

# Improve the quality of existing jobs

Ensuring that jobs provide good pay, benefits, and security is an essential component of rebuilding the middle class.

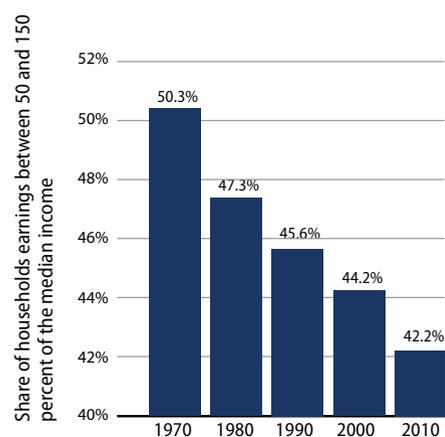
Income for the typical household has stagnated over the past few decades and has actually fallen over the past 10 years: Median income for working-age households—meaning half of the population makes more, and half makes less—fell by 1.9 percent during the supposedly good economic recovery of 2001 to 2007 and fell by another 4.6 percent during the Great Recession of 2007—2009.<sup>1</sup> Moreover, in recent decades, any income gains made by the middle class have been primarily the result of increased working hours and not higher wages, according to data analysis from the Brookings Institution.<sup>2</sup>

As a result of stagnating incomes for the middle class and rising incomes for the rich, the share of the total national income earned by the middle 60 percent of households has been declining for decades and is at its lowest level since the government began keeping track of the statistic in 1967.<sup>3</sup> What's more, the share of households actually making near the median income has been in decline for four decades, according to calculations from Alan Krueger, the chairman of the president's Council of Economic Advisors.<sup>4</sup> This means that jobs are increasingly either at the top or the bottom of the scale, with fewer and fewer jobs in the middle.

By other measures of job quality, American workers are also not faring particularly well. In the area of paid leave, for example, unlike most every other developed economy in the world, many American workers are not guaranteed the ability to stay home when sick or to take leave to care for a new baby or aging parent. Boston College's National Retirement Risk Index estimates that 51 percent of households are at risk of having an insecure retirement.<sup>5</sup>

**FIGURE 1**  
**The shrinking middle class**

The share of households earning a middle-class income has been in decline for the past four decades



Source: Alan Krueger, "The Rise and Consequences of Inequality," Speech at Center for American Progress, Washington, D.C., January 12, 2012.

There are a number of reasons that too few jobs provide for a middle-class standard of living, but a major reason is that workplace standards have failed to keep pace with economic and societal changes and no longer help balance power in the economy. To boost job quality and ensure jobs pay adequate wages and provide necessary benefits, there are a number of actions that states can take, including setting and enforcing basic minimum standards, updating policies to reflect modern realities such as the prevalence of two-earner families, and encouraging high-road business practices.

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## Ensure that working families are able to take sick leave and care for young children and elderly relatives

### Background

Millions of American workers are torn between their responsibilities to care for young children or elderly relatives, while simultaneously meeting their obligations to their employers.

American family structures have changed dramatically during the past two generations, but our employment policies have not kept pace. In the 1960s fewer than one-third of all women worked.<sup>6</sup> Women today comprise nearly half of the workers on U.S. payrolls,<sup>7</sup> and in nearly two-thirds of families with children the mother is either the breadwinner or shares that responsibility with her partner.<sup>8</sup> Less than one-third of children have a stay-at-home parent either because they live with a single parent or are in a household where all the adults work.<sup>9</sup>

Just as the participation of women in the workforce has soared in recent decades, so too has the demand for medical care for an aging population.<sup>10</sup> Millions of full-time workers have to find time to care not only for their children but for aging parents or in-laws, as well. Nearly 60 percent of the estimated 43.5 million caregivers for aging relatives in the United States also work outside the home, according to a 2009 survey by the AARP and the National Association for Caregiving.<sup>11</sup> Understandably, 31 percent of caregivers reported feeling highly stressed.<sup>12</sup> When adult children provide eldercare for their parents, their work often suffers as a result, with work hours decreasing in some cases by more than 40 percent.<sup>13</sup>

Modernized federal and state programs could go a long way toward solving this problem. But the United States falls far behind other countries in terms of paid

family, medical, and sick leave policies. Of the 173 countries surveyed for a 2007 study conducted by The Project on Global Working Families and the Institute for Health and Social Policy, 98 percent had paid maternity leave requirements, and 84 percent had paid sick day requirements—unlike the United States.<sup>14</sup> The United States remains the only advanced economy without a national paid parental leave program and is also the only such country that does not guarantee paid leave for workers when they fall ill.<sup>15</sup>

### Ensure workers receive paid family and medical leave

For some private-sector workers, the federal Family and Medical Leave Act guarantees unpaid leave for childbirth or to care for a sick family member. But the law excludes millions of workers because it only applies to employees who have worked 1,250 hours over the previous 12 months and only as long as their employer employs at least 50 workers living within 75 miles of their worksite.<sup>16</sup> Further, 78 percent of American workers who qualify for leave under the Family and Medical Leave Act say they do not take it because they cannot afford to take unpaid leave.<sup>17</sup> Currently, only 12 percent of American workers are granted paid family leave by their employer.<sup>18</sup>

States should expand on the federal guarantee of unpaid leave by ensuring that paid leave is available for all workers to care for a new child or a seriously ill family member, or to recover from their own serious illness or pregnancy.

Currently, only three states—California,<sup>19</sup> New Jersey,<sup>20</sup> and Washington<sup>21</sup>—have passed paid family leave legislation, though the program in Washington has yet to be implemented.

California's paid leave law, enacted in 2002, provides qualified employees with 55 percent of their wages for six weeks—up to a maximum weekly benefit amount of approximately \$1,000—if they are unable to work due to the illness or injury of a family member or the birth, adoption, or foster-care placement of a child.<sup>22</sup> Additionally, California has a long-standing state temporary disability insurance program that provides the same level of wage replacement for up to 52 weeks in the event of the worker's own serious illness.<sup>23</sup>

California's paid family leave law covers nearly every Californian working in the private sector. Some self-employed workers are ineligible, but nearly all private-

sector workers are covered, including nonprofit-sector employees, regardless of the size of the employer. California public employees may be covered if their agency or unit opts into the program, but most are not eligible.<sup>24</sup>

New Jersey's law, partially modeled on the California law and enacted in 2008, provides up to two-thirds of wages for six weeks. The program's maximum benefit is indexed to the average weekly wage in the state, and it is fully funded by an employee payroll tax.<sup>25</sup> New Jersey's family leave insurance program, mirroring California's, builds on New Jersey's temporary disability program, which provides up to six weeks of leave with the same level of wage replacement.<sup>26</sup> As of May 2012, four years after the law's approval, 80,000 New Jersey workers have benefited from an approved claim under the law. Most used the time provided to bond with a newborn or adopted child, but 15,000 workers reported using it to care for a sick family member.<sup>27</sup>

A review of state paid leave policies by the Center for Economic and Policy Research, however, found that the workers who were the most likely to benefit from these laws were also the least likely to know about them.<sup>28</sup> In order to increase the use of state-mandated paid leave benefits, the Center for Economic and Policy Research recommends adopting a vigorous outreach and public education campaign targeted at affected workers; lifting exemptions for public employees; increasing the payout amount so more workers can afford to take leave; and extending job protections to every worker who qualifies for leave so they know they have a job to return to following their absence.<sup>29</sup>

An additional approach available to lawmakers in states where it may be politically infeasible to pass paid family leave legislation is to extend unpaid leave to workers who do not qualify for it under the federal Family and Medical Leave Act. States can improve the federal mandate by extending unpaid leave protections to those employed by small businesses, employees with fewer hours on the job, and by requiring a longer leave period.

### Allow workers to earn paid sick days

Currently, workers in 145 different nations have the right to a paid sick day, but most workers in the United States are not legally guaranteed that right.<sup>30</sup> Nearly 40 million American workers and 81 percent of low-income workers don't have a single paid sick day available to them.<sup>31</sup> Millions more don't have the right to take paid leave to

care for a sick child or parent.<sup>32</sup> Among America's lowest-paid workers, 80 percent lose income and may risk job discipline or job loss for taking a sick day.<sup>33</sup>

The American public overwhelmingly supports the right to paid sick days. A 2010 poll by the Public Welfare Foundation found that three-quarters—fully 75 percent—of respondents favored a law providing a “minimum number” of paid sick days for all workers, and 86 percent favored a specific proposal that requires seven paid sick days annually for full-time employees.<sup>34</sup>

Without paid sick days, workers are forced to choose between going to work while ill or risking their job and losing a day's pay by staying home, which in turn can create public health risks and impose costs on everyone. During the height of the H1N1 flu epidemic in 2009, for example, 26 million workers were infected, and as many as 8 million likely went to work while they were sick, potentially infecting up to 7 million healthy Americans.<sup>35</sup> Moreover, working parents are far more likely to send their children to school or childcare sick if the parents themselves lack the right to take a paid sick day to care for their child.<sup>36</sup> Finally, all taxpayers end up paying for employers who do not provide paid sick days; if workers had the right to paid sick leave, it is estimated that there would be 1.3 million fewer visits to emergency rooms each year, resulting in savings of \$1.1 billion.<sup>37</sup>

Connecticut<sup>38</sup> and the District of Columbia<sup>39</sup> have passed landmark paid sick days legislation, as have major cities such as Seattle and San Francisco. Connecticut's law requires each employer with 50 or more employees to provide paid sick leave to each of their service workers at the rate of one hour of leave for every 40 hours of work, up to a maximum of 40 hours of paid leave per year.<sup>40</sup> Eligible workers must have averaged more than 10 hours per week and have worked more than 680 hours.<sup>41</sup> Employers are required to post bilingual notices alerting their workers to their rights under the law, the fact that retaliation against a worker for requesting sick leave is prohibited, and the complaint process that is available to them.<sup>42</sup>

Workers can use their sick leave to seek medical diagnosis, for care or treatment of their own illness or injury, or the diagnosis, care, and/or treatment of an illness or injury to their child or spouse. Workers are also allowed to use paid sick leave to seek preventive medical care for themselves, their child, or their spouse, or to get care or counseling if they are a victim of domestic violence.<sup>43</sup>

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## Raise standards for government contracting

### Background

State and local governments procure hundreds of billions of dollars in goods and services each year, contracting for everything from janitorial services to database management to highway construction.<sup>44</sup> Unfortunately, contracting out government functions too often resembles a race to the bottom that leads to low-quality jobs and inadequate value for taxpayers.

Many workers on state contracts, especially those in the service sector, receive lower wages and less valuable benefit packages than they would in comparable occupations in the public sector.<sup>45</sup> A review of state and local contracting practices by the National Employment Law Project finds that, “Better paid workforces typically enjoy decreased employee turnover (with corresponding savings in re-staffing costs), increased productivity, and improvements in the quality and reliability of the services that they provide.”<sup>46</sup> Consequently, taxpayers often receive low-quality work and bear additional costs through programs such as Medicaid when governments contract out services.<sup>47</sup>

While many states make some effort to attach public values to the dollars they spend on private contractors, most states miss opportunities to use the leverage they have to raise standards.

By applying best practices to government contracting, state governments can raise and uphold job standards, ensure that only law-abiding companies receive government contracts, improve the quality of services provided to the government, and prevent waste of taxpayer dollars.<sup>48</sup> Best practices include careful review of decisions to contract out; adopting wage and benefit standards; enacting and enforcing responsible contractor requirements; and employing best-value contracting.

To be properly implemented, these contracting standards should have broad applicability to all government spending, including procurements by all government agencies and other taxpayer-financed institutions such as airports and public universities. In addition, they should have strong enforcement measures, including strict penalties, adequate inspectors, up-to-date information regarding wages, and a private right of action for workers.

## Carefully review decisions to contract out

State and local governments seeking to protect taxpayers and workers and to promote quality services should begin by requiring careful review of decisions to contract out government work to the private sector. Review processes should ensure that the government contracts out only those services that public employees cannot capably and cost-effectively perform and that do not involve functions that should be performed by government for accountability or other public interest reasons.

Many governments have found that excessive use of contracting out has weakened their ability to oversee taxpayer-funded work. Contracting out also frequently results in poorer jobs for communities since many of the industries where privatization has been prevalent—such as building services, food services, and laundries—are characterized by poverty-level wages and widespread violations of basic workplace laws.<sup>49</sup>

Governments should adopt consistent procedures for determining whether it is in the public interest to contract work out and then ensure that when privatization decisions are made, the process allows for strong government oversight, stakeholder input, and accurate analysis of the benefits and costs. Important factors to consider when deciding whether to contract out work include the quality and long-term sustainability of privatized services, working conditions for contracted workers, and additional costs of contracting out such as monitoring and enforcing existing contracts, “fixing” poorly executed contracts, and providing public assistance to the workers on government contracts who receive low wages and benefits.

Few governments have developed comprehensive reforms and adequate enforcement in this area, but many are taking first steps to increase oversight and rationalize procedures when deciding whether to contract out services. The American Federation of State, County, and Municipal Employees has cataloged existing state laws to help protect workers and taxpayers from excessive use of contracting out.<sup>50</sup>

Oregon, for example, passed legislation in 2009 requiring a written cost analysis before contracting out any services valued at more than \$250,000. The legislation requires state and local agencies to demonstrate that contracting out work would reduce costs as compared to using its own personnel and resources, unless the agency “reasonably determines in writing” that using government personnel is not feasible.<sup>51</sup> The government agency is also prohibited from privatizing services if the cost analysis demonstrates that the lower wages and benefits paid by the contractor

is the sole reason why contracting out is cheaper.<sup>52</sup> Progressive state activists continue to work to ensure that these requirements are consistently enforced.<sup>53</sup>

## Adopt wage and benefit standards

Prevailing and living wage laws and project labor agreements all aim to provide wage and benefit standards for workers on government contracts. While the three are distinct policies, they share much in common and can work together to raise standards.

Living wage laws set a wage threshold to ensure that any company providing services for the government pays their workers a wage that provides a decent standard of living.<sup>54</sup> Prevailing wage laws require that contractors pay wages and benefits at least equal to the wages and benefits paid on similar projects in a local area, helping to ensure that workers will benefit from government contracts and that contracting does not drive down wage and benefit standards.<sup>55</sup> Project labor agreements are comprehensive prehire agreements that establish the wage and benefit rates, as well as other terms and conditions of employment such as the site work schedule and training requirements.<sup>56</sup> These agreements apply to specific construction projects, usually large public-works projects, to ensure an adequate supply of skilled workers and to minimize coordination problems among various employers.

Maryland is the first and only state to pass a living wage law, enacted in 2007 (though more than 120 localities have passed such standards).<sup>57</sup> Maryland's living wage is indexed to annually increase with the Consumer Price Index and has two wage tiers that reflect the significant cost-of-living differences between large urban jurisdictions and rural ones.<sup>58</sup>

The first state prevailing wage law was passed more than 100 years earlier in Kansas in 1891.<sup>59</sup> Since then 31 other states have enacted similar legislation. States such as Connecticut, New Jersey, and New York have extended prevailing wage laws—long used to protect contracted construction workers—to low-wage service-sector contractors.<sup>60</sup>

The third policy—project labor agreements—has been promoted by state law since 1994, when an executive order encouraging their use of was first signed by the then-governor of Nevada. In 2003 Illinois's governor issued an executive order committing the state to using project labor agreements on state-financed projects following a determination that such agreements were in the interest of the state.<sup>61</sup>

In 2011 Illinois lawmakers passed H.B. 2987, which largely codified the previous executive order, as well as established a goal for the number of apprenticeship hours on a project and the number of work hours to be performed by minorities and women.<sup>62</sup> And in 2006 New York’s governor issued Executive Order 29 to encourage the use of project labor agreements, explaining that such agreements would help the state in “obtaining the best work possible at the lowest possible price” and “preventing favoritism, improvidence, fraud and corruption in the awarding of public contracts.”<sup>63</sup> That executive order was adopted by the subsequent administrations.<sup>64</sup>

Critics claim that these types of policies drive up costs, but the majority of studies show that this is not the case. Prevailing wage laws, for example, have little or no effect on net costs of contracting to the state.<sup>65</sup> Moreover, any higher wage costs associated with these policies can be offset by reduced turnover and higher-quality work with fewer delays and cost overruns.<sup>66</sup>

Further, these laws have been found to improve the competitiveness of government contracting. An official state study of Maryland’s living wage law found that the average number of bids per contract increased nearly 30 percent after the law was passed, and nearly half of contracting companies interviewed by state researchers said that the new labor standards encouraged them to bid on contracts because it “leveled the playing field.”<sup>67</sup>

### Enforce responsible contractor requirements

State and local governments have sought to improve the quality of their contractor pools over the past decade by instituting more rigorous screening of prospective vendors. Their aim is to do a better job of weeding out companies with histories of committing fraud, wasting taxpayer funds, violating workplace laws and other important regulatory protections, or lacking the proper experience and licensure. States and localities have found that adoption of such programs—often termed prequalification or responsible bidder programs—result in higher-quality and more reliable services; increased competition among responsible contractors; reduced project delays and cost overruns; reduced monitoring, compliance, and litigation costs; and stronger incentives for compliance.<sup>68</sup>

Best practices incorporate a front-end prescreening process before selection of a winning bid—a more reliable approach than a responsibility review conducted

only for the lowest-cost or presumed winning bidder. This prescreening should involve a review of the bidders' legal compliance, financial records, and proof of insurance, licensing, and certification statements proving that the companies have the qualifications to succeed.<sup>69</sup>

Many states, including California, Illinois, New York, and Oregon, as well as major cities such as Los Angeles and New York City, have responsible contractor policies.<sup>70</sup> Among the best policies is the one used in California, where its Department of Industrial Relations has developed a model prequalification questionnaire that is used by several state agencies for public works contracts.<sup>71</sup>

### Employ best-value contracting

The practice of lowest-responsible-bidder procurement—the traditional method of determining which bidder wins the right to a public-works contract—is often ineffective at delivering projects on time and on budget. In lowest-responsible-bidder procurement, once the procurement officer determines which contractors are considered responsible, the officer is only allowed to compare the bidders on the basis of lowest cost rather than consider other factors that may impact the value taxpayers receive such as the contractors past performance or technical expertise.

An alternative approach to procurement—often called best-value contracting—evaluates contractors based on a range of performance factors rather than just price. Best-value contracting is widely used in federal contracting, as well as in Pennsylvania and several other states. In 2001, the U.S. Navy released findings showing that when compared to lowest responsible bidder (or “low bid”) contracting, best-value contracting produced better quality products in less time and at lower costs.<sup>72</sup>

In Pennsylvania, the state's best-value contracting law allows a team of professionals to assess each bidder based on multiple ranking factors,<sup>73</sup> including price and technical qualifications such as past performance, staff qualifications, and safety. States could also adopt the practice to evaluate the workplace practices of contracting companies in a best-value review—El Paso, Texas, for example, evaluates whether a company imposes health care costs on the government by failing to provide coverage for its workers.<sup>74</sup>

Maine's H.B. 1167, passed in 2011, authorized its Department of Transportation to use either best-value or low-bid contracting within their procurement require-

ments.<sup>75</sup> Likewise, Minnesota’s statute allows its transportation department to use best-value contracting, as does Texas, while Vermont’s law allows either best-value or low-bid.<sup>76</sup> New Jersey’s “competitive contracting” laws empower municipalities and towns to evaluate bidders on a range of performance factors such as technical, management, and cost-related criteria.<sup>77</sup>

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## Raise the minimum wage

### Background

When President Franklin Delano Roosevelt proposed passing a federal minimum wage law, his goal was to establish a wage floor that would not only reward work and protect workers from exploitation, but that would also spur the economy by increasing consumer purchasing power. President Roosevelt insisted the goal was not to keep workers at “a bare subsistence level” but rather to be “living wages” that would provide “the wages of a decent living.”<sup>78</sup> In his message to Congress in 1937 urging the passage of the law, Roosevelt emphasized the economic development that would follow from hiking “the purchasing power of industrial workers,” which would “strengthen and stabilize the markets for the farmers’ products.”<sup>79</sup>

At its current rate of \$7.25 per hour,<sup>80</sup> the federal minimum wage not only fails Roosevelt’s standard of providing “the wages of decent living,” it often fails to provide even a bare level of self-sufficiency for workers and their families. A full-time minimum wage worker makes just more than \$15,000 per year—that’s more than \$8,000 below the poverty line for a family of four.<sup>81</sup> All totaled, 10.5 million Americans are now among the working poor—persons who spent more than half the year in the labor force but whose incomes still fall below the official poverty level.<sup>82</sup> In no state in the nation can a full-time worker earning the minimum wage afford even a two-bedroom apartment at fair market rent.<sup>83</sup>

Sadly, the real value of the minimum wage has declined sharply during a period of increased worker productivity. Over the past four decades, workers have become far more productive, making their employers far wealthier, yet they have not shared in that prosperity. In fact, since 1968 the inflation-adjusted value of the minimum wage has declined by 31 percent, while productivity (measured as output per hour of work) has increased by 123 percent.<sup>84</sup>

Fortunately, states are allowed raise their minimum wage above the federal standard—and by doing so, would realize multiple benefits. Raising the minimum would lift workers out of the ranks of the working poor and closer to self-sufficiency, along with boosting the wages of higher-earning workers through a spillover effect.<sup>85</sup> Further, research shows that additional dollars added to the paychecks of minimum-wage workers tend to be spent quickly in the local economy and produce a multiplier effect that boosts local economies.<sup>86</sup> An increased minimum wage would also help our economy by increasing productivity through higher morale and effort, as well as reducing turnover.<sup>87</sup> Raising the minimum wage would also lower the number of low-wage workers, which in turn reduces demand for public assistance.

Finally, this reform would receive broad popular support—supermajorities of voters routinely express their support for significant increases in the minimum wage.<sup>88</sup>

Opponents commonly argue that minimum wage increases benefit teens and part-time workers that do not rely on these jobs to support their families, but research shows only 12 percent of workers fit this description.<sup>89</sup> In fact, 80 percent of minimum-wage workers are older than 20,<sup>90</sup> 64 percent are women,<sup>91</sup> and 78 percent work at least 20 hours per week.<sup>92</sup> Contrary to other common arguments cited by opponents, raising the minimum wage does not reduce job opportunities, even during periods of high unemployment.<sup>93</sup>

### Raise, index, and expand the minimum wage

In order to ensure that the minimum wage works best, states should do three things: raise the minimum wage, index the rate so that inaction doesn't decrease its value, and broaden its coverage.

Nineteen states and the District of Columbia had a higher minimum wage than the federal rate, the highest being Washington state, which increased its minimum wage to \$9.19 per hour on January 1, 2013.<sup>94</sup>

Indexing the minimum wage not only ensures that workers do not lose purchasing power over time, it also provides employers with predictability in their budgeting and ensures that minimum-wage policy is separated from cyclical politics, which creates pressure to raise it as each election year approaches.<sup>95</sup>

Ten states—including Arizona, Colorado, Florida, Missouri, Montana, Nevada, Ohio, Oregon, Vermont, and Washington—now index their minimum wage.<sup>96</sup> Oregon and Washington, for example, index their rate to inflation as measured by the U.S. City Average Consumer Price Index for All Urban Consumers.<sup>97</sup> Another beneficial approach would be to index the wage to one-half the average wage of a state or the nation to ensure that living standards rise as the economy grows, rather than merely keeping pace with inflation.<sup>98</sup>

States should index the rate only as a companion to or after raising the base rate. Indexing the rate when it is at a low level may produce the unintended consequence of locking in the rate at that level by reducing the political appetite for increasing it.<sup>99</sup>

Finally, states should expand coverage to other workers who are allowed to be paid less than minimum wage. The federal minimum wage for tipped employees—which includes waiters and waitresses, bussers and other restaurant employees, nail salon workers, bellhops, and parking attendants—is only \$2.13 an hour and has not increased since 1991.<sup>100</sup> Seven states (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington), however, require tipped employees to be paid 100 percent of the state minimum wage, while Illinois requires 60 percent, and New York and Connecticut require around 70 percent.<sup>101</sup>

Many other workers, including those who provide home care to the elderly or disabled, also are exempt from the federal minimum wage. Dozens of states have laws addressing these exemptions,<sup>102</sup> including Massachusetts, which has a model law ensuring home care workers are paid the minimum wage.<sup>103</sup>

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## Protect workers from wage theft and discrimination

### Background

Employers should not be able to cheat workers out of wages that are due to them or discriminate against them because of employment status, personal financial difficulties, their sexual orientation, or because they are pregnant.

Unfortunately, several relatively widespread practices prevent millions of workers from receiving the wages and benefits they are owed. An estimated 10 percent to 30 percent of employers wrongly claim their employees are independent contractors,

for example.<sup>104</sup> This practice renders workers ineligible for overtime pay protections, forces them to pay additional taxes for Social Security and Medicare that are the employer's responsibility, and leaves workers without coverage under laws regulating health and safety, family and medical leave, and antidiscrimination and labor.<sup>105</sup>

Fully two-thirds of low-wage workers reported at least one pay-related violation in their previous work week—including one-quarter of workers who were paid less than minimum wage and three-quarters who were not paid the overtime wages owed to them—according to a 2009 study by the Center for Urban Economic Development, National Employment Law Project, and the Institute for Research on Labor and Employment surveying 4,500 workers.<sup>106</sup>

Some employers also discriminate against unemployed workers and those with low-credit scores, preventing qualified job seekers from gaining employment. A four-week review of national job-listing websites by the National Employment Law Project in 2011 found more than 150 job postings that explicitly discouraged the unemployed from applying for jobs.<sup>107</sup>

Finally, far too often employers discriminate against gay<sup>108</sup> and transgender workers and refuse to accommodate pregnant women, making it difficult for them to remain in the workplace. According to the Williams Institute on Sexual Orientation Law and Public Policy, 15 percent to 43 percent of gay and transgender workers have experienced some form of discrimination on the job.<sup>109</sup>

These kinds of practices hurt those who are directly affected, depriving them of income and career-advancement opportunities and driving down wages for other workers. This law-breaking shortchanges taxpayers and harms law-abiding businesses that are forced to compete with unscrupulous businesses.

States are responding to these issues with an array of strategies to protect workers on the job. There are strong laws on the books in many states, but these laws need to be accompanied by adequate resources for enforcement so that workers are informed of their rights in the workplace, are encouraged to report violations, and are afforded whistleblower protections to guard against employer retaliation.

## Prevent wage theft

Too often workers—especially low-wage workers but also many in the middle class—are paid less than they are legally owed in violation of minimum wage, overtime, and other laws. Wage theft often occurs when employers pay workers under the table at rates below the minimum wage. Additionally, low-road employers that are willing to break wage laws also frequently commit payroll fraud by misclassifying their employees as independent contractors. This tactic can save bad-actor employers as much as 30 percent of payroll and related taxes, and puts competitors who obey the law at a competitive disadvantage.<sup>110</sup>

The National Employment Law Project has summarized the research on wage theft,<sup>111</sup> but even surveys by the U.S. Department of Labor highlight major problems—finding, for example, that 50 percent of restaurants in Pittsburgh, 74 percent of day care centers in Georgia, 50 percent of nursing homes in Louisiana, and 38 percent of hotels and motels in Reno, Nevada, violated wage and hour laws.<sup>112</sup>

To address this type of abuse, states such as New York,<sup>113</sup> California,<sup>114</sup> and Massachusetts<sup>115</sup> have some of the strongest wage-theft laws in the country. Legislation in New York, for instance, has helped recoup nearly \$3 billion in lost worker wages and recapture hundreds of millions in lost state taxes.<sup>116</sup> More states are also taking action to improve enforcement of wage laws. Delaware passed a law that makes the names of employers who misclassify workers available online,<sup>117</sup> and Louisiana enacted legislation to protect temporary workers from misclassification.<sup>118</sup> Yet most state laws are far too weak: The Progressive States Network recently surveyed wage-theft prevention laws in 50 states, and found that 44 states did not deserve a passing grade.<sup>119</sup>

The AFL-CIO has identified a comprehensive strategy states can adopt to combat wage theft.<sup>120</sup> Ideal wage-theft legislation would:

- Require employers to provide workers with clear notices informing them how much they will be paid, when they will be paid, who the employer is or employers are, including any names under which the employer does business, and the employer's contact information
- Require employers to maintain thorough and accurate payroll records

- Require employers to pay at least the minimum wage (or any required higher wage such as a living wage or prevailing wage requirement) and any applicable overtime
- Empower the state’s commissioner or secretary of labor or the state department of labor equivalent to enforce the law
- Allow affected workers to file complaints regarding violations of the law or bring a suit in civil court and provide for attorney’s fees for these actions
- Provide for immediate protection of workers from employer retaliation
- Include sufficiently strong civil and criminal penalties to provide a deterrent effect
- Specifically address employee misclassification by establishing a task force to study the prevalence and effect of misclassification; create a presumption of “employee” status and adopt objective tests to determine employment status; target industries with rampant misclassification problems; increase penalties for misclassification; and allow harmed parties to recover civil penalties or other monies owed to them<sup>121</sup>

Finally, states need adequate resources to enforce wage and hour laws. According to a nationwide survey, states have the equivalent of one wage and hour inspector for every 146,000 workers. Most states have fewer than 10 inspectors for all their worksites.<sup>122</sup>

### Ban employment discrimination against the unemployed

Sadly, the very fact that an applicant is unemployed is frequently cited as a reason that employers do not offer positions to qualified job applicants. Worse, many employment ads specifically state that unemployed candidates should not apply for the advertised position. A four-week review of national job-listing websites by the National Employment Law Project in 2011 found more than 150 job postings that explicitly discouraged the unemployed from applying for jobs.<sup>123</sup> Yet 63 percent of the public supports a ban on discrimination against the unemployed, according to Hart Research.<sup>124</sup>

Rep. Rosa DeLauro (D-CT) and Sen. Richard Blumenthal (D-CT) introduced the Fair Employment Opportunity Act (H.R. 2501, S.1871) in 2011 to ban such

discrimination,<sup>125</sup> and a similar prohibition on refusing to consider applications from unemployed workers was included in the American Jobs Act of 2012.<sup>126</sup>

Several states have taken action to protect the rights of the unemployed. In April 2011 New Jersey became the first state to prohibit in job advertisements language saying employers will not accept applications from unemployed applicants,<sup>127</sup> and Oregon has passed similar legislation.<sup>128</sup> Employers, however, are still allowed to consider job status in hiring decisions.

In 2012, 16 states and the District of Columbia introduced legislation to ban employment discrimination based on employment status.<sup>129</sup> The District of Columbia, which passed legislation in 2012,<sup>130</sup> not only bans discriminatory language in advertisements, but also prohibits the actual discrimination in employment itself.<sup>131</sup> The National Employment Law Project has drafted model legislation—the Fair Chance for Employment Act—that states can use to address the issue of employment status discrimination.

### Ban credit-check discrimination in employment

Credit checks have been run for years on applicants for jobs in which employees would have access to large amounts of cash, valuable merchandise, or confidential information. More recently, however, many employers hiring manual laborers, teachers, mechanics, entry-level service positions such as servers and cashiers, and gym trainers are also conducting credit checks, according to the AFL-CIO.<sup>132</sup> A survey by the Society for Human Resource Management found that 60 percent of employers conduct a credit check for at least some open positions.<sup>133</sup>

Also, many workers have fallen behind on their bills due to persistent high unemployment following the Great Recession. They may have a diminished credit score but have a history of being successful employees. Further, many individual credit scores have inaccuracies: A 2007 survey by pollster Zogby study found that 37 percent of consumers found faulty information on their credit reports.<sup>134</sup> Yet state laws allow credit reports with inaccurate or meaningless information to exacerbate high unemployment.

In 2012 at least 40 bills to ban credit-check discrimination in 20 states were introduced or pending.<sup>135</sup> Seven states have passed limits on employers' use of credit information in employment, including California, Connecticut, Hawaii,

Illinois, Maryland, Oregon, and Washington.<sup>136</sup> Additionally, model legislation is available from the AFL-CIO,<sup>137</sup> and particularly strong legislation was introduced in New York in 2011.<sup>138</sup>

### Protect gay and transgender workers from workplace discrimination

Nearly 9 out of 10 Americans mistakenly believe it is illegal under federal law for a worker to be fired for being gay or transgender, but this type of discrimination is perfectly legal under federal law.<sup>139</sup> States have the power to protect gay and transgender people from workplace discrimination, but most states still do not have nondiscrimination laws based on sexual orientation and gender identity. Under current state laws, it is legal to fire someone based on sexual orientation in 29 states and based on gender identity in 34 states.<sup>140</sup>

Without a clear federal law in place barring this type of discrimination in the hiring and firing of gay and transgender workers, states should work to pass their own laws that include sexual orientation and gender identity as a protected class. A number of states—including Connecticut, Hawaii, Massachusetts, and Nevada—took action to expand their workplace discrimination laws to cover transgender workers in 2011.<sup>141</sup> In Nevada, Republican Gov. Brian Sandoval broke ranks with most Republican state legislators by signing into a law a measure to protect transgender workers from discrimination.<sup>142</sup>

### Protect the rights of pregnant women in the workplace

Approximately 75 percent of women who enter the workforce will become pregnant at some point during their employment,<sup>143</sup> so state laws need to protect the rights of pregnant women in the workplace. Women should be able to request reasonable accommodation for pregnancy and related medical conditions without having to worry about dismissal or demotion. Unfortunately, the outdated federal Pregnancy Discrimination Act is more than 30 years old and does not guarantee that right.<sup>144</sup>

Rep. Jerrold Nadler (D-NY) has introduced legislation in Congress to protect the right to ask for reasonable accommodation,<sup>145</sup> but states should pass this legislative protection, as well. Seven states—Connecticut, Hawaii, Louisiana, California, Alaska, Texas, and Illinois—now explicitly require certain employers to provide reasonable accommodation to pregnant employees.<sup>146</sup> California's

law may be the broadest—providing for reasonable accommodations, transfers, and leave for pregnant workers—and has been described as a model of success in the 12 years it has been in place.<sup>147</sup>

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## Protect unemployment insurance and use it to avoid layoffs

### Background

Unemployment insurance is critical for working families and the American economy during hard times. The program helps cushion the blow of a job loss for workers who lost their jobs through no fault of their own, and helps fight recessions by allowing unemployed workers to continue to spend money on essentials when the economy needs more demand. In 2009 alone, unemployment benefits prevented 3.3 million families from falling into poverty, and studies by economists estimate that unemployment benefits reduced the gap in economic output caused by the Great Recession by about one-fifth.<sup>148</sup> These accomplishments are impressive, considering the average unemployment benefit in 2010 and 2011 was only about \$300 a week.<sup>149</sup> Clearly, unemployment insurance is a vitally important program that has tangible benefits for our economy.

Unfortunately, the unemployment insurance system is on shaky ground. Years of a declining tax base have denied the system an adequate source of revenue. State unemployment insurance systems were underfunded before the onset of the recession, but the high levels of unemployment and weak labor market recovery has strained the system. Many states have depleted their trust funds and have had to borrow from the federal government in order to continue paying out benefits. As of December 2012, 19 states plus the U.S. Virgin Islands were borrowing funds to cover unemployment benefits, and many others have borrowed previously.<sup>150</sup>

The federal government and the states run the unemployment insurance system together. Any comprehensive plan to reform the system therefore requires federal legislation.<sup>151</sup> States, however, can take the steps profiled below to protect unemployment insurance and put it on a sustainable funding path. Moreover, states should modernize program rules to provide fair and adequate benefits and use unemployment insurance to avoid layoffs and reduce unemployment during recessions.

## Index the taxable wage base

States should raise and then index the wage base subject to state unemployment taxes to the average annual wage in the state. Unemployment benefits are financed by taxes on employers that are levied on a portion of employees' wages. The wage base is set by law, and the unemployment tax can only be applied to wages up to that amount. Increasing the taxable wage base would allow states to raise more revenue without increasing the tax rate.

The federal government sets a minimum taxable wage, which has not been raised from its current level of \$7,000 per employee since 1983.<sup>152</sup> States cannot set their taxable wage level below \$7,000 but are free to set it above the federal minimum. Only two states—Arizona and California—have not raised the taxable wage level above the federal minimum of \$7,000.<sup>153</sup>

We recommend states set their taxable wage base to \$19,055 or higher, and then index its growth to the growth of average annual wages. This wage base would be roughly the same share of the average wage as the current wage base was in 1983.<sup>154</sup>

This would also bring states closer to the average taxable wage base of states that have built up trust funds and are prepared for the next recession. The National Employment Law Project has found that states with trust funds that meet recommended solvency levels have an average taxable wage base of \$18,669 compared to states that are insolvent or near insolvent, which have an average taxable wage base of \$11,350.<sup>155</sup>

Indexing the wage base to the growth of the average wage in the state so that it would adjust upward automatically as the average wages increases would ensure that the state has a tax base that adequately funds the program. Currently 14 states have tax bases that are set as some percentage of the average wage, while four others have flexible tax bases linked in some other way to the average wage.<sup>156</sup> In states that link the tax base to a percentage of the average wage, the percentage ranges from 46.5 percent to 100 percent.<sup>157</sup> Hawaii and Idaho currently set the wage base at 100 percent of the average wage.<sup>158</sup>

These automatic increases to the tax base have helped these states with keep their trust funds well-funded. According to analysis by the Government Accountability Office, states with a flexible tax base have higher annual average reserve ratios for their trust funds and fewer instances of trust fund insolvency.<sup>159</sup>

### Adjust maximum and minimum tax rates to ensure trust funds are adequately prepared for a severe recession

States should set their unemployment tax schedules so that maximum and minimum rates are adjusted at times of trust-fund underfunding in a manner that emphasizes experience rating.

State unemployment taxes are “experience rated,” meaning an employer’s history of laying off workers determines their tax rate. The theory behind this design is that employers should have to contribute toward the benefits for workers they lay off. Companies that lay off large numbers of workers are burdening the resources of a state by increasing the number of workers collecting unemployment benefits. A higher tax rate for these companies discourages large layoffs, as the firm faces a higher tax rate later.<sup>160</sup>

States, however, have minimum and maximum tax rates that limit the range of the experience rating and how much the state collects. A low maximum rate will limit tax liability for companies that layoff large numbers of employees and burden the unemployment insurance system. A high minimum tax increases taxes for employers that have sterling records. These limits can be adjusted to help increase revenue flowing to the state trust fund so it can pay out benefits through a severe recession.

All states have provisions to increase revenue when their trust funds are not adequately funded, but the increased revenue doesn’t necessarily come from increasing unemployment tax rates, and the changes do not necessarily emphasize experience rating.<sup>161</sup> Many states have solvency adjustments that are added on to employer contributions via the unemployment tax. When the rates are changed, they often mitigate the effects of experience rating. When Montana’s trust fund is underfunded, for example, the state increases the minimum rate, hitting firms that withdraw less from the trust, while keeping the maximum rate constant.<sup>162</sup> In contrast, states such as New Hampshire, Rhode Island, and Missouri raise the maximum tax rate by much more than they raise the minimum rate, if they raise it at all.<sup>163</sup> These schedules increase revenues to help trust funds in a way consistent with experience rating.

## Close legal loopholes that allow firms to unfairly lower their unemployment tax rates

Because unemployment tax rates are based upon the history of layoffs by a specific employer, firms have an incentive to reduce their overall burden on the state unemployment insurance system. One way firms can do this is to minimize the number of workers they lay off when the business is in economic trouble. Firms have found ways to reduce their experience rating, however, without changing their practices. They do this by acquiring other firms, transferring their payroll to the new shell firm and then firing workers from the newly acquired firm. This practice is known as “SUTA (State Unemployment Tax Act) dumping,” and helps reduce the unemployment tax rate for the original firm.

SUTA dumping was addressed in part by a 2004 law signed by President George W. Bush, but the law has several flaws.<sup>164</sup> A major gap was that the law did not include the use of professional employee organizations as a form of SUTA dumping. When a company uses such an organization, it sells part or all of its workforce to the organization, which can then fire workers. Because the professional employee organization and the original firm are not considered to be under the same control, the experience rating for the firing of the workers goes toward the professional employee organization’s history and not that of the original firm. The original firm then has a much lower rate than it would have had if it laid off the workers itself. Michigan, Minnesota, North Dakota, Pennsylvania, and Washington state all considered including the use of professional employee organizations in the definition of SUTA dumping when they passed laws to comply with the federal law, but as yet none has done so due to strong industry opposition.<sup>165</sup>

## Eliminate waiting week requirements

State governments should eliminate so-called waiting week requirements, which make laid-off workers wait until their second week of unemployment to begin collecting benefits and often deny unemployed workers their first week’s benefits entirely.

When the unemployment insurance system was originally created, state agencies required time to manually process claims. Information technology, however, has advanced considerably, and states can process applications in a much shorter time than previously was possible. In states that have waiting weeks, the unemployed worker only receives the first week of benefits if they reach the end of the period

they can collect unemployment benefits without getting a job. Since many workers do not reach the end of their benefit period, workers therefore are denied a week of benefits.

Eliminating waiting weeks would allow workers to immediately start receiving benefits from the unemployment insurance system. Proponents of these waiting periods claim that these weeks save money for the state and that newly unemployed workers are those who can best handle a week less of benefits.<sup>166</sup> Unfortunately, workers “get no waiting week on their mortgages, utility bills, or credit card statements,” as the National Employment Law Project points out.<sup>167</sup> Furthermore, states can strengthen the finances of their unemployment insurance trust funds without reducing benefits for workers.

As of 2011, 13 states did not impose a waiting week.<sup>168</sup>

### Use short-time compensation programs to avoid layoffs

Short-time compensation programs are one approach to avoid layoffs and reduce unemployment during a recession. At times of low labor demand, these programs provide employers with the option of retaining all workers but reducing their weekly hours instead of laying them off. Workers are then allowed to keep their jobs, and all workers can also collect partial unemployment compensation to ensure that they do not lose income from their reduced hours.

This policy helps boost employment by spreading out work hours among a greater number of people while keeping pay constant. If workers’ purchasing power is held constant even as they work fewer hours, then more total people will be employed in the economy. Estimates indicate that each dollar spent on short-time compensation produces a \$1.70 boost to the economy.<sup>169</sup> Furthermore, work sharing can also benefit overburdened workers and help struggling employers reduce costs, while maintaining morale and retaining valuable employees so that companies can more easily ramp up production when the economy improves.

Twenty-three states and the District of Columbia have short-time compensation programs,<sup>170</sup> but most are smaller and not as well-used as they could be, and are far less developed than programs in other countries. During the Great Recession, for example, Germany managed to expand participation in its short-time compensation program from 50,000 participants to 1.46 million in 2009, partly by extend-

ing to 24 months the maximum length a worker can participate in a short-time compensation program.<sup>171</sup> Washington state and Rhode Island ramped up participation dramatically during the Great Recession of 2007–2009, with an average of 4,000 people per week claiming benefits in Rhode Island, which prompted one employer to call the program “a lifeline.”<sup>172</sup>

To maximize its impact, a 2011 report from the Big Ideas for Jobs project of the University of California, Berkeley recommended that an ideal short-time compensation program disseminate information about the program to employers and workers, ensure that the program is easy to implement at the onset of a recession, treat the payment of benefits as noncharged benefits in the experience-rated unemployment system, and segregate short-time compensation benefit payments from regular unemployment benefits.<sup>173</sup> California also places no limits on the number of weeks a worker can receive benefits from a short-time compensation program, although they do limit the total benefits an employee can receive.<sup>174</sup> Additionally, most states limit the number of weeks an employer may operate a short-time compensation plan, but New York, for example, has no limit.<sup>175</sup> Moreover, these time-period limits can be different, as the number of weeks a worker receives benefits can be shorter than the number of weeks an employer can run a program.

Following passage of the Middle Class Tax Relief and Job Creation Act of 2012 (also known as the payroll tax cut extension), the U.S. Department of Labor offered guidance to states, including the new definition of short-time compensation used in federal unemployment compensation law, and is expected to release model state legislation in the near future.<sup>176</sup> The Center for Economic Policy and Research estimated that states with short-time compensation programs could save \$1.7 billion through reduced unemployment and unemployment insurance costs over three years if they take advantage of the act’s provisions.<sup>177</sup>

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## Boost retirement security

### Background

Far too many Americans lack adequate retirement savings. Social Security, of course, provides an essential baseline of income for retirees and must be strengthened to ensure that it continues to do so for generations to come, as American Progress has already proposed.<sup>178</sup> But Social Security was never intended to be the

sole source of income for retirees. As a result, there is a significant role for states to play in boosting retirement security for their residents by shoring up workplace retirement savings plans.

Currently, private and employer-based retirement savings plans are failing to provide an adequate supplement for far too many Americans. The typical near-retirement-age worker with a 401(k) has accumulated enough money to provide a monthly retirement payment of only about \$575.<sup>179</sup> Making matters worse, less than half of all workers even have a retirement plan at their jobs, and that figure has been declining over the past few decades.<sup>180</sup>

Americans, therefore, are deeply worried about their ability to retire, with half of all workers saying they are not confident they will have enough money for retirement.<sup>181</sup> Indeed, the accounting firm Ernst & Young estimates that 59 percent of new middle-class retirees will outlive their retirement savings,<sup>182</sup> while Boston College's National Retirement Risk Index estimates that 51 percent of households are at risk of having an insecure retirement, meaning they will be unable to maintain their pre-retirement standard of living.<sup>183</sup> Similarly, researchers at the University of California, Berkeley, Center for Labor Research and Education estimate that, "Nearly 50 percent of middle-income California workers will retire at or near poverty."<sup>184</sup>

States that had expected to face increased pressure on their social services from a growing population of retirees may now face additional risk because of the inadequate retirement savings of many of those retirees. Indeed, the California State Legislature recently concluded that, "The lack of sufficient retirement savings poses a significant threat to the state's already strained safety net programs and also threatens to undermine California's fiscal stability and ongoing economic recovery."<sup>185</sup>

Compounding the problem is that a formerly solid pillar of the employer-based retirement savings framework—pension plans for state employees—are not fully funded: The average state plan is around 75 percent funded,<sup>186</sup> but there is significant variation in funding ratios, ranging from just 45 percent funded in Illinois to Wisconsin's state employee pension plan, which has remained at 100 percent funding over the past several years.<sup>187</sup> This means that in some plans, current assets are not sufficient to pay all promised benefits, which poses challenges for workers, retirees, and taxpayers.

To address these retirement challenges, states can increase retirement savings options for private-sector workers and shore up the underfunded retirement plans of public-sector workers.

## Create opportunities for more workers to save

When workers are offered convenient, safe retirement savings options, most choose to participate. Indeed, around 70 percent to 80 percent of employees participate in a workplace savings plan if they are eligible, though enrollment rates are significantly lower for low-wage workers and communities of color.<sup>188</sup> As a result, policymakers are seeking strategies to expand retirement options for private-sector workers.

The most advanced state effort to boost retirement security is occurring in California. California's S.B. 1234, the California Secure Choice Retirement Savings Trust Act, passed both chambers of the California State Legislature on August 31, 2012, and was signed by Gov. Jerry Brown on September 28 of that year. The new law will allow private-sector workers to contribute to a state-run retirement savings plan called the California Secure Choice Retirement Savings Trust. The bill, which includes a feasibility study, would require private employers with more than five employees that do not offer a retirement savings plan to offer a payroll-deposit retirement savings arrangement so that eligible employees could contribute a portion of their salary or wages to an account in the California Secure Choice Retirement Savings Program.<sup>189</sup>

The California Secure Choice Retirement Savings program would ensure that workers whose employers don't offer retirement plans will have access to a retirement plan at work—the most effective place to encourage workers to save. In addition, the plan will have several notable features that are designed to ensure savings are secure and efficiently managed. Savings will be professionally invested and maintained over a long time horizon to insure against temporary fluctuations in the markets.<sup>190</sup> To minimize expenses and maximize returns, administrative costs will be paid from earnings and limited to less than 1 percent of fund assets.<sup>191</sup>

Another option to expand savings options for private-sector workers who lack a retirement plan at their workplace is for states to create a new collective defined-contribution plan—a retirement plan that combines the best features of pensions and 401(k) programs to cut the costs of savings for retirement in half, compared to a traditional 401(k), while providing greater security.<sup>192</sup>

In recent years, related legislation to expand access to retirement savings vehicles has been introduced in at least eight other states,<sup>193</sup> and Connecticut's Joint Committee on Aging passed legislation creating an 11-member task force to study the need for a public retirement plan.<sup>194</sup>

## Shore up public-sector retirement plans

Largely because pension plan assets were dramatically reduced by the 2007 market crash,<sup>195</sup> states face a significant challenge to address the underfunding of state employee pension plans and to provide promised benefits to workers and retirees. For most states the level of shortfall does not present an immediate crisis, and therefore there is time to develop smart responses. At the current level of shortfall, the typical state defined-benefit pension plan can afford to pay at least 100 percent of benefits over the next 15 years to 20 years.<sup>196</sup>

State should address pension underfunding in the following three ways:<sup>197</sup>

- Make necessary changes to fix plan finances
- Reform plans so they are secure for the long haul
- Avoid drastic “reforms” that will actually cost more money and undermine retirement security

Relatively modest changes to existing defined-benefit pension plans such as increasing contributions from employers and workers and adjusting benefits should significantly correct much of the underfunding problem that many public pensions currently face.<sup>198</sup> Indeed, in recent years at least 43 states have cut benefits, increased contributions, or implemented both options, which will help improve plan funding.<sup>199</sup>

The exact combination of benefit and contribution changes depends on several factors, including public employees’ Social Security coverage, current benefits and contributions, and states’ human resource needs. States still want to make sure that their benefits allow them to hire the most effective employees. If benefit adjustments are unavoidable, states should seek to spread the pain between existing workers and new hires—for example, by guaranteeing already-earned benefits but not those not yet earned, as the private sector does. This has previously been suggested by Christian Weller, American Progress Senior Fellow and professor at the University of Massachusetts, Boston.<sup>200</sup>

Second, to shore up defined-benefit plans for the long haul and minimize the need to make additional contributions during hard times, states should adopt the best practices highlighted by the National Institute for Retirement Security: requiring annual contributions from employers; actuarially valuing any benefit improvement before adoption; closely evaluating cost-of-living adjustments; adopting “anti-spik-

ing” measures to prevent techniques that can result in significant pension increases for some individuals but not others; and reasonable assumptions for inflation and investment returns.<sup>201</sup> Indeed, Wisconsin’s pension plan remained fully funded over the past several years, indicating it is designed for the long haul.<sup>202</sup>

Finally, states should look very skeptically at making drastic changes to their pension plans such as converting to 401(k)-style plans, as they tend to reduce retirement security and are unlikely to save money.<sup>203</sup> A state opting to convert would need to run two retirement plans simultaneously, which would increase administrative costs and the costs of the defined-benefit plan, which would primarily be for retirees instead of for a mix of young and older workers and retirees. Converting to a 401(k)-style plan would become more expensive because a state’s investment strategy would need to become more conservative, as young workers would no longer be joining the pension plan. Any potential long-run savings from such a switch would come from providing lower benefits—something that could be done more cost-effectively by making adjustments to the existing pension plan.

Indeed, estimates of Nevada’s proposal to put new hires in a 401(k)-style defined-contribution plan showed that the state’s total pension costs would increase by approximately 10 percent.<sup>204</sup> Similarly, studies in Kentucky find that a conversion to a defined-contribution plan would increase the state’s costs for nearly two decades before taxpayers realized any savings.<sup>205</sup> Analysis of a proposed defined-contribution plan for New Hampshire finds that the reform would be “more expensive for the employees and employers than maintaining the current Defined Benefit plan.”<sup>206</sup>

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Ensure that when companies do well, workers also do well by promoting inclusive capitalism

## Background

When a company does well, so should all of its workers. American workers help the economy grow by becoming ever-more productive, but they currently receive only a small share of the wealth they help create.

Broad-based sharing programs—such as granting workers an ownership stake in a company or a share of profits based on workers’ collective performance—help ensure that workers are rewarded for the wealth they generate. These programs

not only benefit workers; research shows that firms and investors also receive tangible benefits from sharing with their employees such as increased productivity, profitability, and likelihood of company survival, as well as greater worker loyalty and effort, lower turnover rates, and a greater willingness on the part of workers to suggest innovations.<sup>207</sup> Specifically, inclusive capitalism includes everything from worker cooperatives and employee stock-ownership programs to broad-stock options and profit sharing.

Far too few companies and less than half of all American workers benefit from inclusive capitalism today—in part because companies are unaware of inclusive capitalism programs and the mutual benefits they provide. This ignorance extends to government: State governments do little to support greater adoption of broad-based sharing programs, and too often government policies unintentionally stand in the way of more sharing programs.

State government can begin to bridge this knowledge gap and encourage companies to adopt broad-based sharing programs by increasing awareness of inclusive capitalism and by providing technical assistance to private-sector businesses, providing legal protections for companies with these sorts of programs, and providing financial assistance to companies with these structures.

### Promote awareness and provide technical assistance to private-sector businesses

Inclusive capitalism programs are not always well-understood by the business community. Companies are often unaware of the benefits of empowering their workforce by sharing capital income and ownership broadly, and lack the technical knowledge to evaluate whether to adopt these programs or even how to do so.

Inclusive capitalism can provide important benefits to many small and medium-sized privately held businesses. Many business owners of the baby-boom generation, for example, must soon decide what do with their businesses when they retire. Selling to employees rather than to a competitor who may ship the company's equipment and jobs overseas is one way for these owners to preserve local jobs and the legacy of their company, yet few of these business owners know that employee ownership is an option. Small, privately held companies also are often unaware of how inclusive capitalism programs paired with strong employee involvement can improve business performance.

States should fund efforts, including establishing centers to promote inclusive capitalism and democratic workplace culture by providing education and outreach, technical assistance, and training.<sup>208</sup>

This approach builds on a successful model for increasing one type of sharing—the Employee Ownership Center. Both Vermont and Ohio have launched Employee Ownership Centers that have been successful in increasing awareness throughout the state and facilitating the conversion of small and medium-sized businesses to employee-ownership structure.<sup>209</sup> Historically, both centers have received funding from the state, but budget constraints caused the state of Ohio to withdraw its support in fiscal year 2012.<sup>210</sup>

### Designate a privileged company structure

Traditional business structures can inhibit companies from adopting inclusive capitalism policies. Chief executive officers, for example, could, in theory, be sued by stockholders if profit-making is not their sole objective,<sup>211</sup> and worker cooperatives often lack sufficient capital to leverage private financing.

State governments should enact laws that both allow businesses to more easily adopt sharing policies without fear of shareholder reprisal and that leverage capital for start-up companies.

Since 2010, 12 states have passed laws creating a new class of corporation known as a benefit corporations, which offer legal protection to owners to look beyond short-term financial gains.<sup>212</sup> By law, these companies must create a material positive impact on society; consider how corporate decisions affect employees, community, and the environment; and publicly report companies' social and environmental performance annually.<sup>213</sup> Companies applying for this status must complete an assessment that evaluates whether firms have an employee-ownership structure or offer broad-based stock, stock equivalents, or stock options to employees, among other factors.<sup>214</sup> This does not guarantee that every benefit corporation will offer inclusive capitalism programs, but it can provide a significant legal protection to companies with sharing programs.

Iowa, Minnesota, and Wisconsin have all passed laws to help cooperatives leverage capital to finance their businesses.<sup>215</sup> Most states allow cooperatives to have only one class of voting member-owners, often making it difficult for them to raise sufficient

capital to obtain loans. By allowing cooperatives to have at least two classes of members—patron and investor members—these states help cooperatives to more easily raise the capital necessary to secure loans.<sup>216</sup> This is particularly valuable during the incubation period, when cooperatives typically have difficulty accessing credit.

### Provide direct government financing and encourage private lending to companies with inclusive capitalism policies

Private lenders and even government agencies may be hesitant to provide financing to current and start-up worker cooperatives because they are unfamiliar with the company structure; fear that workers will have too much influence over governance; and are confused about who the responsible parties are in the event of a default. Although employee stock ownership plans do not share the same challenges, their unique ownership structure can preclude them from participating in government programs.

State governments should create programs to provide loans or encourage private lending to cooperatives and employee stock ownership plans. Indiana’s employee stock ownership plan “linked-deposit” program allows the state treasurer’s office to link its routine purchase of certificates of deposit from state financial institutions to companies in need of capital to complete an employee stock ownership plan transaction.<sup>217</sup> The Indiana treasurer’s office regularly invests state funds by purchasing certificates of deposit. In order to assist companies forming an employee stock ownership plan to borrow funds at a low interest rate, the treasurer purchases certificates of deposit that provide a slightly lower interest rate but in exchange requires the financial institution to reduce the interest rate on the loan made to the company.

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