



A How-To Guide for Strengthening State and Local Prevailing Wage Laws

Raising Standards for Government-Funded Work

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Introduction and summary

State and local governments spend billions of dollars each year on goods and services that are provided by private companies.¹ Yet, all too often, this spending undermines the labor standards of high-road companies that pay good wages and benefits, delivers jobs that pay poverty wages, and provides poor value to taxpayers. Policymakers can help ensure that government dollars uphold local market wages, support high-quality jobs, and deliver value to taxpayers by enacting prevailing wage laws, which require recipients of government funding to provide workers with wages and fringe benefits that are comparable to those paid to other similarly placed workers in the region.²

While prevailing wage laws most commonly apply to construction jobs, they also frequently cover service contracts. Policymakers have applied prevailing wage requirements to most types of government funding, including direct contracts, grants, loans, and tax incentives. These laws help level the playing field for high-road employers that pay decent wages and benefits and provide good value for taxpayers and law-abiding business owners. Prevailing wage laws also forestall a race to the bottom among contractors and ensure a stable, well-qualified workforce that produces high-quality work. Wage standard laws have been shown to support good value for contractors by decreasing turnover and improving performance.³ Similarly, prevailing wage and related laws have been shown to increase the number of bids for state contracts because they signal to good actors that they, too, can compete for and win government contracts.⁴ Moreover, research shows that construction prevailing wage laws do not increase project costs on public works⁵ and can actually boost state and local tax revenues.⁶

States and localities can use prevailing wage laws as part of a broader strategy to support high wages and reduce economic and racial inequality. For example, research shows that prevailing wage laws increase incomes for workers and reduce pay gaps between white and Black construction workers.⁷ Greater use of prevailing wage laws in the service sector could further help to raise standards for women and people of color.⁸

In addition, prevailing wages can raise standards for middle-income workers, as rates are tied to specific job classifications. Prevailing wage laws have also been found to increase apprenticeship training, boost worker productivity, and reduce injury rates.⁹

See also:

[“Raising the Bar: State and Local Governments Can Use Prevailing Industry Standards to Raise Minimum Standards for Private Sector Workers”](#)

[“Prevailing Wages: Frequently Asked Questions”](#)

Finally, by preventing public spending from undercutting standards bargained for in the private sector, these laws can have the incidental effect of protecting worker power and helping to extend high standards throughout industries.

Prevailing wage laws are not new. State policymakers enacted the first prevailing wage laws in the 19th century,¹⁰ and, at the federal level, the Davis-Bacon Act and Service Contract Act (SCA) have required companies receiving federal construction and service contracts to pay their workers prevailing wages and benefits for more than half a century.¹¹ Today, roughly half of all states¹² as well as several cities have adopted prevailing wage laws.

However, most prevailing wage laws reach only a portion of workers whose jobs are funded through public spending—often limiting coverage to certain types of spending or categories of work. Moreover, these laws are under attack by lawmakers in a number of states—including Michigan, Indiana, West Virginia, Arkansas, Missouri, Kentucky, and Wisconsin—that have moved to weaken or repeal those protections in recent years and even preempt action by cities.¹³

Progressive policymakers across the country must not only defend laws currently on the books but also build on the successes of existing prevailing wage laws. They should work to extend prevailing wage protections to new sectors and more types of spending so that all government funding—whether done through direct contracts, grants, loans, tax incentives, or other types of public financial assistance to private companies—includes prevailing wage coverage. Prevailing wage laws should also be strengthened so that, for example, wage-setting requirements are more likely to uphold market standards and enforcement is robust enough to encourage high levels of compliance.

This report provides a road map for state and local policymakers working to create or strengthen prevailing wage laws. It explains core features of prevailing wage legislation and lifts up existing best practices from around the country. Specifically, the report recommends that prevailing wage legislation:

- Include a strong purpose statement to ensure that government spending does not drive down labor market standards
- Cover workers across sectors and funding streams
- Adopt wage-setting requirements that uphold market standards
- Ensure employers provide decent benefits
- Increase access to construction industry jobs through apprenticeship
- Stabilize service sector jobs when contracts are rebid
- Guarantee robust mechanisms for enforcement

This report can be used in a variety of ways. Some policymakers may want to focus on a few specific recommendations, such as those that increase coverage or improve enforcement, while other policymakers may want to take a more comprehensive approach to report recommendations. Because the most appropriate policy to achieve a similar goal can vary across legal jurisdictions, most sections of the report contain examples from different cities and states. The report also recognizes that best practices may vary by industry—that is to say, construction versus service industries—and thus provides industry-specific recommendations where appropriate. In addition, a companion fact sheet provides complementary materials to help lawmakers better understand the benefits of prevailing wage laws.¹⁴

Prevailing wage law best practices

The most effective prevailing wage laws include a number of core elements. Provided below are guidance and examples of existing best practices to help state and local policymakers design prevailing wage laws that extend coverage broadly and include robust standards. As noted above, best practices must be modeled to accommodate the laws of any particular jurisdiction.

Include a strong purpose statement to ensure that government spending does not drive down labor market standards

The purpose of prevailing wage laws is to ensure that the government purchases high-quality goods and services that provide good value for taxpayers and do not drive down labor market standards. In this way, these standards protect workers from unfair exploitation; provide high-quality, high-road contractors with fair opportunities to bid on government projects;¹⁵ and, by increasing workforce stability, improve the overall quality and efficiency of contracts.¹⁶ State and local policymakers advancing these reforms should include these justifications in legislative purpose statements in order to provide direction to officials administering the law as well as courts that might review legislative intent if the law is subject to legal challenge.

Strong purpose statements describe the harms of low wages as well as how labor standards ensure efficient procurement that provides a good value to taxpayers and protects employers from unfair competition. For example, New Jersey's prevailing wage law for building services workers states:

It is declared to be the public policy of this State to establish prevailing wage levels for the employees of contractors and subcontractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general wellbeing of those employees and to protect them and their employers from the effects of serious and unfair competition based on low wage levels which are detrimental to efficiency and well-being.¹⁷

Similarly, Minnesota’s construction prevailing wage law maintains that

[i]t is in the public interest that public buildings and other public works be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on public works be compensated according to the real value of the services they perform.¹⁸

The city of Los Angeles’ airport living wage ordinance could also serve as model language for a prevailing wage law justification because it highlights the connection between employee compensation and turnover:

Inadequate compensation of these employees adversely impacts the performance by the City’s lessee or licensee and thereby hinders the opportunity for success of City operations. . . . The minimal compensation tends to inhibit the quantity and quality of services rendered by those employees to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions.¹⁹

In short, purpose statements should highlight how prevailing wages and benefits help workers, taxpayers, and government alike.²⁰

Cover workers across sectors and funding streams

While numerous cities and states have adopted prevailing wage laws, many apply only to public works projects or cover only direct contracts but exclude from coverage loans, grants, tax incentives, and other types of public support for private companies. As a result, many employers that receive government support are not subject to these wage requirements. Therefore, policymakers should enact and update prevailing wage laws to cover all types of government spending that creates private sector jobs and workers whose jobs are funded in whole or in part by state or local spending. There are a number of steps that policymakers can take to help expand the scope of coverage, as detailed below.

First, lawmakers should expand prevailing wage laws—which traditionally cover construction projects—to more industries and types of work. Increasingly, governments are extending prevailing wage mandates to service work.²¹ For example, existing laws cover custodial staff, unarmed security guards, airport workers, food service workers,

and temporary office service workers.²² New York and New Jersey, in particular, have numerous state and local laws that set standards for building service workers.²³ In addition, governments should consider attaching wage requirements to ongoing maintenance and repairs on major public works projects.²⁴

While there are specific nuances to crafting construction and service sector prevailing wage laws (as discussed in more detail in the following sections), too often legislators advocate and advance narrowly crafted reforms, seeing themselves as champions for a specific set of workers rather than a champion for the expansive use of standards to uphold efficient and economical spending and raise standards for workers broadly. By expanding these laws to cover more construction and service sector work, lawmakers can broaden the coalition of supporters and ensure that the laws support high standards across the government.

Second, prevailing wage laws can and should cover spending across all government agencies²⁵ and financing mechanisms, including direct contracts, grants, loans, tax incentives, and other types of public support for private companies such as lease agreements, loan guarantees, and transfers of state land.²⁶ Some construction prevailing wage laws have gone quite far in covering a range of government financial assistance. The New Jersey Economic Development Authority, for instance, requires prevailing wages for

*workers employed in the performance of any construction . . . undertaken in connection with Authority financial assistance or any of its projects . . . or undertaken to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance.*²⁷

*“Authority financial assistance” means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the Authority to any entity and is provided before, during or after completion of a project . . . that enables the entity to engage in a construction contract.*²⁸

As another example, the city of Portland, Maine, requires firms employed in the construction phase of tax increment financing-assisted projects to pay the higher of the prevailing wage and the city minimum wage.²⁹ The state of New York also has an expansive definition for what constitutes public support.³⁰

In the service sector, prevailing wage standards are often applied to direct government contracts and subcontracts for work at properties owned or leased by the municipality or state.³¹ Innovative policymakers should also attach these standards to a wide range of other taxpayer-supported work. For example, Bergen County, New Jersey’s prevailing wage law applies to “[a]ll contracts ... for the performance of any kind of building service work in buildings owned or leased or otherwise utilized by the County that is paid for by voucher, grant or otherwise”³² as well as all contractors receiving economic development financial assistance. The law goes on to broadly define “economic development financial assistance” as

*assistance with an anticipated total value of at least one million dollars that is provided in whole or in part by the County to a business organization for the improvement of development of real property, economic development, job retention and growth, or other similar purposes. Financial assistance includes, but it’s not limited to cash payments or grants, bond financing, tax exemptions, tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements related to real property that, under ordinary circumstances, the County would not pay for.*³³

Third, policymakers should structure laws so that standards kick in when any government funds are involved, even if the project is not led by a state agency. Maine, for example, recently amended its laws to require prevailing wages on all construction projects “funded in whole or in part by state funds and for which the contract amounts to \$50,000 or more.”³⁴

Fourth, where possible, policymakers should extend existing laws to cover more political subdivisions as well as quasi-public entities. Some state laws require that projects by local jurisdictions and school districts be covered.³⁵ In addition, prevailing wage laws have covered public utilities,³⁶ public-private partnerships, universities, and port authorities.³⁷

Finally, it is important that prevailing wage requirements flow down through funding to prevent employers from contracting out work in order to avoid wage requirements. Prevailing wage laws should apply to any subcontractors. In addition, service sector prevailing wages have been extended to cover tenants of funding recipients.³⁸ This ensures that even if a funding recipient leases out their property, building service workers at that property will still be covered by standards. Moreover, many states should take corrective action to reverse loopholes found in laws enacted during the past century which allow contractors to pay workers with disabilities subminimum wages. For example, Connecticut has taken steps to ensure that all workers, regardless of their disability status, are covered by prevailing wages.³⁹

Adopt wage-setting requirements that uphold market standards

Governments have some discretion when it comes to specific strategies for setting wage rates. Jurisdictions use a variety of methods to determine market wage and benefit rates, including surveys and reference to local collective bargaining agreements (CBAs). Strong wage-setting mechanisms can ensure that government contracting does not erode standards in the private sector or undercut standards reached through collective bargaining. Indeed, prevailing wage laws tend to be important for protecting market rates in areas where a significant portion of the workers belong to unions.

State construction prevailing wage laws commonly calculate compensation based on the most frequently occurring rate in an industry, known as the modal rate. For example, the state of Minnesota calculates its construction prevailing wage rate based on the “actual wage rates paid to largest number of workers within each labor classification reported in the statewide survey.”⁴⁰ Illinois’ prevailing wage law—which considers rates for work performed under CBAs in the locality, provided that the agreements cover at least 30 percent of workers—is another good model.⁴¹ New Jersey and Washington state also look directly at CBAs in setting standards for construction contracts.⁴²

Incentives to undercut market wages can be even higher among low-road contractors in the service sector, where labor costs account for a large portion of total contract costs; market wages are lower; and contracts typically fund long-term work rather than temporary construction projects. To generate the strongest wages possible, employers in the service sector should pay their employees the higher of the prevailing wage or the living wage, as is mandated in New York City’s building service prevailing wage law.⁴³ By including such a minimum wage floor, policymakers can help ensure that laws raise standards above poverty levels even in particularly low-wage and nonunion industries.⁴⁴

In addition, the strongest service sector prevailing wage laws ensure that prevailing wage rates don’t undercut markets where a large portion of workers are organized under a CBA. For example, Connecticut’s wage-setting process looks at the largest statewide CBA, provided that the contract covers at least 500 employees.⁴⁵

Bergen County, New Jersey’s prevailing wage for building service workers also provides a useful model for several of the above concepts by calling for the higher of either the prevailing wage or a percentage above the federal minimum wage. Note that, given that state minimum wages are often higher than the federal minimum wage, an even better practice would be to use a percentage of the statewide rate:

For the purposes of this section, “standard hourly rate of pay” other than for armed guards and armed watchpersons shall be 150% of the current federal minimum wage . . . or the hourly rate of pay for work performed within the County under the Collective Bargaining Agreement covering the largest number of hourly non-supervisory employees employed within Bergen county in the relevant classification, provided the Collective Bargaining Agreement covers no less than two hundred (200) employees in the classification, or the hourly rate paid to workers in the relevant classification under a preceding contract, whichever is higher.⁴⁶

On long-term service contracts, it is particularly important that employers receiving public funds are required to pay the current wage rate—rather than the rate in effect at the time the contract was made—and prevailing wage laws should provide for routine annual adjustments to the standard rate of pay and benefits to account for changes in labor costs and the cost of living.⁴⁷ Policymakers can also require bidders to submit specific price breakdowns as a way to ensure that their estimated labor costs appropriately account for wages and payroll taxes.⁴⁸ In addition, policymakers could make state agencies responsible for any increase in labor costs over the life of the contract, as is the case in Connecticut.⁴⁹

Finally, prevailing wages should not be used to interfere with the right of workers to collectively bargain.⁵⁰ For instance, service employers at work sites where there is already a CBA in place should be required to pay the higher of the negotiated CBA wage and benefits rates or the prevailing rate.⁵¹

Ensure employers provide decent benefits

Prevailing wage laws typically go beyond setting minimum wages and also establish fringe benefit contribution requirements. In most instances, cities and states require covered employers to provide a certain amount toward an employee benefits plan or a cash equivalent. In addition, policymakers increasingly require covered employers to separately provide essential benefits such as paid leave.

Prevailing wage laws set minimum contribution levels that cover a range of fringe benefits, including health care and paid time off.⁵² California, for example, includes “employer payments of health and welfare, pension, holidays, sick leave, vacation, apprenticeship or other training programs” as part of its prevailing wage definition.⁵³

Prevailing wage laws commonly set total compensation rates that allow employees to meet supplement requirements through Employee Retirement Income Security Act (ERISA) plans, non-ERISA plans, or cash. Typically, prevailing wage laws provide employers with three options for furnishing these benefits: 1) in the form of bona fide health and other benefits valued at the required hourly supplement amount; 2) through a mixture of bona fide benefits and cash; or 3) entirely in cash.⁵⁴

In addition, some jurisdictions separate out paid leave from health insurance and other benefits to prevent the former from eating up the entire benefits supplement.⁵⁵ Paid leave can include paid vacation, paid holidays, and paid personal or sick days.⁵⁶

Like wages, employers at work sites where there is already a CBA in place should be required to provide workers benefits at negotiated levels, and fringe benefits should be adjusted on an annual basis to account for changes in the cost of living.⁵⁷

Hudson County, New Jersey's service sector sets the hourly supplemental benefits rate equal to the greatest of the following:

- 1. The monetary value of the health and other benefits (not including paid leave) provided by the Collective Bargaining Agreement covering the largest number of hourly, non-supervisory employees employed within Hudson county in the relevant classification, provided the Collective Bargaining Agreement covers no less than two hundred (200) employees in the classification;*
- 2. health and other benefits (not including paid leave) provided by the employer for each employee within ninety (90) days of hiring or pay to the service worker of an hourly stipend equal to twenty percent (20%) of the standard hourly rate of pay (the "Hourly Benefit Supplement"); or*
- 3. the monetary value of the health and other benefits (not including paid leave) provided under a preceding qualified contract. The cost to the employer of "standard benefits" shall be equal to or greater than the Hourly Benefit Supplement. In the event that the premium costs per service worker are less than the Hourly Benefit Supplement then in addition to any other benefits or payments made to a service worker the vendor, contractor, or subcontractor shall pay the service worker on an hourly basis the difference between the Hourly Benefit Supplement and the amount paid for the benefits."⁵⁸*

Increase access to construction industry jobs through apprenticeship

Registered apprenticeships are important tools for structuring training and upholding market wages and safety standards in a number of industries, especially construction.⁵⁹ While construction industry jobs are temporary, registered apprenticeship's nationally recognized credentials allow construction workers to demonstrate skill level and move smoothly between employers while ensuring companies access a continuous supply of qualified workers.

Encouraging the use of registered apprentices with government spending helps provide a skilled workforce for government projects. Additionally, when paired with targeted hire programs, registered apprenticeships can result in local residents from disadvantaged communities having access to construction careers.

Typically, prevailing wage laws permit registered apprentices to be paid at a percentage of the total pay for journeypersons and require employers who wish to take advantage of the lower rate to submit proof of the workers' apprenticeship registration to ensure the program is high quality. See, for example, Washington state's public works law:

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council ... must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.⁶⁰

In addition, states can help expand the use of apprenticeship by requiring that a significant portion of the work on publicly supported construction projects be performed by participants in a federal or state registered apprenticeship program. A number of states already use these types of apprenticeship utilization rates. For example, Washington state requires that no less than 15 percent of the labor hours on large state public works projects be performed by apprentices,⁶¹ and Nevada requires that apprentices supply 10 percent of labor hours for vertical construction.⁶²

In order to achieve the widest talent pool and the most effective and productive workforce possible, lawmakers can also incorporate targeted hire requirements.⁶³ Targeted hire policies can help ensure that historically disadvantaged groups of workers—which could include women, people of color, and the formerly incarcerated—are able to access publicly supported jobs.⁶⁴ For example, the city of San Francisco requires

local residents to complete 50 percent of its apprenticeship hours and has partnered with business, labor, and community groups to create an 18-week preapprenticeship program.⁶⁵ Construction projects by the Los Angeles County Metropolitan Transportation Authority require that 20 percent of workers be apprentices and that 10 percent be “disadvantaged residents.”⁶⁶ In designing prevailing wage laws, states and cities may consider pairing them with laws establishing targeted hire requirements.

Stabilize service sector jobs when contracts are rebid

State and local policymakers must also take steps to prevent the diminution of standards when service sector contracts are rebid. This means requiring that any follow-on contractors maintain the existing onsite workforce as well as uphold wage and benefit rates that are at least as high as those mandated in the previous public contract. These principles are critical in the service sector because workforces tend to be tied to a job site for an extended period.

These protections for subsequent contracts reflect governments’ interest in maintaining a stable workforce and preventing turnover of experienced workers as a result of changes in contracts. By reducing worker turnover, the government can support a more experienced workforce, which has benefits for service quality as well as safety and security. Moreover, these protections help prevent low-road contractors from beating out their competition on the basis of submarket wages and benefits.⁶⁷

Prevailing wage laws should mandate that when such a contract expires, any follow-on contractor shall retain employees formerly employed by the terminated contractor or subcontractor. Should the new contractor determine that fewer employees are required to perform the new contract, it should retain employees by seniority within the job classification.⁶⁸ See, for example, Connecticut’s prevailing wage statute:

(h) Where a required employer is awarded a contract to perform services that are substantially the same as services that have been rendered under a predecessor contract, such required employer shall retain, for a period of ninety days, all employees who had been employed by the predecessor to perform services under such predecessor contract, except that the successor contract need not retain employees who worked less than fifteen hours per week or who had been employed at the site for less than sixty days. During such ninety-day period, the successor contract shall not discharge without just cause an employee retained pursuant to this subsection.

If the performance of an employee retained pursuant to this subsection or section 4a-82 is satisfactory during the ninety-day period, the successor contractor shall offer the employee continued employment for the duration of the successor contract under the terms and conditions established by the successor contractor, or as required by law.⁶⁹

In addition, prevailing wage laws should require employers to comply with the wage, benefit, and paid leave requirements of the prior contract, where they are higher. Hudson County’s prevailing wage law does this by requiring that employers pay the higher of a percentage of the minimum wage, the prevailing wage rate, or “the hourly rate paid to workers in the relevant classification under a preceding contract.”⁷⁰

Taken together, the provisions help ensure that follow-on bidders are not able to win contracts by reducing previous wages and benefits and thereby undercutting high-road companies in order win a contract.

Guarantee robust mechanisms for enforcement

Wage theft—where employers pay workers less than the law requires—is a widespread and serious issue for many contract workers.⁷¹ In order to ensure that worker protections are effective, prevailing wage laws must guarantee robust government enforcement, strong individual rights to action, and partnerships with worker advocates to ensure that victims of wage theft know their rights and are willing to come forward.⁷²

Policymakers can give inspectors the tools they need to investigate potential violations by requiring companies to provide certified payroll;⁷³ allow site access;⁷⁴ and post notices to keep workers informed of their rights.⁷⁵ Moreover, as discussed in endnote 48, requiring government agencies to evaluate bidders based on their detailed price breakdowns can ensure that estimated labor costs appropriately account for wages and help prevent violations after the fact.

Employers found to intentionally, willfully, or repeatedly violate prevailing wage provisions should face penalties⁷⁶ and potentially debarment, which would prevent them from receiving contracts and other types of government funding for a specified period of time, depending on the severity of the violation. For example, New York state labor law prohibits contractors that have been debarred for prevailing wage violations from bidding or being awarded building service contracts for a period of five years.⁷⁷ Principals, affiliates,

successors, and assignees of contractors or subcontractors found to have intentionally violated provisions would also be ineligible for new contracts or funding during that time.⁷⁸ These laws should also prohibit employers from retaliating against workers for filing complaints,⁷⁹ and employers who do should face additional penalties.⁸⁰

Hawaii's construction prevailing wage law is one of the strongest on enforcement. It includes financial penalties that vary based on the number of violations⁸¹ as well as immediate suspension of violators:

(a) The director shall suspend a person or firm as follows:

(1) For a first or second violation, if a person or firm fails to pay wages found due, any penalty assessed, or both, the person or firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full;

(2) For a third violation, the suspension shall be as prescribed in section 104-24(c); provided that, if the person or firm continues to violate this chapter or fails to pay wages found due or any penalty assessed, or both, then the person or firm shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory three-year period. If after the three-year suspension period the wages found due or penalties assessed are still unpaid, the suspension shall remain in force until payment is made in full; or

(3) For falsification of records, or for delay or interference with an investigation pursuant to section 104-22, the person or firm shall be immediately suspended for a period of three years.

(b) The director shall immediately notify the governmental contracting agency, comptroller, the auditor or director of finance of the county, and in the case of a suspended subcontractor, the general contractor of any suspension order.

(c) No contract shall be awarded to the person or firm so suspended or to any firm, corporation, partnership, or association in which the person or firm has an interest, direct or indirect, until three years have elapsed from the date of suspension, unless the period of suspension is reduced as herein provided. Any contract awarded in violation of this subsection shall be void.⁸²

However, government action alone is not enough. Prevailing wage laws should also provide workers with a private right of action, so that they can bring suit for violating prevailing wage laws and recover lost wages and benefits as well as attorney's fees.⁸³

For example, Hudson County, New Jersey's prevailing wage ordinance includes a right of action for covered employees:

*[Violation of this provision] shall constitute a breach of contract, and such provision shall be considered to be a contract for the benefit of the workers, laborers and mechanics upon which such laborers, workers and mechanics shall have the right to maintain action for the difference between the standard compensation and the rates of pay, benefits, and paid leave actually received by them. The laborers, workers and mechanics may be awarded appropriate remedies including, but not limited to, back pay, benefits, attorney's fees, and costs.*⁸⁴

In addition, New York and California allow workers to bring “third party beneficiary” suits against companies that violate their contract with the state by paying less than the prevailing wage and to recover owed wages and remedies on behalf of themselves and other workers.⁸⁵ Third-party beneficiary rights are important because they allow workers to bring a private suit against employers that fail to pay prevailing wages.

Finally, it is also essential that state labor agencies have adequate resources and staff to carry out the necessary enforcement efforts. Policymakers should provide enforcement agencies with robust funding. Furthermore, the most successful models create a role for worker organizations to help educate workers on their rights and confirm compliance.⁸⁶

Evidence suggests that co-enforcement initiatives have been effective in improving compliance and enforcement.⁸⁷ The longest-running co-enforcement program in the country is in Los Angeles County, where the unified school district partners with trade unions to help enforce the prevailing wage laws on district projects. Volunteers trained through the Los Angeles Joint Labor Compliance Monitoring Program are authorized to inspect work sites and talk to workers about compliance.⁸⁸ Multnomah County, Oregon, is currently piloting a similar program on public works construction sites.⁸⁹ Seattle and San Francisco also have partnered with community organizations to enforce labor standards laws, helping to ensure workers know their rights and feel comfortable coming forward.⁹⁰ Lawmakers could strengthen prevailing wage laws by including statutory requirements that state and local labor agencies establish co-enforcement programs with unions and other community organizations to monitor compliance.

Conclusion

Prevailing wage laws provide an opportunity for state and local policymakers to improve the quality of public services and ensure high standards are not driven down by low-road companies. Governments have a responsibility to encourage strong local market wages and support high-quality jobs. While many places already have prevailing wage laws on the books, policymakers should take steps to expand these standards to cover a wider range of taxpayer-funded work as well as a greater number of industries. In addition, lawmakers should design standard-setting methods to ensure the laws do undercut market wages and benefits.

By adopting the key best practices outlined in this report, state and local governments can use prevailing wage laws to secure high-quality goods and services, level the playing field for high-road employers, and boost worker power.

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Endnotes

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- 3 After San Francisco International Airport adopted higher standards for pay and benefits as well as enhanced training for contractors, employee turnover rates fell dramatically, and performance improved. Michael Reich, Peter Hall, and Ken Jacobs, “Living Wages and Economic Performance: The San Francisco Airport Model” (Berkeley, CA: Institute of Industrial Relations, University of California, 2003), available at https://laborcenter.berkeley.edu/pdf/2003/sfo_mar03.pdf. The Midwest Economic Policy Institute has also found lower rates of construction worker turnover in states with prevailing wage laws and responsible bidder ordinances. Frank Manzo IV and Kevin Duncan, “An Examination of Minnesota’s Prevailing Wage Law: Effects on Costs, Training, and Economic Development” (Midwest Economic Policy Institute, 2018), available at <https://midwestepi.files.wordpress.com/2018/07/mepi-csu-examination-of-minnesotas-prevailing-wage-law-final.pdf>; Frank Manzo IV and Jill Manzo, “Responsible Bidder Ordinances Promote Local Construction Standards: Evidence from Indiana” (Midwest Economic Policy Institute, 2018), available at <https://faircontracting.org/wp-content/uploads/2018/05/mepi-responsible-bidder-ordinances-report-final1.pdf>.
- 4 Kevin Duncan and Jeffrey Waddoups, “Unintended Consequences of Nevada’s Ninety-Percent Prevailing Wage Rule,” *Labor Studies Journal* 45 (2) (2020), available at <https://doi.org/10.1177/0160449X19897961>. In addition, after Maryland implemented a contractor living standard, the average number of bids for contracts in the state increased by 27 percent—from 3.7 bidders to 4.7 bidders per contract. Contracting companies interviewed by the state of Maryland commented that the new standards encouraged them to bid on contracts because it leveled the playing field. Michael C. Rubenstein, “Impact of the Maryland Living Wage” (Annapolis, MD: Maryland Department of Legislative Services, 2008), available at http://dlslibrary.state.md.us/publications/OPA/1/IMLW_2008.pdf.
- 5 While critics argue that construction prevailing wages raise costs for taxpayers, numerous studies refute those claims. In addition, repealing these laws has failed to increase bid competition. Michael Kelsay and Frank Manzo IV, “The Impact of Repealing West Virginia’s Prevailing Wage Law: Economic Effects on the Construction Industry and Fiscal Effects on School Construction Costs” (Midwest Economic Policy Institute, 2019), available at <https://faircontracting.org/wp-content/uploads/2019/05/THE-IMPACT-OF.pdf>; Frank Manzo IV and Kevin Duncan, “The Effects of Repealing Common Construction Wage in Indiana: Impacts on Ten Construction Market Outcomes” (Midwest Economic Policy Institute, 2018), available at <https://faircontracting.org/wp-content/uploads/2018/03/mepi-csu-effects-of-repealing-common-construction-wage-in-indiana-final-1.pdf>; Frank Manzo IV and others, “The Effects of Repealing Prevailing Wage in Wisconsin: Impacts on Ten Construction Market Outcomes” (Midwest Economic Policy Institute, 2020), available at <https://faircontracting.org/wp-content/uploads/2020/10/mepi-csu-wisconsin-repeal-study-final.pdf>; Matt Hinkel and Dale Belman, “Should Prevailing Wages Prevail? Reexamining the Effect of Prevailing Wage Laws on Affordable Housing Construction Costs” (East Lansing, MI: Institute for Construction Economic Research, 2020), available at <https://faircontracting.org/wp-content/uploads/2020/01/Should-Prevailing-Wages-Prevail.pdf>; Duncan and Waddoups, “Unintended Consequences of Nevada’s Ninety-Percent Prevailing Wage Rule.”
- 6 For example, Minnesota’s prevailing wage law generates \$37 million in state and local tax revenue every year, while also increasing blue-collar construction worker incomes, expanding health insurance coverage, and reducing the share of construction workers who require public assistance. Conversely, a separate study estimated that repealing the prevailing wage statute in West Virginia would reduce sales and income tax revenues in the state and regional economies in West Virginia. See Manzo IV and Duncan, “An Examination of Minnesota’s Prevailing Wage Law”; Michael Kelsay, “The Adverse Economic Impact From Repeal of the Prevailing Wage Law in West Virginia” (Kansas City, MO: University of Missouri Department of Economics, 2015), available at <http://www.faircontracting.org/wp-content/uploads/2015/01/The-Adverse-Economic-Impact-from-Repeal-of-the-PW-Law-in-WV-Dr-Michael-Kelsay-Full-Report.pdf>.
- 7 Jill Manzo, Robert Bruno, and Frank Manzo IV, “State Prevailing Wage Laws Reduce Racial Income Gaps in Construction: Impacts by Trade, 2013-2015” (La Grange, IL: Illinois Economic Policy Institute, 2018), available at <https://faircontracting.org/wp-content/uploads/2018/03/ilepi-pmc-prevailing-wage-reduces-racial-income-gaps-final-1.pdf>.
- 8 Roughly 50 percent of service occupations are nonwhite, and about 57 percent are female. See DATA USA, “Service Occupations: Diversity,” available at <https://datausa.io/profile/soc/service-occupations#demographics> (last accessed September 2020).
- 9 Frank Manzo IV and Kevin Duncan, “An Examination of Minnesota’s Prevailing Wage Law: Effects on Costs, Training, and Economic Development” (Washington: National Alliance for Fair Contracting, 2018), available at <https://faircontracting.org/wp-content/uploads/2018/07/mepi-csu-examination-of-minnesotas-prevailing-wage-law-final.pdf>. See also Kevin Duncan and Russell Ormiston, “What Does the Research Tell Us about Prevailing Wage Laws?”, *Labor Studies Journal* 44 (2) (2018), available at <https://doi.org/10.1177/0160449X18766398>.

- 10 William G. Whittaker, "The 'Little Davis-Bacon' Acts and State Prevailing Wage Standards" (Washington: Congressional Research Service, 2003), available at https://www.everycrsreport.com/files/20030528_RS20940_02d0a0ad587263d1c07b467d1c28b6debf286d0.pdf.
- 11 Karla Walter, "Ensuring Government Spending Creates Decent Jobs for Workers" (Washington: Center for American Progress Action Fund, 2018), available at <https://www.americanprogressaction.org/issues/economy/reports/2018/01/29/169469/ensuring-government-spending-creates-decent-jobs-workers/>.
- 12 See U.S. Department of Labor, "Dollar Threshold Amount for Contract Coverage," available at <https://www.dol.gov/agencies/whd/state/prevailing-wages#:~:text=These%20States%20are%20Alabama%2C%20Arizona,%2F%20California> (last accessed August 2020).
- 13 See Associated Builders and Contractors, "Breaking News: Michigan Votes to Repeal Prevailing Wage Law," Press release, June 13, 2018, available at <http://www.abc.org/News-Media/Newsline/entryid/15318/breaking-news-michigan-votes-to-repeal-prevailing-wage-law>; Manzo IV and Duncan, "The Effects of Repealing Common Construction Wage in Indiana"; Kelsay and Manzo IV, "The Impact of Repealing West Virginia's Prevailing Wage Law"; Jeff Leieritz, "Arkansas Repeals State Prevailing Wage Law," Associated Builders and Contractors, April 19, 2017, available at <http://www.abc.org/News-Media/Newsline/entryid/8422/arkansas-repeals-state-prevailing-wage-law>; National Alliance for Fair Contracting, "Construction wages cut in half by new prevailing wage rules (MO)," November 7, 2019, available at <https://faircontracting.org/construction-wages-cut-in-half-by-new-prevailing-wage-rules-mo/>; Frank Manzo IV and others, "The Effects of Repealing Prevailing Wage in Wisconsin"; AP, "Kentucky legislature repeals prevailing wage," WHAS11, January 7, 2017, available at <https://www.whas11.com/article/news/kentucky-legislature-repeals-prevailing-wage/417-383369152>; Associated Builders and Contractors, "Breaking News: Michigan Votes to Repeal Prevailing Wage Law." For preemption, see Economic Policy Institute, "Worker rights preemption in the U.S.," available at <https://www.epi.org/preemption-map/> (last accessed September 2020).
- 14 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>.
- 15 A report by the Congressional Research Service notes that Congress initially passed the federal Davis-Bacon Act, the model for many state construction prevailing wage laws, "to end the wage-based competition from the fly-by-night operators, to stabilize the local contracting community, and to protect workers from unfair exploitation." See Congressional Research Service, "Federal Contract Labor Standards Statutes: An Overview," (Washington: 2007), available at https://www.everycrsreport.com/files/20071204_RL32086_da2136a5cf7c0931c34fc317cb659370e349023e.pdf.
- 16 See, for example, Reich, Hall, and Jacobs, "Living Wages and Economic Performance." In adopting an expanded minimum wage policy for JFK International, LaGuardia, and Newark Liberty International airports, the Port Authority of New York and New Jersey Board of Commissioners noted, "In adopting the wage policy, the Port Authority anticipates that its actions will help reduce employee turnover, while increasing workers' job performance and creating a more stable workforce that will allow for an enhanced focus on safety and security. The agency believes that more experienced workers will be more knowledgeable about security processes and be better able to respond to emergencies at the region's major airports." Port Authority of New York and New Jersey, "ICYMI: Port Authority Board Approves Minimum Wage Increase for Airport Workers," Press release, September 27, 2018, available at <https://nj.gov/governor/news/news/562018/approved/20180927d.shtml>.
- 17 New Jersey Statutes Annotated, §34:11-56.58, available at https://www.nj.gov/labor/wagehour/lawregs/state_building_service_contracts_law.html#5658.
- 18 2019 Minnesota Statutes, §177.41, available at <https://www.revisor.mn.gov/statutes/cite/177.41>.
- 19 Los Angeles Administrative Code, "Chapter 1, Article 11: Living Wage," available at <https://lawamediastorage.blob.core.windows.net/lawa-media-files/media-files/lawa-web/tenants411/file/living-wage-and-service-worker-retention-ordinances/amended-living-wage-ordinance.pdf>.
- 20 See, for example, the preamble of Bergen County's prevailing wage ordinance: "Whereas, failure to require entities that receive County contracts, economic development financial assistance, or tax abatements to provide living wages and benefits has the potential to undermine the County's middle class tax base; and Whereas, in addition to being able to support themselves and their families, workers who are paid fair wages and benefits are able to increase their contribution to state and local economies as taxpayers and residents; and Whereas, it is the intention of the Board of Chosen Freeholders to limit unnecessary displacement of incumbent service employees for companies and others receiving economic development financial assistance or tax abatements from the County or firms otherwise in transition." Bergen County, New Jersey, Ordinance No. 14-07 (March 4, 2014), on file with authors.
- 21 For example, Bergen County, New Jersey, defines building service work as "work performed in connection with the care or maintenance of a building or property, and includes but is not limited to work performed by a watchperson, guard, doorman, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner." Bergen County, New Jersey, Ordinance No. 14-07, §5.10(f).
- 22 For more examples of nonconstruction service contracts that have been covered by prevailing wage laws, see San Francisco Administrative Code, Chapter 21C, available at https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-13644#JD_21C.1.
- 23 New Jersey Statutes Annotated § 34:11-56.58 et seq.; Bergen County, New Jersey, Ordinance No. 14-07; Hudson County, New Jersey, Ordinance 365-6-2014, "Economic Development Financial Assistance Standard Compensation Provisions Ordinance," on file with authors; Hudson County, New Jersey, Ordinance No. 363-6-2014, "County Contractor Standard Compensation Provisions Ordinance," on file with authors; New York Labor Law §§230-329-A, available at <https://www.nysenate.gov/legislation/laws/LAB/A9>; NYC Administrative Code §6-130, available at <https://comptroller.nyc.gov/wp-content/uploads/documents/BuildingServiceEmployeeSchedule-2019-2020.pdf>.
- 24 Prevailing wages requirements would apply to the term of the contract or as long as government supports last.
- 25 While many state and local prevailing wage laws set requirements only for select government agencies, others have taken action to extend coverage to more agencies. For example, New Jersey requires prevailing wages for work facilitated or administered by government authorities such as the New Jersey Education Facilities Authority and the New Jersey Health Care Facilities Financing Authority. See N.J.S.A. §18A:72A-5.1 et seq. and N.J.S.A. §26:2l-5.3 et seq.
- 26 Public financial support takes various forms. For a discussion of the importance of using an expansive definition of "public work," see Fred B. Kotler, "New York State Prevailing Wage Law: Defining Public Work" (Ithaca, NY: Cornell University ILR School, 2018), available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1060&context=briefs>.
- 27 N.J.A.C. §19:30-4.2.

- 28 N.J.A.C. §19:30-4.1.
- 29 See Portland TIF Policy, §(V)(B)(3)(a)(iii), November 20, 2017, available at <https://www.portlandmaine.gov/DocumentCenter/View/20553/TIF-Policy-Guidelines-2017>.
- 30 The state of New York recently expanded its definitions to cover “savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing.” See New York State, S. B. 57508-B, 2019-2020 Leg. sess. (2020), available at <https://legislation.nysenate.gov/pdf/bills/2019/57508B>.
- 31 For example, in New Jersey, “Every contract to furnish building services for any property or premises owned or leased by the State shall contain a provision stating the prevailing wage for building services rates that are applicable to the workers employed in the performance of the contract and shall contain a stipulation that those workers shall be paid not less than the indicated prevailing wage for building services rates.” See N.J.S.A. §34:11-56.60.
- 32 See Bergen County, New Jersey, Ordinance No. 14-07, §5.10(a). The ordinance goes on to clarify that “leased by the County” means any agreement “whereby a contracting agency contracts for, or leases or rents, commercial office space or commercial office facilities of 10,000 square feet or more from a non-government entity provided the County, whether through a single agreement or multiple agreements, leases or rents no less than fifty-one percent (51%) of the total square footage of the building to which the lease applies.” Bergen County, New Jersey, Ordinance No. 14-07, §5.10(c).
- 33 See Bergen County, New Jersey, Ordinance No. 14-07, §8.9.10(a)(6).
- 34 Maine Legislative Document 1658, “An Act to Clarify the Definition of ‘Public Works,’” 129th Leg., 1st reg. sess. (2019), available at http://www.mainelegislature.org/legis/bills/display_ps.asp?LD=1658&snum=129.
- 35 In Massachusetts, “[t]he law provides that public works by ‘the commonwealth, or by a county, town, or district’ require the payment of prevailing wages. In general, this means all public agencies and their subdivisions, including state agencies, counties, authorities, cities, towns, school departments, highway or public works departments, water departments, housing authorities, and other municipal departments are covered by the prevailing wage laws.” See Office of Attorney General Maura Healey, “The Massachusetts Prevailing Wage Laws,” available at <https://www.mass.gov/doc/massachusetts-prevailing-wage-laws-an-important-guide-for-awarding-authorities/download> (last accessed December 2020); Massachusetts General Laws §26, available at <https://malegislature.gov/Laws/General-Laws/PartI/TitleXXI/Chapter149/Section26>.
- 36 For example, California requires prevailing wages for custodial or janitorial work contracted by public utilities. See California Public Utilities Code §465-467 (2018), available at <https://law.justia.com/codes/california/2018/code-puc/division-1/part-1/chapter-3/article-1/>. New Jersey sets prevailing wages for work done on public utilities and independent bonding authorities. See N.J.S.A. §34:13B-2.1 & N.J.S.A. §34:13B-16.
- 37 For example, the New York State Senate recently proposed legislation that includes prevailing wage rates for airport workers. See New York S.B. 6266D, 2019-2020 Leg., reg. sess. (2019), available at <https://www.nysenate.gov/legislation/bills/2019/s6266>.
- 38 The latter is especially relevant when it comes to building service contracts. Jersey City’s prevailing wage law includes “any and all tenants or subtenants of the covered developer.” See Jersey City Mun. Code §3-76(C)(2).
- 39 Connecticut General Statutes, §4a-82, available at <https://codes.findlaw.com/ct/title-4a-administrative-services/ct-gen-st-sect-4a-82.html>.
- 40 Minnesota Department of Labor and Industry, “Prevailing-Wage FAQs,” available at <https://www.dli.mn.gov/business/employment-practices/prevailing-wage-faqs> (last accessed December 2020); 2019 Minnesota Statutes, §177.42, available at <https://www.revisor.mn.gov/statutes/cite/177.42>: “‘Prevailing hours of labor’ means the hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week.”
- 41 “The prevailing rate of wages paid to individuals covered under this Act shall not be less than the rate that prevails for work of a similar character on public works in the locality in which the work is performed under collective bargaining agreements or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings successor thereto, provided that said employers or members of said employer associations employ at least 30% of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed.” See 820 ILCS 130/4 §4(a). A recent amendment further provides that, “[i]f the prevailing rates of wages and fringe benefits cannot reasonably and fairly be applied in any locality because no such agreements or understandings exist, the Department of Labor shall determine the rates and fringe benefits for the same or most similar work in the nearest and most similar neighboring locality in which such agreements or understandings exist.” See 820 ILCS 130/4 §4(b). Affected parties who wish to challenge the established rate—because they believe that the government calculations are based on inaccurate assumptions of industry-wide collective bargaining rates—must submit competent evidence substantiating their allegations. See 820 ILCS 130/9, §9.
- 42 New Jersey defines the “prevailing wage” on public work projects as, “the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.” Washington State Department of Labor & Industries “adopts the prevailing wage rates that unions and employers establish in collective bargaining agreements (CBAs), made up of the hourly wage, benefits and overtime for a trade and occupation. For a trade and occupation with more than one CBA in a county, L&I adopts the higher rate.” See N.J.S.A. §34:11-56.26(9); Washington State Department of Labor & Industries, “How Prevailing Wage Rates are Developed,” available at <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/how-prevailing-wage-rates-are-developed> (last accessed December 2020).
- 43 “Where the living wage is greater than the prevailing wage, the city service contractor or subcontractor must either provide its covered employees healthcare benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or subcontractor must provide its employees the prevailing wage and supplements.” See N.Y.C. Admin. Code §6-109. Portland, Maine, also uses a “higher of” approach for certain municipal construction projects. See “Portland TIF Policy” §(V)(B)(3)(a)(iii), November 20, 2017, available at <https://www.portlandmaine.gov/DocumentCenter/View/20553/TIF-Policy-Guidelines-2017>.

- 44 Walter, "Ensuring Government Spending Creates Decent Jobs for Workers."
- 45 Setting the threshold at a specific number, as opposed to a percentage, of workers in a sector or occupation creates a clear threshold for contracting agencies and helps avoid disputes over whether coverage levels meet the required threshold. Connecticut requires prevailing wages for certain service workers: "prevailing rate of wages" means the hourly wages paid for work performed within the city of Hartford under the collective bargaining agreement covering the largest number of hourly nonsupervisory employees employed within Hartford County in each classification established by the Labor Commissioner under subsection (e) of this section, provided the collective bargaining agreement covers no less than five hundred employees in the classification." Connecticut General Statutes §31-57f, available at https://www.cga.ct.gov/current/pub/chap_557.htm#sec_31-57f.
- 46 See Bergen County, New Jersey, Ordinance No. 14-07 §5.10(j).
- 47 For example, a 2003 opinion from the Connecticut state attorney general clarified that employers must pay the current wage rate rather than the rate in effect at the time the state entered into the contract. As a result, wage and benefit rates could increase over the life of the contract. Attorney General Richard Blumenthal, "Shaun B. Cashman, Commissioner of Labor, 2003-013 Formal Opinion," September 8, 2003, available at <https://portal.ct.gov/AG/Opinions/2003-Formal-Opinions/Saun-B-Cashman-Commissioner-of-Labor-2003013-Formal-Opinion-Attorney-General-of-Connecticut>. As another example, Bergen County utilizes the higher of "the annually adjusted standard compensation shall be the previous rate of standard compensation increased by the annual percentage difference between the current New York-Northern New Jersey-Long Island, NY-NJCT-P A Consumer Price Index (CPI) for all items for All Urban Consumers and the same CPI for the same month of the previous year" and "the standard compensation for work performed within the County under the current Collective Bargaining Agreement covering the largest number of hourly non-supervisory employees employed within Bergen County in the relevant classification, provided the Collective Bargaining Agreement covers no less than two hundred (200) employees in the classification." Bergen County, New Jersey, Ordinance No. 14-07, §5.10(e).
- 48 See Cambridge, Massachusetts, Municipal Code §2.121.060, available at https://library.municode.com/ma/cambridge/codes/code_of_ordinances?nodid=TIT2ADPE_CH2.121LIWAOR_2.121.060NORE: "All Applicable Departments shall provide in writing an explanation of the requirements of this Chapter in all requests for bids for service contracts and to all persons applying for Assistance as defined by this Chapter. All persons who have signed a service contract with the City of Cambridge or a contract for Assistance shall forward a copy of such requirements to any person submitting a bid for a subcontract on the Assistance contract. All Covered Building Service Contracts and all solicitations for Building Services issued by the City of Cambridge or any of its departments or subdivisions, shall contain a provision indicating the number of hours or work required and stating the Standard Compensation for the relevant classification that is applicable to the Covered Building Service Employees and shall contain a stipulation that the Covered Building Service employees shall be paid not less than the Standard Compensation for the relevant classifications. All requests for proposals or other solicitations and all specifications for building service work, shall include specific reference to this chapter, shall state the required number of hours, and shall require prospective building service contractors to submit pricing on a standard worksheet furnished by the City that specifies the components of hourly pricing for the duration of the contract."
- 49 A 2006 opinion from the Connecticut state attorney general concluded that state agencies bear the responsibility of paying for standard wage increases (as opposed to contractors absorbing the cost). Attorney General Richard Blumenthal, "Raeanne Curtis, Acting Commissioner of Labor, Formal Opinion 2006-026," April 10, 2006, available at <https://portal.ct.gov/AG/Opinions/2006-Formal-Opinions/Raeanne-Curtis-Acting-Commissioner-of-Labor-Formal-Opinion-2006026-Attorney-General-State-of-Connecticut>.
- 50 For sample language, see New Jersey's building service prevailing wage, which states that "[n]othing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workers to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act." N.J.S.A. §34:11-56.67.
- 51 See, for example, New Jersey's prevailing wage law for construction work on public utilities: "Where a collective bargaining agreement has established a higher rate of compensation than the applicable prevailing wage, the affected worker or workers shall receive the higher rate of compensation set forth in the collective bargaining agreement." N.J.A.C. §12:66-2.3. N.J.A.C. 12:64-2.3 contains similar language for building service workers.
- 52 "Benefits' [should] not include workers compensation or other legally mandated insurance, nor [should] it include the value of any benefit for which an employee is eligible, but for which no payment is actually made by a contractor to the employee or to any other party on the employee's behalf because the employee either does not actually utilize or does not elect to receive the benefit for any reason." Bergen County, New Jersey, Ordinance No. 14-07, §5.10(n).
- 53 See Cal. Pub. Util. Code §465(a).
- 54 N.Y.C. Administrative Code §6-109, available at <https://comptroller.nyc.gov/wp-content/uploads/documents/NYCServicerContractorsSchedule-2019-2020.pdf>; Jersey City Mun. Code §3-76.
- 55 For example, Bergen County, New Jersey, separates "standard compensation" into "(i) the standard hourly rate of pay for the relevant classification, (ii) standard paid leave and (iii) standard benefits." Bergen County, New Jersey, Ordinance No. 14-07, §5.10(i).
- 56 Bergen County, New Jersey, defines "standard paid leave" as "paid leave, including paid vacation, paid holidays, and paid personal or sick days, as provided by the Collective Bargaining Agreement covering the largest number of hourly non-supervisory employees employed within Bergen county in the relevant classification, provided the Collective Bargaining Agreement covers no less than two hundred (200) employees in the classification. If there is no such collective bargaining agreement, the following provision shall apply: covered employees, shall accrue at least five (5) days of paid vacation of the first six (6) months of continuous employment and an additional five (5) days for the second six (6) months of continuous employment under the same contract." Bergen County, New Jersey, Ordinance No. 14-07, §5.10(l).

- 57 Bergen County, New Jersey, takes the following approach to set supplemental benefits: "The required hourly supplemental rate shall be equal to the monetary value of the benefits provided by the Collective Bargaining Agreement covering the largest number of hourly, non-supervisory employees employed within Bergen County in the relevant classification, provided the Collective Bargaining Agreement covers no less than two hundred (200) employees in the classification. If there is no such collective bargaining agreement, 'standard benefits' shall be the hourly rate established for health and welfare benefits by the Federal Department of Labor for the Guard II classification in the Area Wage Determination applicable to work performed within the County of Bergen under Federal Service Contract Act (41 U.S.C. 351, et seq.," Bergen County, New Jersey, Ordinance No. 14-07, §5.10(m). Note that the federal Service Contract Act adjusts benefit supplements on an annual basis.
- 58 See §1(1)(l) of Hudson County, New Jersey, Ordinance 365-6-2014, "Economic Development Financial Assistance Standard Compensation Provisions Ordinance."
- 59 Karla Walter, "Infrastructure Investment Must Create Good Jobs for All" (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/economy/reports/2019/04/22/466754/infrastructure-investment-must-create-good-jobs/>.
- 60 Revised Code of Washington, §39.12.021, available at <https://app.leg.wa.gov/RCW/default.aspx?cite=39.12.021>. Note that in jurisdictions where apprenticeships are certified by the federal government, the statutory language would need to point to apprenticeship provisions under the National Apprenticeship Act (also known as the Fitzgerald Act) rather than state laws.
- 61 Washington State Department of Labor & Industries, "Apprenticeship Utilization Fact Sheet" (Spokane, WA: 2008), available at https://demo-public.inl.wa.gov/licensing-permits/apprenticeship/_docs/aurdescription.pdf.
- 62 SB 207 required that "[n]otwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs a worker on a public work pursuant to NRS 338.040 shall use one or more apprentices for at least 10 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed." See Office of the Labor Commissioner, "Advisory Opinion – Nevada Administrative Code §607.650 Senate Bill 207 Apprenticeship Utilization Act, Effective January 1, 2020," January 28, 2020, available at http://labor.nv.gov/uploadedFiles/labornv.gov/content/Apprenticeship_Utilization_Act/AO-2020-01%20Senate%20Bill%20207%20-%20Apprenticeship%20Utilization%20Act.pdf.
- 63 Another way to increase workforce diversity is through preapprenticeship programs. See Angela Hanks and Ethan Gurwitz, "How States Are Expanding Apprenticeship" (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/economy/reports/2016/02/09/130750/how-states-are-expanding-apprenticeship/>.
- 64 Karla Walter, "Getting Americans Back to Work and Good Jobs" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/issues/economy/reports/2020/06/29/487075/getting-americans-back-work-good-jobs/>. Note that "[t]argeted hire measures that preference race, ethnicity or gender (through mandatory requirements as opposed to aspirational goals or good faith efforts) must be narrowly tailored and show that such measures are the last resort and necessary to counteract past discrimination in the specific location and industry at hand." UCLA Labor Center, "Exploring Targeted Hire: An Assessment of Best Practices in the Construction Industry" (Los Angeles: 2014), available at <https://www.labor.ucla.edu/wp-content/uploads/2018/06/Exploring-Targeted-Hire.pdf>.
- 65 San Francisco Office of Economic and Workforce Development, "San Francisco Local Hiring Policy for Construction: 2017/2018 Report" (San Francisco: 2018), available at <https://oewd.org/sites/default/files/Workforce/Workforce%20Collateral/2018%20Local%20Hiring%20Policy%20Annual%20Report%206.22.18.pdf>; San Francisco Ordinance No. 84-17 (2017), available at <https://sfbos.org/sites/default/files/o0084-17.pdf>.
- 66 Working Partnerships USA, "Building Opportunity: Investing in local and disadvantaged residents with Community Workforce Agreements" (San Jose, CA: 2017), available at <https://www.wpusa.org/files/reports/BuildingOpportunity.pdf>; Metro, "Project Labor Agreement & Construction Careers Policy," available at <https://www.metro.net/about/placcp/> (last accessed August 2020).
- 67 Congressional Research Service, "Federal Contract Labor Standards Statutes." In describing the need for follow-on requirements in the federal SCA, it was argued that "[w] age-based competition resulted in a downward spiral so long as there were cheaper workers available. ... Annual shifts in contractors created a lack of continuity and stability within the industry. ... Low wages produced no real economy for government or the consumer since (a) cheaper workers were often less competent and responsible than more experienced and more highly paid workers and, (b) the annual rotation of contractors created an employer incentive to maximize profits for the short-term—with little thought for quality of performance. ... Since service workers were, arguably, usually on the lower end of the pay scale even where prevailing scales were honored, they might pose a welfare burden to the community. And, were they displaced in a shift of contractors, the workers might be left destitute. ... An annual change of contractors, if only because of the short duration of service, seemed to guarantee a non-union work environment."
- 68 See Bergen County, New Jersey, Ordinance No. 14-07, §5.10(p)(3): "If at any time the successor contractor determines that fewer employees are required to perform the new service contract than had been performing such services under the terminated contract: the successor contractor shall retain the employees by seniority within the job classification. Except for such layoffs, during the 90-day transition period, the successor contractor shall not discharge without cause an employee retained pursuant to this section. During the 90-day transition period, the successor contractor shall maintain a preferential hiring list of those employees not retained, from which the successor contractor or its subcontractors shall hire additional employees."
- 69 Connecticut General Statutes, §31-57f, available at https://www.cga.ct.gov/current/pub/chap_557.htm#sec_31-57f.
- 70 Hudson County, New Jersey, Ordinance No. 363-6-2014, "County Contractor Standard Compensation Provisions Ordinance," §11(e) sets standard compensation at the greatest of "(1) 150% of the federal minimum wage; (2) the hourly rate of pay for work performed within the County under the Collective Bargaining Agreement covering the largest number of hourly non-supervisory employees employed within Hudson county in the relevant classification, provided the Collective Bargaining Agreement covers no less than two hundred (200) employees in the classification; or (3) the hourly rate paid to workers in the relevant classification under a preceding qualified contract." The Hudson ordinance also includes relevant requirements for paid leave and supplemental benefits. See Hudson County, New Jersey, "County Contractor Standard Compensation Provisions Ordinance," §11(g) and §11(h), respectively. Similarly, Section 4(c) of the McNamara-O'Hara Service Contract Act contains language ensuring that subsequent contractors comply with previous wage and benefit standards.
- 71 Brady Meixell and Ross Eisenbrey, "An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year" (Washington: Economic Policy Institute, 2014), available at <https://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>.

- 72 For a list of model enforcement mechanisms, see SEIU Florida, “Living Wage Ordinances,” available at <http://www.seiuf.org/livingwage> (last accessed August 2020).
- 73 See, for example, Jersey City Mun. Code §3-76(C)(5): “(5) Record keeping. Each covered developer shall maintain original payroll records for each janitor and unarmed security reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked, and shall retain such records for at least six years after the janitorial or security work is performed. The covered developer may satisfy this requirement by obtaining copies of records from the employer or employers of such employees. Failure to maintain such records as required shall create a rebuttable presumption that the janitors or unarmed security guards were not paid the wages and benefits required under this section. Upon written request of the city, the covered developer shall provide a certified original payroll record within ten (10) days of the date of the request.”
- 74 See for example, Jersey City Mun. Code §3-76(C)(6): “Site access. Representatives of the city shall be permitted to have appropriate access to all covered development projects in order to monitor compliance.”
- 75 Laws should require employers to post a prevailing wage advisory—including both the current schedule of wages and complaint procedures—in an easily accessible area at all job sites. For example, New York’s prevailing wage law governing building service workers requires that “[n]o later than the first day upon which work on said contract is performed by any employee, the contractor shall post in a prominent and accessible place on the site of the work a legible statement of the wages to be paid to the workmen employed thereon.” See N.Y. Lab. Law §231(6). Lawmakers could also create penalties for failures to comply. See, for example, N.Y. Lab. Law §220(3-a)(iii): “If after investigation the fiscal officer finds that a contractor or sub-contractor has (1) failed to post any notice required under this subdivision, (2) failed to set forth the prevailing wage on the pay stub, (3) willfully posted the incorrect prevailing wage, or (4) willfully set forth the incorrect prevailing wage on the pay stub, the fiscal officer, shall by an order which shall describe particularly the nature of the alleged violation, assess the contractor or sub-contractor a civil penalty of not more than fifty dollars upon the first finding of a violation, two hundred fifty dollars upon the second finding of a violation, and five hundred dollars for each subsequent violation. In assessing the amount of the penalty, the fiscal officer shall give due consideration to the size of the employer’s business, the good faith of the employer, and the gravity of the violation.”
- 76 In Montana, “[a]n employer that pays employees at less than the prevailing wage shall forfeit to the employee the amount of wages owed plus \$25.00 per day for each day the employee was underpaid. The employer shall also forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees and court costs. There are also fines of \$1,000.00 for failing to comply with other areas of the act and \$10,000.00 for gross negligence.” See Montana Department of Labor and Industry, “Public Works Contracts/Prevailing Wage Law FAQs,” available at <http://erd.dli.mt.gov/labor-standards/public-works-contracts-prevailing-wage-law/public-works-contracts-prevailing-wage-law-faqs> (last accessed August 2020).
- 77 In New York state, building service contractors are debarred if they have: 1) two final determinations within six consecutive years for willfully failing to pay the prevailing rate or 2) one final determination for falsification of payroll records or the kickback of wages and/or supplements. New York State Department of Labor, “Article 9, Section 230 - Building Service: Frequently Asked Questions,” available at <https://labor.ny.gov/workerprotection/publicwork/PWart9FAQ2.shtm> (last accessed August 2020).
- 78 For example, Philadelphia’s prevailing wage law states that “[n]o contract for City-work shall be awarded to any contractor or subcontractor, or any principal, affiliate, successor or assignee of any contractor or subcontractor, who has been found to have intentionally violated any provisions of this Section or who has been found to have violated this Section with respect to more than one City-work contract or subcontract within the past three years, until three years have elapsed from the date of the determination of such violation unless the Procurement Commissioner, after reviewing the recommendation of the Director, or the Board of Labor Standards, on appeal, shall fix a shorter period in view of extenuating circumstances relating to the particular violation.” Philadelphia Code §17-107(9)(a). In New Jersey, contractors who fail to pay the construction prevailing wage, “or to any firm, corporation or partnership in which such contractor or subcontractor has an interest,” are barred from receiving contracts for three years. See N.J.S.A. §34:11-56.38.
- 79 See City of Pittsburgh, Pennsylvania Code of Ordinances §161.38 (V)(G): “A covered employer shall not discharge, reduce the compensation or otherwise retaliate against any employee for making a complaint to the covered employer, its agents, the applicable department, or the Controller, to enforce his or her rights under this section. The Controller shall investigate allegations of retaliation or discrimination. If, after notice and an opportunity for a hearing, the allegations are found to be true, the Controller shall order appropriate relief, including reinstatement of a discharged employee with back pay. A covered employer may dispute a finding of retaliation or discrimination by requesting a hearing as provided in subsection D. above.”
- 80 See, for example, Philadelphia Code §17-107, which governs prevailing wages for building service employees: “(5)(a) No person shall take any adverse action against any other person (including discharge or other discrimination in employment) for filing a complaint under this subsection or for otherwise reporting any violation of this Section or instituting or testifying in any proceeding relating to any violation of this Section.” It also states, “(9)(b) A fine of three hundred dollars (\$300) for each violation committed against every employee on each project shall be imposed upon any contractor who: (.1) Violates subsection 5(a), relating to retaliation.”
- 81 See Hawaii Revised Statutes §104-24.
- 82 See Hawaii Revised Statutes §104-25.
- 83 For example, under San Francisco’s prevailing wage law, contractors can “cure” a violation by, “paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section, plus an annualized rate of interest of ten percent (10%).” San Francisco Admin. Code §21C.7(c)(4). In Pittsburgh, “In the event the Controller or hearing officer determines that a covered employer has failed to comply for more than sixty (60) days after a notice of corrective action has become final, or in the event the hearing officer determines that any portion of a covered employer’s dispute of a finding of noncompliance is frivolous or was brought for the purpose of delaying compliance, the Controller or hearing officer shall order the following penalties and relief: (1) wage restitution for the affected employee(s); (2) liquidated damages in the amount of three (3) times the wages owed; (3) a directive to the applicable department to withhold any payments due the covered employer, and to apply such payments to the payment of fines or the restitution of wages; (4) attorneys fees; and (5) rescission of any City service contract.” See City of Pittsburgh, “Pennsylvania Code of Ordinances, §161.38 (VI)(A),” available at https://library.municode.com/pa/pittsburgh/codes/code_of_ordinances?nodeId=COOR_TITONEAD_ARTVI_IPR_CH161CO_S161.38CIPSEWOPRWAOR.

- 84 See Hudson County, New Jersey, “County Contractor Standard Compensation Provisions Ordinance,” §III(a).
- 85 “The California Court of Appeal found that a worker on a public works project may maintain a private suit against the contractor to recover unpaid prevailing wages as a third party beneficiary of the public works contract if the contract provides for the payment of prevailing wages. (*Tippett v. Terich* (1995) 37 Cal.App.4th 1517, 1531-32.)” See Chapter 4.11.3 in State of California Department of Industrial Relations, “Public Works Manual” (San Francisco: 2018), available at <https://www.dir.ca.gov/dlse/PWManualCombined.pdf>. See also: N.Y. Lab. Law §220, *Fata v. S. A. Healy Co.*, (1943) Court of Appeals of the State of New York 289 N.Y. 401.
- 86 David Madland and Malkie Wall, “American Ghent: Designing Programs to Strengthen Unions and Improve Government Services” (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/economy/reports/2019/09/18/474690/american-ghent/>.
- 87 Seema N. Patel and Catherine L. Fisk, “California Co-Enforcement Initiatives that Facilitate Workers Organizing,” *Harvard Law and Policy Review* 12 (2017): 1–21, available at <https://harvardlpr.com/wp-content/uploads/sites/20/2017/11/Patel-Fisk-CoEnforcement.pdf>.
- 88 Los Angeles Unified School District, “Joint Compliance Monitoring Program: Los Angeles Unified School District and All Work Preservation Groups: Rules of Engagement (Fiscal Year 2020-21),” available at http://www.laschools.org/contractor/lc/documents/download/work-preservation/Rules_of_Engagement.pdf (last accessed September 2020); City of Los Angeles, “Labor Compliance Manual” (Los Angeles: 2014), available at <https://bca.lacity.org/Uploads/labor/LABOR%20COMPLIANCE%20MANUAL.pdf>.
- 89 Don McIntosh, “Union volunteers help enforce laws against construction wage theft on Multnomah County projects,” NW Labor Press, February 18, 2020, available at <https://nw-laborpress.org/2020/02/union-volunteers-help-enforce-laws-against-construction-wage-theft-on-multnomah-county-projects/>.
- 90 Madland and Wall, “American Ghent.”

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The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

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As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

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