposed striking workers to criminal

sanctions and damage claims for losses resulting from strikes. Today there are limitations on the types of actions that workers may engage in during strikes: the labor court permits work stoppages but forbids related actions like not allowing goods to leave the plant or occupying the plant courtyard; there are also limitations on “wildcat” strikes that break out without prior warning. In recent years, the labor court has been reducing the right to strike in favor of the economic and public interests in preventing disruption in the operation of public services.

Some Workers are More Equal Than Others: The Stratified Labor Market

The present-day Israeli labor market is stratified, with each stratum having differential benefits:

The top stratum includes workers in the financial services and in hi-tech, who belong to the top income decile. The wages of this stratum on are the rise, as is their share in the national income. Here individual contracts abound, as well as compensation beyond salary, like stock options. These workers have high salaries and supplementary benefits way beyond the basic conditions stipulated in Israeli labor laws.

The middle stratum includes service workers and workers in traditional industries. The wages and working conditions of these workers have been eroding, and over the years, the gaps between their benefits and those of workers in the top stratum have been widening. At the same time, some of these workers are organized, and a good many of them still benefit from collective labor agreements, thanks to which they still have a certain degree of work security.

The bottom stratum consists of a secondary labor market comprised of temporary workers, part-time workers, and agency workers. This secondary market has a disproportionate representation of women, new immigrants, migrant workers, Palestinians and Arab citizens of Israel. Due to their lack of bargaining power, the phenomenon of sub-minimum wages without fringe benefits is common. For this stratum of workers, enforcement of labor laws is nil.

Lax Enforcement of Labor Laws

Who enforces Israeli labor laws and wage agreements? In principle, three bodies are involved.

- The labor courts, which are responsible for judgments concerning labor laws and labor agreements;
- The Ministry of Industry, Trade and Labor, charged with the state authority to enforce labor laws;
- The unions, which, among others, act to ensure that their members actually benefit from the conditions stipulated in labor laws and labor agreements with employers.

At present, the most effective agents are the labor courts. Until these were created in 1969, labor relations were consensual, based on the model of the collective labor agreement and conducted outside the legal system. In the middle of the 1980s, a trend of legal activism began, whereas the labor courts and the High Court of Justice began to interpret labor agreements and to determine precedents on central issues in the area of labor relations. The involvement of the State and the juridification of labor relations has not necessarily augured well for workers. The labor courts and the High Court of Justice have acted in accordance with the model of “balancing interests,” according to which the interest of workers needs to be balanced against the interests of the State, of employers and of the individual worker. Labor courts hand down verdicts in the cases brought before them. While these verdicts have the status of precedents and the potential to deter employers, this occurs mainly when there

is backing from trade unions. In the absence of such backing, or when that backing is weak, the influence of the verdicts handed down by the labor courts beyond the case in hand is extremely limited. Moreover, workers who turn to the labor courts do so in most cases after they are no longer working for the delinquent employer. Furthermore, court deliberations are slow and complex; as such, they cannot serve as an effective enforcement mechanism for the majority of workers.

In contrast, when it comes to collective agreements, the role of the labor courts is very important: since their inception, and especially during the 1980s, which saw major strikes in the public services, the courts have become the main mechanism for the settlement of labor disputes between trade unions and employers.

The Ministry of Industry, Trade and Labor

Within the Ministry of Industry, Trade and Labor, the Division for the Enforcement of Labor Laws is responsible for monitoring labor laws, as the name implies. This is an ineffective body, whose actions are marginal and very selective.

The Enforcement Division is charged with enforcing no fewer than 16 labor laws. It has two departments: one for Israeli workers and

the other for migrant workers. The latter is also responsible for locating and expelling Palestinian workers who are in Israel without permits.

The Enforcement Division has no more than twenty inspectors responsible for enforcing labor laws for all Israeli workers. In contrast, the department in charge of migrant workers has about a hundred inspectors; and a separate department, charged with work safety, has some seventy inspectors.

The budget of the Enforcement Division is very small, and it has been declining. Between 1994 and 2002, the budget grew, as a result of a Cabinet decision to buttress enforcement for migrant workers, meaning, primarily - ferreting out migrants without working permits and deporting them. In 2003 a separate department was set up for migrant workers, and the lion's share of the budget was transferred to it. This indicates that the issue of migrant workers is the main focus of the enforcement activities of the Ministry, despite the fact that migrant workers comprise fewer than 10% of workers in Israel. Since 2003, the budget, shown below, has been dedicated to Israeli workers only. Even since 2003, the budget has been greatly reduced: the 2006 budget is 12.5 times smaller than the 2003 budget.

Budget of the Division for the Enforcement of Labor Laws in the Ministry of Industry, Trade and Labor

1994-2006 • In NIS Thousands • In 2005 Prices

Year	Enforcement Budget	Percentage Change
1994	4,462	
1995	4,809	7.8%
1996	7,135	48.3%
1997	7,979	11.8%
1998	10,147	27.1%
1999	10,804	6.5%
2000	11,708	8.4%
2001	11,156	- 4.7%
2002	21,663	94.2%
2003	2,482	- 88.5%
2004	2,257	-9.1%
2005	138	-93.9%
2006	197	42.2%

Note: Through 2002, the figures include allocations for monitoring migrant workers; from 2003, they relate to Israeli workers only. Prior to 2003, published figures do not allow differentiation between allocations for monitoring laws with regard to Israeli workers and with regard to migrant workers.

Enforcement by Trade Unions

Labor unions have an important role in the enforcement of labor laws and agreements. The unions themselves are comprised of representatives of workers who are either stationed at the work site or visit it, receive complaints from workers and are more aware than others of the phenomenon of violations of labor laws and labor agreements on the part of employers. When it comes to working conditions stipulated in collective agreements that accord benefits not included in labor laws, the trade union is the only enforcement agency in the field. This is because collective labor agreements do not enjoy the status of labor laws and thus are not enforced by the Ministry of Industry, Trade and Labor.

At the same time, it should be remembered that the number of organized workers is on the wane, and the number of collective agreements and the proportion of workers who benefit from them is also declining; thus the power of enforcement of the unions is also in retreat. In government and Histadrut corporations that were privatized, the private owners openly oppose organized labor in general and the Histadrut in particular; thus the Histadrut can hardly get a foot into the door. The new employment patterns – migrant workers, agency workers, and the like – have resulted in divisions between workers stationed at the same workplace

and have made it difficult to organize on the level of the plant or the economic sector. Thus, at present, the Histadrut provides protection mainly to the strongest, best-organized workers within its ranks, sometimes at the expense of the interests of weaker groups like agency employees and migrant workers.

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