



Cities and Jobs

Local Strategies for Improving Job Quality and Access

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Introduction

In spite of the extraordinarily high productivity of U.S workers, a large share of the country's workers hold bad jobs. In 2004, the value of the goods and services generated by the economy amounted to \$46 per hour of work (OECD 2005: Annex Table 2). In that same year, two out of each five workers older than 17 had jobs paying less than \$ 12 per hour and, in the vast majority of cases, providing no major nonwage benefit. These low-wage workers were not mainly teenagers without economic responsibilities, as is often claimed; most were adults, and most were married or had been married. And the low quality of their employment had deleterious consequences for their and their families' welfare: More than two-fifths of these workers lived in poor families, while about one-third lacked health-care coverage of any kind.

People in different socio-demographic groups have very different chances of landing bad jobs: 45 percent of women, 50 percent of non-whites, and 55 percent of those without any college education held jobs paying less than \$ 12 per hour in 2004, compared to 33 percent of men, 34 percent of whites, and 15 percent of four-year college graduates.¹

Making the issue even more pressing, upward earnings mobility has become much more difficult than in the past, in particular for those without high-education credentials. As a result, a substantial share of people get trapped in bad jobs for long periods of time (Andersson, Holzer et al. 2005: Ch. 4; Bernhardt, Morris et al. 2001: Chs. 6 and 7; Carnevale and Rose 2001; Connolly, Gottschalk et al. 2004; Duncan, Boisjoly et al. 1996; OECD 1997: Ch. 2; Osterman 1999:76-78).

What can cities do to improve the quality of jobs? How can cities boost the access of the disadvantaged to the good jobs available in their jurisdictions? Building from policy innovations and experiences from all around the country, we offer here a menu of city policies aimed at improving job quality and redistributing job opportunities in favor of the disadvantaged. The policies that we consider here are the following:

- Using a city's regulatory power to establish wage floors and other employment standards.
- Using a city's proprietary interests (i.e., its interests as a market participant) to establish wage floors and other employment standards, to protect workers' right to organize, and to secure good job opportunities for the disadvantaged.
- Using a city's resources and regulatory powers to help enforce federal and state employment regulations.
- Regulating domestic-employee placing agencies.
- Implementing equal opportunity employment policies and disseminating information on good-job opportunities.
- Curbing employers' practices that take advantage of immigrant workers.

We discuss them in turn.

Resources

This report refers to many city ordinances and resolutions, to proposed legislation, and to several other documents. Most of these resources can be found on-line at:

www.cows.org/citiesandjobs

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Using a City's Regulatory Power to Establish Employment Standards

In many states, cities may have the legal authority to establish wage floors and other employment standards. In what follows we discuss first the two types of wage floors — citywide and targeted minimum wages — and other employment standards that cities may be able to mandate. Next, we briefly refer to the thorny legal issues involved in determining whether a city is likely to have the powers required to impose employment standards.

Citywide Minimum Wages

Baltimore has had its own minimum wage law since 1964, when it prevailed in court over a challenge to its power to legislate on such matters (Sonn 2005: Endnt.15). This city minimum wage is set at the same level as the federal minimum wage. The District of Columbia has had its own minimum wage since 1993, and it is today higher than the federal minimum. The city's unique juridical status, however, makes this mandated wage floor more analogous to a state than to a city minimum wage. The first "regular" city to try to establish a city-wide minimum wage higher than pre-existing wage floors in its jurisdiction was New Orleans, which passed legislation to this effect in February 2002. Cities in California, New Mexico, and Wisconsin followed suit. However, the New Orleans minimum wage ordinance was overturned by the Louisiana Supreme Court shortly after its enactment, and a 2005 state law banned city minimum wages in Wisconsin. The five cities with minimum-wage laws currently in force are shown in Figure 1.²

Studies of the economic effects of minimum wages in San Francisco and Santa Fe, NM, indicate that they have achieved their purpose of substantially boosting wages at the bottom of the labor market, with negligible negative effects.³ In the case of San Francisco, a study of the restaurant industry — the industry with the greatest proportion and absolute number of minimum wage workers — showed that the introduction of a citywide minimum wage greatly reduced the share of poverty-wage workers, increased the average job tenure and the proportion of full-time workers in limited-services restaurants, and had no effect on employment growth or store closures (Dube, Naidu et al. 2005; Dube, Naidu et al. 2006; Reich, Dube et al. 2006). In this industry, the only negative effect of lifting the wage floor was a small increase in the average prices of limited-service restaurants. In Santa Fe, the city minimum wage also reduced significantly the share of people in poverty-wage jobs, without having any discernible negative effect on employment, store closures, or gross receipts tax revenues (Potter 2006; Reynis and Potter 2006; Reynis, Segal et al. 2005).⁴ In neither city has the introduction of a city-wide minimum wage led to the departure of big box retailers (Dube, Kaplan et al. 2006), an important concern of policy-makers given its potential effect on sales tax revenue.

Figure 1

Cities with Citywide Minimum Wages, May 2007

City	Minimum Wage	Planned Adjustments	Coverage	Other Specifications
Albuquerque, NM	\$6.75/hr	\$7.15/hr in 2008 \$7.50/hr in 2009	Most workers	Includes tips and commissions. Annualized health-care or child-care benefits of \$2,500+ allows employers to pay \$1/hr less.
Baltimore, MD	\$5.15/hr	Whenever the federal minimum wage is raised (the minimum wage is set to be equal to the federal minimum wage).	Most workers	Includes tips, uniforms, board, and lodging.
District of Columbia	\$7/hr	Whenever the federal minimum wage is higher than \$6/hr. (The minimum wage is set to be the greater of \$7/hr or the federal minimum wage plus \$1/hr.)	Workers in private industry; several categories of private workers are excluded	Includes tips, and permits offsets for meal costs.
San Francisco, CA	\$9.14/hr	Annually indexed to inflation.	Most workers	Includes commissions and non-discretionary performance bonuses, and permits offsets for housing and meal costs.
Santa Fe, NM	\$9.50/hr	\$10.50/hr in 2008 Annually indexed to inflation after 2008.	Workers in businesses with at least 25 employees	Includes tips, and the value of health-care and child care benefits.

Source: Prepared from city ordinances

City minimum wage legislation may have a broader coverage and include stronger enforcement mechanisms and harsher penalties for noncompliant employers than their federal and state counterparts. Baltimore’s minimum wage law, which covers all employers with two or more employees, establishes the following:

- It is unlawful for an employer to retaliate against an employee for making a complaint to the Wage Commission — the city agency in charge of enforcing the law — or for participating in any of its proceedings
- It is a violation each time an employee is not paid the required minimum wage at the time he or she is entitled to be paid.
- The Wage Commission is authorized to file a complaint against an employer, acting upon its own initiative and without any complaint from an employee, whenever it has reasonable cause to believe violations have occurred.
- The Wage Commission has the power to compel the attendance and testimony of witnesses and the production of documents relating to payroll records.

- Any employer who commits a violation of any of the provisions of the wage law is liable to pay the affected employee his or her unpaid compensation plus 10 per cent interest; to pay the city a fine for each violation, whose amount increases substantially both after the first and after the second offense; and to pay for the attorney costs employees may incur.

In the case of San Francisco, the minimum wage ordinance includes provisions that:

- Make retaliation unlawful and establish a rebuttable presumption of retaliation for any employer taking adverse action against a person within ninety days of the person's exercise of the rights protected by the ordinance.
- Authorize a city agency to investigate any possible violation of the ordinance's provisions by employers, and to order appropriate interim relief for prima facie violations.
- Establish that when a verified violation occurs, the city agency in charge of enforcing the ordinance may order any appropriate relief, including reinstatement, the payment of back wages, and compensation for damages.
- Authorize the same city agency to take any appropriate enforcement action to secure compliance from uncooperative employers, including civil action, requesting other city agencies to revoke city licenses, and ordering them to compensate the city for the costs of implementing and enforcing the ordinance.
- Grant the right to initiate civil action against noncompliant employers not only to affected individual workers and the city, but also to any other person or entity acting on behalf of the public.
- Establish that employers found to have violated the provisions of the ordinance by a civil court would be ordered to provide appropriate relief, as described above, and to pay attorneys' fees and costs.

Establishing a city-wide minimum wage may thus help disadvantaged populations in two ways. On the one hand, it may provide a wage floor better aligned with the cost of living. Given the secular decline in the real value of the federal minimum wage since the late 1960s (Mishel, Bernstein et al. 2007:190 and ff.), a city can compensate by introducing its own minimum wage, something particularly important if the city is in a state that has not taken this task in its own hands, or has done so but without fully compensating for that decline.⁵ Perhaps as important, cities can impose wage floors that account for *local* variations in the cost of living.

On the other hand, city minimum wage legislation may help workers by expanding coverage to those left out in federal and state legislation, and by ratcheting up enforcement resources and mechanisms, e.g., strengthening penalties for violations; giving city agencies the authority to investigate and order appropriate relief; allowing unions, community-based organizations, immigrant worker centers and other third parties file complaints; staffing enforcement agencies with bilingual employees; and forbidding these employees from interrogating workers about their immigration status.

Thus, expanding coverage and improving enforcement constitute important and independent reasons for cities to pass minimum-wage legislation of their own, even if they consider that the current wage floors in their jurisdictions are appropriate.

Targeted Minimum Wages

In some cases, economic and political considerations may make it more feasible or desirable for a city to mandate minimum wages in particular industries, types of establishments, or geographic areas rather than citywide. These reasons may include:

- **Mobility.** Some industries are much less mobile than others. In some industries sunk costs are so large and location is so essential that it is very unlikely that employers will leave a city or move to a non-covered region of the city, or even credibly threaten to do so, if required to pay higher wages.
- **Capacity to pay.** Industries and types of establishments differ in their profit margins. Those with healthy profits are more likely to be able to absorb wage increases. Moreover, it is much easier to garner support for a minimum wage targeted at employers with high profits, which are likely to be seen as exploiting their low-wage employees.
- **Labor-intensity.** Low labor-intensity employers are less affected by wage increases than high labor-intensity ones.
- **Geographic scope of markets.** While wage increases might affect the competitiveness of companies competing in regional, national or international markets, those competing in local markets are all subjected to the same standards, and thus wage increases would not affect their competitiveness.
- **High concentration of low-wage workers.** Targeting industries and employers with high concentrations of bad jobs may be politically more viable than targeting those offering mostly good-quality employment.

There have been two attempts to use the regulatory powers of a city to establish targeted minimum wages. In July 2001 the city council of Santa Monica, CA, passed an ordinance mandating a geographically and economically targeted minimum wage. Among other things, it required private employers located in two tourist areas and with gross receipts of over \$5 million per year to offer their employees, by July 2002, a total hourly compensation package of at least \$12.25.⁶ The minimum compensation package was set to be adjusted annually by indexing it to inflation. However, businesses opposed to the ordinance launched a successful initiative to put it to referendum in November 2002, and thus stopped it from taking effect until the matter was decided by popular vote. Although pre-election polls had predicted an easy victory for those in favor of the ordinance, voters rejected it by a 51.7 percent to a 48.3 percent margin, in part because the events of 9/11 “had led to a significant downturn in the local tourist trade, making business seem more vulnerable than before” (Sander and Williams 2005:27).

In July 2006 the Chicago City Council passed an industry and firm-size targeted minimum wage. It required large retailers in the city (companies with annual gross revenues of at least \$1 billion and indoor premises of at least 75,000 feet) to provide employees a total hourly compensation package of \$13.60, of which at most \$3 could be provided as nonwage benefits. This compensation package was to be indexed to the cost of living

in the Chicago area. The ordinance defined “employees” in a very encompassing way: any person performing in a particular week at least five hours of work on the premises of a large retailer for any large retail employer. This covered persons performing work on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.

In September of the same year Chicago’s Mayor Richard Daley vetoed the bill, arguing that it would have driven jobs and businesses from Chicago. Although the supporters of the ordinance were close to the two-thirds City Council majority needed to override the veto, they fell a few votes short. The ordinance is very likely to be considered again by the city’s council this year.⁷

Employment Standards Other Than Minimum Wages

Cities can use their regulatory powers to regulate aspects of employment relations other than minimum wages. For instance, Baltimore’s minimum wage law mandates that employers pay overtime work (over 40 hours per week) at a rate of 1.5 times the employee’s usual hourly wage rate. It also establishes that no employer may withhold any wages or salary of any employee, except for those deductions in accordance with law, without written and signed authorization of the employee. And it forbids employers from refusing to pay on the next regular payday all due wages to an employee who resigns, retires or is fired. These are not secondary additions to the minimum-wage provision of the law: Noncompliance with the overtime provision and the lack of wage payment, especially after termination, are much more common violations in Baltimore than the payment of sub-minimum wages.⁸

The District of Columbia has also passed legislation establishing employment standards other than minimum wages. These include the following:

- Overtime pay of 1.5 times the employee’s regular rate of pay.
- The times when due wages must be paid, including the payment of wages upon discharge or resignation of an employee and upon the suspension of work.
- Requirements for seating for those working in stores, shops, offices, or factories.
- Additional pay for split shifts.
- Employers’ obligation to pay for the purchase and cleaning of mandatory uniforms and protective clothing.

San Francisco, for its part, requires that all businesses provide paid sick leave to full- and part-time employees, permanent workers and temps; and that employees be allowed to use their paid sick leave not only when they are injured or ill, or to receive medical care, but also to care for their family members.

Two cities have mandated that employers spend a minimum amount to help cover health-care costs for their employees. New York City enacted a minimum health spending requirement ordinance in August 2005. The New York City Health Care Security Act requires any grocery store with 50 or more employees or any retailer greater than 12,500 square feet to contribute at least \$2.50 to \$3.00 per hour toward health care for each employee. The law allows employers to contribute in a range of ways, such as paying into employee health accounts, reimbursing employee health bills, or making contributions to community health clinics. The law was meant to expand health care for up to 6,000 employees and protect coverage for 21,000 employees in the grocery industry.

More ambitious, San Francisco's Health Care Security Ordinance has created the Health Access Program (HAP). Set to begin operations in July 2007, HAP will offer primary care, hospitalization services, specialty care, and prescription drugs for all uninsured residents of the city. Individuals and their employers in San Francisco will be able to enroll in the program for a sliding monthly fee, heavily subsidized for small and medium sized businesses and for low income individuals. The ordinance's most critical element is a minimum health spending requirement. This provision, aimed specifically at the 15 percent of city employers who currently do not offer health insurance, requires that all large and medium-sized businesses contribute a certain amount toward health care for each hour worked by their employees. The contribution will not necessarily go to the HAP; employers have other options, such as providing insurance, contributing to health savings accounts, or directly reimbursing employees for health care costs. The existence of options is essential for San Francisco's attempt to avoid conflicts with the Employee Retirement Income Security Act.

Kansas City, MO, makes it illegal to steal a person's wage. This prohibition is embedded within a broader ordinance that establishes that a person commits the violation of stealing if he or she appropriates property or services of another, either without consent or by means of deceit, and includes "labor for wages" in the definition of "services" (bundled together with things like transportation, telephone, electricity, gas, water, and other public services, accommodation in hotels and restaurants, admission to exhibitions and use of vehicles). In this way, it created a criminal penalty for employers that do not pay wages.

Finally, New York City has a comprehensive anti-discrimination employment law. It forbids "an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

All the examples above have referred to existing city-level laws, or to legislation actually proposed in some cities. In addition, cities can do the following:

- Combat the practice of improperly classifying workers as independent contractors to avoid compliance with employment law.
- Make employers responsible for the workplace standards of subcontractors they control.

- Establish meal breaks, maternity and paternity leave, paid vacations, and other employment standards that improve the quality of jobs.
- Establish workplace safety and health regulations not prevented by federal laws. New York City, for instance, is considering three bills to regulate work on suspended scaffolds, as part of a comprehensive plan to improve safety for suspended-scaffold workers.

As with city minimum wages, workers may benefit from other city-mandated employment standards in three ways. First, these standards may be higher than those existing at the federal or state level. Second, their coverage may be broader. Third, cities may be able to ratchet up enforcement resources and mechanisms, in particular by strengthening penalties, by setting up proactive city agencies with authority to investigate and to order relief, by allowing third parties to file complaints, and by promoting individual action by credibly promising not to help enforce the civil provisions of immigration laws.

Cities' regulatory powers to impose employment standards: Legal issues

Cities do not have inherent sovereign powers. Whatever powers they may have are powers delegated by the states. As state constitutions and statutes frequently specify these powers in a very imprecise way, exactly which powers are delegated to cities often remains an open question to be settled either by courts or by new state legislation. Thus, not only is there great variability across states on this front, but very often the questions of whether the cities in a particular state have, at least in principle, the legal authority needed to legislate on minimum wages and other employment standards, and whether they would be able to prevail in court if they decided to do so and were challenged, remain contentious matters.

In the particular case of city minimum wages, it is clear that cities have the power to impose them in California, Maryland and New Mexico, the three states in which such minimum wages exist. Indeed, California law explicitly grants cities the power to establish minimum wages, while in Maryland and New Mexico the courts have upheld cities' rights to do so. In addition, a 2006 referendum in Arizona gave counties, cities and towns the authority to establish wage floors higher than the state minimum wage. In contrast, in Colorado, Florida, Louisiana, Oregon, Texas, Utah, South Carolina, and Wisconsin local minimum wages have been banned by statute or by the courts.

It is not feasible to further discuss, without a detailed state-by-state analysis that would go well beyond the scope of this report, whether cities in the remaining states are likely to have the powers required to regulate employment relations, including the imposition of city minimum wages. Nevertheless, we can point out some general factors that should be considered in such analysis (cf. Dalmat 2005; Sonn 2005):

- Whether cities enjoy "home rule powers"; those without home rule powers would be able to regulate any particular aspect of employment relations only if the corresponding state has *expressly* delegated to cities the powers to do so.
- The type of home rule regime. Cities in states with legislative home rule regimes are likely to be in a better position than those in *imperio* regimes, because the former generally accord somewhat broader powers to cities.

- Whether there are state statutes pre-empting cities from regulating (any aspect of) employment relations. Moreover, even if this is not the case, cities need to take into account that opponents to the regulation of employment relations by cities will likely try to pass state legislation banning cities' action as soon as they begin to consider such regulation.
- Whether the state supreme court is likely to uphold cities' power to regulate employment relations, given its track record and ideological makeup.

Opponents of legislation regulating employment relations that targets only some employers may raise additional legal issues, not related with the limits of a city's home rule powers. For instance, opponents of Chicago's targeted minimum wage ordinance argued that it conflicted with the state and federal equal protection clauses. However, a careful analysis of the legal basis of this claim by a leading academic expert on local government law found it insubstantial, mainly because the equal protection clauses only require, when applied to economic regulation, that the classification of affected businesses "bear a rational relationship to a legitimate government interest" (Reynolds 2006). In general, it seems likely that if a city is able to show that establishing an employment standard is among its legitimate powers, it would not matter much whether the standard covers all or a (rationally justified) sub-population of employers.

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Using a City's Proprietary Interests as a Basis for Policy

So far we have focused on cities in their capacity as regulators. However, because cities are also “financial entities and market participants with expenses, assets, and incomes, as well as rights and responsibilities to their investors [that is, the citizenry]” (Wells 2002:124), cities can also act as proprietors. When a city acts in this capacity it may decide, for example, that it will only interact with – contract with, give financial aid to, rent property to, etc. – firms that pay “a living wage,” that is, a minimum wage specified by the city. In doing so, it does as all people and firms do, that is, choose whom to do business with. A city passing a living wage ordinance based on its proprietary interest does not mandate that firms under its jurisdiction pay a minimum wage, which would involve regulatory powers. Instead, it chooses to do business only with firms paying living wages. The same principle also applies — with more limitations, given potentially preemptive federal statutes — to conditions other than wages. This has not been missed by activists, community organizers, and policy makers; over time, living wage ordinances have tended to expand their scope, from focusing exclusively on wages to include benefits, working conditions and several other things as conditions, while some cities have enacted separate legislation to the same effect.

In what follows, we describe four ways in which cities may use their proprietary interests to improve the situation of the disadvantaged: pushing wage floors up; inducing employers to meet employment standards other than living wages; supporting workers' right to organize; and securing good job opportunities for the disadvantaged. After that we briefly discuss some relevant legal issues.

Living wages

The first living wage ordinance, passed in Baltimore in 1994, specified that city service contractors had to pay their employees at least \$6.10 per hour (\$7.84 in 2006 dollars). Since then, living-wage ordinances have been passed and implemented in more than 100 cities, and many other cities are discussing whether to enact similar legislation.⁹ Several of the cities with living-wage ordinances are major cities, e.g., Baltimore; Boston; Chicago; Denver; Detroit; Los Angeles; Miami; Milwaukee; New York; Oakland, CA; and Portland, OR. In 2005, the minimum wages required by already implemented living-wage ordinances, which are frequently indexed to inflation, averaged more than \$ 9 per hour (Fairris and Reich 2005).

In general, living wage ordinances cover a relatively small number of employees. In most cases they cover those working on service contracts with the city above some threshold (typically, \$25,000 per year), and in many cases the city's own employees. Over time, however, ordinances have tended to extend their coverage. As a result, about a fourth of today's living wage ordinances cover the employees of firms receiving economic development subsidies of various types (tax abatements, bond financing, tax increment financing, grants, subsidized loans, etc.), most often in addition to covering employees

in service-contract firms. Cities where this is the case include Ann Arbor, MI; Burlington, VT; Cleveland; Detroit; Duluth, MN; Los Angeles; Madison, WI; Oakland, CA; St. Louis, MO; and Rochester, NY. Less often, these ordinances also cover employees of at least one of the following: non-profit social service providers funded by city grants; subcontractors of covered contractors; contractors and tenants of firms that are directly receiving economic development assistance; firms getting concessions from the city; and firms operating on government-owned land, such as an airport or marina (Fairris and Reich 2005; Reynolds and Kern 2003). Some of these extensions expand the coverage of living wages ordinances substantially.

Studying the effects of living-wage ordinances is difficult due to the relatively small scale of the interventions. The most reliable studies are those comparing covered with otherwise similar but non-covered establishments, or covered establishments before and after the passing of a living-wage ordinance. Establishment-level studies of these two types for Boston (Brenner 2005), Los Angeles (Fairris 2005), and San Francisco (Reich, Hall et al. 2005) suggest that living wage ordinances would tend to have the following effects at *covered* establishments:

- Wage levels at low-skill jobs rise substantially.
- Wage inequality drops significantly.
- Turnover and absenteeism fall.
- There is an increase in full-time employment at the expense of part-time employment.
- Profits fall or there is a marginal increase in prices.
- Overall employment levels are not affected, and there is limited substitution of higher-skill for lower-skill workers.

Other employment standards

Living wage ordinances often include provisions aimed at inducing employers to improve the quality of jobs in ways other than increasing wages at the bottom, while a few cities have passed separate legislation conditioning various forms of financial support for economic development projects on employment standards other than wages. Thus, most living wage ordinances require a higher minimum wage if employers do not provide health-care benefits, while a few cities require covered firms to provide health-care benefits. Several cities require the provision of vacations or sick leave time. Others allow retirement and childcare benefits to count as part of the minimum compensation they demand. A few require that the jobs created with the help of public money be full-time or almost full-time. Figure 2 gives examples of ordinances with provisions on all these subjects.

Workers' right to organize

Unions push wages up and improve nonwage benefits, both directly (due to their bargaining power) and indirectly (by pressuring non-union firms to offer better compensation in order to avoid unionization). Moreover, unions tend to improve wages and other forms of compensation the most at the bottom of the labor market

Figure 2

Examples of living-wage and other proprietary-interests-based ordinances

City	Health-care	Vacations	Sick leave	Other
Ashland, OR	Permits offsets for health care benefits	Required	8 hours/month	Permits offsets for retirement, 401K and IRS eligible cafeteria plans (including childcare)
Burlington, VT		12 paid days		
Cleveland, OH	Incentives to provide health care			
Columbus, OH				Jobs created with city economic assistance must be full-time
Davenport, IA	Must provide health care benefits			
Des Moines, IA	Must provide health care benefits			
Detroit, MI	Higher living wage if no health care benefits			
Haywood, CA		12 paid days 5 unpaid		
Houston, TX	Must provide 100% employer-paid health care benefits			Jobs must be at least 30 hours/week
Lewiston, ME	Companies must provide benefits (health care, retirement, vacation, sick leave)			
Los Angeles, CA	Higher living wage if no health care benefits.	12 paid days 10 unpaid days		
Missoula, MT	Must provide health care benefits			
Oakland, CA	Higher living wage if no health care benefits	12 paid days	10 unpaid days	
Oxnard, CA			96 paid hours/year	
San Fernando, CA		6 paid days 6 unpaid days		
San Francisco, CA		12 paid days	10 unpaid days for family emergencies	
Sonoma, CA	Higher living wage if no health care benefits	12 paid days 10 unpaid days		
Watsonville, CA		10 paid days		

Source: Prepared with data from Reynolds and Kern (2003), Purinton (2003), and directly from city ordinances and policy statements

(Mishel, Bernstein et al. 2007:181-189). Supporting workers' right to organize is thus an important means to help disadvantaged workers and their families. Cities can do this in different ways.

Neutrality agreements and card-check recognition

Workers' right to organize is nominally protected by the provisions of the National Labor Relations Act (NLRA) and the agency it created, the National Labor Relations Board (NLRB). However, it is well known that in election campaigns supervised by the NLRB, employers use their disproportionate power and resources, and engage in a myriad of seldom punished but indisputably unlawful practices, including firing union supporters, to resist unionization — and that they very often succeed (Bronfenbrenner 1994; Bronfenbrenner 2000; Brudney 2005; Freeman and Kleiner 1990; Kleiner 2001; Mehta and Theodore 2005).

An alternative way for unions to try to obtain recognition, which has been quite effective, is by negotiating neutrality and card-check recognition commitments from employers. The former "provide for employers to remain neutral during an upcoming union organizing campaign," while the latter specify that "the employer will not exercise its right to demand a Board-supervised election, but will instead recognize the union as exclusive representative, and participate in collective bargaining, if a majority of its employees sign valid authorization cards" (Brudney 2005). In most cases, neutrality agreements are signed together with card-check-recognition agreements.

Cities can use their proprietary interests to help unions negotiate these kinds of agreements by adding "labor peace" or related provisions to their living-wage ordinances, or by passing separate legislation to the same effect. Labor peace provisions specify that "in return for financial assistance in the form of grants, loans, contracts, or rent, or as part of a procurement policy, the governmental entity requires that employers sign a labor peace agreement with any union that requests it, thereby protecting the government's proprietary interest by minimizing the probability of labor disruptions" (Logan 2003:184). As cities often contract out millions of dollars in services or risk millions of dollars in development projects, they have a vested interest in the existence of harmonious labor relations; a work stoppage or other action directed at employers could have negative economic effects for cities.

Labor peace and related provisions vary broadly in their coverage and scope, as the examples that follow show.

- The living-wage ordinance passed in 2000 in Santa Cruz, CA, includes a clause establishing that "contractors for services and subcontractors shall not hinder or further collective bargaining organization or other collective bargaining activities by or on behalf of an employer's employees."
- San Jose, CA, passed a resolution in 1998 (revised in 1999) implementing a living wage policy that includes a subtle form of labor peace provision, covering city service contracts. Essentially, this provision states that in cases in which the proprietary interests of the city are highly vulnerable to labor disputes, the city will use as one criterion for awarding service contracts the type of assurances of protection against labor discord that candidate contractors offer.

- Although it does not explicitly cite the protection of the city's proprietary interests, the living-wage passed in Minneapolis in 1997 mandates preferential treatment for business with "responsible labor relations," and defines these business as those that remain neutral in unionization campaigns, provide unions with the names and addresses of employees, give them access to facilities during non-work hours, and agree to card-check recognition and binding arbitration for a first contract.
- San Francisco passed in 1998 the Employee Signature Authorization Ordinance (amended in 2001). It requires that employers participating in a hotel or restaurant development project or facility in which the city has a proprietary interest, in virtue of its role as landlord, proprietor, lender or guarantor, "agree to abide by card-check procedures for determining employee preference on the subject of labor union representation" with any union that requests such agreement. In exchange, the union has to agree to refrain from striking or taking other economic action against the employer as part of a campaign to organize employees.
- Pittsburgh's living wage ordinance establishes, first, that to prevent disruption of goods and services being provided to or on behalf of the city, the city will, to the greatest extent feasible, give preference for assistance to businesses that engage in "responsible and harmonious labor relations." Second, it establishes that the beneficiaries of city's assistance "shall not use City funds to support or oppose unionization." The range of activities forbidden by this clause is very broad.¹⁰ The ordinance is also very broad: It covers entities receiving any kind of financial assistance; those getting contracts or subcontracts to provide goods or services to the city; those entering into lease or rental agreements with firms in the previous categories, or for the use of property or equipment that was purchased, improved or developed as the result of city's financial assistance; and those getting leases, subleases, licenses or sublicenses from an authority or public entity receiving assistance from the city to operate parking facilities, transportation facilities, public sports and entertainment venues, and others facilities visited by substantial numbers of the public on a frequent basis. In addition, the ordinance provides that "any disputes as to whether an employer or a particular type of assistance is covered (...) shall be resolved by application of a rebuttable presumption of coverage."

Right of first refusal / worker retention

The right of first refusal gives employees working in a city service contract the right to keep their jobs when a new firm gets the contract. On the one hand, workers obtain some job security – in general, this provision only covers them for 90 days since the contract changes hands. On the other, by stabilizing the workforce, it facilitates worker organization. New Haven, CT, and Port of Oakland, Santa Cruz, San Jose, and Watsonville, CA, are some of the localities that have included provisions with this right either in their living wage ordinances or in separate laws.

Collective bargaining opt out

Many living wage ordinances include a clause specifying that the ordinance, or any particular provision of it, may be superseded by specific provisions of collective bargaining agreements (e.g., the ordinances of Camden, NJ; Cincinnati; Duluth, MN; Ferndale, MI; Hayward, CA; Los

Angeles; Madison, WI; New Haven, CT; and Oakland, CA). Likewise, living wage legislation sometimes includes a clause establishing that it does not apply whenever there is a collective bargaining labor agreement in effect (e.g., the ordinances of Burlington, VT; Cleveland; Lansing, MI; Santa Cruz, CA; and Warren, MI). Because either form of opt out clause gives unionized employers “the opportunity to bargain for greater flexibility such as trading certain wage levels for increased benefits or lower starting wages for increased long-term wage levels” (Reynolds and Kern 2003:42), unions get additional leverage. Note, however, that the first approach is preferable. If the second approach is used, employees covered by collective agreements negotiated before the living wage ordinance was passed may well be paid wages below the living wage rate, without them getting anything in return.

Securing good job opportunities for the disadvantaged

Cities can use their proprietary interests to secure for the disadvantaged some of the good job opportunities generated by the wage floor provisions of their living wage legislation. They may do so in at least four ways.

First, a city may require that firms receiving economic assistance or service contracts adopt the city’s equal opportunity / affirmative action policies. Lansing, MI, for instance, has established that all contractors providing goods or services to the city for \$5,000 or more per year “must adhere to the principles and policies of equal opportunity as mandated by the City affirmative action plan,” and that “to the greatest extent feasible, a contractor or grantee shall make good faith efforts to fill all new positions created as a result of a contract for services or economic development assistance by providing equal employment opportunities to residents” of the city.

Second, a city may require that firms receiving economic assistance or service contracts meet certain hiring goals. Cleveland, for instance, demands that at least 40 percent of those newly hired to work on service contracts be city residents. Similarly, Detroit requires that, to the greatest extent feasible, employers that contract with the city or which receive financial assistance from the city for economic development or job growth attempt to fill all new positions created as a result of a contract or financial assistance with employees who are residents of the city. It seems, then, that nothing would prevent a city from also requiring that some proportion of the newly hired to positions covered by its living wage ordinance be low-income people, or that covered employers attempt to hire low-income people for the new positions. In either case, though, monitoring difficulties may arise.

Third, cities may require that firms covered by their living-wage legislation give priority to job candidates referred by community-based hiring halls or other organizations serving the disadvantaged. For instance:

- The city of New Britain, CT, demands that any firm receiving a city contract for more than \$25,000 agree to inform each local job agency in the city of any opening it intends to fill from the external labor market, and give “first preference to hiring any person referred by a local job agency whose qualifications are at least equal to those of all other applicants.” A local job agency is defined here as any nonprofit organization based in or with an office in the city, which maintains a list of residents of the city who need employment.

- The city of New Haven, CT, specifies that city service contractors need to post all vacant service work positions with community based hiring halls, and give first consideration for these positions to referrals from these hiring halls. A community hiring hall is defined in this case as a non-profit or governmental job registry and referral service that has a record of conducting outreach in low- and moderate-income communities and in underserved minority neighborhoods, and which has been designated as such by the city controller.
- One of the goals of Boston's Jobs and Living Wage ordinance is to maximize access for low- and moderate-income residents — those making less than 80 percent of the median income in the metropolitan area — to the jobs that are created, maintained or subsidized through city service contracts or economic assistance. To this end, it requires that contractors, subcontractors and firms receiving economic assistance sign a "first source hiring agreement" with one or more referral agencies or one or more Boston One Stop Career Centers. This agreement specifies that the employer will notify the agency or center of any vacancy it intends to fill in the external labor market five days before it announces or advertises it publicly, and that it will consider hiring (but will not necessarily hire) properly qualified candidates referred by the agency or center. The referral agency has to be an organization serving low- and moderate-income Boston residents.¹¹

Finally, cities can link their support for economic development projects to the existence of community benefits agreements (CBAs). A CBA is "a legally enforceable contract, signed by community groups and by a developer, setting forth a range of community benefits that the developer agrees to provide as part of a development project." Such an agreement results from "a negotiation process between the developer and organized representatives of affected communities," and often includes the establishment of a first source hiring system "to target job opportunities in the development to residents of low-income neighborhoods" (Gross, LeRoy et al. 2005:9-10).

A good example of a CBA with a first source hiring system is the Staples Center CBA, a comprehensive agreement negotiated by a coalition of labor and community-based organizations for a large, heavily-subsidized, multipurpose project in Los Angeles (including a hotel; a theater; a convention center expansion; a housing complex; and plazas for entertainment, restaurant, and retail businesses). The agreement specifies that 70 percent of the jobs created in the project will pay the city's living wage, and includes a "first source hiring policy" covering all employers in the development. This policy gives preference in hiring, in this order, to: individuals whose residence or job is displaced by any phase of the development, low-income individuals living within a three-mile radius of the development, and other low-income residents of Los Angeles. It establishes a period (three weeks when employers are making initial hires for the commencement of their operations in the project, five days otherwise) in which employers only may hire individuals referred by the First Source Referral System, a referral service run by the coalition signing the agreement.

There are various ways a city can link its economic support to a development project with the existence of a CBA. A possible approach is to give preferential treatment to those projects with a "good" CBA attached. This preference could be translated into a formal policy and embodied in a resolution, ordinance or similar legal instrument.

However, it is probably legally simpler and safer for cities to signal their preference to developers during negotiations for city assistance, and to implement it by using the discretion they have when making decisions about economic assistance.

Using cities' proprietary interests as a basis for policy: Some legal issues

Living-wage legislation requiring that contractors and those benefiting from economic assistance pay their employees a minimum wage should be, in the vast majority of states, legally unproblematic — cities are not very likely to be challenged in court, and they are very likely to prevail if challenged. There are a few states, however, in which this is not the case. Utah and Georgia have prohibited local governments from requiring contractors, vendors, service providers, etc., to pay wages above the federal minimum wage, or even from giving any preferential treatment to those firms that do so. Likewise, Virginia's attorney general has issued an opinion arguing that the Virginia Public Procurement Act does not authorize local governments to require private contractors and vendors to pay a minimum wage to their employees. Observe, however, that even in these three states, it seems that cities may still safely condition the award of economic assistance on the payment of living wages by those firms receiving it.

The same reasoning applies to almost all other employment standards. With the exception of health-care benefits, conditioning city contracts or assistance on other employment standards (the provision of paid vacations, sick leave, parenthood leave, etc.) should be generally unproblematic. Georgia's prohibition, however, expressly covers employment benefits and, according to the logic of Virginia's attorney general's opinion, the Public Procurement Act would forbid Virginia cities from requiring that contractors and vendors meet employment standards other than wage floors.¹² Utah's prohibition applies only to wage floors, and not to benefits.

In the case of health-care benefits, to avoid potential conflicts with federal statutes cities typically avoid direct requirements, but instead demand a higher living wage if those benefits are not offered (Reynolds and Kern 2003:40). However, some cities (e.g., Davenport and Des Moines, IA; Houston; Missoula, MT) do require employers to provide health care benefits as a condition for receiving economic assistance.¹³ These cities have been doing so for several years (cf. the relevant endnotes in Purinton 2003), which suggests that cities are on firm legal grounds when they attach a health-care benefit condition to economic assistance instead of service contracts.

Labor peace and related provisions have been explicitly prohibited in at least one state, Louisiana.¹⁴ This is, however, an uncommon situation — we are not aware of any other state in which this is the case. In general, provisions in living-wage ordinances or in other laws aimed at protecting workers' right to organize are legally viable but need to be very carefully crafted in order to avoid preemption by federal legislation. Indeed, although the National Labor Relations Act "contains no explicit provision preempting state and local labor laws, these laws are potentially vulnerable to the broad doctrine, created by the federal courts between the late 1950s and early 1970s, that upholds federal supremacy in questions of labor-management law" (Logan 2003). However, beginning with the 1993 Supreme Court decision in the case known as *Boston Harbor*, courts have consistently ruled that local legislation in this area is not preempted as long as the local government acts as a market participant and not as a regulator (Wells 2002:125 and ff.).¹⁵ This is clearly the case when a city participates in a development

project as landlord, proprietor, lender, guarantor or grantor, but it is not as apparent when it contracts out services. In this context, for a city to be safely covered by the so-called proprietary exemption, labor peace and related provisions have to be carefully targeted at those workers for whom the city can demonstrate a direct proprietary interest as the user of the services (Reynolds and Kern 2003:41-42)

Right of first refusal or worker retention provisions covering city service contract employees are unlikely to be preempted by the National Labor Relations Act or by state laws.¹⁶ Collective bargaining opt out provisions are fully unproblematic, given that they expand, not restrict, worker and employer options under living-wage ordinances.

Targeted-hiring conditions need to be written so as to avoid conflicts with the many federal and state laws that govern the hiring process. If this is done correctly, however, a city should be able to prevail in the unlikely event of a legal challenge.

Lastly, giving preference to economic development projects that include good CBAs should be completely unproblematic, as long as this preference is implemented in the way suggested above.

4

Helping Enforce Federal and State Employment Regulations

Cities that lack the powers required to enact city-wide legislation regulating employment relations, or lack the political support needed to do so, may still help enforce federal and state employment standards and regulations. The likelihood that workers whose labor rights have been violated will exert their private right of action is a function, in large part, of the information and resources they possess and of the risks they face if they do act. Similarly, the likelihood that employers will violate those rights in the first place is mainly a function of the information they have about their legal obligations, the probability that they will be caught if they violate the law, and the magnitude of the costs associated to being caught. Cities can thus reduce the incidence of labor law violations and increase the probability that workers will file complaints when their rights are violated, by using their resources and regulatory powers to influence employers' and workers' actions.

A city can provide information and educate workers about their labor rights under state and federal laws. To this end, it can use mass media and print or broadcast outlets directed at specific ethnic groups (from radio or TV stations with a full programming dedicated to broad ethnic groups, to small community-specific magazines or newsletters). It can do outreach and provide know-your-rights materials in multiple languages; to this end, it can harness its often extensive network of service providers (Bernhardt, McGrath et al. 2007:41). It can inform workers of the organizations that are available to help them make claims regarding workplace-law violations. It can support community-based organizations and worker advocacy groups by funding, training, and helping them form associative structures, so that they can more effectively inform and educate their constituencies about their workplace rights. Finally, it can help organize, in partnership with unions, religious organizations, community-based organizations, etc., city-wide workers' rights information campaigns, aimed at obtaining synergistic effects.

A city can also educate employers about their legal responsibilities. One possible strategy is to mail or deliver in some other way information to employers, in industries in which workplace-law violations are widespread, regarding employers' legal obligations and the monetary and reputation costs incurred by non-compliant firms in selected cases. A second strategy is to have the mayor or other high-ranking city officials address the issue at public events, or in meetings with appropriate industry associations, signaling in this way that the city condemns workplace-law violations and is watching the issue closely. A city can also partner with advocates to educate employers, as New York City has started to do in the restaurant industry (Bernhardt, McGrath et al. 2007:41).

However, lack of information is not the only, and probably is not the most fundamental reason why low-wage workers seldom file complaints or go to court. Lack of resources and fear of retaliation by employers are very likely to play a crucial role.

Likewise, the fundamental reason many employers violate employment and safety and health regulations is unlikely to be their lack of information. It is rather that the chance that they will be caught and the penalties for being caught are both very small. Some employers find it profitable to keep violating the law, because the savings in wages and in other areas way outstrip the costs of non-compliance. Hence, cities need to find ways of making workers much more likely to file complaints, and of substantially increasing the costs that employers pay when they are found to have violated workers' rights.

A city can move in this direction by creating an agency to lend legal services to low-income residents, including advice in the area of employment law, or by expanding the legal services offered in that area if such a city agency already exists. However, a city will likely have a much larger impact by providing earmarked funding for employment-law advising to three types of civil society organizations: providers of legal services to low income families or communities; community-based organizations that want to hire lawyers to start providing such services; and immigrant worker centers and other organizations working with immigrants. Supporting the latter may be a particularly effective policy. Some worker centers have proved not only very efficient at helping workers with their claims, but have also developed more comprehensive strategies for combating wage, hours and other forms of labor law violations. These strategies are often designed to have multiplier effects at the industry level (e.g., the targeting of standard-setting, high-profile firms) or to set new juridical precedents (Fine 2006).

Cities can also make violation of workplace laws much more costly for employers. One way is by denying or revoking city licenses to businesses, if they or their owners, directors, shareholders or managers have a track record of demonstrated employment-law violations. In most cities, establishments like restaurants, bars and taverns need city licenses to operate. Helping to tighten the enforcement of employment laws in this part of the economy alone would boost the earnings and improve the working conditions of a large number of workers.

In addition, in most cities there are many other industries in which businesses need a city license to operate. For instance, Milwaukee requires licenses for 45 types of businesses, apart from restaurants and businesses selling alcoholic beverages.¹⁷ Likewise, in New York City, the Department of Consumer Affairs requires licenses for 41 types of businesses, while the department of Health and Mental Hygiene requires licenses for restaurants and other food vendors and several other types of businesses.¹⁸ Some cities, for instance Chicago and Durango, CO, require that all or almost all businesses located within their boundaries get a city license or permit.¹⁹

Some cities may not need to pass any new law in order to use their licensing power to help enforce state and federal workplace regulations. Some cities already have laws on the books specifying that they can deny or revoke business licenses based on their evaluation of the "moral character" of those requesting or holding them, while other cities could pass new legislation to the same effect. In addition, in at least one state (New York) the courts have held that cities have inherent powers to deny or to revoke a license for good cause, which includes the moral character of the licensee or potential licensee. And it is clear that the repeated violation of employment or workplace safety and health law provisions could be used to reject an application or to revoke a license on these grounds.

5

Regulating Domestic- Employee Placing Agencies

House-cleaners and other domestic or household employees are often subject to exploitative working conditions, including the violation of the most basic workers' rights. In addition to making sure that legal information specifically directed to domestic employees and their employers is included in the educational and outreach activities described above, another way cities can tackle this problem is by regulating intermediary placement agencies, which frequently contribute, by commission or omission, to the generation of those exploitative working conditions.

Cities can follow New York City's lead, which in 2003 passed model legislation. New York requires, first, that employment agencies provide to each applicant for employment as a domestic employee, and to his or her prospective employer, a written statement indicating the employee's rights and the employer's obligations under state and federal law. The statement has been prepared and distributed by the city to all licensed employment agencies. It describes laws regarding minimum wage, overtime and hours of work, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation.

Second, New York requires that employment agencies provide to each applicant for employment as a domestic employee a written statement of the job conditions of each potential employment position to which the agency recommends that the applicant apply. Each such statement must fully and accurately describe the nature and terms of employment, including wages, hours of work, kind of services to be performed, agency fee, and the name and address of both the person to whom the applicant is to apply and of the person authorizing the hiring for the position.

Finally, the ordinance requires employment agencies engaged in the placement of domestic employees to keep on file, for three years, a duplicate copy of the written statement of job conditions provided to each applicant placed by them, and a statement, signed by the employer of each agency-placed domestic employee, indicating that the employer has read and understands the statement of rights and obligations he or she received.

6

Implementing EOE Policies and Disseminating Information on Good Jobs

There are several things cities can do that may help the disadvantaged get access to good jobs or to the job-training opportunities leading to them. One Stop Centers and other similar public agencies offer information on vacancies and short-term classes, workshops and materials aimed at improving job-search and job-application skills. They also provide some training or fund its provision by third parties. Many community-based organizations offer training, placement and related support services, and are often more successful than the public workforce development system at helping low-wage workers get better jobs. Cities can do outreach and provide information about all these services and programs. They can post information at their own facilities, and disseminate information through mass media, through more specific print or broadcast outlets directed at specific ethnic groups or low-income neighborhoods, and through their networks of service providers. Cities can also support the community-based organizations that provide training, placement, and related support services to low-income communities, by funding, training, and helping them form associative structures leading to economies of scale and mutual learning.

Some of the best jobs available for people with low education are offered by cities themselves, directly or through city contracts subject to living wage legislation. Cities can thus pass legislation establishing equal opportunity / affirmative action policies, or give priority in hiring to people from low-income communities. And, as we already discussed above, there are several policies that cities can implement to boost the access of the disadvantaged to good jobs generated by city contracts subject to living-wage policies.

In the private sector, many of the best jobs available for people without high education are in construction and manufacturing. Jobs in construction's skilled trades pay quite well. Minorities, however, have difficulties entering them. Although this is in large part a consequence of the trades' skill requirements, it is also a result of how confusing and complicated the application process itself is. Among other things, application procedures vary substantially from trade to trade and geographically, and involve a substantial commitment by applicants, including enduring often-long waiting periods. For this reason, programs have been developed throughout the country to help minorities enter the trades. Cities can thus direct some of their efforts to disseminating information and doing outreach in low-income communities, both regarding the existence of good careers in construction for people without high education, and about the available programs that help minorities get into those careers.

Finally, many manufacturing firms have experienced skill scarcities, and they have become more open to filling vacancies with minorities and immigrants. To this end, some manufacturing firms have developed, often with public funds and in partnership with community colleges, workforce intermediaries and other civil society organizations, training programs that combine English language classes and training in the specific skills they need (National Association of Manufacturers and Jobs for the Future 2006).

Cities can do outreach and disseminate information along the lines suggested in the previous paragraph, to help minority groups and immigrants get into these training programs and, more generally, to induce them to apply for the good manufacturing jobs that firms have difficulties filling.

7

Curbing Employers' Practices That Take Advantage of Immigrants

In many cities, immigrants constitute a large share of the disadvantaged. This final section discusses a series of policies aimed at helping them directly, but which have much broader indirect effects. They help all workers by reducing the downward pressures on wages that the vulnerability of immigrants often generates, and by combating employers' strategic use of immigrants' legal status to resist workers' attempts to organize.

No-match Letters

When the Social Security Administration (SSA) finds inconsistencies between the name and Social Security number (SSN) in its records and these in a Wage and Tax Statement (Form W-2) issued by an employer, it sends a letter to both the employee and the employer notifying them of the situation. These "no-match" letters are intended to protect the employee's contribution to Social Security. The SSA does not put the earnings on an employee's Social Security record until both name and SSN reported in the W-2 agree with those in its records.

There are many reasons why such a discrepancy may exist, including typographical errors, the report of an incomplete or blank name or SSN, name changes – for instance, due to marriage or divorce – and the use of a false SSN or an SSN assigned to someone else by an immigrant not authorized to work in the United States.

Federal law does not require employers to do anything when they receive a no-match letter, but they may check whether the discrepancy is due to a clerical error; ask workers to make sure that the information on file for them is correct, and encourage them to verify their SSN directly with the SSA; and explain the meaning of the no-match letter to affected employees. According to current law, they may not ask workers to re-verify their employment authorization, nor fire, suspend, demote, or retaliate against workers named in a no-match letter.

It has been found, however, that in practice employers often fire workers identified in no-match letters. Sometimes employers fire all named employees, assuming they are undocumented immigrants and that keeping them in their payrolls would violate immigration law. In other cases they fire them selectively, using no-match letters strategically as an excuse to get rid of workers who complain about workplace conditions or participate in union activity. Other employers keep all the workers identified in such letters but reduce their wages or cut their benefits. In addition, many undocumented immigrants receiving no-match letters quit their jobs out of fear that immigration authorities will further investigate their employers (Mehta, Theodore et al. 2003).

Given this scenario, there are a handful of things that cities can do. First, they can pass a resolution declaring a policy of non-discrimination upon receipt of a no-match letter from the SSA. This would establish that, upon receipt of a no-match letter, the city will

neither take adverse action against any city employee listed on the letter, nor ask any employee to provide documentation to re-verify immigration status unless required by law. Both Santa Fe, NM, and San Francisco have passed such resolutions.

Second, cities can use their proprietary interests to make other employers adopt this non-discrimination policy. The easiest move in this direction is requiring employers receiving economic assistance from the city to adopt the aforementioned policy. This can be done formally, by passing legislation to this effect, or by signaling the city's preference during negotiations for such assistance. Extending the policy to service contractors in a way that is robust to legal challenges may be more difficult. However, given the documented strategic use of no-match letters by employers to curtail workers' right to organize, it is likely that this can be done along the lines used to justify labor peace provisions.

Third, a city can use its regulatory powers to mandate that all employers adopt this policy. The most viable strategy would seem for a city to specify, in anti-discrimination legislation including immigration status (other than unauthorized alien) as an attribute that employers have to ignore in making hiring, promotion, firing and related decisions, that using no-match letters to infer undocumented status is deemed discriminatory. Given that the SSA explicitly asserts in every no-match letter it sends to employers that "this letter makes no statement about your employee's immigration status," including such a clause in anti-discrimination legislation would seem to be easy to defend in court.

Finally, cities can educate employers regarding the legal meaning of receiving a no-match letter, the ways in which they may help employees named in those letters get their contributions to Social Security credited to them, and those courses of action that are forbidden by law. In addition, cities can inform employers of all the potential liabilities they face if they take adverse action against employees based only on their reception of a no-match letter. These liabilities may result from the violation of, among other laws, the national origin antidiscrimination provision of the Immigration Reform and Control Act; Title VII of the Civil Rights Act of 1964; and provisions of the NLRA, the Occupational Safety and Health Act, the Fair Labor Standards Act, and equivalent state statutes.²⁰

The Basic Pilot program

The Basic Pilot program (BPP) is a voluntary Internet-based program allowing employers to check their employees' employment-authorization status with the SSA and the Department of Homeland Security (DHS).²¹ Participating employers obtain some benefits in the form of some extra "legal coverage" in the case that an employee is found by a DHS investigation to be unauthorized to work in the country. Employers that want to participate must sign a memorandum of understanding with the SSA and the DHS agreeing to use the program to verify the employment eligibility of all new employees regardless of nationality and very shortly after they hire them, and only with that purpose; using the program selectively, to screen applicants, or to re-check the eligibility of previously hired employees are not allowed. Employers also have to agree not to discriminate against any person in their hiring, firing, or recruitment practices because of his or her national origin or citizenship status, and to refrain from taking adverse action against employees challenging tentative work-authorization

non-confirmation results. By March 2007, the BPP was being used by 15,000 employers representing approximately 56,000 work sites across all 50 states (National Immigration Law Center 2007a).

There are serious problems with the BPP (National Immigration Law Center 2007b):

- Inaccurate and outdated federal databases prevent a large share of eligible individuals from being approved for work.
- Employers and workers can easily circumvent the BPP by using valid or counterfeit documents, or simply by not using the program when the employer knows the employee is not authorized to work and wants to hire him or her anyway.
- Employers use the BPP to discriminate against workers, engaging in prohibited practices like selective application of the program, using it for pre-employment screening, and taking adverse actions against employees based on tentative non-confirmation notices.
- Workers' privacy is compromised because the information in DHS and SSA databases is not protected.
- BPP involves large costs for the federal government, businesses and workers.

Given these problems, cities should avoid participating in the BPP themselves. In addition, they can attempt to curb the misuse of the program by employers in at least three ways.

First, they can use their proprietary interests to discourage some employers from participating in it, following the model suggested above for no-match letters.

Second, cities can pass legislation that effectively takes in their own hands the enforcement of some of the provisions of the memoranda of understanding that participating employers sign with the DHS but that the federal government routinely fails to enforce. Specifically, they can prohibit participating employers from engaging in the actions that the memo of understanding already prohibits, and rigorously enforce this prohibition.

Finally, cities can pass legislation establishing that employers within the city limits are not allowed to enter into a memorandum of understanding with DHS until the BPP is certified to be very reliable (e.g., confirms correctly the employment eligibility status of 99 percent of those non-citizens legally authorized to work). One way to proceed is by embedding this prohibition within broad anti-discrimination legislation, including discrimination based on people's national origin or citizenship status.

In addition to employers' misuses of the BPP, immigrant workers are also affected by the fact that the program makes it their responsibility to challenge any discrepancy between government records and their own, even in those cases in which the federal government or the employer is responsible for the discrepancy, and gives them very little time to do so. These workers need to know what to do to protect their rights in the event of a non-confirmation by the BPP, and often will benefit greatly from help. Cities can help them by including this issue among those they will direct their legal outreach and education efforts, as discussed in a previous section.

Endnotes

1. With the exception of the figure on labor productivity, the data reported in the previous two paragraphs come from the author's analyses of the Current Population Survey – Outgoing Rotation Groups, 2004, and the March Supplement of the Current Population Survey, 2005. Precise figures and some methodological details can be found in the Appendix.
2. There is a sixth local minimum wage in Sandia Pueblo, NM (a pueblo is a federally recognized Native American community, of which there are 20, all of them in the Southwest of the country).
3. These are the only cities for which studies of actual effects exist. There are studies for other cities, but they are all studies of the expected effects of introducing city-wide minimum wages.
4. Yelowitz (2005) has misleadingly claimed that the introduction of Santa Fe's minimum wage has harmed those it purported to help. His argument is that the minimum wage led to a reduction in the hours worked by those with less education, and to a higher unemployment rate than what would have been the case without the minimum wage. He ignores that the reduction in hours worked he finds among those with less education (three hours per week) is more than compensated, in terms of earned income, by the increase in wages, and that the minimum wage did not produce any decline at all in the availability of jobs — the higher unemployment rate is fully accounted for by an increase in labor force participation, almost certainly a result of the higher minimum wage itself (Pollin and Wicks-Lim 2005).
5. By January 2007 29 states had established minimum wages higher than the federal minimum (see information provided by the Department of Labor at <http://www.dol.gov/esa/minwage/america.htm>). However, few of them have been set high enough to fully compensate for the decline in the real value of the federal minimum wage since 1969, or even since its lower 1979 level.
6. The ordinance also established that the same minimum compensation package had to be offered by the city to all its employees, and by any contractor or subcontractor working for the city on a service contract to the workers performing the work on that contract. This part of the ordinance does not involve the use of the city's regulatory powers but is based on its proprietary interests (more on this below). Also, the ordinance allowed for exceptions, the most important for unionized firms and for firms undergoing severe economic hardship.
7. For more information on Chicago's proposed ordinance and campaign, see the Brennan Center for Justice's web site, <http://www.brennancenter.org> > Wages, Jobs & Strong Economy > Living Wage and Minimum Wage Laws.

8. Personal communication from Sheldon Shugarman, Executive Director of Baltimore's Wage Commission, 04/05/2007. These data, of course, correspond to those violations the Wage Commission is aware of.
9. For a full list of cities and other local governments that have passed living-wage ordinances, see <http://www.livingwagecampaign.org> > Living wage wins. For a full list of living wage campaigns under way, see <http://www.livingwagecampaign.org> > Current campaigns.
10. It includes the preparation or distribution of materials advocating for or against unionization; getting legal or other types of advice on how to assist, promote or deter union organizing or how to impede a union from fulfilling its representational responsibilities; holding meetings to influence employees about unionization; planning or conducting activities by supervisors to assist, promote or deter union activities; and defending against unfair labor practice charges brought by federal or state enforcement agencies.
11. A referral agency is defined in this ordinance as an organized job registry and referral service operated by a not-for-profit organization or union, provided that the not-for-profit organization: (a) has an established community membership base; (b) has a record of conducting outreach in low- and moderate-income Boston communities; (c) has a governing board composed of a majority of low- and moderate-income Boston residents or provides a majority of its services to low- and moderate-income Boston residents; (d) has a proven track record of nondiscriminatory job placement; (e) possess some minimal technical capabilities required to perform its referral role; and (f) has been certified as meeting all these requirements by the Boston Office of Jobs and Community Services.
12. In Georgia, the prohibition bans local governments from requiring contractors to provide employment benefits, defined as anything of value that an employee may receive from an employer in addition to wages and salary, including but not limiting to health, disability, death, and group accidental death and dismemberment benefits; paid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits.
13. More specifically: Davenport requires the provision of health-care benefits to those receiving Tax Increment Financing; Des Moines to those getting tax benefits through their participation in the Enterprise Zone Incentives for Business Expansion program; Houston to those receiving tax abatements; and Missoula to those participating in any of five different programs aimed at economic development and job creation.
14. Louisiana passed legislation in 2001 establishing that "no governmental body may pass any law, ordinance, or regulation, or impose any contractual, zoning, permitting, licensing, or other condition on employers' or employees' full freedom to act" under the National Labor Relations Act and the Labor Management Relations Act, including "conditioning any purchase, sale, lease, or other business or commercial transaction between any employers on waiver or limitation of any right those employers may have" under those acts (Act 1190).
15. Boston Harbor refers to *Building Trades Council v. Associated Builders & Contractors*, 507 U.S. 218(1993).

16. Some cities have even passed worker retention legislation covering workers outside city service contracts (e.g., Los Angeles, covering grocery workers).
17. See <http://www.ci.mil.wi.us> > Get Licenses or Permits.
18. See <http://www.nyc.gov/html/dca/html/home/home.shtml> > Licenses.
19. For Chicago, see <http://egov.cityofchicago.org/city/webportal/home.do> > For Business > Licenses, Permits and Taxes, Licenses > Business Licenses. For Durango, see <http://www.durangogov.org> > Business > Licensing Information.
20. See www.nilc.org > Employment Issues > Social Security Administration (SSA)-related Information > Social Security Administration “No-Match” Letters > Employer Education Materials > Potential Liability That Employers Face If They Take Adverse Action against Employees Based Solely on a No-Match Letter.
21. Participation is voluntary in most cases – a few employers may be required to participate.

Appendix

In the introduction we characterized the workers holding bad jobs, but did not present the precise figures behind many of our assertions. They are provided here, together with some methodological details.

In 2004, 38.9 percent of workers older than 17 made less than \$12 per hour. Even working full-time full-year, they could have made at most \$25,000 that year, but most of them made far less than that — their median annual earnings were \$13,000. Of all workers making less than \$12 per hour:

- 69.4 percent were older than 25.
- 45.4 percent were married.
- 14.9 percent were widowed, divorced or separated.
- 78 percent were not included in any employer-based pension plan.
- 66.7 percent were not offered get health-care insurance at their jobs.
- 42.2 percent lived in families whose total income (including all possible sources of income) was less than twice the federal poverty line.
- 30.1 percent did not have any form of health-care insurance.

The proportion of workers with hourly earnings below \$12, and their demographics, were calculated using data from the Census Bureau's Current Population Survey – Outgoing Rotation Groups, 2004. These data cover both hourly and non-hourly workers, but they do not include the self-employed. For those hourly workers in occupations in which tips are common, a measure of hourly earnings that includes tips was used. The figures on pension plans, health-care insurance, and poverty were calculated using data from the Census Bureau's March Supplement of the Current Population Survey, 2005 (which has data for 2004). When using this dataset, the self-employed were excluded. For a description of the CPS and its supplements, see <http://www.census.gov/cps/>.

The analysis uses twice the federal poverty line as the poverty threshold. It is widely accepted that the poverty line grossly underestimates the amount of money required to avoid poverty (e.g., Acs, Phillips et al. 2000). In addition, a 2001 study indicated that twice the poverty line is a better approximation to the amount of money that families need to afford a safe and decent, but modest and absolutely no-frills, standard of living (Boushey, Brocht et al. 2001).

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