

5 Ways to Strengthen Economic Security for America's Families

Raise the
Minimum
Wage

Fight
Wage Theft

Repair the
Unemployment
Safety Net

Expand
Opportunity
to Work

Hold
Employers
Accountable

NELP
National Employment
Law Project

Table of Contents

I. Fighting for a Future of Living Wage Jobs 1

II. Raise the Minimum Wage 6

III. Fight Wage Theft 8

IV. Repair the Unemployment Safety Net for Low-Wage Workers and Families 10

V. Expand Opportunity to Work Through Fair Hiring Reforms 13

VI. Hold Subcontracting Employers Accountable 15



National Employment Law Project
75 Maiden Lane, Suite 601
New York, NY 10038
Phone: 212-285-3025
Fax: (212)285-3044

Five Ways to Strengthen Economic Security for America's Families

The best way to fight inequality is to build an economy on living wage jobs.

Fighting for a Future of Living Wage Jobs

After 35 years of growing inequality, America stands at a pivotal moment. Our economy creates too many low-wage jobs and not nearly enough good ones. Upward mobility has stalled, and new and old forms of discrimination continue to undermine opportunity. Workers' rights are under attack as cost-cutting imperatives undermine labor law compliance. Changes in business structures and employment relationships have left millions with no job security and with limited legal protection in the workplace. Meanwhile, millions of workers who lost jobs in recent years face a frightening and uncertain future, unable to get work and lacking any assurance that income support or reemployment assistance will be available at their time of greatest need.

The footprints of inequality are everywhere – in our politics, our education system, and health care – but they are most acute in the collapse of the labor market for most workers. If we continue on our current path, without intervention, the future of work in America will be marked by inequality in the distribution of wages; inequality in who is protected by workplace laws; and inequality in who gets access to full-time, stable employment in good jobs that enable families to provide for today and prepare for tomorrow.

NELP believes that the best way to fight inequality and restore equity is with an economy built on living wage jobs, skilled workers, and a strong safety net. We see great opportunities to engage this fight. In 2013, fast food strikes in 60 cities shone a spotlight on the nation's wage crisis and galvanized low-wage workers and their allies. The fight for \$15 helped propel the minimum wage to the top of the agenda, with campaigns for robust increases underway in Congress, the states and several cities. Elsewhere, workers have launched a renewed wave of organizing and activism to improve jobs in low wage sectors like retail, warehousing, airport concessions and logistics.

NELP partners with national and grassroots allies on concrete campaigns to win an economy that works for all working people, especially low-wage workers -- immigrants, women, people of color, workers with criminal records-- and the unemployed. Inspired by our allies and the power of community-driven change – and using both national and local strategies – our goal is to create an America in which the promise of economic opportunity and security through work becomes reality for all of America’s workers.

What We Do

We fight for good jobs, and equal access to them, by...

- *Raising the minimum wage:* NELP is a national leader in efforts to boost wages in fast-growing jobs that line the body of the labor market. We spearhead the coalition that has come together in support of the proposal to raise the federal minimum wage to \$10.10 per hour. And we are providing crucial leadership and technical support to minimum wage campaigns underway in 17 states and seven cities across the country. In addition to providing robust increases in overall minimum wage levels, the federal proposal and most of the state and city measures also index the rates to rise each year and raise or end the egregiously low separate rate for tipped workers, which at the federal level has been frozen at \$2.13 per hour since 1991.
- *Advocating for living wage laws and accountable economic development:* Our staff has played a central role in the living wage movement since its inception. We are now working with partners to spread that model to economic development, including strategic campaigns to raise wages at large airports.
- *Breaking down barriers to employment for workers with criminal records:* An estimated 65 million Americans have arrest or conviction records that often make it much harder to find work. Persistent joblessness translates into economic losses for everyone. NELP led the effort to secure landmark EEOC guidance on limiting the use of criminal records in hiring. We also give extensive support to local ban-the-box campaigns, which we expect to soon reach a tipping point nationwide.
- *Investing in quality job creation:* Through policy inventories and data analysis, we point the way to leveraging public dollars to create jobs, and advocate for wage standards and targeted hiring from local communities on infrastructure and green jobs projects.

Our goal: an America that fulfills the promise of economic opportunity and security through work.

- *Transforming caregiver jobs into good jobs:* We are a core partner of the Caring Across Generations Campaign, contributing policy and research expertise to improve wages and working conditions for millions of home care workers in the U.S.

We strengthen standards in America's workplaces by...

- *Ending legal exclusions of home care workers from core labor standards:* After many years and campaigning on many fronts, NELP and its close allies scored a major win for the nation's home care workforce in September 2013, when the U.S. Department of Labor announced final rules ending an archaic exemption and extending federal minimum wage and overtime protections to more than two million of our nation's home care workers. We are proud to have played a role in securing such a fundamental victory for workers in this large and fast-growing occupation, and pleased also to be supporting efforts to pass state bills of rights for domestic workers in California, Connecticut, Illinois and Massachusetts.
- *Enforcing core labor standards:* NELP is the lead ally of wage theft campaigns in states and cities across the country, working with partners in California, Colorado, Florida, Illinois, Kentucky, Massachusetts, North Carolina, New Jersey, Oregon, Texas and Washington State. We also support industry-specific strategies ranging from restaurants and retail to warehousing and day labor.
- *Protecting subcontracted and misclassified workers:* For too many workers today, the murky distinction between the companies they're "working for" and those they're "employed by" makes it next to impossible to enforce basic workplace rights or secure fair wages for their work. NELP has launched an ambitious project to address the wide-spread use of subcontracting and its relationship to declining wages and working conditions. This project builds on our long-standing leadership in helping states and worker organizations fight independent contractor misclassification. From our early successes in winning millions in back wages for immigrant baggers and delivery workers employed by New York City grocers and pharmacies to our latest research detailing widespread misclassification of port drayage drivers, NELP is exposing and fighting unscrupulous ruses to deny workers the wages they have earned or avoid compliance with our core labor standards.
- *Protecting immigrants and guest workers:* We advocate for greater protections against immigration-status related retaliation against immigrant workers, greater access to U-Visas for victims of work-

place crime, better protections under the H-2B program, and a strong firewall between immigration and workplace enforcement.

We promote a strong safety net by...

- Preventing lay-offs and helping displaced workers: NELP engages directly with workers, employers, unions, program operators and policymakers to prevent lay-offs. In 2014, we are working with partners in an ambitious effort to get nine more states to adopt work-sharing programs. If successful, this will be a win-win for workers and employers in 35 states (plus D.C.) that will pay prorated unemployment insurance benefits to workers whose employers opt to reduce hours rather than cut jobs altogether in downturns.
- Building a robust system of unemployment insurance: Throughout the Great Recession and the recovery, NELP led the effort to build the strongest unemployment insurance program in the nation's history – helping 24.5 million jobless Americans through 12 successful federal campaigns to extend benefits, and winning reforms in 39 states to boost coverage of low-wage and part-time workers. We also promote new investments in job placement, career counseling and retraining.

How We Do It

NELP's staff includes policy analysts, lawyers, researchers, and campaign coordinators. We are experts in our fields, dedicated to supporting an organizing model of social change.

We work to create systemic change from the ground up:

- Collaborating with grassroots organizations on community-led campaigns
- Testing new policies at the state and local level and then scaling them up to federal policy – which in turn provides a launching pad for more local innovation
- Supporting new forms of worker organizing

We play both offense and defense:

- We help to incubate and disseminate new policy models
- We fight bad policies that undermine wages and workplace protections

We use strategic tools to build movement capacity:

- Innovative policy design and legal analysis – spanning legislation, regulation, and administrative advocacy, at the federal, state and local level.
- Strategic litigation – which provides remedies for mistreated workers while cementing policy and helping to build the power of organizing groups.
- Rigorous economic research – like our reports tracking the low-wage recovery, and the landmark Broken Laws study documenting widespread workplace violations.
- Testimony before federal, state and local legislative and policy-making bodies.
- Campaign coordination.
- Communications and public education.

Our partners are our strength:

- Community organizing groups from low-wage advocates like Action Now, Jobs with Justice and National Peoples' Action, to accountable development organizations like Alliance for a Greater New York, to faith-based organizations like Interfaith Worker Justice.
- Immigrant worker centers like the National Domestic Workers Alliance, Restaurant Opportunities Centers United, the National Day Laborer Organizing Network, and the National Guestworker Alliance.
- Unions representing workers across the economy, including building services, home health care, manufacturing, retail, construction, grocery stores, and warehousing and a host of state labor federations.
- Policy experts and networks like the Partnership for Working Families, the Economic Policy Institute, Businesses for Shared Prosperity, Small Business Majority, Center for Economic and Policy Research, and dozens of state-level partners.

1. Raise the Minimum Wage

The federal minimum wage has remained stuck at \$7.25 per hour for nearly five years, even as the cost of basic necessities like food, housing, and gasoline has continued to rise. As low-wage jobs have begun to shift from the periphery to the core of the U.S. economy, a growing number of states, cities, and leaders at the federal level are calling for a long-overdue minimum wage increase to improve job quality for working families and boost the economic recovery.

Increasing the minimum wage will give working families a much-needed raise.

- Raising the federal minimum wage to \$10.10 per hour would benefit nearly 28 million low-paid workers across the country. Among these affected workers, the average age is 35 years old.
- The average worker affected by this increase contributes fully 50 percent of his or her entire household's income, and the average parent affected by this increase accounts for an even greater share (59.6 percent) of family income.
- 14 million children in the U.S. (nearly one in five children) have at least one parent who would receive a raise if the minimum wage were increased to \$10.10 per hour. One quarter (24.7 percent) of parents affected by this increase are the sole income earners for their family.

Raising the tipped minimum wage is a critical priority for boosting wages and addressing pay equity for working women.

- At the federal level, the minimum wage for tipped workers has remained stuck at the meager rate of \$2.13 per hour since 1991. With women making up nearly two-thirds of all tipped workers, raising the tipped minimum wage remains a critical step for boosting incomes and alleviating the pay gap for working women.
- Despite common misconceptions, tipped workers – including restaurant servers, parking lot attendants, nail salon workers, and airport luggage porters – earn low wages even after factoring in tips. For example, tipped workers are more than twice as likely to fall under the federal poverty line, and nearly three times likely to rely on food stamps, as the average worker.
- Tips are highly erratic, varying from shift to shift and season to season. Raising the tipped minimum wage will help alleviate this uncertainty and provide for more stable base income paid directly by employers.

POLITICO

The Roots of Obama's Minimum Wage Gamble

January 5, 2014

"I think the resonance is deeper this time," says Paul Sonn, a lawyer with the National Employment Law Project who, over the last 20 years, has authored many of the successful living wage ordinances. "Once we moved out of the recession, the economy started to grow but most of the jobs are in low-paying fields. There's really a sense this time that we have to care more about low-wage jobs, they're more at the core of our economy than they were before, and therefore more at the core of national politics."

“I am a minimum wage worker at a restaurant, and trying to provide for my family is really tough. I have a fiancé who makes minimum wage as well.

We have three children, and our paychecks combined barely cover the necessities like a roof over our heads, gas and lights, and clothes for the kids. We wouldn’t be able to make it without assistance like food stamps and a medical card. There is constant stress because we are living paycheck to paycheck and never have enough money. This isn’t about needing more money for luxury things, we need a raise in the living wage in order to survive.”

~ Edward A. Alton, Illinois

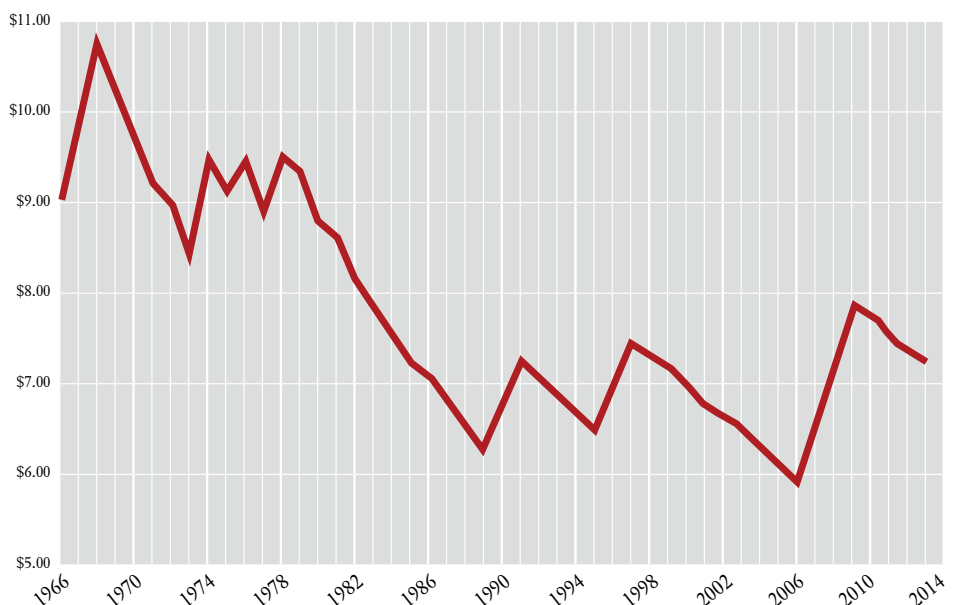
Raising the minimum wage will help alleviate inequality and reduce poverty in the U.S.

- The federal minimum wage has lost over 30 percent of its purchasing power since its real value peaked in 1968, when it was worth \$10.70 in today’s dollars. Fully 57 percent of the inequality that has emerged over the last 30 years between the lowest-paid workers and those in the middle has been due to the eroding purchasing power of the federal minimum wage.
- A review of the economic evidence over the past 20 years shows that every 10 percent increase in the minimum wage is associated with a 2.4 percent reduction in the federal poverty rate.
- Unless we take steps to raise wages now, the economy is not projected to do so on its own. The Bureau of Labor Statistics estimates that low-wage jobs will make up 6 of the 10 largest growth occupations over the next decade.

Solutions:

Congress should raise the federal minimum wage to \$10.10 per hour, index it to rise each year with the cost of living (as 11 states currently do), and increase the base wage for tipped workers to 70 percent of the full minimum wage. States should also continue to exercise their authority to step ahead of Congress and raise the minimum wage to at least \$10.10 per hour, with indexing, and increase the base wage for tipped workers to 70 percent of the full minimum wage.

Chart 1. Real value of the federal minimum wage (constant 2013 dollars)



NELP Analysis of Bureau of Labor Statistics Consumer Price Index (CPI-U)

2. Fight Wage Theft

Workers should get paid for the work they do. Yet, unscrupulous employers around the country steal millions of dollars out of their workers' paychecks every week. Some workers are paid less than minimum wage or not paid overtime; others are worked "off the clock" or cheated of their tips. Wage theft exacerbates the problems of an economy increasingly dependent on low-wage jobs, and puts workers and their families at greater risk of poverty and economic insecurity.

Wage theft is systemic and pervasive across a wide range of industries, occupations, and workplaces.

- NELP's landmark study of low-wage workers in the nation's three largest cities – New York, Chicago, and Los Angeles – found that more than two in three experienced at least one pay-related violation in their previous work week, including one in four who were paid less than minimum wage, and three in four who were not paid overtime pay owed to them.
- Many of the fastest-growing occupations in our economy combine low pay with high rates of wage theft: one in four retail workers report minimum wage violations; nearly three in four food preparation workers report "off the clock" violations; more than four in five waiters and waitresses suffer rest and meal break violations; and nearly 9 in 10 personal and home care aides experience overtime pay violations.
- 43 percent of workers who complained to their employers faced retaliation, such as termination, cuts in wages or hours, or threats – or actual calls – to immigration authorities. While wage theft affects all workers across the low-wage labor markets, women and immigrant workers, and particularly undocumented women workers, are most at risk of wage theft.

Wage theft hurts all of us.

- Low-wage workers lose an average of nearly \$3,000 (about 15 percent of their annual income) to wage theft. That means workers and their families lack the money to pay for necessities like food, clothes, and rent, much less save for retirement or for a college education for their children.
- Wage theft, combined with chronic low wages, harms workers and their children, whose physical and mental health are greatly affected by constant scarcity. Studies have found that chronic scarcity in one generation bleeds over into the next: children raised in poverty remain in poverty as adults.

DAILY NEWS

Queens Restaurant Workers Struggling With Wage Theft

February 21, 2014

Wait staff and cooks in two Queens restaurants say their wages are rotten. [The] workers . . . often go without minimum wage or overtime, according to lawsuits. Employees at the eateries are waiting for judgment even though the state resolved 6,794 wage complaints last year.

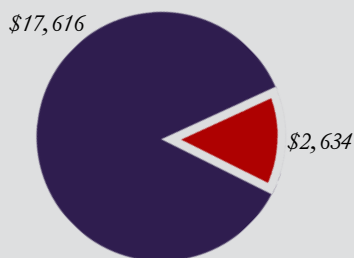
"These violations are rampant and there's just not enough enforcement either on the public level or the private level to make a huge dent," said Tsedeye Gebreselassie, staff attorney at the National Employment Law Project. New York City's 300,000 low-wage workers lose \$18.4 million per week in unpaid wages, according to the advocacy group.

Restaurant Flouts Wage Standards

“I worked at a restaurant for approximately two months. I was mainly responsible for cooking but also had to serve patrons and clean the restaurant. I worked over 10 hours per day, seven days a week. When I started, the owner agreed to pay me at a rate of \$8.00 per hour, but he never did. For the time I worked, I was paid \$1,000 total – much less than the minimum wage and only about one-fifth of what I should have been paid.”

*~ Celina Alvarez
Queens, New York*

On average, wage theft accounts for a loss of 15% of low-wage workers' earnings



Source: Broken Laws, Unprotected Workers (2009), available at www.unprotectedworkers.org

- Wage theft also harms law-abiding employers and public treasuries. Workers lose some \$56 million weekly in just three cities nationwide (Los Angeles, New York and Chicago). Unpaid wages cheat the public of payroll taxes, and create an uneven playing field for employers who follow the law.

Unscrupulous employers violate the law because they can.

- Public enforcement of wage and hour laws cannot keep up with violations. The U.S. Department of Labor has just over 1,000 investigators tasked with enforcing wage and hour laws at more than seven million workplaces. The average employer has just a 0.001 percent chance of being investigated. Most state enforcement agencies are similarly under-resourced.
- Private enforcement is rarely an option for low-wage workers. Workers can seldom find lawyers to take their cases, given the limited damages they would recover and the time and expense of filing a lawsuit.
- The chances of getting caught are so remote that most employers don't think twice about the consequences of breaking the law. Even when employers are caught, many don't pay up. Those that do pay up may only have to pay the bare amount of wages owed, so that wage theft is like an interest-free loan for employers.

Solutions:

Fighting wage theft involves not only passing stronger new laws and closing gaping loopholes, but also allocating more resources for smarter enforcement of laws already on the books and enacting stronger enforcement tools. Advocates are taking action against wage theft at both state and local levels:

- Advocates in New York are pushing for increased funding for public enforcement at the New York State Department of Labor. Maryland passed state legislation to make it easier for workers to collect wages owed; advocates in Oregon, California, and Washington are engaged in a similar fight.
- In 2013, New Mexico adopted a new law that gives streamlined treatment to wage claims, so that workers in need can have their claims heard quickly. Kentucky has joined 10 other states in assessing triple the wages due certain workers, both as a penalty and to deter further violations.
- Some states, such as Texas, have increased penalties for wage theft to deter violations and impose consequences. California enacted stronger protections against retaliation for workers who step up and identify violators.
- Advocates are also pursuing innovative strategies locally. Houston, Chicago, Seattle, and Somerville, Massachusetts have all passed wage theft ordinances that tie issuance or renewal of business licenses to wage and hour compliance.

3. Repair the Unemployment Safety Net for Low-Wage Workers and Families

Unemployment insurance – the first line of defense against economic hardship during job loss – has kept more than 11 million people out of poverty since the devastating 2007 recession. This vital program must be modernized and strengthened, however, to include more low-wage and women workers and to mitigate damaging state cuts.

Unemployment insurance (UI) provides a crucial lifeline of support, keeping families out of poverty and helping job-seekers find work, but the benefits are modest and fewer unemployed are able to access the program today.

- The financial strain of job loss affects the well-being and stability of the entire family. Children who experience economic hardship are more likely to drop out of school, suffer from poor health, and have difficulty maintaining stable employment in adulthood.
- In addition to lifting 11.4 million people out of poverty in response to the most severe economic downturn since the Great Depression, unemployment insurance is responsible for a 25 percent reduction in poverty among children who have had an unemployed parent.
- Despite remarkable successes, state UI programs provide only modest aid. On average, workers receive just \$300 a week in benefits, which barely covers typical housing expenses. Moreover, the share of unemployed workers receiving state jobless aid fell to a record low of just one in four in 2013.
- This alarming drop in reciprocity is partly the result of unprecedented state cuts. Twelve states have slashed the maximum 26 weeks of UI benefits, many to less than 20 weeks. These cuts often penalize low-wage workers, who are already two-and-a-half times as likely to be out of work, but only half as likely to collect unemployment, as higher wage-workers.

More states need to fill in the gaps that leave women and low-wage workers without UI protections.

- In 2009, the American Recovery and Reinvestment Act (ARRA) created an historic opportunity for the states to modernize their UI programs by making \$7 billion available to fund reforms to fill the gaps in the program, so that more low-wage workers, women, part-time workers, and the long-term unemployed could be covered.

Tampa Bay
Times

U.S. Department of Labor
Blasts Florida's Unemployment
Aid Program

April 25, 2013

Only about 17 percent of Floridians eligible for unemployment benefits actually received them and the number of applications rejected for paperwork reasons has quadrupled since 2010, said George Wentworth, an attorney with the National Employment Law Project.

Wentworth said the number of first-time applicants able to get jobless benefits has plummeted to 43 percent in Florida, compared with 70 percent nationally. "The Florida unemployment program is riddled with obstacles that have made it difficult for all kinds of workers," he said.

Hanging On by a Thread

Dawn Deane, a 49-year-old old mother of two from Philadelphia, was laid off from her job as a human resource manager at an education non-profit. With more than 20 years of professional experience, a modest home to maintain, and a nine-year-old daughter to support, Dawn and her family counted on unemployment insurance to sustain themselves while she continued her determined, daily job search.

“The unemployment insurance is helping me manage and maintain my mortgage, utilities, and car payments – helping us just barely stay above water. Without it, I’d just have nothing while I look for new work – not even heat, electricity, or a phone. And if it got cut off, I would fall behind on my mortgage, probably face foreclosure, have my car repossessed, and end up applying for welfare.”

- In just three years, 35 states have enacted major UI reforms, bringing hundreds of thousands of workers into the unemployment system. Significant gaps remain, however, especially in the South, where many states failed to take advantage of the federal incentives.
- Part-time workers – of whom nearly two-thirds are women – are far less likely to receive UI benefits than full-time workers. Nearly half the states still exclude workers seeking part-time employment from receiving UI benefits.
- ARRA also encouraged states to expand UI benefits to cover to workers forced to leave a job due to compelling family reasons, such as domestic violence or the need to care for a sick family member. In more than half the states, a worker who lost her job to care for a sick child would be denied benefits. Only about a dozen states provide an extra “dependent allowance” for workers caring for minor children and sick family members.

The state UI systems should connect unemployed workers and families with other government support programs.

- The state agencies that process UI claims often function in silos, and they have largely failed to help connect unemployed workers and their families with other government aid and social services. But in response to the economic downturn, which has left record numbers of workers reaching the end of their UI benefits, more states are finding new and creative ways to reach across programs and connect jobless workers to job training, subsidized jobs, SNAP, health care, mortgage assistance, and other safety net programs.
- Maximizing access to SNAP benefits is especially vital to the families of unemployed workers. Around 20 percent of unemployed workers received SNAP in 2010, while only 2.4 percent of unemployed workers accessed TANF.

Solutions:

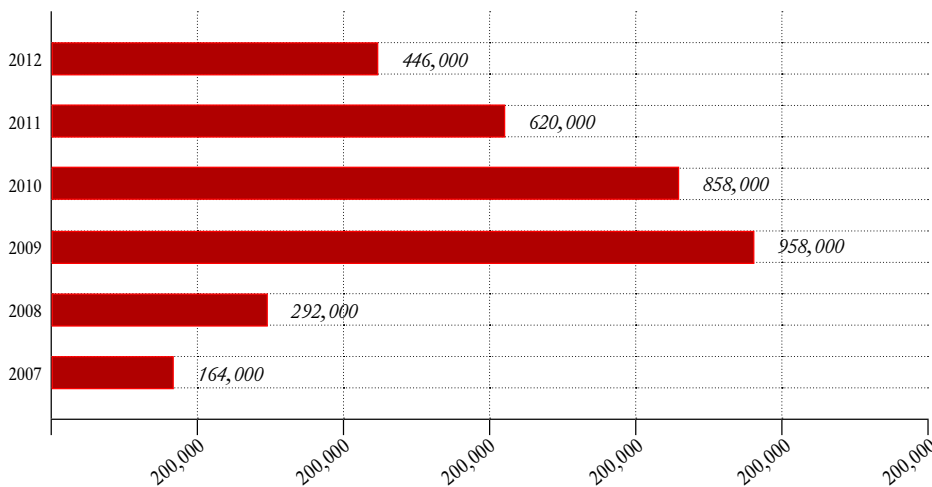
Reform state UI laws to cover women with families and low-wage and part-time workers. Far too many states have failed to modernize their UI programs to protect workers who are balancing work and family responsibilities and other low-wage and part-time workers. In addition, benefits should be increased for families caring for children and sick family members through “dependent allowances.”

Connect unemployed families with SNAP and other government benefits. States should break down their agency silos to connect workers receiving UI benefits to other safety net programs. Pennsylvania, for example, contracted with

a nonprofit agency to help phone bank all workers reaching the end of their UI benefits to help them file for SNAP and other programs. Maine provided in-person counseling to workers reaching the end of their UI benefits, and California and Massachusetts have sent targeted mailings and set up “211” hotlines to assist with the outreach and education to workers receiving UI.

Hold the line against state UI program attacks. Never in the UI program’s nearly 80-year history has it been under such severe attack by state legislators and governors hostile to the plight of the unemployed. In addition to severe benefit cuts, states are imposing mandatory online filing and other barriers to access that have a devastating impact on low-wage workers and other vulnerable groups. Advocates and state policy makers must make every effort to hold the line against these attacks, while maintaining a proactive UI reform agenda.

Chart 2. Unemployment Insurance Has Kept Millions of Children Out of Poverty During the Economic Downturn



Source: U.S. Census Bureau, *Income, Poverty and Health Insurance in the United States: 2012 - Tables & Figures, Impact on Poverty of Alternative Resource Measures by Age: 1981 to 2012*, available at <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2012/tables.html>

4. Expand Opportunity to Work Through Fair Hiring Reforms

One in four U.S. adults - 65 million people - has a criminal record



The New York Times

An Unfair Barrier to Employment

Editorial, May 13, 2013

Sixty-five million Americans have criminal records that might cause them to be denied jobs, even for arrests or minor convictions that occurred in the distant past. . . . The problem has become so acute that a growing number of states and municipalities have explicitly prohibited public agencies – and in some cases, private businesses – from asking about an applicant’s criminal history until the applicant reaches the interview stage or receives a conditional job offer.

Laws or administrative directives of this nature have been enacted in [nearly 60] cities and counties and in [nine] states, according to a recent analysis by the National Employment Law Project, a research and advocacy group.

States and cities around the nation have embraced reforms that help qualified job applicants with a criminal record compete fairly for jobs. Ensuring employment opportunity for people with records is essential to reducing poverty and recidivism and supporting families hardest hit by the criminal justice system and unemployment. Reforms include “banning the box” that asks about convictions on initial job applications and delaying background checks until later in the hiring process.

Record numbers of Americans have a criminal record that jeopardizes their ability to find work, leaving families trapped in poverty.

- In 2011, NELP documented that 65 million Americans – one in four adults in the U.S. – have a criminal record that will show up on routine criminal background checks for employment. As background checks for employment become increasingly common, qualified job-seekers who have turned their lives around are routinely locked out of the labor market, regardless of the age or seriousness of the offense.
- The scarlet letter of a criminal record has taken an especially heavy toll on communities of color that were targeted in the failed “War on Drugs” and face unprecedented levels of incarceration as a result.
- More than two in three male inmates were working before they were incarcerated. More than half served as the primary source of financial support for their children.
- Employment of people with a criminal record not only reduces the high rates of recidivism that plague low-income communities, but it also goes a long way to help reunite families with children and to maintain child support, which is critical to the family’s economic well-being.

“Smart on crime” reforms, including “ban the box” and other model policies that open employment opportunities to people with records, enjoy broad bipartisan support.

- Policymakers and officials as diverse as U.S. Attorney General Eric Holder and Senator Rand Paul are increasingly united in support of a “smart on crime” agenda. In addition to sensible criminal justice reforms such as those that address drug sentencing disparities, there is a commitment to reducing the “collateral consequences” associated with a criminal record, including the denial of voting rights, and limited access to employment, education, housing, and public benefits.

Old Conviction Casts Long Shadow

Darrell Langdon struggled with addiction in his youth, but through strength of character, the 52-year-old father of two kicked the habit and has remained sober for over 20 years.

After losing his mortgage broker job in the 2008 recession, Darrell reapplied for his former position as a boiler room engineer for the Chicago Public Schools (CPS). He was conditionally hired pending a background check, but his 25-year-old felony conviction for cocaine possession proved to be the mark against him.

Not giving up, Darrell secured a “certificate of good conduct” from the court, which legally should have lifted the barrier to employment, but CPS again rejected him. It took media scrutiny and legal support to finally get CPS to reconsider. One of the few lucky ones, Darrell overcame the hiring barrier posed by a criminal record and now works in a job he loves.

- More than any other single employment issue, states and cities have embraced “ban the box” and the strong message it sends about removing the debilitating stigma of a criminal record from the hiring process. “Ban the box” is not about eliminating criminal background checks. Employers are still free to conduct background checks. But they should wait until later in the hiring process, after applicants have had a fair opportunity to establish their credentials for the job.
- Since 2009, nine states have adopted ban-the-box policies. Four states (Minnesota, Rhode Island, Massachusetts, and Hawaii) cover not just state and local government employers, but most private employers as well. In addition, nearly 60 cities and counties now have this fair hiring policy in place. In total, about 30 percent of the U.S. population now resides in a community where ban-the-box is in effect.
- Ban-the-box has been endorsed by the U.S. Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs as a best-practice to help employers comply with antidiscrimination laws. Corporations such as Target and Walmart also have adopted the policy. Businesses and recruiters benefit because the policy ensures access to a full pool of qualified candidates and conserves resources by limiting background checks to those being seriously considered.

Solutions; Reduce barriers to employment and open up employment opportunities for job-seekers with records through the following:

- *Ban-the-Box Model Policies:* States and cities are expanding their ban-the-box policies to cover not only public employers but private employers and contractors as well. The most robust policies include strong enforcement provisions and reserve background checks for the end of the hiring process, after a conditional offer of employment has been made.
- *Occupational Licensing Protections:* State occupational licensing laws, governing a range of occupations such as barbers and cosmetologists, certified nurse assistants, truck drivers, and port workers, often mandate criminal background checks. These laws routinely deny certification to qualified workers who pose no safety or security concerns. Reforms should include protections that allow workers to verify the accuracy of the record and a waiver process for applicants to show rehabilitation.
- *Targeted Hiring Agreements:* In cities across the U.S., thousands of good jobs are being created for low-income community residents through government-subsidized development projects, thanks to targeted hiring agreements negotiated with employers. Large-scale development projects can specify people with records in the targeting criteria, while also applying ban-the-box to all employers and subcontractors involved in the project.

5. Hold Subcontracting Employers Accountable for Violating Labor Standards

THE AMERICAN PROSPECT

As Common as Dirt

September 11, 2012

[O]ne of the thorniest problems facing American workers [is] the rise of subcontracted labor and the question of who is responsible when abuse occurs.

“If you think about the jobs we can’t outsource and will stay here, that’s where you see a lot of subcontracting going on,” says Catherine Ruckelshaus, legal co-director of the National Employment Law Project.

Subcontracting has sprawled into other low-wage jobs in construction, janitorial, security, health-care, housekeeping, and warehouse industries, often at name-brand companies like Amazon and Wal-Mart.

More and more businesses are inserting tiers of contractors between themselves and their workers and calling their employees independent contractors. It’s a way to distance themselves from bad working conditions, and it’s happening in huge sectors like hotels, hospitals, retail, and construction. We should stop employers from skirting responsibility for the bad jobs they create by holding them accountable for conditions in their supply chain and overall business.

Subcontracted and disaggregated jobs are on the rise.

- Growing numbers of employers are attempting to lower labor costs and shed responsibility for their workers by using strategies such as subcontracting that effectively externalize the employment relationship.
- An estimated 1 to 2 percent of employees are misclassified as independent contractors and therefore are not covered by labor laws; numerous federal and state studies find that upwards of 30 percent of employers misclassify workers. Hundreds of thousands more workers are paid off the books.
- From 1982 to 2006, the share of GDP resulting from subcontracting rose from 7 percent to 12 percent. From 1982 to 2013, the share of the workforce in contract firms rose from 8.8 percent to 13.6 percent.
- While temporary and staffing work remains a relatively small portion of the overall workforce (2.8 percent, or just over 3.3 million workers), the sector has shifted away from clerical jobs towards low-wage manufacturing (39 percent) and logistics and transportation jobs (20 percent) that now dominate temp employment.

Workers and their communities suffer in jobs with subcontracting structures.

- Numerous surveys, case law, and anecdotal examples suggest that subcontracted workers’ ambiguous employment status and often wholesale exclusion from labor law protections are central factors driving lower wages and poor working conditions.
- Studies have found that outsourced call center workers earn 8 percent less than in-house counterparts; contract company janitors earn 4 to 7 percent less, and contract security guards earn 8 to 24 percent less than directly employed counterparts; and average wages for airport baggage handlers fell

by more than 30 percent when Alaska Airlines contracted out the job in the SeaTac airport in 2005.

- Temp agency workers (roughly 2 percent of the workforce) earn 20 to 30 percent less than non-temp counterparts, depending on the occupation.
- Port truck drivers wrongly classified as independent contractors earn 18 percent less than driver-employees, according to a NELP study.
- An estimated two million low-wage workers are in federally contracted jobs.
- Independent contractor and off-the-books arrangements cost the federal and state governments billions of dollars annually in lost payroll and workers' compensation payments.

Solutions:

A concerted effort to broaden responsibility and accountability for businesses that contract out their work will help create better jobs for more lower-wage workers. It will also improve working conditions in lower-wage occupations that have seen the strongest job growth in this slow recovery from the Great Recession.

- Enforce laws currently on the books that broadly define who is the responsible employer, in order to hold more entities accountable as joint employers.
- Pass new laws, building on the good models being developed in the states and internationally, that explicitly hold more businesses liable for the working conditions in their realm. For example, a California responsible contractor law holds user-firms jointly responsible for contractors' labor violations if the contractors aren't financially sound; an Illinois law holds worksite employers responsible for working conditions of any worker it engages through a temporary or staffing company.
- Encourage state and federal labor agencies to target firms that use subcontracting structures to evade labor laws, employing all the tools at their disposal to send a strong message to law-breakers. The U.S. Labor Department should use its "hot goods" seizure power to hold goods anywhere in the supply chain if they were produced under substandard conditions, as it has in Oregon recently.
- The U.S. Labor Department and the states should resume collecting data on the magnitude and impacts of subcontracting and related structures to better understand and assign responsibility for labor violations.

A Warehouse Worker's Story

Jesus Saucedo works at Schneider Logistics, unloading Walmart products at a warehousing facility in California, so his two boys will have a better life. He says it's the hardest job he's ever had, and he has serious concerns about safety.

"When you are in the container, dust and fiberglass used to wrap the boxes flies all over and you inhale it. It gets in your eyes and you know it's bad for you." When Jesus told his supervisor about his concerns, he was told, "If you don't like it, go do something else."

To keep labor costs low, Walmart contracts with outfits like Schneider while still maintaining tight control over day-to-day operations in its warehouses. Schneider, in turn, contracts with temporary staffing firms at even lower rates. This approach puts low prices above all else, including labor standards.

