
CHAPTER EIGHT

LABOR POLICY

1. Improving Workers' Compensation

Recommendations

1. Legalize private workers' compensation insurance and move the system toward greater choice and competition.
2. Allow small groups and associations to self-insure.
3. Clarify the calculation of benefits.
4. Bring benefit levels more in line with those of 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 workers injured on the job, is often confusing and tedious for employers, workers, policymakers and the general public.

The Department of Labor and Industries (L&I), which administers the workers’ compensation program, is one of the largest agencies in state government, with 2,778 full-time staff and a two-year budget of \$638 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 \$1.6 billion in premiums each year.²

In 2007, mandatory premium collections were so high the L&I declared a partial rate holiday, allowing employers to keep \$346 million of

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their money until the rate officials charged for premiums more accurately reflected the true costs of the program.³

But the last few years have seen severe rate increases. In 2008, L&I raised rates approximately three percent. In 2009 rates went up another three percent. However, in 2010 rates went up eight percent, and in 2011 rates increased 12%. These rate increases are averages; some businesses saw smaller increases and some experienced much larger increases in the cost of doing business. Over the last decade, businesses have experienced a massive 64% increase in premiums.⁴

In addition to running the state's only workers' compensation insurance business, L&I managers regulate 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.⁵

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 L&I 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 permanently higher level of benefits for all claimants.

In the past few years, businesses have become increasingly frustrated with L&I's large rate increases imposed through a monopoly system. Every rate increase represents 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' compensation premiums—the Accident Fund premium was not affected. The rate holiday expired at the end of 2007 and L&I officials then permanently increased rates an average of 3.2%.

Four years later, however, both the Accident and Medical Aid funds face fiscal uncertainty. A State Auditor report in 2010 stated that both accounts were being underfunded, which raised the probability of insolvency, or at least drastic future rate increases in order to stave off insolvency.⁶

Washington has one of the highest rates of workers' compensation benefits paid out by any state in the nation. Washington's average weekly benefit is almost \$700 per covered worker—about 65% higher than the U.S. worker's compensation average.⁷

High insurance costs are a significant contributor to job loss, layoffs and wage cuts, and they 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% and brief rate holidays. In 2010, employers on average paid 4.5% more in L&I Accident Fund premiums, 8.4% more on Medical Aid fund premiums, and 16% more on Supplemental Pension Fund premiums than they did in 2009.⁸

Much of the financial strain in the system is the result of structural weaknesses and lack of competition. Washington is one of only four states where buying private workers compensation insurance is illegal. Except for the few large companies that self-insure, all employers are forced to purchase insurance from a 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 becoming fiscally unsustainable, to the ultimate detriment of all employers and workers.

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Major reforms are needed to bring the workers' compensation system back to its original purpose: A true insurance plan that 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 toward greater choice and competition.** Washington is one of only four states 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—state government—at a non-negotiable price.
- 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. 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.
- 4. Bring benefit levels more in line with those of 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. De-couple automatic minimum wage increases from the Puget Sound-area 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 temporary training wages for young or inexperienced workers.
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 \$8.67 an hour it is fully 20% higher than the current federal minimum wage of \$7.25. On January 1, 2012, the state minimum wage will automatically increase to \$9.04 an hour, 24% higher than the federal minimum.⁹

Because a high minimum wage decreases job opportunities, Washington law allows 14- and 15-year-olds to be paid 85% 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.¹⁰ However, those 16 and older must be paid the full minimum wage, pricing many young and inexperienced workers out of the labor market.

Washington’s unemployment rate, which had declined to 4.5% in 2007, has remained at or above nine percent since April of 2009 due to the effects of the current economic downturn.

Young, inexperienced and minority workers are bearing the brunt of the joblessness. It is not unusual for young and minority workers’ jobless rates to be higher than the general population, but the

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teen unemployment rate is drastically higher. As of April 2011, the teen unemployment rate for Washington was 33.2%, the fourth highest in the nation.¹¹

The unemployment rate for young workers, those ages 16 to 24, is also disproportionately high. In 2011, the unemployment rate nationally for young workers was 19%, but for young Hispanics the unemployment rate was 22%, for Asians it was 21%, and for black youth it was 33%.¹²

Washington's present minimum wage law was adopted 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.¹³

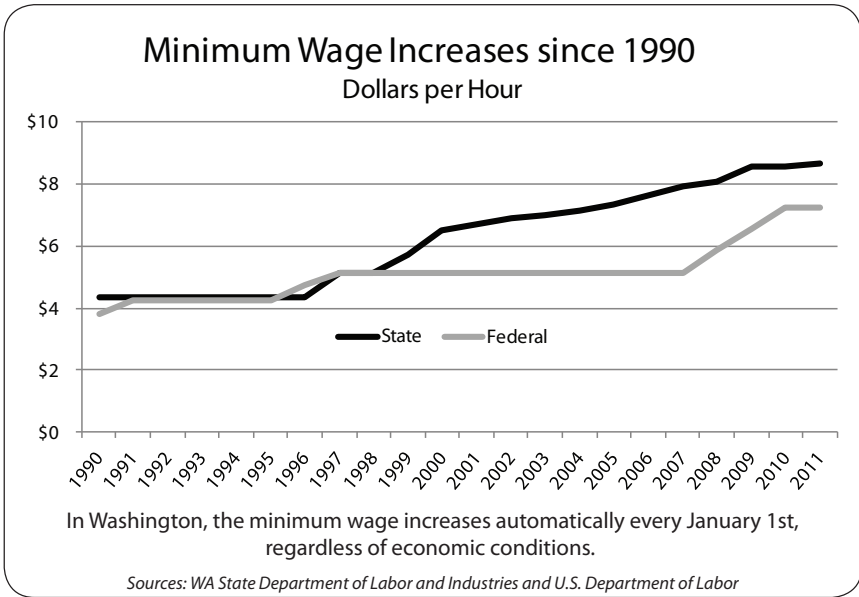
The state minimum wage now automatically increases every January 1st and is pegged to the Puget Sound-area cost of living, the highest in the state. Previously, the legislature had increased the minimum only ten times since the first state-mandated wage was enacted in 1959.

Under the current policy of automatic increases, the state minimum wage has increased 31% in ten years. Inflation over the same period was 28%.

Washington has some 67,000 minimum wage jobs, or about 3.1% of all industry jobs.¹⁴ They tend to be concentrated in certain sectors: food service, 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.¹⁵ A U.S. Department of Labor analysis reports that only four percent of workers over the age of 25 earn the minimum wage. Therefore, teens and young workers, not wage-earning adults, are more likely to lose employment due to increases in the minimum wage.¹⁶

The following chart shows the rise in Washington's minimum wage since 1990 compared to the federal minimum.



Among minimum wage supporters is an activist subset that promotes the idea of government imposing a mandatory “living wage” on the labor market. 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 by local governments. 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, not the general economy. Bellingham officials are concerned the hyper-minimum would drive businesses and jobs out of the city if it were 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 required all retail stores of over 95,000 square feet to pay their employees a minimum wage of 135% of the state’s minimum wage if the employee received a pre-set level of health care

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benefits, or 165% of the minimum wage if the employee did not receive the approved level of health care benefits.¹⁷

If Spokane voters had passed the living wage ordinance, the impact of the policy would have been detrimental to the very working people advocates said they wanted 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 small retailers who are unable to pay the higher wage and would have lost employees.

Policy Analysis

During a time of economic struggle, small businesses in particular are finding it difficult to pay for yearly wage increases. Fortunately, in 2010 the Department of Labor and Industries ruled there would be no minimum wage increase due to the Consumer Price Index remaining flat (actually it fell about two percent). But the wage went up again in 2011 and will rise again in January 2012—even though Washington's unemployment rate was close to 9.5%.

The burden of job loss falls disproportionately on low-skilled and minority workers. A study by labor policy researchers at Cornell University found 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.¹⁸

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, ensuring it would go up automatically every January 1, with no debate, no additional vote and no discussion.

Politically the strategy is brilliant. It avoids 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's business climate is less competitive than that of other states, but it is a strong contributing factor. Washington suffers deeper economic downturns 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 on the supply of labor. 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 and few jobs for workers.

Recommendations

- 1. De-couple automatic minimum wage increases from the Puget Sound-area 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 fairer

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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 for a temporary training wage for young or inexperienced workers.** Currently 14- and 15-year olds can be paid 85% of the minimum wage. Employers of young workers up to age 25 should have the option of paying 85% of the minimum for a limited time, to give new workers the opportunity to gain valuable knowledge and workplace experience needed to transition to a higher wage. This temporary wage would reduce youth unemployment by allowing young workers to get started on a path that leads to greater earning power.
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. It leads to higher prices for consumers and fewer jobs for workers.

3. Mandatory Paid Sick Leave

Recommendation

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.

Background

In the 2006 legislative session, lawmakers considered a bill that would have made every employer provide a minimum amount of paid sick leave for each employee.¹⁹ 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 push in future legislative sessions for a law that would impose a single, paid sick leave policy on every employer in the state.

Having received no statewide traction since the 2006 state legislation, proponents have refocused their efforts on passing mandatory paid sick leave requirements city by city.

A Seattle City Council ordinance imposes paid sick days on all of the city's businesses, regardless of size. While the required benefits depend on the size of a business by number of employees, the policy requires even the smallest business to provide this benefit.²⁰

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Currently, 44% of Washington employers voluntarily offer full-time workers a paid sick leave benefit.²¹ Nationally, only the state of Connecticut requires paid sick leave as a matter of law, and even then it is only directed toward the service industry and many types of businesses, including nonprofits, are exempt from the law. The only other governments to impose such a law are Washington, D.C., Milwaukee and San Francisco.

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 never use. Some jobs are based on tips and gratuities, so being forced to pay employees full salary to stay at home undermines the businesses' economic viability.²²

Impact on Small Businesses

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

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 is less than ten days, the mandated benefit bill considered by the legislature would automatically increase these businesses' costs.

Seventy-three percent of Washington firms offer paid time off to full-time workers, without distinguishing between sick leave and vacation time.²³ In addition, 23% of firms report offering undesignated paid leave, often accumulated by workers in personal "time banks," on top of the yearly paid holidays the employer already provides.²⁴

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 flexible benefit, 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 on 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. 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 employees of large businesses.²⁵ The smallest firms are often forced to make substantially higher contributions for benefits per participant 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.

A National Federation of Independent Business study shows that 66% 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 mandatory paid family leave are advocating.²⁶

Policy Analysis

In the modern economy, most companies offer voluntary and flexible ways of compensating their employees, based on the demands

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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 government-imposed mandate may help a few employees, but it would contribute to unemployment and increase the cost of living for all citizens.

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 of these things. By forcing employers to provide a new benefit, policymakers would end up making conditions worse for many 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 requirements, added to existing regulations, would significantly increase costs, especially for small businesses, and make our business climate even less attractive to out-of-state companies.

Recommendation

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 form 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.

4. Expanded Employee Leave Policies

Recommendations

1. Policymakers should encourage flexibility in the workplace for employee leave policies, rather than push for specific mandated benefits.
2. Repeal the never-implemented Paid Family Leave payroll tax program.

Background

Washington employees have a number of benefits guaranteed to them by both federal and state laws. Proposals are introduced each year, however, to expand either the current statutory benefits or add new benefits for employees. If adopted, these proposals would end up costing employers and consumers more, and could cause employees to lose other, non-statutory, benefits.

Employers in Washington are already required to provide benefits under the following state and federal family leave laws:

- Family Care Act
- Family Leave Act
- Leave due to Domestic Violence, Sexual Assault, Stalking
- Leave for Spouses of Deployed Military Personnel
- Leave for Certain Emergency Services Personnel
- Protection from Discrimination
- Pregnancy Disability Leave
- Federal Family Medical and Leave Act

Bills debated in recent legislative sessions include proposals to require mandatory leave for employees who want to participate in their child's educational activities, vaguely defined,²⁷ and for employees who have been elected to the state legislature.²⁸

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Policy Analysis

Employers already provide several mandated benefits under federal and state law, and cities are beginning to mandate specific benefits such as a “living wage” and paid sick leave. These statutory mandates come at a cost, however. As government officials impose more rules dictating how citizens can run a business, employers are left with fewer options for designing benefits tailored to meet their employees’ individual and family needs. A mandated benefit that one employee likes may not be needed or desired by another employee.

These types of detailed benefit mandates hit small businesses the hardest, though all businesses are affected. According to the Washington Employment Security Department, 65% of full-time employees in the state receive paid leave for vacation, and another 21% receive paid leave for any reason. However, 79% of businesses with more than 500 employees offer full-time employees paid vacation or undesignated paid leave, while only 61% of the smaller firms (with between two and nine employees) did the same.²⁹

Lawmakers may feel they are being generous in requiring business owners to pay employees to attend a school activity, and they may believe such detailed mandates serve the public interest. But what lawmakers do not see is the cost their mandates impose on society as a whole—by raising prices and making job creation more difficult—and how they deprive employees of choice and flexibility in the workplace.

In 2007, the legislature enacted a law giving employees up to \$250 a week of paid leave for up to five weeks a year after the birth or adoption of a child, for a total paid benefit of \$1,250 per worker per year.³⁰ The new mandated benefit was to be funded through a payroll tax of two cents per employee on every hour worked in the first year. After the first year regulators at the Department of Labor and Industries could increase the payroll tax without further action by the legislature.³¹

Recognizing the significant financial burden the new tax would place on employment, the legislature enacted a bill in 2009 delaying implementation of the program for three years.³² The extraordinary action of passing a new entitlement and then quickly suspending it demonstrates the problem with the original idea. In theory, lawmakers felt they were dispensing a new, politically attractive benefit to workers. In practice, they

realized imposing new costs on employment would actually hurt workers and job creation, so they blocked the law from going into effect.

The fate of the paid family leave program shows that adding new government-mandated benefits is unlikely to achieve the intended policy goals, and instead only increases costs to small businesses and restricts choices for workers. Employers may be forced to cut back on employee benefits that are not imposed by law in order to balance out the cost of mandated benefits.

Recommendations

- 1. Policymakers should encourage flexibility in the workplace for employee leave policies, rather than push for specific mandated benefits.** Mandates remove the option for a business owner to be flexible in responding to the individual and family needs of workers, instead forcing business owners to adopt a one-size-fits-all requirement imposed from above. By imposing mandates, officials make it illegal for employees to request a different mix of salary and benefits that best serve their interests.
- 2. Repeal the never-implemented Paid Family Leave payroll tax program.** Enacted in 2007 but never implemented, this program created a new mandated employee benefit funded by a new payroll tax. This program, which exists only on paper, should be repealed so business owners and workers can be confident the state will not add to the financial burden the state places on employment.

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Additional Resources from Washington Policy Center, Available at washingtonpolicy.org

“Analysis of Seattle’s Paid Sick Leave Ordinance,” by Carl Gipson, June 2011.

“L&I Hurts Small Businesses, Young Workers, with Decision to Raise Minimum Wage,” by Carl Gipson, November 2010.

“Lead the Way: Small Businesses and the Road to Recovery,” by Carl Gipson, January 2010.

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Endnotes

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- ⁸ *Supra*, note 4.
- ⁹ “History of the Washington Minimum Wage, Effective Dates,” Washington State Department of Labor and Industries, Minimum Wage, at www.lni.wa.gov/workplacerrights/wages/minimum/history/default.asp.
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- ¹¹ “Teen Unemployment Continues to Rise,” Employment Policies Institute, July 8, 2011, at www.epionline.org/news_detail.cfm?rid=323.
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- ¹⁴ “Minimum Wage Jobs and Median Hourly Wage in Washington State: 2009 Update,” *Washington Labor Market Quarterly Review*, Employment Security Department, Volume 34, No.1, January – March 2010.
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¹⁷ See “A National Movement Hits Close to Home: The Living Wage Proposal in Washington State,” by Carl Gipson, Washington Policy Center, November 2007.

¹⁸ “Why Raising the Minimum Wage is a Poor Way to Help the Poor,” by Dr. Richard Burkhauser and Dr. Joseph Sabia, (both of Cornell University), published by the Employment Policies Institute, July 2004, http://www.epionline.org/study_detail.cfm?sid=71.

¹⁹ HB 2777, introduced by Rep. Mary Lou Dickerson, January 13, 2006. The companion bill in the Senate was SB 6592.

²⁰ For more information, see “Analysis of Seattle’s Paid Sick Leave Ordinance,” by Carl Gipson, available at www.washingtonpolicy.org/publications/brief/analysis-seattles-paid-sick-leave-ordinance.

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³² Senate Bill 6158, “Delaying implementation of the Family Leave Insurance Program,” signed May 18, 2009.