



By Mandating A Specific Compensation Mix, Labor Policies Take Flexibility Out of the Equation

Briefly

- An initiative has been filed that would increase the state minimum wage.
- It would also mandate paid sick leave statewide.
- The House has passed a wage parity bill.
- The House and Senate have passed separate bills providing accommodations for pregnant women.
- A Senate committee has passed a bill that would preempt cities, towns, and port districts from enacting local labor laws.
- Seattle may consider a restrictive scheduling ordinance.
- It is not the case that “Women working full-time in Washington earn eighty cents for every dollar earned by a man working the same job.”
- Employee compensation consists of wages, benefits, and working conditions.
- When the government mandates specific benefits or working conditions, the optimal mix for a given employee may no longer be offered.
- Labor policy should be set at the state level so as to provide uniformity and more certainty for employers.

Labor policy is a major topic in the state Legislature and various cities of late, and it may be on the ballot in November. Policies being discussed include the minimum wage, paid leave, wage parity, accommodations for pregnant women and restrictive scheduling. The Legislature is also considering preempting local governments from regulating labor policy.

Minimum Wage

Washington’s minimum wage is currently \$9.47 an hour. Since the approval of Initiative 688 in 1998, Washington’s minimum wage has been indexed to inflation. From 2000 through 2015, Washington’s minimum wage was the highest state minimum wage in the nation (except for 2001 and 2003, when Washington came in second). In 2016, Washington drops to seventh place, behind California, Massachusetts, Alaska, Con-

necticut, Rhode Island and Vermont. (Of those states, only Alaska and Vermont tie their minimum wages to inflation.)

Some cities in Washington have enacted higher municipal minimum wages. In SeaTac, the 2016 minimum wage for certain hospitality, transportation, and airport workers is \$15.24. In Seattle, the 2016 minimum wage varies from \$10.50 to \$13.00 depending on the size of the employer, whether medical benefits are provided and whether employees earn tips. In Tacoma, the 2016 minimum wage is \$10.35.

An initiative has been filed this year that would increase the state minimum wage. Under I-1433 (if it receives enough signatures to go on the ballot and then is approved by voters), the minimum wage would increase to \$11.00 in 2017, \$11.50 in 2018, \$12.00 in 2019, and \$13.50 in

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2020. Thereafter it would be indexed to inflation. (The initiative does not preempt localities from enacting higher minimum wages.)

Meanwhile, there has been some interest in the Legislature this year to increase the state minimum wage, but nothing passed out of committee by cutoff (the last day to pass bills out of committee in their house of origin). For example, [PSSB 6087](#) would increase the minimum wage to \$10.00 in 2017, \$10.50 in 2018, \$11.00 in 2019, and \$12.00 in 2020. Thereafter it would be indexed to inflation. (The proposed substitute bill would also require paid sick leave. Employees would accrue one hour of sick leave for every 40 hours worked, and employees would be able to use up to 40 hours a year.) The bill would require that minimum standards for wages, leave from employment, labor scheduling and standards be set by the state. (Previously enacted local regulations would be grandfathered in.)

In a February 2015 [special report](#), we wrote about the minimum wage (WRC 2015a). That report included a review of the economic literature on the topic. Overall, the evidence supports the conclusion that minimum wages reduce employment of lower-skilled workers, whether by firing workers, reducing hours or not hiring as many new employees. Further, minimum wages are not effective at reducing poverty because they aren't means-tested.

Also, as we wrote in 2014, "Because younger workers are disproportionately low skilled, the disemployment effects of the minimum wage should be most visible in teenagers" (WRC 2014). And indeed they are: In January 2016 the overall national employment rate was 4.9 percent, while the unemployment rate for those aged 16 to 19 was 16.0 percent (BLS 2016).

Since last spring, a few notable studies have been released. One finds that "the minimum wage reduces employment over a longer period of time than the

literature has focused on in recent years" (Meer and West 2015). Employment effects may not show up immediately, but that doesn't mean they won't show up at all.

Another study finds that if higher minimum wages are paid for through higher prices, ". . . families with lower levels of consumption disproportionately purchase the goods produced with the larger shares of minimum wage labor" (MaCurdy 2015). Consequently, not only is the minimum wage an ineffective poverty-fighting tool, it can even be considered "a 'national consumption tax' that is more regressive than a typical state sales tax" (MaCurdy 2015).

Paid Leave

In 2015 the House passed [HB 1356](#), which would require employers in Washington to provide a paid sick and safe time benefit to workers. (For more details, see our 2015 policy brief on the bill, "[Mandating Paid Sick Leave in Washington](#).") In 2016 the bill was re-introduced in the House, but it failed to be passed out of committee by cutoff.

This doesn't mean the issue of paid sick leave is dead, however. Paid sick leave policies are in effect in Seattle, SeaTac and Tacoma, and Spokane recently adopted a paid sick leave ordinance (it will be effective Jan. 1, 2017). Additionally, I-1433 would not only increase the state's minimum wage—it would also require Washington employers to provide paid sick leave. The various ordinances and proposals contain key differences as to who is affected and the amount of leave that is mandated (see the table on page 3).

Nationally, four states have paid sick leave laws, as do 22 cities and one county (NPWF 2016).

In our 2015 policy brief we wrote that only a limited number of studies have been done on the impacts of paid sick leave mandates (which are a relatively new phenomenon). Moreover, those that do exist "were conducted by supporters

or opponents of the mandates, and they are often simply surveys of employers and employees” (WRC 2015b). Still, they show that paid sick leave mandates are not costless. No new studies have been released since then.

In addition to paid sick leave, bills regarding paid family leave and paid vacation have also been introduced in the Legislature. Under [HB 1163](#), employees would earn two hours of paid vacation

leave for each 40 hours worked, if their employer employs 10 or more employees. The bill was not passed out of committee. No jurisdiction in the U.S. mandates paid vacation time.

The Legislature enacted a paid family leave program in 2007, but it was never implemented. [SHB 1273](#) would require paid family leave benefits to be available beginning Oct. 1, 2017. It is more generous than the 2007 version: Benefits

Table: Paid Sick Leave Ordinances and Proposals in Washington

	Effective Date	Employers Affected	Employees Affected	Exempted Employees	Leave Accrual	Hours of Leave That May Be Used In a Year	Amount That May Be Carried Over
Seattle	Sept. 1, 2012	Businesses with one or more employees	Perform more than 240 hours of work in city in a calendar year	Work-study students	1 hour for every 40 hours worked	40 hours per year	40 hours per year
At least 50 and fewer than 250 FTE					1 hour for every 40 hours worked	56 hours per year	56 hours per year
250 or more FTE					1 hour for every 30 hours worked	72 hours per year	72 hours per year
SeaTac	Jan. 1, 2014	Hospitality and transportation employers	Those employed in hospitality and transportation industries		1 hour for every 40 hours worked		The worker will be compensated for any unused time at end of year
Tacoma	Feb. 1, 2016	Businesses with one or more employees	Perform more than 80 hours of work in city in a calendar year	Work-study students, independent contractors	1 hour for every 40 hours worked	24 hours per year (may use hours carried over for a total not to exceed 40 hours)	24 hours per year
Spokane	Jan. 1, 2017	Businesses that employ at least one person in the city and have been in business for at least a year	Perform more than 240 hours of work in city in a calendar year	Work-study students, independent contractors, seasonal workers, construction workers	1 hour for every 30 hours worked	24 hours per year	24 hours per year
Fewer than 10 employees					1 hour for every 40 hours worked	40 hours per year	
HB 1356 (Proposed)		Businesses that employ more than four full-time equivalent employees	Perform more than 240 hours of work in Washington in a calendar year		1 hour for every 40 hours worked	40 hours per year	40 hours per year
More than 4 and less than 50 FTE					1 hour for every 40 hours worked	56 hours per year	56 hours per year
At least 50 and fewer than 250 FTE					1 hour for every 30 hours worked	72 hours per year	72 hours per year
I-1433 (Proposed)		All	All		1 hour for every 40 hours worked		40 hours per year

The 80 cents figure is an average of all female and male workers—it is not the case that they are “working the same job.”

would be payable for a maximum of 12 weeks for the birth or placement of a child and for a family member’s serious health condition. An additional 12 weeks would be allowed for the employee’s serious health condition. The weekly benefit amount would be 5.2 percent of the employee’s average quarterly wages (with a maximum of \$1,000 a week, to be indexed to inflation). To pay for this program, employers would be required to pay a premium based on the amount of each employee’s wages. HB 1273 was also not passed out of committee.

Only California, New Jersey and Rhode Island have paid family leave laws (NPWF 2015b). According to the Council of Economic Advisers (CEA), based on an employer survey, 11 percent of employees are covered by formal paid family leave policies. But based on a survey of employees, 48 percent say they are able to take paid leave for family reasons. As the CEA writes,

The gap between workers’ and employers’ reports suggests that informal arrangements with managers and the use of other forms of leave, like paid vacation, may currently be playing an important role. (CEA 2014)

Wage Parity

In 1963 the federal government enacted the Equal Pay Act, which prohibits sex discrimination in wages. Also, since 1943 Washington state law has specified that paying female employees less than male employees who are similarly employed is against the law. Further, an employee being paid less is “entitled to recover in a civil action the full amount of compensation she would have received had she not been discriminated against” (RCW 49.12.175).

The Washington Post notes that bills addressing equal pay were introduced this year in at least 23 states, as part of a “coordinated effort” by a number of progressive groups (DePillis 2016). This includes [ESHB 1646](#) in Washington, which was passed by the House on Feb. 3.

ESHB 1646 would expand the entitlement to civil action to include instances when an “employee receives less favorable employment opportunities because of being discriminated against on account of gender.” It also specifies that employees would be entitled to actual damages, statutory damages of twice the actual damages, interest on compensation owed, and costs and attorneys’ fees. The court may also order injunctive relief.

If there is a compensation or employment opportunities differential that is based on “bona fide job-related” factors, it would not be considered discrimination. Those job-related factors are education, training or experience. “Less favorable employment opportunities” is defined as “assigning or directing the employee into a less favorable career track or position based on gender.”

Further, under the bill employers may not prevent employees from discussing their wages with each other.

According to the bill, “Women working full-time in Washington earn eighty cents for every dollar earned by a man working the same job.” This is flatly untrue. First, the 80 cents figure is an average of all female and male workers—it is not the case that they are “working the same job.”

The U.S. Bureau of Labor Statistics reports that in 2014 (the most recent data), women’s earnings as a percent of men’s were 82.5 percent nationally. For Washington the figure was 81.0 percent. These are full-time workers, which the BLS defines as those who work 35 hours or more a week (BLS 2015). Thus, the gap doesn’t take into account the fact that a woman may be working 35 hours while a man may be working 45 hours. Indeed, according to the BLS, in 2014 “26 percent of men who usually work full time worked 41 or more hours per week, compared with 15 percent of women who worked those hours” (BLS 2015). When you compare men and women who work the same hours, the gap nar-

“A flexible schedule often comes at a high price.”

rows. For those working just 40 hours, women’s earnings were 89.3 percent of men’s. (For those working 41 to 44 hours, it was 93.0 percent.)

The liberal Institute for Women’s Policy Research (IWPR) notes, “Women’s median earnings are lower than men’s in nearly all occupations” (IWPR 2015). But the gaps in earnings vary depending on the occupation. Further, “Male-dominated occupations tend to pay more than female-dominated occupations at similar skill levels, particularly in jobs that require higher educational levels” (IWPR 2015). Consequently, IWPR writes, “tackling occupational segregation is an important part of eliminating the gender wage gap.”

In a 2014 paper, economist Claudia Goldin argues that the key factor in addressing the remaining gap is less occupational segregation than

... the value placed on the hours and job continuity of workers ... Individuals in some occupations work 70 hours a week and receive far more than twice the earnings of those who work 35 hours a week. But in other occupations they do not. . . . When earnings are linear with respect to time worked the gender gap is low; when there is non-linearity the gender gap is higher. (Goldin 2014)

Many individuals prefer flexibility to higher wages. According to Goldin, it comes down to “how firms reward individuals who differ in their desire for various amenities” (Goldin 2014). As Goldin writes, “A flexible schedule often comes at a high price” (Goldin 2014). But that doesn’t mean that wanting flexibility isn’t a rational decision, and it doesn’t follow that the resulting gap must or even could be legislated away.

Accommodations for Pregnant Women

[ESHB 2307](#) was passed by the House Feb. 4. Under the bill, it would be an unfair practice for employers not

to make reasonable accommodation for an employee for pregnancy, childbirth, or a pregnancy-related health condition, including, but not limited to, the need to express breast milk, unless the employer can demonstrate that doing so would impose an undue hardship on the employer’s program, enterprise, or business.

It would also be considered unfair practice for employers

- To take adverse action against employees who need an accommodation or to deny employment based on such accommodations,
- To deny employment opportunities based on the need to make reasonable accommodations,
- To require an employee to take leave if another reasonable accommodation can be provided (unless the employee refuses the accommodation offered), or
- To force an employee to accept an accommodation.

“Reasonable accommodation” includes time off for childbirth recovery, equipment or workstation modifications, temporary transfer to a less strenuous or hazardous position, assistance with manual labor, and work schedule modification.

Employers would not be able to claim undue hardship (or require a doctor’s note) when the accommodation requested is “longer, more frequent, or flexible restroom, food, or water breaks,” seating, limits on lifting over 20 pounds, and flexible scheduling to go to prenatal and postnatal health care visits. (For other accommodations, employers may request a doctor’s note.)

The bill requires the attorney general to enforce these requirements. In addition, any person injured by violations of the bill “shall have a civil cause of action in court.”

Additionally, on Feb. 16 the Senate

Federal law prohibits employers from discriminating against pregnant women.

passed [ESSB 6149](#), which would require employers to provide reasonable accommodations to employees for pregnancy- or childbirth-related health conditions, “unless the employer demonstrates that the accommodation would impose an undue hardship.” Employers would not be able to claim hardship for more frequent, longer or flexible restroom, food and water breaks; seating; and limits on lifting over 20 pounds. As in ESHB 2307, employers would not be allowed to take adverse action against employees requesting accommodation, deny employment opportunities to those requesting accommodation, require employees to take leave if another accommodation can be provided or require employees to accept an accommodation.

Under ESSB 6149, “reasonable accommodation” means making existing facilities accessible for employees with pregnancy- or childbirth-related disabilities, job restructuring, offering part-time or modified work schedules, acquisition of equipment, temporary transfer to less strenuous positions, limits on heavy lifting and scheduling flexibility for prenatal visits.

As with ESHB 2307, persons injured by violations of ESSB 6149 would have a civil cause of action in court.

Sixteen states and five cities have enacted pregnancy accommodation laws (NPWF 2015). Additionally, federal law prohibits employers from discriminating against pregnant women, and if a pregnancy-related medical condition prevents a woman from being able to do her job, her employer

must treat her in the same way as it treats any other temporarily disabled employee. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave . . . (EEOC 2016)

Restrictive Scheduling

Over the past few years, some workers (particularly in the retail and restaurant sectors) have raised concerns about their schedules—shifts and hours may vary

from week to week, there’s sometimes little notice given of when a worker will be needed, and sometimes they have to be on call with no guarantee of getting hours. This can make it logistically difficult for workers and their families.

On the other hand, such workers understand when they take the job that it is not a 9-to-5 proposition. Many of these employees must value the flexibility that shift work can offer. So do retailers and restaurants: Because they must be responsive to the customer base on any given day, their need of employees will necessarily change often.

Still, in 2014 San Francisco enacted two ordinances on scheduling, hours, and retention for chain stores. The ordinances became effective July 3, 2015; they apply to retail chains that have at least 40 stores around the world and at least 20 employees in San Francisco. Under the ordinances:

- Employers “must offer any extra work hours to current qualified part-time employees in writing before hiring new employees or using contractors or staffing agencies to perform additional work.”
- If a covered store is sold, the new owner must keep the store’s employees on for 90 days.
- Employers must give new employees “a good faith written estimate of the employee’s expected minimum number of scheduled shifts per month and the days and hours of those shifts.”
- Schedules must be given two weeks in advance.
- Employers must pay employees one to four hours of pay if they change their schedules with less than a week’s notice.
- Employees must be paid for two to four hours of work if they were on-call but not asked to work.
- There are some exceptions to these pay requirements (e.g., if operations

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can't continue due to failure of public utilities, an earthquake, or another employee failed to report to work). (OLSE 2016)

The rules may be waived as part of collective bargaining agreements. The provisions on employee retention are similar to those in SeaTac's Proposition 1, which—in addition to a \$15 minimum wage and other labor provisions—requires hospitality and transportation employers to offer additional hours to existing part-time employees before hiring new employees and requires retention of certain employees if an employer's contract with the city is terminated (WRC 2013).

Thirteen other jurisdictions nationally have proposed (but have not yet enacted) similar scheduling requirements, including California, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, and Oregon (NWLC 2015, NRF 2016a). The National Retail Federation notes that these proposals

generally include four common provisions: advance posting of schedules, employer penalties for unexpected schedule changes, burdensome record-keeping requirements and prohibitions on requiring employees to find replacements for scheduled shifts if they are unable to work. (NRF 2016b)

So far the Washington Legislature has not proposed similar legislation, but there is a campaign to enact an ordinance on the issue in Seattle (Beekman 2016).

It's too early to tell what effects the San Francisco scheduling ordinance has had on employers and employees. But the Washington Post reported last year that both employers and employees in San Francisco have complaints about the scheduling ordinance. Employers say the ordinance is "impacting service. . . Stores can't always predict surges in foot traffic, which might be brought on a sunny day, leaving managers without the option to

bring in more staff" (DePillis 2015). Additionally,

Some workers grumble the law discourages employers from offering extra shifts on short notice, because they would have to pay the last-minute schedule change penalty—even if workers would be happy for the chance to pick up more hours. (DePillis 2015)

Preemption

Recently, cities have been taking the lead on many labor and other policy issues. Indeed, some policymakers around the country cite federal gridlock as the reason "they are turning to cities, hoping they can act as incubators for ideas and pave the way for state and federal governments to follow" (Miller 2016).

Many states have responded by passing preemption laws to keep cities from acting on various topics, including regulating landlords, municipal broadband and the minimum wage, for example (Dewan 2015). At least 13 states have enacted preemption of local laws related to wages and benefits (Grassroots 2016).

Washington state law preempts localities from regulating a wide variety of issues (see box on page 8), but so far Washington has not preempted cities from making labor law.

[SSB 6578](#) was passed out of committee on Feb. 4. It would prohibit cities, towns, and port districts from regulating payment of wages, hours of work, employee retention, labor scheduling or leave for private employers. Any such laws and regulations adopted by localities prior to the effective date of SSB 6578 would be grandfathered in. This is not true statewide preemption—county regulations on these topics would be allowed.

Labor policy is increasingly being set at the local level. Additionally, policies are different in each jurisdiction—and they may apply differently to certain employers and employees. (For an example of the complexity, see the table on page 3

In Washington, state law preempts localities from:

- regulating firearms (RCW 9.41.290),
- licensing and regulating of any gambling activity (RCW 9.46.285),
- taking action related to residency restrictions for sex offenders (RCW 9.94A.8445),
- defining “criminal street gangs,” etc. (RCW 9.101.010),
- making residential energy codes (RCW 19.27A.020(6)(a)),
- regulating commercial electronic authentication and reliability (RCW 19.34.501),
- regulating customer safety at ATMs or night deposit facilities (RCW 19.174.080),
- regulating going out of business sales (RCW 19.178.140),
- regulating commercial electronic mail (RCW 19.190.110),
- regulating spyware and notices from software providers regarding information collection (RCW 19.270.070),
- regulating scrap metal processors, recyclers, or suppliers (RCW 19.290.200),
- cigarette ignition propensity (RCW 19.305.110),
- controlling rent (RCW 35.21.830 and 36.01.130),
- regulating crime-free rental housing programs (RCW 35.106.100),
- requiring or issuing licenses or certificates related to vehicles and drivers (RCW 46.08.010),
- regulating hitchhiking (except in areas where prostitution is occurring) (RCW 46.61.255(6)),
- regulating the use of wireless communications devices in motor vehicles (RCW 46.61.667(5)),
- regulating limousine carriers (RCW 46.72A.040),
- imposing excise or privilege taxes on insurers (RCW 48.14.020(5)),
- imposing excise or privilege taxes on taxpayers for premiums and payments for health benefit plans offered by health care service contractors (RCW 48.14.0201(7)),
- licensing the sale or distribution of, or imposing an excise tax on liquor (RCW 66.08.120),
- registering kegs (RCW 66.28.240),
- setting penalties for violations of the controlled substances act (RCW 69.50.608),
- regulating the sale, distribution, receipt, or possession of dextromethorphan (RCW 69.75.050),
- regulating small arms ammunition and handloader components (RCW 70.74.201),
- defining biomedical waste (RCW 70.95K.011),
- permitting or regulating hazardous waste management facilities (RCW 70.105.240),
- licensing or regulating cigarettes and tobacco products (RCW 70.155.120),
- regulating the construction and operation of a secure community transition facility and a total confinement facility on McNeil Island (RCW 71.09.250(3)),
- permitting and regulating community transition facilities in certain areas (RCW 71.09.342),
- regulating and certifying energy facilities (RCW 80.50.110),
- imposing taxes on parimutuel wagering, conveyances, and cigarettes (RCW 82.02.020),
- imposing taxes on the construction of buildings or on the development of land (RCW 82.02.020),
- levying taxes on motor vehicle fuel (RCW 82.36.440),
- imposing taxes on manufacturing, selling, or distributing special fuel (RCW 82.38.280), and
- regulating underground storage tanks (RCW 90.76.110).

Note: May not be exhaustive.

on paid sick leave.) This creates significant administrative burdens for businesses that have locations and employees in multiple cities. It also affects businesses that operate in neighboring jurisdictions; effectively, they may have to offer the same level of compensation in order to compete for the best workers—but they have no political input into their effective minimum compensation level.

Comment

Bills related to the minimum wage and paid leave did not pass cutoff in the Legislature this year, but the topics are the subject of a proposed initiative, and they have been passed by several cities in Washington in recent years. Meanwhile, bills on wage parity and accommodations for pregnant women are still alive in the Legislature this year, as is a preemption bill.

It is important to remember that employee compensation does not consist only of wages—benefits and working conditions are also important components. An employer may offer a mix of wages, health insurance, leave, scholarships, flexibility, etc. as compensation. In the absence of government intervention, that mix will reflect the preferences of both the employer and employee. Because the mix will differ from employer to employer, prospective employees can shop around for the mix that best suits them.

But when the government mandates specific benefits or working conditions, the optimal mix for a given employee may no longer exist. As Lawrence Summers has written, benefits mandates result in lower wages (Summers 1989). Because of the minimum wage, employers may have to respond by reducing non-mandated benefits. A paid leave mandate might result in the cancellation of a scholarship program, for example. Many employees may not like that tradeoff.

Whether or not each of the policies considered in this paper would be beneficial to some workers, labor policies should

be considered as interconnected parts of total compensation. If one policy is mandated, there will be an opposite reaction in the compensation mix. Restricting scheduling practices will necessarily result in less flexibility—something that many workers value to the extent that

they are willing to accept lower pay.

Further, labor policy should be set at the state level so as to provide uniformity and more certainty for employers—to promote continued employment growth in Washington.

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