



# Raising the Bar

## State and Local Governments Can Use Prevailing Industry Standards to Raise Minimum Standards for Private Sector Workers

By David Madland, Malkie Wall, and Alex Rowell | December 22, 2020

Nearly all states and many cities set minimum wages for private sector employees operating within their jurisdictions. These laws are essential, as they particularly help the most vulnerable workers and ensure that pay does not fall below certain thresholds. But in this era of extreme economic inequality and concentrated economic power, many states and cities want to do more to improve conditions for working people—and they have the authority to do so.

There is one particular underutilized tool that states and cities should consider using as a complement to their universal minimum wage laws: the enactment of industry-specific, prevailing wage-style laws that apply to private sector employees. Under this approach, minimum compensation standards are set with reference to prevailing wage and benefit rates.

Setting standards based on what some employers in the industry pay is widespread in government contracting, where prevailing wage laws are common.<sup>1</sup> But in several cases, prevailing wage-style laws have also been used to regulate private businesses that are not working on contracts or other government-funded or subsidized projects. The authors call this type of industry-specific wage law a prevailing industry standard.

Prevailing industry standard laws can build upon traditional minimum wage laws by stabilizing wages and benefits above bare minimums so that jobs can be sufficient to meet workers' basic needs. For example, in Washington, D.C., in 2020, all security guards in commercial office buildings must receive at least \$21.17 per hour in combined wages and benefits, well above the citywide minimum wage of \$15 per hour.<sup>2</sup>

At the same time, prevailing industry standards can ensure that high-road employers—those paying good wages and benefits—are not undercut by low-road businesses competing on the basis of submarket wages. Prevailing industry standards can protect gains that workers have been able to make toward achieving family-supporting compensation and prevent them from being undermined. Laws that protect industry standards can also deliver good outcomes for taxpayers by increasing income tax contributions and reducing poverty and reliance on public assistance.<sup>3</sup>

### See also:

["A How-To Guide for Strengthening State and Local Prevailing Wage Laws: Raising Standards for Government-Funded Work"](#)

["Prevailing Wages: Frequently Asked Questions"](#)

Moreover, industrywide wage-setting is proven to reduce pay gaps across race and gender.<sup>4</sup> Finally, unions are often supportive of setting standards based on prevailing industry compensation levels. This is important because supporting unions is a critical step toward addressing key problems in the U.S. economy and democracy.<sup>5</sup>

This issue brief discusses three existing examples of industrywide prevailing standards laws that cover security officers, building service employees, and apprentices on construction projects. In addition, it describes how policymakers can adopt these types of policies in conjunction with other strategies to lift wages and benefits. By adopting prevailing industry standard laws, policymakers can take important steps toward stabilizing wages and benefits at family-sustaining levels and ensure businesses are competing on a more level playing field.

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## Where prevailing standard laws are being implemented

Several cities and states use prevailing industry standard laws to ensure high standards in private sector employment. Though use of these policies has been relatively limited so far—and some were passed due to very specific circumstances such as the desire to limit security guard turnover in Washington, D.C., in the aftermath of 9/11—the concept holds promise for much broader applicability. Existing laws in Washington, D.C., New York, and California serve as examples of what is possible in this space.

### Security officers at commercial office buildings in Washington, D.C.

Since 2008, the District of Columbia has required all security officers working in commercial office buildings in the city to be paid at least the total compensation—wages and benefits—that prevails in the sector.<sup>6</sup> In justifying the law, the Council of the District of Columbia stated:

*Any wage that is not sufficient to provide adequate maintenance and to protect health impairs the health, efficiency, and well-being of persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that their wages be supplemented by the payment of public moneys for relief or other public and private assistance.<sup>7</sup>*

Because of the law, as of June 2020, District of Columbia security officers are entitled to at least \$16.69 per hour in wages plus an additional \$4.48 per hour in benefits or their cash equivalent.<sup>8</sup> Meanwhile, the citywide minimum wage just recently increased to \$15 per hour.<sup>9</sup>

### Building service workers at energy generation facilities in New York

In 2020, the state of New York passed legislation requiring that building service employees at major active energy generation facilities or at critical infrastructure transmission or distribution facilities be paid at least the prevailing wage and benefit rate.<sup>10</sup>

Among the justifications for the law is that it can help ensure the security of critical infrastructure by reducing turnover and allowing for a more developed and trained workforce.<sup>11</sup> The law can help ensure that service jobs at these facilities pay family-sustaining wages and benefits. In New York County, for instance, the prevailing wage for building cleaners is \$27.25 per hour plus \$13.33 per hour in supplemental benefits.<sup>12</sup>

### Registered apprentices on private construction projects in California

Policymakers in California have also applied prevailing standards to construction projects that are not subsidized by the government. One California regulation, for example, set a total compensation standard for registered apprentices on private construction projects based on the state prevailing wage law.<sup>13</sup> The 9th U.S. Circuit Court of Appeals upheld the law against a preemption challenge.<sup>14</sup>

Referencing prevailing wage and benefit statutes has allowed policymakers in these areas to set minimum wages and benefits in specific sectors at levels above the bare minimum, ensure that high standards are not undercut, and encourage businesses to compete based on productivity rather than low wages. The success of existing policies may demonstrate their value for more widespread adoption.

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### Guidance for policymakers looking to implement these laws

States—and cities with sufficient home-rule authority—should adopt prevailing industry standards as part of a multipronged approach to setting high standards for workers. Cities and states should cover all workers in their jurisdictions with minimum wage laws and then strengthen these laws by passing prevailing industry standards to ensure workers receive fair compensation given their particular industry. That is, workers should receive either the universal minimum wage or the wages and benefits that prevail in their industry or occupation—whichever is higher.

Prevailing industry standard laws should also be adopted in conjunction with other sectoral approaches. When some employers in the industry already pay decent wages and benefits, prevailing industry standards can support high standards. But when market wage rates are low, sectoral-specific minimum wages or workers' boards may be required.<sup>15</sup> New York City, for example, requires that ride-hailing apps pay drivers \$17.22 per hour after expenses, and Los Angeles law sets minimum wage and leave requirements for hotel workers citywide.<sup>16</sup> Similarly, wage or workers' boards—where representatives of workers, employers, and the public come together to set minimum standards for an industry or occupation—have been used to improve conditions for fast-food workers in New York state and domestic workers in Seattle.<sup>17</sup> Workers' boards can be particularly effective in industries with low standards because they can set high standards for compensation as well as for a wide range of issues, including safety and training.<sup>18</sup> Beyond that, workers' boards can help foster worker organizations, give workers a voice in determining workplace standards, and build worker

power, potentially providing a pathway for workers to directly improve their working conditions in the future. As workers gain strength to improve conditions, workers' boards can even look to prevailing compensation rates in setting their standards.

In short, prevailing industry standard laws are an important part of a series of overlapping minimum wage policies—including universal minimum wage laws and workers' boards—that cities and states should adopt. State and local governments will need to carefully craft prevailing industry standard laws to survive potential legal challenges. The authors can help advise pro-worker advocates designing these standards.

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## Conclusion

Setting minimum workplace standards based on those that prevail in an industry and locality is an important way to strengthen minimum wage legislation. Prevailing industry standards can frequently lead to higher compensation levels than universal standards, prevent businesses that pay decent wages and benefits from being undercut, and protect the gains that workers have been able to make in achieving family-supporting compensation. These prevailing wage-style laws have been adopted by some cities and states and deserve wider use. Setting private sector minimums that reference prevailing market standards can benefit workers and high-road employers by lifting compensation, reducing turnover, and improving service quality.

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## Endnotes

- 1 A separate CAP report provides guidance for state and local governments looking to create traditional prevailing wage laws. See Karla Walter, Malkie Wall, and Alex Rowell, "A How-To Guide for Strengthening State and Local Prevailing Wage Laws: Raising Standards for Government-Funded Work" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/?p=494146>; Malkie Wall, David Madland, and Karla Walter, "Prevailing Wages: Frequently Asked Questions" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/?p=494144>.
- 2 District of Columbia Department of Employment Services, "District of Columbia Security Officer Minimum Wage Increase," available at <https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/2018-2019%20Security%20MW%20Rate%20Notice%20-%20Final.pdf> (last accessed September 2020); Government of the District of Columbia, "District of Columbia Minimum Wage Poster," available at [https://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/Minimum%20Wage%20Poster.pdf](https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Minimum%20Wage%20Poster.pdf) (last accessed September 2020).
- 3 Frank Manzo IV, Alex Lantsberg, and Kevin Duncan, "The Economic, Fiscal, and Social Impacts of State Prevailing Wage Laws: Choosing Between the High Road and the Low Road in the Construction Industry" (La Grange, IL: Illinois Economic Policy Institute, 2016), available at <https://illinoisepi.files.wordpress.com/2017/03/pw-national-impact-study-final2-9-16.pdf>. For more general information on the impact that higher wages have on reducing welfare spending, see David Cooper, "Balancing paychecks and public assistance: How higher wages would strengthen what government can do" (Washington: Economic Policy Institute, 2016), available at <https://www.epi.org/publication/wages-and-transfers/>.
- 4 David Madland and Alex Rowell, "Combating Pay Gaps with Unions and Expanded Collective Bargaining" (Washington: Center for American Progress Action Fund, 2018), available at <https://www.americanprogressaction.org/issues/economy/reports/2018/06/28/170469/combating-pay-gaps-unions-expanded-collective-bargaining>.
- 5 Karla Walter and David Madland, "American Workers Need Unions: 3 Steps to Strengthen the Federal Labor Law System" (Washington: Center for American Progress Action Fund, 2019), available at <https://www.americanprogressaction.org/issues/economy/reports/2019/04/02/173622/american-workers-need-unions/>.
- 6 Compensation rates are set equal to the combination of minimum wage and fringe benefits required for the guard 1 classification under the Service Contract Act. Code of the District of Columbia, "Chapter 10. Minimum Wages," available at <https://code.dccouncil.us/dc/council/code/titles/32/chapters/10/> (last accessed December 2020).
- 7 Ibid.
- 8 District of Columbia Department of Employment Services, "Office of Wage-Hour Compliance," available at <https://does.dc.gov/service/office-wage-hour-compliance-0> (last accessed November 2020).
- 9 Ibid.
- 10 Assembly Bill A9505B, New York State Senate, 2019–2020 Legislative Session (January 22, 2020), available at <https://www.nysenate.gov/legislation/bills/2019/a9505/amendment/b>. Prevailing wage rates are subject to Article 9 of labor law, which directs the fiscal officer to determine wage and fringe benefits using data from various sources. An FAQ from the New York Department of Labor states that wage schedules are "determined from information obtained from collectively bargained agreements and the Department of Labor's Division of Research and Statistics." See New York State Senate, "Section 234: Powers of the Fiscal Officer," available at <https://www.nysenate.gov/legislation/laws/LAB/234> (last accessed December 2020); New York Department of Labor, "Article 9, Section 230 – Building Service: Frequently Asked Questions," available at <https://labor.ny.gov/workerprotection/publicwork/PWart-9FAQ2.shtm#12> (last accessed September 2020).
- 11 "New York has a fundamental obligation to harden its infrastructure against any [terrorist] . . . threats or activity. In hardening the infrastructure there is no greater asset than the human capital that serve at the front lines of the effort to thwart terrorist attacks. The electric and steam generating facilities in the state, when active, provide a target that requires the hardening not only of the physical infrastructure but the human infrastructure as well. Turnover in such positions, for the service workers who provide cleaning, security and maintenance services at such active generating facilities will decrease if the workers are paid increased wages. The reduction of turnover will allow for the more developed and trained workforce to continue to provide the measure of safety and security the state requires. Given that important state interest, it is therefore found and declared that the workers at such facilities shall be trained to ensure their ability to meet the security needs of the facilities that they work upon. It is further found and declared that the reduction of turnover may be accomplished by the payment of rates of pay in line with those prevailing in such trade or occupation, as otherwise defined." See Assembly Bill A9505B.
- 12 The compensation rate is for a Building Class "A" cleaner/porter, elevator operator, exterminator, fire safety director (more than 280,000 square feet gross area). The wage and benefit rates for new hires is slightly lower; the wage rate is \$20.44 per hour for wages during the first zero to 21 months of employment, with benefits also increasing based on the length of employment. Office of the Comptroller, City of New York, "Prevailing Wage for Building Service Employees on NYC Contracts Pursuant to Labor Law Article 9," available at <https://comptroller.nyc.gov/wp-content/uploads/documents/BuildingServiceEmployee-Schedule-2020-2021.pdf> (last accessed November 2020).
- 13 See Casetext, "Cal. Code. Regs. §208," available at <https://casetext.com/regulation/california-code-of-regulations/title-8-industrial-relations/division-1-department-of-industrial-relations/chapter-2-california-apprenticeship-council/subchapter-1-apprenticeship/article-3-standards-for-minimum-wages-maximum-hours-and-working-conditions/section-208-wages-employee-benefits-and-other-compensation-for-apprentices8> (last accessed December 2020). In California, the Director of Industrial Relations determines the prevailing rate by looking at the "basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing." Finally, "[i]f a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data." Casetext, "Cal. Labor Code §1773.9," available at <https://casetext.com/statute/california-codes/california-labor-code/division-2-employment-regulation-and-supervision/part-7-public-works-and-public-agencies/chapter-1-public-works/article-2-wages/section-17739> (last accessed December 2020).
- 14 *Associated Builders and Contractors of Southern California, Inc. v. Nunn*, 356 F.3d 979 (2004), available at <https://casetext.com/case/associated-buil-and-contrac-v-nunn>. The court held that the regulations established "minimum labor standards" and were not preempted by the NLRA.
- 15 Kate Andrias, David Madland, and Malkie Wall, "A How-To Guide for State and Local Workers' Boards," (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/economy/reports/2019/12/11/478539/guide-state-local-workers-boards/>.
- 16 New York City Taxi and Limousine Commission, "Notice of Promulgation: Driver Income Rules," available at [https://www1.nyc.gov/assets/tlc/downloads/pdf/driver\\_income\\_rules\\_12\\_04\\_2018.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf) (last accessed December 2020); City of Los Angeles, "Citywide Hotel Worker Minimum Wage Ordinance (CHWMWO)," available at [https://bca.lacity.org/eo\\_hotel](https://bca.lacity.org/eo_hotel) (last accessed September 2020).

17 New York State, "Fast Food Wage Board," available at <https://www.labor.ny.gov/workerprotection/laborstandards/wageboard2015.shtm> (last accessed September 2020); Seattle.gov, "Seattle, Washington, Municipal Code, Ch. 14.23," available at [https://library.municode.com/wa/seattle/codes/municipal\\_code?nodeId=TIT14HURI\\_CH14.23DOWO](https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.23DOWO) (last accessed December 2020).

18 Andrias, Madland, and Wall, "A How-To Guide for State and Local Workers' Boards."