

CHAPTER 8

LABOR POLICY

1. Improving Workers' Compensation

Recommendations

1. Legalize private workers' compensation insurance and move the system towards greater choice and competition.
2. Allow small groups and associations to self-insure.
3. Increase fraud prevention efforts.
4. Clarify the calculation of benefits.
5. Bring benefit levels more in line with those in other states.

Background

The phrase “workers’ compensation insurance” often elicits vacant stares and furrowed brows from those who hear it. This complex and important social program, which replaces employer liability for workplace injured workers, is often confusing and tedious for employers, workers, policymakers and the public alike.

The Department of Labor and Industries (L&I), which administers the state’s workers’ compensation program, is one of the largest agencies in state government, with more than 2,700 full-time staff and a biennial budget of \$537 million.¹

By law, only L&I is permitted to sell workers’ compensation insurance in Washington, and virtually all businesses in the state are required to have such insurance. The program provides insurance that covers over 168,000 employers and 2.5 million workers, and it

collects more than \$1.55 billion in premiums each year. In 2007, premium collections became so high the Department declared a partial rate holiday, allowing employers to keep \$346 million of their money until the rate L&I charged for premiums more accurately reflected the true costs of the program.²

L&I also oversees almost 400 employers who self-insure and provide coverage for 830,000 workers, about one-third of all workers in the state. The L&I program and self-insured companies provide coverage for the more than 140,000 industrial injuries that are reported annually.³

Policy Analysis

The original purpose of workers' compensation was to provide sure and certain relief for workers in the event of an on-the-job injury. In return for joining a legally-mandated program, employers gained protection against the uncertainty of individual lawsuits brought against them by injured employees. For employers and workers, the system is intended to provide security, financial predictability and fair treatment.

Yet over the years the "exclusive remedy" aspect of workers' compensation has eroded. Workers routinely sue the Department in court to gain a higher level of benefits, and, while they are not suing employers directly, employers must bear the full cost of lawsuits and any resulting awards through higher workers' compensation taxes. In addition, employers must pay the long-term cost of litigation when court decisions result in a permanent higher level of benefits for all claimants.

In the past few years, businesses have become increasingly frustrated with the Department's rate increases. Every rate increase is essentially a tax increase on business, which is passed on to consumers in the form of higher prices.

The 2007 rate holiday afforded employers and workers a period of partial tax relief. From July 1st through the end of the year, L&I officials suspended the Medical Aid portion of the workers' comp premiums – the Accident Fund premium was not affected. The rate holiday expired at the end of 2007 and Department officials then permanently increased rates an average of 3.2 percent.

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Washington has one of the highest rates of workers' compensation benefits paid out by any state in the nation. Washington's benefit payments increased 12 percent from 2001 to 2004, and today the average weekly benefit is almost \$700 per covered worker – about 57 percent higher than the U.S. worker's compensation average.⁴

High insurance costs are a significant contributor to job loss, layoffs and wage cuts, and have a detrimental effect on the economic vitality and business climate of the state. In recent years L&I has greatly varied the premium adjustments, resulting in cost swings between whopping rate increases of up to 30 percent and brief rate holidays. In 2008, employers pay 4.5 percent more on average in L&I accident fund premiums, 10.5 percent more on the Medical Aid fund premiums, and 17.1 percent more in the Supplemental Pension Fund.⁵

Much of the financial strain in the system is the result of structural weaknesses and lack of competition. Washington is one of only five states where buying private workers compensation insurance is illegal. Except for the few companies that self-insure, all employers are forced to purchase insurance from the sole provider: the state. Bringing competition to workers' compensation insurance in Washington would create more choices, reduce prices and improve service for both workers and employers.

The system has also been weakened by a series of lawsuits. Injured workers and their lawyers who sue and win realize an immediate economic gain. But the system as a whole is undermined and risks become fiscally unsustainable, to the ultimate detriment of all employers and workers.

Major reforms are needed to bring the workers' compensation system back to its original purpose: a true insurance plan which mitigates risk for employers, provides fair and reliable benefits for injured workers, and contributes to a stable business environment for all Washington citizens.

Recommendations

1) Legalize private workers' compensation insurance and move the system towards greater choice and competition. Washington is one

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of only five states nationwide that makes it illegal for companies to purchase private workers' compensation insurance. Large companies may have sufficient cash flow to self-insure, but all others must purchase insurance from one source at a non-negotiable price – the state government.

2) Allow small groups and associations to self-insure. Washington law currently bans groups of small employers from joining together to self-insure, reserving that choice only to large companies and a few public entities. Allowing groups and associations to self-insure would bring greater choice and price competition to the system. Standards for coverage would still be set by the state, so basic protections for workers would not be compromised.

3) Increase fraud prevention efforts. Fraud has cost L&I and taxpayers millions of dollars over the years. The Department is starting to crack down on fraudulent claims. In 2007, L&I recovered more than \$139 million in unpaid premiums and overpayments. Passage of Initiative 900 in 2006, directing the State Auditor to conduct audits of L&I, will help keep the focus of the Department on accountability.

4) Clarify the calculation of benefits. No-fault insurance is supposed to keep costs low by eliminating the need for lawsuits. Yet this approach is not working. Lawsuits have built new fixed costs into the system. Policymakers should make the way benefits are calculated clearer and simpler to avoid legal disputes.

5) Bring benefit levels more in line with those in other states. Reducing the maximum benefit cap to match the national average would save money and establish a more reasonable level of benefits.

2. Minimum Wage and Living Wage

Recommendations

1. Decouple automatic minimum wage increases from the Puget Sound Consumer Price Index to reflect the true cost of living across the state.
2. Delay automatic increases in years when state unemployment is higher than the national average.
3. Allow restaurants to count tip income as part of normal minimum wage earnings, so employment costs in one industry are not artificially inflated.
4. Refrain from imposing mandatory “living wage” controls, whether or not directed at a particular industry.

Background

Washington has the highest state minimum wage in the nation. At \$8.07 an hour it is fully 38 percent higher than the current federal minimum wage of \$5.85. However, the federal minimum wage is scheduled to rise to \$6.55 on July 24, 2008 and \$7.25 per hour on July 24, 2009.

Because a high minimum wage decreases job opportunities, Washington law allows 14- and 15-year-olds to be paid 85 percent of the state minimum wage, or \$6.86 an hour, in order to mitigate some of the job losses for people in this age group.⁶

Washington’s unemployment rate has declined to about 4.3 percent for the first time in several years, but that was not always the case. During the recession years of 2000-2001 and in 2002-2005, Washington’s unemployment rate topped out at 7.7 percent, a period when the state’s minimum wage and its unemployment rate were respectively the highest or second highest in the nation.⁷

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Washington's present minimum wage law was enacted by voters with passage of Initiative 688 in 1998. The measure enacted a two-step boost in the state minimum wage from \$4.90 to \$6.50, and for the first time created regular yearly increases tied to inflation.⁸

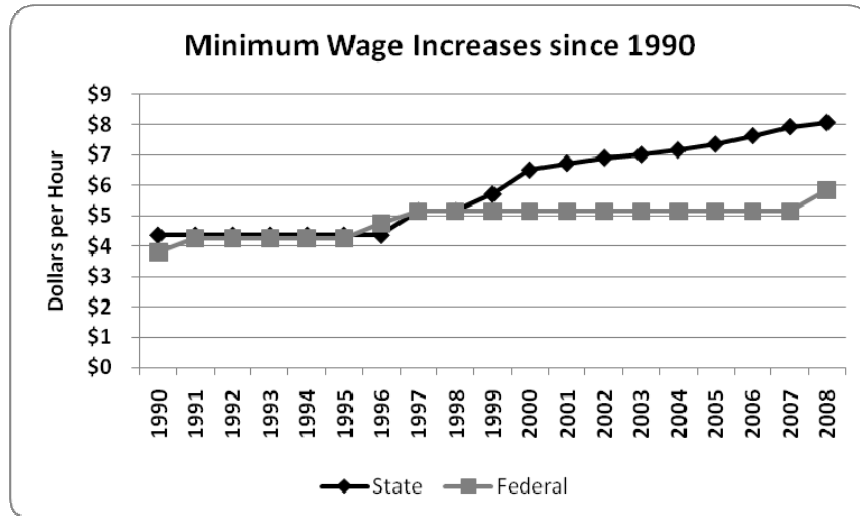
The state minimum wage now automatically increases every January 1st and is pegged to the Puget Sound cost of living, the highest in the state. Previously, the legislature had increased the minimum only ten times since the first state-mandated wage was enacted in 1959.

Under the current policy of automatic increases, the state minimum wage has increased 65 percent in ten years. Inflation over the same period was 32 percent.

Washington has some 74,000 minimum wage jobs, or about 3.5 percent of all industry jobs. They tend to be concentrated in certain industries: food services, retail sales, health care, agriculture, forestry and fishing. The majority of minimum wage workers are employed by small businesses.

Minimum wage jobs usually supplement other income; very rarely are they the sole financial support for a family. Eighty-five percent of those earning the minimum wage either live with a parent or relative, are part of a two-income couple or are single and have no children.⁹ The chart below shows the rise in Washington's minimum wage compared to the federal minimum.

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In Washington, the minimum wage increases automatically every January 1st, regardless of economic conditions. Sources: Department of Labor and Industries and U.S. Department of Labor

Among minimum wage supporters is an activist subset that endorses the idea of a mandatory “living wage.” A living wage is a hyper minimum wage, where the mandated wages paid to employees are based on the worker being able to afford a certain theoretical standard of living.

Living wage ordinances throughout the nation have primarily been enacted within local government limits. Bellingham is the only city in Washington that has imposed a living wage ordinance, and even there the law only applies to a limited number of government contractors. Bellingham officials are concerned the hyper-minimum would drive businesses and jobs out of the city if it was broadly applied.

Supporters of the living wage, however, are beginning to target private industries and mandate living wage requirements. For instance, in 2007, living wage proponents came within a few hundred signatures of putting a hyper-minimum wage initiative on the ballot in the city of Spokane.

The initiative would have mandated that large retail stores of over 95,000 square feet pay their employees a minimum wage of 135 percent of the state’s minimum wage, if the employee received a pre-

set level of health care benefits, or 165 percent of the minimum wage if the employee did not receive the approved level of health care benefits.¹⁰

If Spokane voters had passed the living wage ordinance, the impact of the policy would have been detrimental to the very working people the law was intended to help. But its effects would have been felt city-wide. The unintended consequences of a city-wide living wage ordinance would have resulted in fewer jobs, fewer working hours for those in the retail industry who would have fallen under the new law, and a trickle-down effect on smaller retailers who are unable to pay the higher wage and would have lost employees.

Policy Analysis

During the difficult economic recovery, Washington's small businesses were particularly harmed by the state's high minimum wage requirement. The burden of job loss falls disproportionately on low-skilled and minority workers. A study by labor policy researchers at Cornell University concludes that, "A 10 percent increase in the minimum wage causes four times more employment loss for employees without a high school diploma and African American young adults than it does for more educated and non-black employees."¹¹

Workers priced out of the labor market

Washington's high minimum wage law falls hardest on those who can least afford it. The poor, homeless, teenagers and other young workers trying to enter the workforce are the first to be impacted by a rising unemployment rate. When state law artificially increases the cost of creating jobs, fewer jobs are created. Low-skill, low-income workers are the first to be priced out of the job market.

The high minimum wage creates a ripple effect through the economy by pushing up all wages, which is one reason powerful unions always support minimum wage increases. Supporters of an ever-higher minimum wage grew weary of the public debate needed to argue for increases. They included a provision in Initiative 688 that linked the wage to inflation, insuring it would go up automatically every January 1st, with no debate, no additional vote and no discussion.

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Politically the strategy is brilliant. It avoids all that messy public discussion about the harmful effects of raising the minimum wage – increases just happen, and most people do not notice the broader effect on the job market.

The result is a higher cost of living for everyone. While most people can pay a little more for a hamburger or a house, the burden again falls heaviest on those who can least afford it: the poor and the unemployed.

The high minimum wage is not the only reason Washington is less competitive nationally than other states, but it is a strong contributing factor. Washington suffers deeper economic down-turns and slower recoveries than other states. Policymakers should recognize that putting state labor policy on auto-pilot does not improve job opportunities or the business climate, but actually makes them worse.

The arguments made against the minimum wage are even stronger against the mandated living wage. Backers of the living wage are basing an employee's earning on the perceived need of the employee and not on productivity or labor demand or supply. Ignoring fundamental economic principles in the course of determining worker remuneration is a form of price control and will result in increased labor costs, higher prices for consumers, or perhaps even the loss of jobs.

Tip income and the minimum wage

Washington state is one of only seven states where food servers receive the state minimum wage *in addition* to their tips. This puts an undue burden on small restaurants, many of which are family-owned, by artificially inflating their wage costs in comparison to other types of businesses. In states without this restriction, hourly and tip income may be counted together, and the law specifies that from these two sources no employee may ever be paid less than the minimum wage.

Restaurant servers in Washington average almost \$19 an hour in tips plus wages, meaning on average they earn over \$11 an hour in tips.¹² One proposal would allow employers in the restaurant industry to pay 50 percent of the minimum wage (\$4.04 in 2008) to tipped

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employees, with the legal guarantee that no worker would earn less than the legal minimum wage. This reform would not fully equalize treatment among industries, but it would spur job creation and help level the playing field by treating employment costs in restaurants like those in other businesses.

Recommendations

1) Decouple automatic minimum wage increases from the Puget Sound Consumer Price Index to reflect the true cost of living across the state. Forcing all labor costs to match the most expensive region creates a particular burden for businesses in the eastern and rural parts of the state. Using regional measures of inflation is fair and would more accurately reflect price changes in the local economy.

2) Delay automatic increases in years when state unemployment is higher than the national average. If full control over minimum wage policy cannot be returned to the legislature, a mechanism should be created which suspends automatic increases when the unemployment rate is high and people are most in need of work opportunities.

3) Allow restaurants to count tip income as part of normal minimum wage earnings, so employment costs in one industry are not artificially inflated. Allowing tips to be counted as income would expand job opportunities and lower wage costs, especially for smaller, family-owned restaurants.

4) Refrain from imposing mandatory “living wage” controls, whether or not directed at a particular industry. Arbitrarily raising the cost of labor among a specific industry based solely on workers’ perceived need is bad economic policy and bad public policy, and it leads to higher prices for consumers and job losses or cutbacks for workers.

3. The Temporary Labor Market

Recommendation

1. Minimize state regulation of the temporary labor market to promote job opportunities for low-income and part-time workers.

Background

Policymakers and the public tend to place much emphasis on the economy producing permanent, full-time jobs, yet one valuable segment of our state's workforce is often overlooked: temporary workers. They are students and homemakers, recent immigrants and new citizens, people between jobs and permanent part-timers.

For many laid off workers, a temporary job is the best path back to full-time employment. For others, a temporary position frees up time for other interests. The temporary labor market is a reflection of how free citizens pursue their own goals in life. Everyone has the right to work, not work, or work less, as they choose. The temporary labor market makes these highly personal economic choices possible.

Integral to the temporary labor market are the job-finding agencies that bring workers and employers together for the benefit of both. As requests from employers come in, workers are matched with specific jobs and sent to the business or jobsite. Typical jobs include construction, homebuilding, food packing, landscaping and light manufacturing. Increasingly, temporary employees are highly paid technical, computer and health care workers seeking flexible schedules. At the end of the day, workers return to the placement company's office and receive a paycheck.

Private temporary placement companies make this efficient labor market possible because they handle all the paperwork, make sure workers follow federal and state regulations, and make the required payroll deductions.

People seeking quick employment need only show up on time and be willing to work. Employers get reliable workers with a

minimum of red tape. Workers get the chance to work where they want and when they want.

In 2007, the services of temporary staffing agencies across the country benefited three million workers on an average day, and over the course of the year helped 11.4 million people find gainful work.¹³

The temporary labor market is not only good for individuals, it is an essential part of reducing unemployment in society. It makes up a little over two percent of non-agricultural employment, and growth in the number of temporary jobs is a leading indicator that the economy is emerging from an economic downturn.¹⁴

The temporary labor system is entirely voluntary and, like most good ideas, is elegantly simple: people can work and get paid the same day.

Policy Analysis

The temporary labor market, however, has its detractors. Traditional labor unions, in particular, do not like flexible work arrangements, because these jobs exist outside the conventional union structure. Their ideal is that every employer should use unionized workers and no others. Rather than accept a vibrant temporary workforce that serves the needs of individuals and employers, unions try to use the force of government to foreclose what they see as inconvenient labor competition.

Opponents of voluntary temporary labor seek to burden this market with as many regulatory barriers as possible. One lawsuit in another state sought to bar workers from paying a minimal fee to cash their paychecks in the dispatch office at the end of the day. The result of the lawsuit was to force workers to wait a day and go to a bank or to a costly check-cashing store. Many temporary workers, however, are low-income and do not have bank accounts. Many of them would prefer to pay a small fee and cash their paychecks right away.

Temporary labor opponents have also sought to force closure of heated waiting rooms where workers gather to seek work. They claim that workers should be paid while they wait for job assignments. Since few businesses can afford to pay people for not

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working, temporary labor offices would have to close their waiting rooms, and job seekers would be left to congregate on street corners.

Temporary placement companies often provide workers with hard hats, work boots, dust-masks and eye-protection for free. Temporary labor opponents say workers should not be held responsible for lost or broken equipment, meaning that workers would have to provide important safety gear themselves.

Opponents support legislation to force temporary companies to provide mandated paid health benefits, even though such top-down requirements defeat the purpose of providing flexible and voluntary job opportunities for temporary workers.

Many local governments have tried to set up day labor centers, using tax dollars to compete directly against their own citizens. Local officials intend tax-subsidized day labor centers to act as cover for people who are in the country illegally. In contrast, a local private employer can be punished under federal law for hiring illegal workers. Also, the employer, through local taxes, is subsidizing a government program that finds work for undocumented workers.

Together these hostile efforts add up to a coordinated assault on the temporary labor market. Adverse rulings by the courts or onerous regulations imposed by government come with a high cost. Employers lose information about where to find able and willing workers and thousands of job opportunities disappear. Washington's economy would become even more difficult for struggling small businesses and innovative start-ups.

Worst of all, the most vulnerable in our communities would lose vital job opportunities, forcing them onto public assistance or leaving them vulnerable to the underground labor market.

Recommendation

1) Minimize state regulation of the temporary labor market, to maximize job opportunities for low-income and part-time workers. Letting the temporary labor market operate as freely and efficiently as possible is an effective way to stimulate our state economy, while creating choice and opportunity for thousands of hard-working men

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and women. For example, placement agencies should be able to offer paycheck cashing services for a minimal fee, so low-income workers are not forced to open bank accounts as a condition of finding work. In addition, local governments should not set up day labor placement centers that compete against their own citizens.

4. Mandatory Paid Sick Leave and Paid Family Leave

Recommendations

1. Avoid imposing a mandatory, one-size-fits all sick leave policy on Washington business owners and their employees. Allow employers to retain flexibility in setting compensation and benefits.
2. Repeal the Paid Family Leave Insurance program until sufficient long-term funding can be identified, or transform the mandate into a voluntary program.

Background

In the 2006 session, lawmakers considered a bill that would have made every employer provide a minimum amount of paid sick leave for each employee.¹⁵ There was no exemption for small businesses. Under the proposal, all businesses would have been mandated to give 10 days of paid sick leave based on the following requirements:

- An employee would be granted at least 40 hours of paid sick leave for each six months of full-time work;
- An employee would be entitled to take paid sick leave after completing six months of consecutive employment;
- Part-time employees would receive paid sick leave in proportion to the hours they work.

The bill did not pass, but proponents have made it clear they intend to continue to push in future legislative sessions for a law that would impose a single, paid sick leave policy on every employer in the state.

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Currently, forty-four percent of Washington employers voluntarily offer full-time workers a paid sick leave benefit.¹⁶ Nationally, no state requires paid sick leave as a matter of law.

Proponents of mandatory paid sick leave say that it is needed for employees to supplement income for days lost at work when caring for themselves or their children, and to avoid bringing contagious diseases to the workplace.

Employers cite several reasons why they do not always offer paid sick leave. Many jobs are temporary, or are jobs where an employee's absence is covered by a fellow co-worker. Some employees prefer to receive other forms of compensation, rather than be eligible for paid sick days they may never use. Some jobs are based on tips and gratuities, thus paying an employee full compensation to stay at home undermines businesses' economic viability.¹⁷

Impact on small businesses

Small businesses would be disproportionately impacted by a mandatory paid sick leave policy. As the following chart shows, every business category is affected, but employers with fewer than 100 employees would be disproportionately impacted.

Percentage of Washington businesses affected by proposed paid sick leave mandate	
All firms	56%
100+ employees	33%
50-99 employees	47%
25-49 employees	54%
10-24 employees	58%
2-9 employees	58%

Many small firms already offer some level of paid sick leave, but if that level were less than ten days, the mandated benefit bill considered by the legislature would automatically increase these business' costs.

Seventy-three percent of Washington firms offer paid time off to full-time workers, without distinguishing between sick leave and vacation time.¹⁸ In addition, 23 percent of firms report offering

undesigned paid leave, often accumulated for workers in personal “time banks,” on top of the yearly paid holidays the employer already provides.¹⁹

Undesignated leave and personal time banks allow workers to use their paid time off as they see fit, without losing an earned benefit if they don’t happen to take sick days. Mandating paid sick leave by law would end this flexibility, since paid time off does not meet the proposed definition of sick leave.

Estimates vary of how much work productivity would be lost due to a new mandatory benefit imposed upon employers. According to some surveys, employees often use paid sick days in proportion to how much leave is available. If an employee has 12 sick days a year he or she will typically use about seven days per year, and an employee with five sick days will use about three days a year.

A study by the U.S. Small Business Administration shows that employees of small businesses have, by-and-large, access to fewer benefits than do the employees of large businesses.²⁰ The smallest firms are often forced to make substantially higher contributions per participant for benefits than the largest firms. Smaller businesses face a much higher marginal cost in implementing any new mandated benefit, placing them at a marked disadvantage compared to their larger competitors.

Paid family leave insurance program

In April 2007, the legislature enacted a paid family leave insurance program. This program would pay qualified applicants – those with newborn children or newborn adopted children – up to \$250 per week for five weeks in order for the parent(s) to remain at home with the new child.

The program is unusual, since only California had a similar system in place when the legislation passed (New Jersey has since passed a similar program as well). Funding the program became problematic when state agency managers expressed their hesitation about administering the program. Washington’s program is scheduled to begin reviewing applications and paying out benefits on October 1, 2009.

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The problems with this mandatory program are diverse. First, the state would need to set up, from scratch, a new entitlement program. Such an effort is unlikely to take place in the short amount of time between passage of the legislation and October 1, 2009.

Second, legislators failed to identify a permanent source of funding. A line-item in the 2007-2009 supplemental budget sets aside \$6.2 million for set-up costs and an initial start-up phase of operation. However, proposals on the necessary permanent funding have ranged from a new employee payroll tax, to using general fund dollars, to taxing candy and gum.

The special Paid Family Leave Task Force failed to produce a funding recommendation, and in 2008 the legislature, perhaps concerned about imposing more taxes in an election year, did not identify a funding source. Instead, finding money for the program has been left to a future legislature.

Third, there is almost no flexibility in the program. Just about every worker in the state would have to pay into the system, even people who are self-employed. There are no exemptions for small businesses, even though a small business is much less likely to be able to handle an extended leave for an employee. Larger firms are better able to switch personnel around to cover employees out on leave. Smaller firms tend to take a flexible approach in times of employees' need.

A National Federation of Independent Business study shows that 66 percent of small businesses provide some sort of paid leave and that the remaining one-third of small businesses deal with employee leaves on a case-by-case basis, thereby meeting the same standard that backers of the new family leave insurance program are advocating.²¹

Policy Analysis

In the modern economy, most companies have adopted voluntary and flexible ways of compensating their employees, based on the demands of workers and the need of firms to stay competitive in their particular market. Many companies give their employees three, five or seven days of paid leave per year. Arbitrarily increasing the number of paid sick days from seven to ten through a state-

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imposed mandate, for example, may help a few employees, but will contribute to unemployment and increase the cost of living for all citizens.

Likewise, a new state entitlement program – one that, as yet, has no funding source – will only further negatively affect the business climate, particularly for small business owners who are less able to cover for employees on leave.

Smaller businesses are often forced to adjust to a new employment mandate by raising prices, reducing paid vacation, cutting other non-cash benefits, hiring fewer workers or a combination of all four. In forcing employers to provide a new benefit, policymakers would end up making things worse for workers, not better.

The cumulative effect of top-down regulations, such as numerous health insurance mandates and the automatically increasing minimum wage, already inhibit the ability of Washington businesses to create jobs. The proposed mandatory sick leave requirement, added to existing regulations, would significantly increase costs, especially for local small businesses, and make our business climate even less attractive to out-of-state companies.

Recommendations

1) Avoid imposing a mandatory, one-size-fits all sick leave policy on Washington business owners and their employees. Allow employers to retain flexibility in setting compensation and benefits. Blanket regulations that apply one rule to every business are harmful to the economy as a whole. Most businesses have some sort of paid sick leave or paid time off policy, but business owners should not have a single, one-size-fits-all rule forced upon them by the state.

2) Repeal the Paid Family Leave Insurance program until sufficient long-term funding can be identified, or transform the mandate into a voluntary program. The program should be suspended until a permanent source of funding can be identified. The program could also be revamped to make it a voluntary system or provide for an opt-out for small businesses that already offer paid leave to their employees.

5. Mandatory Paid Health Benefits

Recommendation

1. Do not impose a restrictive “Fair Share” health benefit mandate on the Washington labor market.

Background

In 2006, the legislature debated a bill proponents refer to as the “Fair Share Act,” which would require all companies in Washington with 5,000 or more employees to provide a certain level of health care benefits, or pay a new nine percent payroll tax to the state treasury.²²

Proponents say the proposal would reduce the number of uninsured by increasing access to health coverage for Washington workers. They say owners of large companies have a responsibility to provide a minimum standard of health coverage to their workers and that if they do not do so voluntarily the state should require it by law.

Proponents also say companies shift their health coverage costs to the taxpayers when their workers enroll in publicly-funded health programs. The nine percent payroll tax is intended to reimburse the government for this perceived corporate subsidy.

Policy Analysis

A close analysis of the proposal finds it to be bad public policy for two primary reasons: it is wrong in principle and wrong in practice.

Wrong in principle

The idea is wrong in principle because it unfairly targets a narrow group of companies. Citizens should always be concerned when certain groups or businesses are singled out as the target of government power.

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The proposal is unfair to workers who choose to access health coverage in other ways, such as through a spouse or individual-based coverage that puts workers in charge of their own health care. Mandating a one-size-fits-all, employer-based health care system deprives workers of choices in one of the most important areas of life.

It is particularly unfair to temporary and part-time workers. If a temporary employee works just *one day*, he could be counted toward the employer's quota of 5,000 workers. Increasing the regulatory burden on jobs in Washington will encourage outsourcing to other states and countries.

The bill is unfair to business owners who should have the right to run their business free from micro-management by the state. If the largest companies can be hit with a costly and inflexible mandate, then no business in Washington is immune to similar treatment. Supporters of "Fair Share" have said they view the requirement as a basic employment standard and that it should eventually be applied to all companies.

The proposal discourages new jobs. It creates a strong incentive for companies to maintain no more than 4,999 employees in Washington, and severely punishes successful companies that attempt to hire more workers.

Public health programs are not "corporate welfare"

Proponents of the "Fair Share" proposal say employers are receiving corporate welfare when their workers sign up for public health programs for which they are eligible.

Yet the state itself encourages people to participate in public health programs. For example, since the inception of the Basic Health Plan 20 years ago, it has been the express policy of Washington state to sign up as many working people as possible. It is illogical and contradictory to criticize employers when workers actually join a state plan for which they are legally eligible.

It is equally wrong to say that public health programs for working people are "corporate welfare." Corporate welfare is a special economic benefit or market protection that policymakers give directly to favored companies. Many working people live in public

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housing, receive food assistance and use subsidized transportation. These important social programs are not “corporate welfare” to the companies that give these workers jobs, and neither is broad-based subsidized health care.

Part of national labor union strategy

In January 2006, the Maryland legislature passed a “Fair Share” bill over Governor Ehrlich’s veto. The Maryland bill applies to companies with 10,000 employees and imposes an eight percent payroll tax. A year later, the federal courts struck down the Maryland law as violating the Employee Retirement Income Security Act (ERISA).

The Washington “Fair Share” bill was similar to the Maryland bill, except that the payroll tax is higher and it applies to companies with half as many in-state employees. It is also similar to the “Pay or Play” legislation that died in the Washington legislature in 2005. That bill applied to companies with as few as fifty employees. Proponents say they plan to re-introduce both bills in future legislative sessions.

Proponents say they will continue to push the “Fair Share” bill in Olympia. Even if the bill is passed in Washington, however, it is likely that, like the similar proposal in Maryland, it would ultimately be struck down in federal court as a violation of the ERISA law.

Reducing artificial costs imposed by government

The “Fair Share” proposal’s mandatory approach ignores the large artificial costs the state already imposes on the provision of health care coverage. The greatest barrier to health insurance is cost. State policies contribute significantly to the cost of health insurance. Such policies include state-imposed mandates, lack of basic health coverage and disincentives for purchasing Health Savings Accounts. Specific recommendations for reducing government-imposed health costs are presented in Chapter 4.

Recommendation

1) Do not impose a restrictive “Fair Share” health benefit mandate on the Washington labor market. The “Fair Share” approach does nothing to make health coverage more affordable, personal or portable. It is not only unfair to workers and employers, it moves our state in exactly the wrong direction in efforts to make health care more affordable.

Additional Resources from Washington Policy Center

“This Session, There’s a Little Something for Everyone,” by Carl Gipson, March 2008.

“24 Ways to Improve the State’s Small Business Climate,” by Carl Gipson, January 2008.

“Proposed Bill Would Unionize Foster Parents,” by Paul Guppy, February 2008.

“Bill to Unionize Daycare Workers Violates the National Labor Relations Act,” by Liv Finne, February 2008.

“Unionizing Daycare, Requiring Union Membership and Collective Bargaining in the Provision of State Subsidized Daycare Services,” by Liv Finne, February 2008.

“A National Movement Hits Close to Home,” by Carl Gipson, November 2007.

“The Living Wage Movement Comes to Washington State,” by Carl Gipson, Policy Note 2007-23.

“An Overview of Washington’s Emergency Heat Stress Rule,” by Carl Gipson, Policy Note 2007-21.

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