A New Payday(s)

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Yonathan A. Arbel, Payday, 96 **Wash. U.L. Rev.** 1 (forthcoming 2020), available at SSRN.

The unfolding pandemic has been an incredible change agent. In business, it has upended the rhythms and routines of work and operations in pedestrian and profound ways. It has accelerated anticipated changes and forced unforeseen changes. It has pushed us to examine and re-examine what was normal and necessary in the old ways we work, in the old operations of our businesses.

In his forthcoming article, *Payday*, Professor Yonathan Arbel examines the old, longstanding business practice of payday. In particular, he looks into why so many workers only get paid on one day for their continuous daily labor despite numerous advances in financial technology. As he succinctly put it at the start of his article:

> While trillions of dollars are exchanged in online transactions—safely, cheaply, and instantaneously—workers still must wait two weeks to a month to receive payments from their employers. In the modern economy, workers are effectively lending money to their employers, as they wait for earned wages to be paid.

Through thoughtful research and argument, Professor Arbel methodically critiques the historical, legal, social, and economic explanations for our current system of payday. His critiques lead him to conclude that our present payday practice is the result of outdated legislation and stale regulation that have failed to keep up with extraordinary advances in business operations and technology.

This mismatch between legislation from a bygone era imposing an artificial and anachronistic business practice on the modern worker has had significant social and economic consequences. Employers ostensibly receive an interest free line of credit from their employees because they receive labor weeks in advance of actual payment. Employees, on the flip side, are sometimes forced into ruinous and predatory gray and black financial markets trying to make ends meet while waiting for their payday.

To alleviate this employer-employee disparity, Professor Arbel argues for the abolishment of the traditional payday, and a transition to a system of daily payment for labor. Professor Arbel believes that this transition would "spare employees the indignities of the payday, increase consumer liquidity, enhance worker autonomy, reduce the size of the payday lending industry, and improve the American economy as a whole." Whether this is true on a large, meaningful scale remains to be seen. Nevertheless, one can reasonably surmise that a wholesale transition to a system of daily payment would have significant consequences, intended and unintended, on businesses and society. It will certainly make lives easier for many workers, but it could also have a significant impact on savings rates, consumption habits, and numerous other ripple effects on our current socioeconomic order.

The transition that is being advocated by Professor Arbel is not as radical as it may seem at initial glance. This transition is actually happening already. As more and more people take on nontraditional jobs in the gig economy, we are witnessing how work, wages, and payment practices have changed as a result of technology. Lyft drivers, Instacart shoppers, Grubhub delivery persons, and many other workers in the modern economy are already being paid on timelines that deviate greatly from the traditional monthly or biweekly payday timeline.

These unfolding business and labor changes have happened not because of law, but in spite of it. In fact, many of these new disruptive and innovative business and labor practices happened due to gaps and lags in the law relative to emerging new technology. In the financial sector, it can sometimes seem like laws, rules, and regulations—even well-intentioned ones—are trapped in a time where smartphones, apps, and electronic commerce simply do not exist. Policymakers need to do better to ensure that our financial and business regulations reflect the current technological and commercial realities of our world. New technology and new business practices can only do so much when constrained by outdated and mismatched rules and regulations.

In the coming months and years, cities and states will gradually reopen and rebuild with the specter of tens of millions of Americans unemployed and underemployed, all seeking a better payday. Much about how we work has changed as a result of the pandemic, and much will change as part of a grand but hard reopening and rebuilding. We need not go back to normal, however old or new. Entrepreneurs, executives, and employees can collectively work together to build better labor and business practices. In the end, while much remains unclear and uncertain about the road ahead, Professor Arbel's article helps illuminate one possible better path for reimagining how we work, and also how and when we are paid for our work.

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