The Role of Labor Market Regulation in Rebuilding Economic Opportunity in the U.S.

White Paper by
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EXECUTIVE SUMMARY
At the start of the 21st century, millions of Americans face a daunting labor market that, absent coherent and sustained policy intervention, will very likely provide them with fewer career opportunities and less economic security than their parents enjoyed. While globalization is often blamed for the deterioration in labor standards, it is domestic service industries where the low-wage problem is most acute. One of the key drivers of precariousness in these sectors is employers’ growing evasion and violation of both legal and normative standards, facilitated by the withdrawal of government’s hand in the labor market. Myriad factors describe this new world of work: the weakening of employment and labor laws; under-resourced enforcement of a host of regulations; production chains that mask legal accountability; the exclusion of groups of workers from legal protection; and a dysfunctional immigration policy. To reinvigorate labor market regulation opportunity, government should: establish a strong floor of labor standards; vigorously enforce that floor; and build a base of good jobs on top of that floor.

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INTRODUCTION
Having struggled through the worst economic crisis in nearly a century, the U.S. is once again confronting trends that were underway long before the financial crash and collapse of the housing bubble in 2008. In particular, America’s low-wage problem remains unabated. During the Great Recession, job losses were concentrated in mid-wage occupations such as paralegals, health technicians, administrative assistants, and bus drivers, with wages ranging from $15 to $20 an hour. But so far in the weak recovery, employment growth has come disproportionately from low-wage occupations such as retail workers, office and stock clerks, restaurant staff, and child care aides, with wages ranging from $8 to $10 an hour. Moreover, paychecks in those low-wage jobs are shrinking. Real wages for the average worker, stagnant since the start of the recession, have actually declined in lower-wage occupations (National Employment Law Project 2012). These trends are not likely to reverse anytime soon. In new estimates from the Bureau of Labor Statistics, seven of the top ten occupations projected to generate the most jobs by 2020 are low-wage service and laborer jobs (Lockhard and Wolf 2012).

These trends are exacerbating the polarization that unfolded across three decades of economic restructuring. Since the mid-1970s, globalization, technological change, financialization, deunionization, and a deteriorating social contract have reshaped how and where work is performed, and what it is paid. In industries that span the U.S. economy, researchers have identified a pronounced shift in firms’ competitive strategies, with growing numbers of employers focused on cutting labor costs, achieving greater flexibility in the organization of work, and maximizing shareholder value. The symptoms of this shift are well documented. The U.S. wage distribution has grown more unequal. Workers increasingly find themselves stuck in contingent, non-standard jobs. Employers are reducing their provision of health and pension benefits and investing less in developing the skills of their workers.

In short, at the start of the 21st century, millions of Americans face a daunting labor market that, absent coherent and sustained policy intervention, will very likely provide them with fewer career opportunities and less economic security than their parents enjoyed.

The important question, then, is what that policy intervention should look like. Advocates and scholars are calling for the development of a new social contract to address the consequences of growing inequality, with a general consensus that we need good jobs, skilled workers, and a strong safety net. But the specific mix of policies is still very much in play.

My goal in this essay is to argue for the central role of labor market regulation in rebuilding economic opportunity in the U.S. This is not to downplay the importance of supply-side strategies or the need for a stronger safety net and universal access to health insurance and retirement security. Moreover, any solution to America’s wage deficit will require a macroeconomic policy that is firmly focused on the goal of full employment (Baker and Bernstein 2013).

But my reading of several decades of labor market research is that the domestic service industries that have not been impacted by globalization are the main source of America’s low-wage problem. The key driver of precariousness in these industries is employers’ growing evasion and violation of both legal and normative standards, facilitated by the withdrawal of government’s hand in the labor market (Bernhardt et al., 2008). That hand must become visible again. Business may have engaged in a form of self-regulation during the heyday of managerial capitalism, but those days are long gone. Unions are struggling just to maintain their current share of
the work force (down to 6.9 percent of the private sector), and they cannot on their own deliver strong labor standards. Community organizing has proved surprisingly robust in recent years (more on that below), but it has not yet reached the scale required to significantly move the needle on job quality.

The success of a renewed social contract will need to include a renewed commitment to labor market regulation, where government uses legislation and administrative action to set a framework that combines baseline labor standards with incentives for upgrading, preserving and creating good jobs. In what follows, I lay out three ways government can do that: by establishing a strong floor of labor standards; by vigorously enforcing that floor; and by helping to build a base of good jobs on top of that floor. I conclude with thoughts on the problem of getting to scale with these reforms, based on my experience as both a social science researcher and a policy advocate.

STRENGTHENING THE FLOOR OF LABOR STANDARDS
In the U.S., employment and labor laws - the minimum wage, health and safety regulations, and the right to organize chief among them - serve as the main anchors of the employment relationship in the United States. But for many of those laws, standards have either stagnated or weakened over the past 30 years, and significant exemptions from coverage remain. At the same time, changes in the organization of work have made it more difficult to hold employers legally accountable for their employees. This multi-dimensional weakening of labor standards has been one of the key shifts opening the door to low-road business strategies focused on cutting labor costs.

**Policies that strengthen the floor of labor standards**

- **Raise the minimum wage:** The value of the federal minimum wage needs to be increased back to its historic level (roughly half the average wage), and it needs to be indexed to avoid future erosion of the wage floor.
- **Update health and safety standards:** We need to update existing health and safety and develop new standards to address new hazards. Increased funding for OSHA will also be critical.
- **Strengthen the right of workers to organize:** The NLRA needs comprehensive overhaul - including reforms to expand legal coverage, to strengthen the means for unions to establish majority support, and to help certified unions achieve a first contract.
- **Expand the realm of baseline standards:** New standards are being developed establishing paid sick days, rest breaks, and meal breaks.
- **Hold employers responsible for the working conditions of their employees:** We need to develop stronger standards for employee misclassification and hold firms responsible for their subcontractors’ wage-and-hour practices.
- **Close the remaining gaps in employment and labor law:** We need to end the explicit exclusion of farmworkers and domestic workers from the right to organize, raise the subminimum wage for tipped workers and include workers in smaller workplaces in anti-discrimination laws and health and safety protections.

**Stronger Legal Standards**

The real value of the federal minimum wage is currently 30 percent lower than it was in 1968, the result of four decades of policy neglect. This drop in the legal wage floor has directly impacted the wages of millions of workers at the bottom of the labor market, contributing to the overall rise in wage inequality (Lee 1999). But there are also important indirect effects. For example, the steep decline of the minimum wage created strong incentives for employers to subcontract front-line jobs to outside bidders, allowing them to reap the benefits of the lower wage floor while protecting their higher internal wages.

The story of health and safety standards is also one of stagnation. Occupational Safety and Health Administration (OSHA) regulations for many occupations were written in the 1970s and have not been updated for new hazards, machines, or toxic chemicals. Recent administrative actions have not helped. Even though musculoskeletal disorders account for about one-third of all workplace injuries, the Bush Administration repealed newly crafted ergonomics standards during its first term, and that decision has not yet been reversed (AFL-CIO 2011). More generally, analysts argue that the rulemaking process by which health and safety standards are set has essentially ground to a halt; OSHA has dropped more standards from its regulatory agenda during the last decade than it finalized (McGarity et al. 2010).
Inadequate standards are also undermining the right to organize. The root of the problem is that the National Labor Relations Act (NLRA) does not adequately account for the power imbalance between employers and employees (Compa 2004). For example, although the NLRA technically prohibits employers from threatening employees about the repercussions of unionization, the definition of “threat” is too narrow and easily obscured under current interpretations of the law. The law also permits employers to hold mandatory anti-union meetings, control the agenda of these meetings, and designate the attendees without giving similar access to organizers. As a result, researchers have documented a marked decline in compliance with the NLRA over the past several decades, which has had a direct impact on unionization rates (Bronfenbrenner 2000).

On all three fronts, the policy solutions are straightforward: raise the minimum wage, update health and safety standards, and strengthen the right of workers to organize. The NLRA needs comprehensive overhaul – including reforms to expand legal coverage, to strengthen the means for unions to establish majority support, and to help certified unions achieve a first contract (Craver 2010). On the health and safety front, a host of existing standards in different industries and occupations require updating, and new standards are needed to address new hazards. Increased agency funding is critical here, because setting new standards is a resource-intensive process requiring scientific research to demonstrate the need for regulation (McGarity et al. 2010). But on both fronts, chances for action look dim in the current Congress.

Prospects for raising the minimum wage appear better. In part, this is because a new research consensus has emerged over the last 15 years, finding that modest increases in the minimum wage do not cause significant job loss (Dube, Lester and Reich 2010). Additionally, states and some cities have the legal power to set their own minimum wage standards above the federal floor (this is not true of all parts of employment and labor law), meaning that local action is possible even when progress in the Congress is stalled. For example, 20 states and the District of Columbia currently have higher minimum wages than the federal level of $7.25 an hour, and a half dozen state campaigns are planned over the next several years. Moreover, 10 states currently index their minimum wage to increases in the cost of living, a relatively new policy development that has had significant impact. For example, on January 1 of this year, workers in nine states saw a minimum wage increase because of indexing. But state action alone is not enough. Many states (especially in low-wage regions of the U.S.) do not have their own minimum wage, and they do not have the political will to raise it. The value of the federal minimum wage needs to be increased back to its historic level (roughly half the average wage), and it needs to be indexed to avoid future erosion of the wage floor.

Similar diagnoses hold for other areas of employment and labor law, such as anti-discrimination and workers’ compensation law. In addition, new standards are being developed establishing paid sick days, rest breaks, and meal breaks; these will be critical given the growing body of evidence that, especially in the low-wage labor market, workers are often not able to access sick leave and breaks on the job if that time is unpaid (National Employment Law Project 2011).

Employers’ Legal Responsibility for Their Employees

There is growing consensus among legal scholars that U.S. employment and labor law is struggling to catch up with the realities of the 21st century workplace. Traditional definitions of “employer” and “employee” are increasingly being challenged by a host of non-standard ways of organizing work and production: contingent work, subcontracting, and misclassification of workers as independent contractors. While some of these strategies truly reflect new ways of producing goods and services, others are the result of explicit employer strategies to evade legal obligation for their workers. But both scenarios challenge a body of law that was put into place more than a half a century ago and built around long-term employment relationships between one worker and one employer in one workplace.

The ambiguous legal status or wholesale exclusion of subcontracted workers, independent contractors, temporary workers, and day laborers is one of the central factors opening the door to lower wages and poor working conditions (Zatz 2008). For example, janitorial and security services, food services, and industrial
laundries are all sectors that have grown significantly over the last several decades, as large firms and public institutions externalized those functions to lower-wage subcontractors.

Subcontracting is not always driven by the desire to cut labor costs, and the impact on workers is not predetermined (Abraham and Taylor 1996). For example, in the case of janitorial contractors, the industry looks increasingly bifurcated between corporate contractors that serve large employers like financial firms and that pay decent wages, and fly-by-night contractors that serve low-margin industries like retail and that pay substandard wages (Nissen, 2004). Moreover, many front-line and low-wage workers are still in traditional employment relationships. But the trend line is clear: growing numbers of employers are creating legal distance between themselves and their employees by using strategies such as subcontracting that are permissible under current law.

In response, researchers and advocates have identified a range of reforms to hold employers responsible for the workplace standards they control, whether directly or indirectly. Some fixes are available under existing laws. Most important among these is the method of determining who is an employee, a process that is currently guided by a number of different legal tests. Legal experts propose shifting from the more narrow test, which focuses strictly on the employer’s control over the production process, to the broader test, which focuses on the extent to which the worker is economically dependent on the employer (Goldstein et al. 1999).

Other fixes require new laws. An important area of emerging scholarship is focused on devising legal tools that would hold firms liable for their subcontractors’ violations of minimum wage, overtime, and other laws. Zatz (2008) cites several innovative examples along these lines, such as two California laws that hold firms in specific industries responsible for their subcontractors’ wage-and-hour practices without needing to establish a direct employment relationship between the firm and the subcontracted worker. But production chains (for both goods and services) increasingly feature multiple layers of subcontractors, making it almost impossible to establish legal accountability for violations that occur at the end of the chain. Rogers (2010) and others are therefore developing new legal models that hold firms at the top of the supply chain liable for failing to exercise “reasonable care” to prevent wage and hour violations by their suppliers, regardless of whether they have a contractual relationship with the specific subcontractor committing the violation.

A third strategy is to establish “employers of record” for occupations that are classified as independent contractors. This strategy has been used successfully for home health care and child care services that are funded through state programs. In recent years, a number of states have created “public authorities” that pay workers in these sectors and serve as the legal entity with which workers can bargain. The best-known example of this model is Los Angeles, where the establishment of this type of public authority created an employer of record for over 70,000 home care workers, who then voted to unionize and join the SEIU in 1999. This model is now spreading to home care workers in other states and also to publicly funded family day care providers (Dresser 2008).

**Gaps in Legal Coverage**

Several groups of workers that are at risk of substandard working conditions remain partially or wholly exempted from coverage by key employment and labor laws. While significant progress has been made in ending these exemptions, especially over the past several years, gaps in coverage remain (National Employment Law Project 2011).

The U.S. Department of Labor recently took regulatory action to end the “companionship exemption” that excluded many of the nation’s nearly two million home care workers from federal minimum wage and overtime protection. This is a critical victory for workers in one of the fastest growing occupations in the economy; the exemption had helped to suppress wages in the industry, which led to high rates of poverty among the workers and chronic turnover and staffing shortages (Howes, Leana and Smith 2012).
Domestic workers won coverage under federal minimum wage and overtime laws in 1974 (though live-in domestic workers remain excluded from the latter). More recently, advocates have campaigned for additional rights with the passage of the Domestic Worker Bills of Rights in New York State (2010), Hawaii (2013) and California (2013); provisions include expanded coverage under those states’ minimum wage laws (including overtime for some categories of domestic workers who had been exempted), coverage by anti-discrimination laws, and paid leave days.

But the work continues to try to close the remaining gaps. Farm workers are still not covered by federal overtime laws, and they (along with domestic workers) are also excluded from the right to organize under the National Labor Relations Act. Tipped workers in a wide range of industries are only covered by a “tipped worker” minimum wage, which at the federal level is much lower (only $2.13 an hour) than the regular minimum wage. Restaurant workers and their allies are currently campaigning at both the federal and state level to raise this subminimum wage to 60% of the full minimum wage. And many workers in small establishments remain excluded from anti-discrimination laws and health and safety protections. While closing these and other statutory exemptions under employment and labor laws does not automatically lead to living wages, they significantly impact millions of workers, many of whom are immigrants and women of color.

**ENFORCING THE FLOOR OF LABOR STANDARDS**

Across the U.S., growing numbers of workers are paid less than the minimum wage, are denied overtime pay, are forced to work in hazardous workplaces, and face routine retaliation for speaking up. Their ability to seek recourse is often constrained - by lack of immigration papers, by lack of access to legal services, and by lack of effective government enforcement of workplace laws. In a landmark study, *Broken Laws, Unprotected Workers*, researchers surveyed more than 4,000 workers in low-wage industries in Chicago, Los Angeles, and New York. They found that 26 percent had been paid less than the minimum wage in the preceding week, 76 percent had been underpaid for their overtime hours, and 70 percent did not receive any pay at all when they came in early or stayed late after their shift. Moreover, 43 percent of the respondents who complained about their working conditions experienced illegal retaliation from their employer or supervisor. And while immigrants, women, and people of color were particularly hard hit, all workers were at risk of wage theft (Bernhardt et al. 2009).

*Broken Laws* confirms a growing body of research suggesting that wage theft and other workplace violations are on the verge of becoming common business strategy in low-wage industries, impacting millions of workers - from hotel room cleaners, dishwashers, retail sales workers, and home health aides to garment factory workers, taxi drivers, janitors, and construction laborers. Economic restructuring and the growing focus on cutting labor costs are driving this trend, encouraging the development of practices such as subcontracting that facilitate violations. But weak public enforcement of workplace regulations has contributed as well. Between 1980 and 2007, the number of federal wage and hour inspectors declined by 31 percent and the number of enforcement actions

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**Policies that make enforcement more vigorous:**

- **Increase funding for enforcement:** While funding increases alone are not enough to guarantee effective public enforcement, current agency staffing levels clearly do not suffice to deter violations of U.S. employment and labor laws.
- **Raise the penalties for violations:** Current penalties for workplace violations are far too modest, and enforcement agencies often do not even pursue the maximum amounts allowed under law.
- **Develop proactive enforcement models:** Enforcement agencies need to proactively identify industries where workplace violations are systemic and conduct repeated and unannounced workplace audits. Enforcement agencies should partner with immigrant worker centers, unions, service providers, and other community groups, as well as responsible employers that understand the need to ensure full compliance in their industry.
- **Protest immigrant workers:** Comprehensive immigration reform is a critical step towards guaranteeing equal protection and equal status for immigrants in the workplace.
fell by 61 percent; by contrast, the civilian labor force grew 52 percent during this same period (Bernhardt, Spiller and Theodore 2013). And while the U.S. Department of Labor has added wage and hour investigators under the Obama administration, the current federal staffing level of just over 1,000 is still below its 1980 peak.

The picture looks even worse for enforcement of health and safety laws (AFL-CIO 2011). In 1975, federal OSHA had a total of 2,435 staff responsible for the safety and health of 67.8 million workers at more than 3.9 million establishments. In 2010, the agency had about the same number of staff (2,335), but for double the number of workers (128.6 million) and establishments (8.8 million). In the case of workers’ right to organize, official data show increases in both legal and illegal coercive tactics by employers, stemming back to the 1980s. Researchers have documented extensive delays in the government’s investigation of retaliation and illegal firings by employers, which significantly reduces the chances that unions will be able to win elections to represent workers. Moreover, authorized remedies for impacted workers are widely regarded as insufficient, and are rarely fully pursued by the National Labor Relations Board (Compa 2004).

Any public policy that is concerned with improving job quality must leverage the significant resources and potential power of the various agencies that are responsible for enforcing workplace laws. Tapping the often-unrealized potential of these agencies will require increased staffing and, just as important, stronger penalties and new enforcement strategies.

**Funding**

While funding increases alone are not enough to guarantee effective public enforcement, current agency staffing levels clearly do not suffice to deter violations of U.S. employment and labor laws. For example, Ji and Weil (2010) estimate there is only a 0.008 probability that a national fast food chain restaurant will be inspected by a wage and hour investigator in a given year. Similarly, given OSHA’s current staffing levels, it would take the agency 129 years to inspect each workplace under its jurisdiction just once (AFL-CIO 2011). These are estimates for federal resources; resources for enforcing state-level laws are lower and often nonexistent (Schiller and DeCarlo 2010). In short, substantial increases in enforcement agency budgets are needed; even a 50 percent rise in the number of wage and hour investigators would only make up the ground that was lost over the past several decades, never mind meeting the growing need.

**Penalties for Violations**

Current penalties for workplace violations are far too modest, and enforcement agencies often do not even pursue the maximum amounts allowed under law. As a result, employers might easily calculate that their potential gains from paying less than the minimum wage outweigh the costs of getting caught. For example, Weil (1995) estimated that for a typical apparel contractor, the potential cost of not complying with minimum wage and overtime laws was $121, compared with a potential benefit of $12,205. In the case of OSHA, there is no incentive for employers to address hazards, much less develop precautionary health and safety programs. OSHA penalties are generally regarded as some of the weakest in employment law, and criminal penalties are rarely pursued, even in cases where workers have died as the result of violations. Estlund (2005) reports that the maximum fine for a serious OSHA violation is $7,000 and for a willful violation is $70,000, compared to more significant fines for violations of the Clean Water Act that go up to $250,000 per day. In short, in order to better ensure compliance and deterrence, enforcement agencies need to fully pursue the maximum penalties for workplace violations. And even more important, those penalties need substantial strengthening at both the federal and state levels.

**Proactive Enforcement and Partnering with Stakeholders**

Enforcement of workplace laws in the U.S. is typically described as passive and complaint-driven: agencies wait for workers to come with complaints, and then investigate (Ruckelshaus 2008). But relying on workers to come forward with cases of violations is not enough; the threat of employer retaliation is too great to depend on individual workers to carry the weight. Enforcement agencies need to take the initiative, proactively identifying industries where workplace violations are systemic and conducting strategic, repeated, and unannounced
workplace audits. The goal is to send industry-wide signals that there is a tangible likelihood of inspection and that the government will pursue violations, even if workers are dissuaded from filing complaints.

But even if they substantially increase their staffing, government agencies alone will never have enough resources or expertise to monitor each and every workplace in the country. One critical way to increase the reach and effectiveness of enforcement is to partner with immigrant worker centers, unions, service providers, and other community groups, as well as responsible employers that understand the need to ensure full compliance in their industry. Such partnerships can deliver vital information about common employer evasion strategies and locations where workplace violations are most concentrated. They can also help agencies gain access to established networks for worker outreach and public education (Fine and Gordon 2010).

**Protecting Immigrant Workers**

While unauthorized workers in the U.S. are theoretically covered by most employment and labor laws, it can be nearly impossible for them to exercise those rights in practice, given their lack of legal status and the very real fear of deportation. The result is that unauthorized immigrants experience significantly higher rates of workplace violations than documented immigrants (Bernhardt et al. 2009). Comprehensive immigration reform will need to tackle a wide range of policy goals, but a key element must be to guarantee equal protection and equal status for immigrants in the workplace (Gordon 2007). In addition, agencies enforcing employment and labor laws must maintain a strong firewall between themselves and immigration authorities, so that workers do not fear deportation when bringing a wage claim or workplace grievance. Without this firewall, unauthorized workers will be driven further underground - as happened in North Carolina in 2005, when U.S. Immigration and Customs Enforcement (ICE) conducted a sting operation to apprehend undocumented workers by advertising a mandatory workplace safety meeting purportedly sponsored by OSHA (Rathod 2010).

**GOOD JOBS ABOVE THE FLOOR: GOVERNMENT PAVES THE WAY**

The above agenda to strengthen and enforce basic labor standards is already daunting, but alone will not suffice to significantly improve the quality of jobs in the United States. For example, while research suggests that we can expect some ripple effects from raising the minimum wage, that increase won’t create family-supporting jobs with health and pension benefits and opportunities for upward mobility. So is there a labor market regulation agenda to grow the number of living wage jobs in the U.S. economy?

The key insight is that government's levers on the private sector are plentiful, but underused. Public money touches millions of private-sector jobs, whether by purchasing goods and services for the government or by funding the public goods that make our economy run - everything from schools and bridges to health care, education, and social services. For example, the federal government spends more than $500 billion annually on purchasing goods and services, and roughly the same amount again on grant-in-aid programs to the states. State and local governments themselves spend an estimated $50 billion a year on direct subsidies, tax exemptions, and targeted infrastructure improvements to benefit private businesses (Sonn and Gebreselassie 2009). Beyond these existent expenditures, there is the potential for significant new funding streams designed to spur growth in the green economy and to rebuild the nation’s aging infrastructure.

Government currently taps only a small amount of this leverage for creating good jobs. In response, advocates and policy analysts have been developing a broad program of legislative, administrative, and regulatory action to attach job standards and local hiring requirements to expenditures of public funds. These strategies have the potential to both improve existing jobs and raise the bar on job creation at the federal, state, and local level.

**Wage and Benefit Standards**

Federal, state, and local governments are increasingly using a range of policies – including responsible contracting, prevailing wage, and living wage – to ensure that government contracts are directed toward employers that follow the law and create quality jobs (Sonn and Gebreselassie 2009).
A timely example of this kind of policy intervention is President Obama’s recent executive order that raised the minimum wage for federal contract workers to $10.10 per hour. Though intended primarily as a political intervention in the federal debate over raising the minimum wage, this decision stands to significantly improve the wages of many federal contractors. For example, Edwards and Filion (2009) estimated that in 2006, nearly 20 percent of all federal contract workers earned less than the federal poverty level, 40 percent earned less than a living wage, and many did not receive employer-provided health benefits. Before the President’s order, a survey of federal contract workers found that 74 percent earned less that $10 an hour (Christman, et al. 2013). And an analysis of administrative data estimated that more than half a million federal contract workers earned less than $12 an hour in 2012 (Traub and Hiltonsmith 2013).

Prevailing wage laws are the most established, but they do little to promote good jobs in industries and regions that are overwhelmingly low-wage or that have limited union presence. States like California, Massachusetts, Oregon, Connecticut, and Illinois and cities like El Paso, Orlando, and Los Angeles have adopted “responsible contracting” policies that ask prospective bidders for government contracts to provide information on their legal compliance records in workplace safety, employment law, and environmental protection as well as details on wages, benefits, apprenticeship training, and use of independent contractors. Local governments then use these data to determine which bidders to select for the contracts. Similarly, more than 140 cities and one state (Maryland) have adopted living wage standards for businesses performing government contracts. These standards require or incentivize employers to provide decent wages, affordable health insurance, and other benefits such as paid sick leave.

A closely related trend is state and city policies that mandate similar standards on publicly funded economic development projects – an important expansion of the living wage strategy that significantly increases the number of jobs impacted. In exchange for tax breaks and other public subsidies, private developers are required to agree to a series of job and benefit standards. Early versions of this model were Community Benefits Agreements, legally binding contracts developed in Los Angeles between community groups, unions, and developers on specific projects, setting forth a range of requirements such as living wage jobs and affordable housing (Parks and Warren 2009). Recently, cities and states have begun to shift from project-by-project agreements to institutionalizing these requirements in city-wide policy. In some cases, city officials simply prioritize good jobs in economic development projects. The oft-cited example is Los Angeles where, as a matter of city policy under Mayor Antonio Villaraigosa, no major subsidized development project went forward without a living-wage standard. But the best strategy is to use legislation. For example, in 2010, Pittsburgh enacted a local law that guaranteed living wages for building service, food service, hotel, and grocery workers on all city-subsidized development projects, and New York City passed similar legislation last year.

These examples demonstrate that it is politically viable to mandate wage and benefit standards in government contracts and subsidy programs, and research documents positive economic outcomes. For example, Dube and Reich (2004) found that annual turnover for security screeners at the San Francisco Airport dropped from 94.7 percent to 18.7 percent when their hourly wage rose from $6.45 to $10.00 an hour under the airport’s new living wage policy.
wage policy. In Maryland, a statewide living wage policy that affected roughly two-thirds of state service contracts was found to increase wages between 13 and 25 percent, with no negative impact on the number of firms bidding for contracts (Maryland Department of Legislative Services 2008).

Significantly expanding the use of such policies at the city, state, and federal level will be one of the key strategies going forward for rebuilding the stock of good jobs in the U.S. economy. This is especially true at the federal level, where advocates are calling on the Obama administration to adopt strong, responsible contracting policies that would review bidders at the beginning of the selection process and establish preferences for employers that comply with employment and labor laws, pay living wages, and provide health benefits and paid sick days.

Local Hiring and Training

Beyond wages and benefits, a second important strategy to address growing economic inequality is to ensure that low-income communities and communities of color have access to good jobs. This has been a key focus of the Community Benefits Agreement movement, which often includes targeted hiring programs in its agreements with developers. Targeted hiring programs can take the form of percentage goals in the developers’ hiring for the project or the creation of a “first source” hiring system, in which the developer is required to interview workers from local job training centers. Targeted populations can be defined in any number of ways: residents displaced by the development, residents of low-income neighborhoods, public assistance recipients, ex-offenders, veterans, and so forth. In the case of construction jobs, community groups have worked with unions and developers to specify access to apprenticeship slots for local residents, and they have advocated for funding for pre-apprenticeship programs to get new workers up to speed (Gross 2005).

This model will be especially important in the emerging national policy discussion about the future of U.S. competitiveness. Analysts point to the decades-long backlog of infrastructure repair and upgrading of bridges, tunnels, roads, mass transit, and schools. They have also identified the need to invest in energy efficiency and in the development of green technologies and alternative energy sources. The promise – and, at this point, it largely remains a promise – is that when these projects are publicly funded via vehicles such as infrastructure banks, they could be harnessed to help bring good jobs to low-income communities and communities of color. The American Recovery and Reinvestment Act of 2009 was a small step in this direction.

Two recent examples are illustrative. Portland’s 2009 Clean Energy Works is a residential retrofitting program that integrates energy efficiency into the city’s long-term economic development strategy. The program’s Community Workforce Agreement mandates job quality measures such as living wages and hiring from designated training programs, and it provides incentives for other measures such as health insurance and labor force diversity. As of March 2011, median wages for the program’s predominantly local workers were $18 per hour, and nearly two-thirds received health benefits. Fully 84 percent of the workforce is made up of local residents, and nearly half of the work is done by people of color. This city-level program has spawned a similar state-wide initiative aimed at retrofitting 6,000 homes over the next three years, with the goal of creating or retaining 1,300 quality jobs (Christman and Riordan 2011).

In a similar vein, Los Angeles recently announced a large-scale Construction Careers Project. Over the next 30 years, the Los Angeles Metropolitan Transportation Authority plans to invest over $67 billion to improve public transit, creating more than 257,000 construction jobs in the process. The project has a Community Workforce Agreement among building trades unions and developers that sets out wage and benefits standards, and it also contains a targeted hiring program that increases access to construction jobs for local residents and low-income communities. The policy is based on similar programs developed by the Port of Los Angeles and the Los Angeles City Department of Public Works, and it is seen as a national model for other cities hoping to build a local green energy sector.
Local hiring and training policies will be critical to address the severe economic crisis that continues to grip communities of color across the country. In Milwaukee, for example, Levine (2012) reports that the employment rate for working-age black men dropped to 45 percent in 2010, the lowest ever recorded. The implementation challenge is significant (Gross 2005), however, and examples of stalled training programs and unmet hiring targets are not hard to find. The problem is that the U.S. has very little history of collaborative training and placement between government, employers, and unions, meaning that there is little institutionalized knowledge about best practices. Still, it is hard to conceive of a good jobs policy agenda that does not include a local hiring and training component on publicly funded projects, in order to gain traction on the continuing labor market exclusion of communities of color.

**Harnessing Federal Grants Programs**

A final (and less explored) source of government’s leverage on job quality resides in the care work sector. Care work industries — such as home health care, nursing homes, and child care — depend on public funding streams such as Medicaid, Medicare, and Child Care Development Block Grants. They are therefore strongly influenced by budgetary decisions made by the public sector. Analysts have long documented that the amount of public funding for these services is insufficient to meet consumer demand, or to pay a living wage for care workers (Dresser 2008). As a result, workers in these industries are some of the lowest-paid in the U.S. economy, with median wages of less than $10 an hour and chronic wage and hour violations.

In addition, the chronic underfunding of these public goods creates unregulated markets. For example, the unregulated market in home health care is by some estimates as large as the publicly funded market. Families who are not eligible for Medicaid or who have exhausted their Medicaid coverage turn to the unregulated market to hire workers directly. The resulting wage rates vary widely, and often fall below legal standards (Dawson and Surpin 2001). Another example is publicly subsidized child care, which has seen significant growth in recent years, especially in the home-based segment. Lack of sufficient funds has meant that government agencies are increasingly treating home-based child care providers as independent contractors. These workers are generally paid a flat sum based on the number of children cared for and hours worked, and in New York City, the resulting reimbursement rates often fall below the statutory minimum wage (McGrath and DeFilippis 2009).

Care work industries are among the fastest growing in the U.S. economy, and they disproportionately employ African-American and immigrant women. Public policies that address the acute job quality problem in this sector will have a significant impact on reducing economic inequality, as well as boosting the quality of the care provided (researchers have consistently shown a strong link between higher wages, lower turnover, and the quality of care that workers can provide).

There are short-term policy steps that move in this direction, based on finding more money in the existing system to pass on to workers’ wages, either by reducing the high overhead taken by home care agencies or by reducing fraud and controlling costs. This latter strategy is currently being tested in New York. But ultimately, the solution is to increase federal funding for Medicaid, Medicare, and Child Care and Development Block Grants at a high enough level to pay care workers a living wage and to meet growing demand for elder care and child care. The price tag will be steep, but the social cost of continuing to operate these programs on poverty wages is simply too high to ignore.

**THE QUESTION OF SCALE**

It would be an understatement to say that the U.S. has struggled to respond to 30 years of rising inequality and economic insecurity. Political dysfunction has played no small role, peaking with the debt ceiling debacle of 2011 and the recent government shutdown. As a result, six years after the start of the Great Recession, Washington has yet to develop anything even approaching a viable policy on job creation, never mind a policy program that addresses job quality.
Even in the best of times, it is difficult to leverage legislative, administrative, and regulatory policy to improve wages and working conditions in the United States. But in the current political context, the policy trend has actually been for legislatures to try to weaken labor standards. The last several years have seen a coordinated strategy to roll back or eliminate collective bargaining rights at the state level, beginning with Wisconsin and spreading to fourteen other states including other former union strongholds like Ohio and Michigan. There have also been multiple efforts to undermine state minimum wage and overtime laws. Four states passed laws that either weakened their minimum wage standard or its coverage (and another five attempted to do so) (Laffer, 2013). In Maine, the state legislature rescinded overtime protections for truck drivers, while the Ohio legislature considered replacing overtime with "comp time" (which would effectively deny workers access to overtime pay).

Perhaps most troubling for the future, several states have blocked the ability of cities to innovate and set their own labor standards, such as the minimum wage (Indiana and Mississippi), paid sick leave (Louisiana, Wisconsin and Florida), and anti-wage theft laws (Florida). And worth mentioning for sheer brazenness, legislation in several states weakened or attempted to weaken child labor protections (Laffer, 2013). For advocates on the ground, it has felt something like a stampede of wildebeests, trampling long-established pillars of labor market policy with abandon.

There are reasons, however, to think that a renewed commitment to strong labor standards is politically viable. First, many of the policies outlined in this article are popular with the public. Raising the minimum wage consistently polls in the 70-80 percent range, but other policies such as community control over local development and restoring the right to organize also receive significant support. Second, even as unions continue to hemorrhage membership, alternative forms of organizing have shown themselves to be surprisingly robust. The Occupy Wall Street movement is of course the signal populist event of the past several years. But while those protests opened up the public arena for robust debates about inequality, it is important to recognize that advocates in cities and towns across the country have been organizing around economic justice issues for decades.

The living wage movement is the best known, growing from a single campaign in Baltimore in 1993 to the present, where cities across the country have adopted living wage policies and where the term itself has entered the popular lexicon (Pollin and Luce 2000). Immigrant worker centers have grown from a handful of scattered organizations a decade ago to a nationwide movement with close to 200 centers and five national networks (Theodore 2011; Fine 2006). Despite the continuing anti-immigration climate, this movement scored major victories over the last three years, winning city and state anti-wage theft laws and helping to recover millions of dollars in stolen wages. And in the urban battles over economic development, low-income communities and communities of color have steadily laid down a track record of winning regional equity campaigns over the last decade (Parks and Warren 2009).

Until recently, these three movements have focused largely on winning reforms at the state and local level, and this is no accident. There is a long history of states as “laboratories of innovation” in the U.S., where progressive policy reforms are developed and tested at the state level, and then sometimes adopted by the federal government. Freeman and Rogers (2007) build on this history to make the case for a progressive federalism. In this model, policy “floors” are set at the federal level; states cannot fall below these floors, but they can build higher standards above them. The minimum wage has effectively taken on this policy structure since 1979, where federal inaction has resulted in a number of states raising their own minimum wages, which in turn has mounted pressure on federal lawmakers to follow suit. Indeed, the question of legal pre-emption – which labor standards can be set by states and especially cities and which can only be set at the federal level – has become contested political terrain, with conservative legislation and litigation challenging, for example, the right of cities to pass living wage laws.

To be clear: a state and local strategy is not inherently progressive, as demonstrated by the history of segregation in the U.S. and the conservative call for “states rights.” Nor will state and city policies suffice to address the labor market polarization of the past three decades. We need the scale of federal resources, the
breadth of federal standards, and the coordination and dissemination that only a national good jobs policy agenda can deliver.

But progressive power is built from the ground up. Given the current political environment in Washington, winning change at the national level will require ratcheting up from state and local policy victories to federal reforms, institutionalizing best practices along the way. And we should be careful not to underestimate the impact of local successes on their own terms. For example, it would be significant progress if, over the next five years, 30 states created infrastructure banks, 20 states passed stronger wage theft laws and raised their minimum wage, dozens of cities approved paid sick days ordinances; 15 states adopted clean energy standards creating demand for green jobs, and employers, unions, and workforce development agencies in cities across the country learned to implement targeted hiring and training programs.

Obviously, all of this takes political will. So the question becomes how to harness this pivotal moment where the public is focused on income inequality, and translate it into the level of power needed to win strong and inclusive labor standards in the workplace. The answer to this question has enormously high stakes for the long-term project of building a sustainable and just America.
NOTES

1. It will also be important to develop non-public resources, such as increased funding of legal services and legal aid, and to build on recent experiments by unions to leverage joint labor-management funds, such as the Maintenance Cooperation Trust Fund in California (Ruckelshaus 2008).

2. Even though a Memorandum of Understanding was recently renewed between the U.S. Department of Labor (USDOL) and U.S. Immigration and Customs Enforcement (ICE), establishing that ICE will not investigate workplaces where the USDOL is conducting a wage-related or health and safety investigation, legal advocates report that adherence with and implementation of the MOU requires ongoing monitoring and assessment.


4. In recent testimony, a former official of Los Angeles’ economic development agency reported that the city had 144 projects with a living-wage component, representing over $8 billion in private investment. The projects include the Staples Center (LA’s sports-and-entertainment complex), the Kodak Theater (host to the Academy Awards), and numerous hotels and retail projects (Spivack 2011).

5. Three states - Idaho, Ohio and Minnesota – rescinded these “right-to-work” laws by popular referendum.
REFERENCES


