The field of working relationships summons issues of ethical behavior daily, beyond legal norms, emphasizing values of human dignity, equality, trust upon the balance between parties within working relationships. Behavioral ethics seeks to define normative patterns of behavior in managing this relationship between an employee and an employer.

The question 'what is ethics?' engaged philosophers around the world since the days of Socrates and Aristotle to this day.[[1]](#footnote-1) this field finds its expression, among other things, in behavior labor law relationship raising various moral questions, such as the obligation to obey the law.[[2]](#footnote-2) By examining the concept of behavioral ethics in labor law, we will try to answer the question of what is the appropriate behavior in that field.

Intuitively, in a routine, employees tend to accept the organization's behavior. Accordingly, most people, most of the time, also tend to obey the instructions given to them, whether out of habit, by the power of inertia, and in many cases in the absence of much attention to the deeper meaning of the daily actions they must perform as part of defining their duties. As part of the article, we will try to point out the behavior in workplaces that pushes parties to act unethically, when we assume that the employee is subject to moral rights, among them, his right is that his ethics will not be compromised. Unlike the development of labor law rights, as part of protective provisions laws,[[3]](#footnote-3) the voice of the employee's moral right, as part of behavioral ethics in labor law, is rarely heard. In the relationship between employer and employee, we would like to point out unethical behaviors, which, while not addressed within the law, are undoubtedly improper.

We do no longer look only at what the law determines about a certain behavior but examine whether the behavior is also appropriate, beyond being legal. Legal but ethically inappropriate behavior provokes a barrage of criticisms. Discussion of ethics became widespread in the context of corporations,[[4]](#footnote-4) and absent the field of labor law. Therefore, beyond the legal system, the unethical behavior of employers in the workplace can be discerned. This behavior can have varied expressions, from unethical behavior toward employees to behavior that leads the employee himself to unethical behavior in the workplace, towards other employees and customers.[[5]](#footnote-5)

Ethical Culture has been defined as a slice of the organizational culture that influences employees.[[6]](#footnote-6) Behavioral ethics researchers have found links between employees' justice perceptions and employees' ethical and unethical conduct. Organizational justice became one of the most studied organizational behavior topics in the 1990s. [[7]](#footnote-7) Although there have been many strides in the behavioral ethics literature, more work is needed to shed light on factors that influence ethics within the workplace. Little is known about employee reactions in the form of unethical behavior to perceived acts of unfairness. Employees' perceptions about the fairness of the treatment they receive from their organizations have been extensively studied,[[8]](#footnote-8) in a corporate sense, and detached from the legal context of labor law and the relationship between employer and employee.

A set of etiquette rules exists separately from the etiquette system of the law. Law rules are determined by the official institutions of each state and expressed by provisions, regulations, and judgments. The rules of ethics are usually established by society, gradually evolve without a deliberate hand, and are held in many daily situations, in family, the public sphere, and at work. The law, as opposed to ethics rules, regulates only abnormal forms of behavior, unlike him, ethics also seeks to regulate behavior that the law defines as normative, or indifferent to. [[9]](#footnote-9) we hold that, next to the worker's rights under labor law, some of which are part of natural rights, as a person, or within the framework of the labor relationship, there is a need to add the employee's moral right to follow the order of his conscience, which is not protected by law such as other rights.[[10]](#footnote-10) This right is intuitively identified with a social code of conduct and not necessarily with a legal right. In the case of the employee-facing a dilemma, the employee feels that although his expected conduct does not align with his positions, he is expected to remain loyal to the organization. Studies of workplaces have shown that ideology is affected when the employee identifies an action or requirement for ethical misconduct. In examining the impact on the employee's ethical behavior, external influences towards third parties can be identified primarily. [[11]](#footnote-11)

The issue of safety ethics intrigued many people. [[12]](#footnote-12) Alongside the obvious impact of work safety towards the employee public, we seek to point to situations in which requirements or organizational culture will adversely affect employees' behavioral ethics toward third parties, those who encounter workplace facilities. The field of hiring by the personnel departments, which includes diverse practices, also consists of a wide range of decision-making regarding applicants.[[13]](#footnote-13) We would like to point to the impact of the employer's demands, which lead him to make unethical decisions, some of which can be marked as prohibited under the law and some will be labeled immoral but allowed under the law. Cases such as these may occur for example when the employer requests applicants under a certain age, a request that constitutes age discrimination. The employee must consider whether to act following the applicant's benefit and refrain from surrendering to unethical requirements. Also, one can find race and gender requirements, all of which can be requested to be promoted less openly, making it difficult to prove allegations of discrimination against the employer, with the employee required to assist him in an appointment procedure contrary to the provisions of law.[[14]](#footnote-14)

The last example is from the field of targeting employees, Murphy and Laksenyak have stood up for the combination of ethics in the sales world. [[15]](#footnote-15) To take a deeper look at the ethics issue for sales employees, one must understand how the sales philosophy in the target world contributes to a negative impact on employees' ethical behavior. There is almost no workplace that does not set goals daily. A joint study conducted by Ordonzo Schweitzer Galinsky and Bizerman shows that these goals are urging employees and causing damage.[[16]](#footnote-16)

In this article, we would like to address cases in which there is a small, sometimes daily violation of employee's rights leading to an erosion of his rights. This situation raises two interesting legal issues affected by the employer's unethical behavior towards the employee. First, the law tends to address these violations as small and irrelevant to labor laws protection.[[17]](#footnote-17) Second, since labor law produces a complex relationship, usually characterized by power gaps and a long-term changing relationship between employee and employer, wherever, next to a small violation by the employer, accompanied by the employee's lack of response, the employer may have the protection of acceptable behavior on the part of the employee. Either way, when it comes to small violations, not only does the law not think it should be dealt with, but the employee generally considers them to be small violations and do not stand up for his rights.

This aspect of small violations is not specific to employees but also exists toward employers. Thus, even in a situation where an employee tends to be late to work a few minutes each day, or take slightly longer breaks than allowed, even then it can be argued that this is a too small violation, and as long as the employer wants to keep the employee in the workplace, the more he will not typically be used that behavior as the proverbial "straw that breaks the camel's back" to justify termination, he will tend not to comment, and therefore be seen as having accepted the new situation by behavior.

As we can see, there are minor ethics violations that labor law does not conduct. For this, we would like to expand on this article. We would also like to focus on violations against the employee, assume they are the most common violations. As part of the employer's minor vulnerability towards the employee, payment is absent for break time, a requirement for availability beyond working hours, 'harmless' statements which are not cross a line of harassment, and accumulation of mental stress at the workplace. In each case, these are abusive, minor behaviors that we believe have the cumulative effect of infringing on employee rights at the workplace. This negligible injury, especially as it becomes increasingly common, is an unethical act that needs the protection of the law, within the field of labor law.

As we stated up, when it comes to small injuries, these are often not responded to. The lack of a response means acceptance of conduct and legally it may be construed as a waiver of a contractual right. The issue arises in the context of long-term contractual relationships in which trust relationships develop between the parties. Generally, when we seek to attribute any behavior, it is not enough to take a specific action, but rather we will seek to be based on an ongoing pattern of behavior, which differs from random behaviors. This is true in any inter-party behavior, but increased attention to small, also random violations is important in a case of labor relations when there are power gaps between the parties. However, it can be said that the weight of each violation is so small that it does not meet the normative threshold of serious harm to receive the law protection, a situation that the law treats as a "De Minimis Non-Curate Lex".[[18]](#footnote-18) The "de minimis" doctrine comes from the Latin maxim de minimis non-curate lex, which means "the law does not concern itself with trifles."

In such situations, we believe there is a need for aggregation of the vulnerability. [[19]](#footnote-19) Although Harel and Porat believe that it is ineffective for the law to develop appropriate rules for these minor injuries, and it may not be effective to conduct legal proceedings, we hold it necessary to exclude the field of labor relations from this opinion, as it offers a doctrinaire rigidity upon protecting workers' rights, as part of enacting protection laws.

The pedestal of the law to de-minimis matters, is not new, and in general, the law does not deal with minors matters, and "it does not tend to engage in minimal infringement of the right." [[20]](#footnote-20) Although this principle originates from tort law, it is also found in contract law, and recently even required by U.S. labor courts, under minor normative injuries. For example, in American law, some openness is evident, although it is not yet finalized. The Supreme Court first described the de minimis doctrine as "split-second absurdities" that "are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act." [[21]](#footnote-21)  While there is no bright-line rule as to how much time is or is not de minimis, many courts have held that less than ten minutes of working time is de minimis. [[22]](#footnote-22)

The United States Department of Labor ("DOL") has likewise recognized the de minimis principle. [[23]](#footnote-23) The regulation provides that "[a]n employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period he is regularly required to spend on duties assigned to him." The DOL has advised that the de minimis rule applies to the aggregate daily time for all activities for which an employee seeks compensation, not separately as to each discrete activity.

For the past 70 years, federal courts have applied the de minimis doctrine to excuse the payment of wages to non-exempt employees for small amounts of compensable time if the time was shown to be administratively difficult to record.[[24]](#footnote-24) In 2018, the California Supreme Court held in Troester v. Starbucks Corporation that California's wage and hour laws do not fully align with the federal de minimis doctrine. [[25]](#footnote-25) In this landmark decision, the California Supreme Court concluded that non-exempt employees must be compensated for off-the-clock work includes small increments of time, such as the 4 to 10 minutes per shift. In reaching its conclusion, the court reasoned that California's wage and hour laws did not adopt the de minimis doctrine found in the FLSA. [[26]](#footnote-26) The court noted that California law is more protective of employee rights than federal law and requires non-exempt employees to be paid for all hours worked.

Specifically, in Troester, the court observed that the California labor laws are more protective than the federal de minimis rule in that California law requires employees to receive compensation for all hours worked or any work beyond eight hours a day. The court ultimately rejected the application of the de minimis rule to plaintiffs with daily post-closing activities ranging from 4 to 10 minutes each shift. In so holding, the court emphasized that such activities took minutes each shift and occurred regularly.

In the case of Troester, some have suggested the de minimis doctrine in California is dead or that any time exceeding a minute is compensable in California. However, neither view is supported. Notably, according to the Ninth Circuit, the rule in Troester "does not require employers to account for split-second absurdities and might not apply in cases where work is so irregular that it is unreasonable to expect the time to be recorded.” [[27]](#footnote-27)

Despite its small weight, and its prevalence varies, it regulates the relationship between employee and employer, as part of protective legislation framework, in which the worker's labor rights are protected in a way that cannot be conditioned, even voluntarily. Just as the employee is not allowed to waive these rights, the law is also not allowed to waive the protection of them. Furthermore, the rigidity of the legislation is a great example of regulating behavior in a way that does not consider parties' will. Among other things, examples can be found of state intervention in protecting workers' rights, even by way of suing the employee, to denounce behaviors. This is also the case in situations where the employee himself has no incentive to conduct legal proceedings against the employer. [[28]](#footnote-28)

On our view, there is room to examine these vulnerabilities by way of an incremental effect. This cumulative effect approach has been recognized in American literature. There, the opinion was expressed that there was no room to recognize and apply it on de-minimis matters regarding overtime pay, based on the argument that employee's injuries should be viewed by way of cumulative effect, a perspective that leads to the conclusion it is a significant extra hour.[[29]](#footnote-29)

1. *Aristotle's Nicomachean Ethics*, Robert C. Bartlett, and Susan D. Collins (eds/trans.), Chicago: The University of Chicago Press (2012). [↑](#footnote-ref-1)
2. <https://lawjournal.huji.ac.il/sites/default/files/2018-01/31.%20%D7%97%D7%99%D7%99%D7%9D%20%D7%92%D7%A0%D7%96%20-%20%27%D7%9E%D7%95%D7%A9%D7%92%20%D7%94%D7%97%D7%95%D7%91%D7%94%20%D7%9C%D7%A6%D7%99%D7%99%D7%AA%20%D7%9C%D7%97%D7%95%D7%A7%27.pdf>

   [↑](#footnote-ref-2)
3. Employment relations in Israel are regulated by a number of sources: constitutional rights, as determined by the Basic Laws mentioned above; Statutory rights, as set out in statutes and regulations; International standards, especially ILO conventions adopted by Israel, but also EU standards, are used by the government and courts as guidelines, even though they are not  binding. For a protective legal legislation, see: Employment Protection Act 1975 (UK), and the U.S. Department of Labor enforces the Fair Labor Standards Act (FLSA), which sets basic minimum wage and overtime pay standards. [↑](#footnote-ref-3)
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20. (בג"ץ 3434/96 ולראות שם עוד אסמכתאות, וגם דנ"א 1333/02). [↑](#footnote-ref-20)
21. Since *Mt. Clemens*, federal courts have generally analysed three non-determinative factors to determine whether time is *de minimis*or compensable: (1) the practical difficulty the employer would face in recording the additional time; (2) the total amount of compensable time; and (3) the regularity of the additional work.  *See, e.g.*,*Reich v. New York City Transit Authority*, 45 F.3d 646, 652 (2d Cir. 1995)*; Lindow v. United States*, 738 F.2d 1057, 1062-63 (9th Cir. 1984). [↑](#footnote-ref-21)
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    <file:///C:/Users/netan/Dropbox/My%20PC%20(LAPTOP-KMCEF9V2)/Downloads/export_2020-09-29%2014_41_12.pdf>;

    <https://heinonline.org/HOL/Page?handle=hein.journals/inonu9&div=31&g_sent=1&casa_token=zZ8yUXJaWlEAAAAA:UUaTDY0Azp5p9O_LuV0NYbrxq5Vz6nRbRtp71TfOKEi9WPxor-traMJr8-pME7-W7ZXnuelQ&collection=journals> [↑](#footnote-ref-24)
25. Troester v. Starbucks Corp. [↑](#footnote-ref-25)
26. Fair Labor Standard Act, 29 U.S.C § 213 (a)(1) [↑](#footnote-ref-26)
27. *Rodriguez v. Nike Retail Services, Inc.*, 928 F.3d 810, 818 (9th Cir. 2019) [↑](#footnote-ref-27)
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