

POLICY BRIEF

Olympia's \$15 wage mandate would impose harsh penalties on business owners and limit voluntary job opportunities for workers

Erin Shannon
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January 2016

Key Findings:

- 1. The sweeping new set of labor regulations proposed in the City of Olympia would affect every business owner and employee in the city.*
- 2. The title of the proposal is "City of Olympia Minimum Wage Ordinance," but the proposed regulations extend far beyond mandated wages, and would create a complex network of new rules and punishments that would severely restrict how employers manage their workforce.*
- 3. The proposed ordinance would not only mandate a \$15 minimum wage, it would impose a paid sick leave requirement on all employers, restrict part-time employment and require employers to provide work schedules 21-days in advance.*
- 4. Micro-management of work schedules and paid time off policies would encourage the shift of business and job opportunities away from low-skill workers and out of the city.*
- 5. The strict wage and work rules would go much farther with much harsher penalties than similar laws passed in Seattle and Tacoma and would burden small, Main Street employers and their workers the most.*
- 6. The one-size-fits-all mandates on how employers pay and manage their workers would discourage job creation and deprive employers of the ability to manage services in a way that works best for their business, their employees and their customers. Workers would lose the flexibility and freedom to negotiate the schedules and compensation that fits their individual needs.*
- 7. If the "City of Olympia Minimum Wage Ordinance" is enacted into law, it would create a significant hardship in the community. Every employer would be forced to comply with detailed and inflexible mandates that would make running a business in Olympia more difficult and workers would have fewer choices and fewer job opportunities.*



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Olympia’s \$15 wage mandate would impose harsh penalties on business owners and limit voluntary job opportunities for workers

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Introduction

City Councilmembers in Olympia are considering a sweeping new set of labor regulations that would affect every business owner and employee in the city. The title of the proposal is “City of Olympia Minimum Wage Ordinance,” but the proposed regulations extend far beyond mandated wages, and would create a much more restricted business and labor environment on the community.

The proposed ordinance would not only mandate a \$15 minimum wage, it would impose a paid sick leave requirement on all employers, restrict part-time employees and limit how employers plan and schedule employee work schedules.¹

If the ordinance is enacted into law, every employer in Olympia would be subject to a new set of detailed, complex and inflexible mandates that would make running a business in Olympia much harder, and would restrict voluntary opportunities to earn money for those currently employed and for those looking for work.

Background

The proposed new law was drafted and introduced by Olympia City Council member Jim Cooper on October 26, 2015. The Washington Federation of State Employees says the proposal was “developed in conjunction with a remarkably broad coalition of worker and community organizations.”

This broad coalition appears to be limited solely to labor unions. Other unions that helped write the proposed law include WFSE/AFSCME Local 443, AFSCME Council 2, SEIU Healthcare 1199NW, SEIU 775, UFCW 21, UFCW 367 and Working Washington (organized, funded and run by SEIU).²

Councilmember Cooper admits he has no economic or labor data to support his proposed policy to make it illegal to offer or accept employment for less than \$15 an hour:

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- 1 City of Olympia Minimum Wage Ordinance, at www.dropbox.com/s/n6abdoz39hfk5p/OlympiaMinimumWageProposal.pdf?dl=0
 - 2 “\$15 minimum wage gets boost in City of Olympia—thanks in part to WFSE/AFSCME 443,” Washington Federation of State Employees, October 29, 2015 at <http://wfse.org/update-15-minimum-wage-gets-boost-in-city-of-olympia-thanks-in-part-to-wfseafscme-local-443>

“...15 is a number that feels good and is sort of not based on a lot of data, but is a number that seems tolerable both for business and the community.”³

While the proposed ordinance is currently under consideration by the Olympia City Council, Councilmember Cooper says he would like neighboring cities of Lacey and Tumwater, as well as Thurston County, to participate in the labor restrictions proposed by his bill, in what he terms a “regional approach.”⁴

Imposing a \$15 Minimum Wage

Under the proposed “City of Olympia Minimum Wage Ordinance,” it would be illegal for any person who works more than two hours during a two-week period in Olympia to earn less than \$15 per hour.

The ordinance would split employers into two groups with separate phase-in schedules. Employers with more than 25 employees would have two years to phase in the higher wage; the minimum wage would be \$13 in 2016 and \$15 in 2017. Businesses with 25 or fewer employees would have four years: \$12 in 2016, \$13 in 2017, \$14 in 2018 and \$15 in 2019.

After the wage limit on each group of firms is fully phased in, the minimum wage mandate would automatically increase each year with inflation.

Employers located outside of Olympia would be required to pay the \$15 wage to workers who work occasionally in the city. Any employee who spends more than two hours of work in Olympia within a two-week period would be considered a “Covered Worker.”

Franchise owners whose franchise brand employs more than 500 workers nationally would be considered large businesses, regardless of how many employees actually work in Olympia. A local franchise with 10 employees would be treated like a large national corporation and would be required to pay their workers \$15 per hour two years before their non-franchised competitor of the same size.

Councilmember Cooper says he believes his ordinance would be, “good for the economy and that the negative consequences are negligible.”⁵ Extensive research, however, shows the proposal would have harmful effects on local businesses and workers.

Multiple studies show a correlation between increases in the minimum wage and reduced employment opportunities, especially for workers with no experience and few job skills. The higher the wage increase, the greater the reduction in job opportunities. Since Seattle’s \$15 minimum wage began phasing-in this year, the

3 Olympia City Council member Jim Cooper, The Lars Larson Podcast, October 29, 2015 at <https://soundcloud.com/the-lars-larson-podcast/olympia-city-council-member-jim-cooper-makes-his-case-for-15hr-minimum-wage>

4 “Letter from Councilman Jim Cooper to City City Council,” October 23, 2015 at Cooper www.scribd.com/doc/287343809/Cooper-Wage-Memo

5 “Letter from Councilman Jim Cooper to City City Council,” October 23, 2015 at Cooper www.scribd.com/doc/287343809/Cooper-Wage-Memo

restaurant industry lost 900 jobs between January and September. During that same period the rest of the state gained 6,200 restaurant jobs.⁶

The restaurant industry employs 19.1 percent of Olympia's workforce. An outcome similar to Seattle's could have a significant impact on the city's employment rate.

Along with fewer jobs, the higher wage would likely spark fierce labor competition, as experienced workers from neighboring cities, like Lacey and Tumwater, seek higher paying jobs in Olympia. The losers in these cases would be younger, less experienced workers, as employers respond to the legal incentive to hire workers with proven skills and experience.

Regulating Part Time Employment

The proposed ordinance would force employers in Olympia to provide additional hours of work to existing employees before creating new jobs for additional employees. The proposed law would impose a rigid protocol by which employers must manage work shifts.

The employer would first have to post a notice of available work for all employees to view. The notice would have to include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, the length of time the employer anticipates requiring the additional hours and the criteria for how the employer plans to distribute the extra hours. This notice would have to be posted at least three days before the employer would be allowed to consider creating new jobs for others.

If a current employee wants to work the planned extra hours, they would have to be accommodated first. If an employer does decide to create a new job, the employer must first record the time, method and result of offering the additional hours of work to existing staff. Failure to keep detailed records for at least three years after the date of hiring new employees would be considered a violation and could lead to sanctions, fines or lawsuits.

Employers could also be sued or sanctioned for not making "reasonable efforts to offer employees training opportunities to gain the skills and experience to perform work for which the employer typically has additional needs." None of the terms in this requirement are defined, and would likely be left to courts to define in lawsuits.

The "Minimum Wage Ordinance" would prevent business owners from managing their operations in a flexible way that serves the needs of workers, customers and the community. Instead, Olympia employers would find themselves micro-managed by the one-size-fits-all requirements of a city law.

6 "Minimum wage effect? Seattle area restaurant jobs have fallen -900 this year vs +6,200 food jobs in rest of state," American Enterprise Institute, November 23, 2015 at www.aei.org/publication/minimum-wage-effect-seattle-area-restaurant-jobs-have-fallen-900-this-year-vs-6200-food-jobs-in-rest-of-state/

Restricting Shift Scheduling

This provision of the proposed ordinance would impose three levels of legal restrictions on Olympia employers when scheduling their workers.

First, employers could not schedule workers in shifts less than 11 hours apart. Employees would have to give their written permission to work any hours less than 11 hours after the end of the previous day's shift or during the 11 hours following the end of a shift that spanned two days. Workers who agree to such shifts must be paid time and a half for any hours worked that are less than 11 hours following the end of a previous shift.

Second, employers would be required to lock-in an employee's work schedule at least 21 days in advance, depriving both employer and employee of the flexibility to respond to changing conditions. Workers may refuse to work any hours not included in the 21-day advance written work schedule. For new hires, employers must provide a written estimate of the number of hours and the days and times the employee is expected to work or be on call each week. New hires must also be given a written work schedule for their first 21 days.

Third, employers would be required to get the written consent of employees who agree to work hours added after the 21-day advance notice, as well as pay them one hour of "predictability pay" at their regular rate, for each shift changed, in addition to the hours they work. The same one-hour of "predictability pay" would be owed to workers for every shift reduced, cancelled or changed in any way after the 21-day window.

These restrictions and penalties would apply even when the schedule changes are the result of employees who call in sick or leave a shift early due to illness.

If the employer cancels a scheduled work or on-call shift or reduces the hours of a shift with less than 24 hours notice, a penalty greater than "predictability pay" would be triggered. In such cases, the employer must pay the worker a minimum of four hours at their regular rate of pay. So if a worker shows up for a shift and is sent home early due to lack of work, they must be paid for a minimum of four hours of work.

These restrictions would severely eliminate the flexibility employers need to respond to changing market conditions. The labor needs of a business can change daily, and employers rely on scheduling systems that allow them to quickly modify employee schedules to fit their current labor needs.

They would also place Olympia-based businesses at a competitive disadvantage, since other area businesses would be more nimble in responding to customer needs. The shift of faster and better customer service to businesses outside of Olympia would further reduce job opportunities in the community.

Mandating Paid Sick Leave

The final provision of the proposed "City of Olympia Minimum Wage Ordinance," would impose a costly paid sick leave mandate on all employers in the city.

The Olympia proposal is much broader and open-ended than the paid sick leave mandates imposed in Tacoma and Seattle. In Olympia:

- There is no accommodation for small businesses. A business employing two workers would have to provide the same amount of paid sick time as businesses with 500 workers.
- There is no waiting period. Paid sick leave time could be used as soon as it is accrued, even for employees who had worked as little as one week.
- There is no maximum limit on how much sick leave could be accrued.
- There is no maximum limit on how much sick leave could be used in a year.
- Up to 56 hours of unused paid leave could be carried over to the following year.
- “Occasional” workers from outside Olympia who work more than two hours in any two-week period in the city would be covered.
- There is no requirement to provide written documentation from a doctor for use of paid sick leave, regardless of the amount of leave used.

In contrast, under the new law that passed in 2015 all employers in Tacoma must provide paid sick leave, but workers in that city must work 180 days before they can use paid sick leave hours, are capped at earning 24 hours of paid sick leave per year, may carry-over only 24 hours and are limited to using 40 hours per year. “Occasional” workers from outside Tacoma must work at least 80 hours to qualify for paid sick leave.⁷

Seattle’s paid sick leave law that was implemented in 2012 exempts small businesses with fewer than five employees from that city’s paid sick leave law entirely. New companies with fewer than 250 employees are exempt from the paid leave requirement until 24 months after the hire date of their first employee. Workers in Seattle must work 180 days before they can use paid sick leave hours, are limited to using between 40-72 paid leave hours per year (depending on the size of their employer). Any sick leave in excess of three consecutive days requires documentation from a doctor. “Occasional” workers from outside Seattle must work at least 240 hours per year to qualify for paid sick leave.⁸

Clearly, the Olympia proposal goes much further than the mandated paid sick leave laws in Tacoma and Seattle. Under the proposed ordinance, any worker in Olympia could take unlimited sick leave with full pay without providing a statement from a doctor, while the business owner would be faced with paying another person to do the work of the absent employee.

7 City of Tacoma Paid Sick Leave Ordinance, at www.cityoftacoma.org/cms/one.aspx?objectId=75860

8 Seattle Paid Sick and Safe Time Ordinance, at www.seattle.gov/Documents/Departments/CivilRights/psst-summary.pdf

Enforcement

Under the proposed ordinance city officials would be given the power to adopt the new rules and regulations to implement and enforce the new law. The ordinance is unfunded, so funding would have to be diverted from other programs, or a new burden placed on taxpayers.

A complaint alleging a violation of the ordinance could be made by the city, a worker, or “any entity” (such as a labor union) of which the worker is a member. This provision gives unions new powers to file complaints and lawsuits against business owners.

Employers found by a court to be in violation would owe for any back wages plus one percent interest per month, an additional \$50 per worker for each day the violation occurred, as well as attorney costs. The ordinance would provide no cap on the total amount a business owner might be required to pay.

The unlimited \$50 per employee per day penalty is concerning since the proposed law would allow a complaint to be filed against an employer up to three years after the alleged occurrence. A charge filed three years after the alleged violation could blind-side an employer who perhaps did not know they were in violation of the rules, with potentially devastating financial results for the business.

If the goal of the proposed ordinance is to ensure Olympia’s employers comply with the new labor mandates, there should not be such an extended time to file a complaint. The city should want employers to know as soon as possible if they are afool of the law so any violations could be quickly corrected. Worse, that \$50 per employee per day penalty could incentivize workers and labor unions to wait as long as possible to file a complaint in order to maximize that penalty.

In addition to the penalties that could be imposed by a court, city officials would be given the power to impose civil penalties of up to \$5,000 per employee, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater, on the business owner. These fines could go as high as \$20,000 per violation. City officials would also have the power to assess an additional penalty of two times the total value of all wages in dispute, plus one percent interest.

These proposed penalties are particularly harsh, and are far tougher than those imposed on business owners by officials in Seattle or Tacoma. In a community in which 80 percent of business owners employ fewer than 10 workers, this level of financial punishment could force the closure of some businesses found in violation.

Conclusion

Contrary to Councilman Cooper’s statement that, “...there is little or no negative consequences to the economy when you make minimum wage increases up to and about \$15 an hour...” a mandatory 58 percent increase in an employer’s labor

costs would require employers to make some difficult decisions on how to offset those higher costs.⁹

While some workers may benefit from the mandated higher wage, many others could experience reduced hours, fewer benefits and difficulty even finding a job. Fewer jobs, and fiercer competition for those jobs, would reduce the job opportunities for low-skilled workers and likely increase the prices every consumer pays.

Further, employers would face a complex network of new rules and punishments under the proposed “City of Olympia Minimum Wage Ordinance.” Micro-management of work schedules and paid time off policies would encourage the shift of business and job opportunities away from low skill workers and out of the city.

The strict wage and work rules would go much farther with much harsher penalties than similar laws passed in Seattle and Tacoma and would burden small, Main Street employers and their workers the most.

The one-size-fits-all mandates on how employers pay and manage their workers would discourage job creation and deprive employers of the ability to manage services in a way that works best for their business, their employees and their customers. Workers would lose the flexibility and freedom to negotiate the schedules and compensation that fits their individual needs.

If the “City of Olympia Minimum Wage Ordinance” is enacted into law, it would create a significant hardship in the community. Every employer would be forced to comply with detailed and inflexible mandates that would make running a business in Olympia more difficult and workers would have fewer choices and fewer job opportunities.

9 Olympia City Council member Jim Cooper, The Lars Larson Podcast, October 29, 2015 at <https://soundcloud.com/the-lars-larson-podcast/olympia-city-council-member-jim-cooper-makes-his-case-for-15hr-minimum-wage>

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Erin Shannon is director of WPC's Center for Small Business. Before joining Washington Policy Center in 2012, she was the Public Relations director of Washington state's largest pro-small business trade association, and was formerly a Legislative Correspondent for U.S. Congressman Randy Tate in Washington, D.C. Over the past 15 years Erin has appeared regularly in print, broadcast and radio media. She was a recurring guest on ABC's "Bill Maher's Politically Incorrect" until the show's cancellation in 2002, and participated in a live, on-stage version of Politically Incorrect in Seattle with Bill Maher. Erin has served as the spokesperson for several pro-small business initiative campaigns including Referendum 53, repealing increases in unemployment insurance taxes; Initiative 841, repealing the state's ergonomics rule; and Initiative 1082, to end the state's monopoly on workers' compensation. Erin holds a bachelor's degree in political science from the University of Washington.