

LIVING WAGE ORDINANCES IN THE PUBLIC SECTOR: THE GOOD, THE BAD, AND THE POLITICS

C. W. VON BERGEN*

WILLIAM (WILL) T. MAWER**

BARLOW SOPER***

I. INTRODUCTION

The concept of a living wage, a wage sufficient to support a family, surfaced in 1891 when it was advocated in a papal encyclical, *Rerum Novarum* ("On the Condition of the Working Classes"), in an attempt to remedy economic injustice within European industry. Pope Leo XIII wrote in his encyclical "... that the remuneration must be enough to support the wage-earner in reasonable and frugal comfort. If through necessity or fear of a worse evil, the workman accepts harder conditions because an employer or contractor will give him no better, he is the victim of force and injustice."¹ In the United States, living wage movements were active at the outset of the 20th century, mostly promoted by organized labor and their allies.² The quest for a living wage turned to a fight for a legislated minimum wage and, ultimately, to the passage of the national Fair Labor Standards Act.³

More recently, the principles of a living wage, "just wage", "fair wage", "subsistence wage", or "minimum living wage" (such terms are frequently used interchangeably) have received renewed support from religious groups as well as from organized labor. The concept has also been the focus of many community activist organizations,⁴ and selected public policy institutes.⁵ Additionally, a number of books have addressed the issue of the working poor and how living wage ordinances can be designed to assist not only in terms of a higher minimum wage but also in terms of medical coverage.⁶ Living wage legislation has become an even more publicized and

*C.W.Von Bergen, Ph.D., Massey Endowed Chair, Southeastern Oklahoma State University

**William T. (Will) Mawer, J.D., Assistant Professor, Southeastern Oklahoma State University

***Barlow Soper, Ph.D., Professor, Louisiana Tech University

¹ LEO XIII, POPE. ENCYCLICAL LETTER RERUM NOVARUM ("ON THE CONDITION OF THE WORKING CLASSES," 1891). BOSTON: DAUGHTERS OF ST. PAUL.

² David M. Fighart, *Ethical Foundations of the Contemporary Wage Movement*, 28 INTERNATIONAL JOURNAL OF SOCIAL ECONOMICS 800, 800-814 (2001).

³ LAWRENCE B. GLICKMAN, A LIVING WAGE: AMERICAN WORKERS AND THE MAKING OF CONSUMER SOCIETY (1997).

⁴ E.g., the Association of Community Organizations for Reform Now hereinafter referred to as ACORN, the nation's largest community organization of low and moderate-income families, at <http://livingwagecampaign.org/campaigns.php>. (last viewed on December 15, 2003)

⁵ E.g., the Economic Policy Institute, at <http://www.epinet.org/> and the Public Policy Institute of California, at <http://www.ppic.org/main/home.asp>. (last viewed on December 18, 2003).

⁶ DAVID K. SHIPLER, THE WORKING POOR: INVISIBLE IN AMERICA (2004); BARBARA EHRENREICH, NICKEL AND DIME: ON (NOT) GETTING BY IN AMERICA (2002).

politicized concept as indicated in an article by Kwon. Reporting about the events of San Diego City Council meeting, Kwon wrote:

Brandishing bright yellow 'Living Wage Now' stickers, supporters filled the seats of the assembly room with students and workers, as well as ministers and priests holding open Bibles on their laps and quoting scripture on their turn to speak.... Some 50 pro-living wage supporters eager for their three minutes before the council outnumbered a handful of opponents who expressed their concerns about the economic effects of such an ordinance.⁷

Such a scenario is commonplace given that the organizational components found in almost all living wage campaigns are organized labor, religious or faith-based social justice bodies, and anti-poverty community organizations.⁸

Not all publicity, however, has been favorable for living wage advocates. Opponents, such as Michigan State Senator David Jaye (R), have gone so far as to introduce legislation to outlaw the living wage ordinances which were passed by five communities in southeastern Michigan. Senator Jaye stated: "These bleeding heart liberal advocates of paying people an artificial high minimum wage are actually destroying the jobs of welfare recipients, minorities and young people."⁹ Other states and lesser legislative governmental units have not taken such an adversarial approach and have basically acquiesced to the concept by doing nothing to prohibit it.

The revitalization of the living wage movement in the U.S. is gaining momentum and has become a significant local public policy trend as evidenced by numerous cities, counties, and other political authorities that have implemented living wage laws over the last decade.¹⁰ A number of trends in national and global economies may have contributed to the recent living wage campaigns. Some of these factors may be attributed to the growing gap between rich and poor, the growth of a temporary workforce, mounting large scale lay-offs, declining real wages, the loss of union membership, the failure of the federal government's minimum wage to keep pace with inflation, and the loss of various governmental supports for the working poor.^{11,12} With living wage policies gaining popular support across the country, legislative authorities, as well as public managers and administrators, must be prepared to address the concept.

⁷ Christine Kwon, *City to Study Living Wage: Council Decides to Investigate Proposal*. The UCSD Guardian, Nov. 6, 2003, available at http://www.ucsdguardian.org/cgi-bin/print?param=news_2003_11_06_01 (last visited Dec 18, 2003).

⁸ Bruce Nissen, *Living Wage Campaigns from a "Social movement" Perspective: The Miami Case*. 25 LABOR STUDIES JOURNAL 29-50 (2000).

⁹ Shawn D. Ellis, *Local Living Wage Ordinances Come Under Attack by State Again*, Metro Detroit AFL-CIO Council, at <http://www.detroitaflcio.org/feature/01/0228lw.html>. (last visited Mar. 4, 2004).

¹⁰ Andrew J. Elmore, *Living Wage Laws and Communities: Smarter Economic Development, Lower than Expected Costs*, Brennan Center for Justice at NYU School of Law, at <http://www.brennancenter.org/>. (last visited Dec 16, 2003).

¹¹ John F. Buckley, *Paying a Legal Rate May Require Looking Beyond the FLSA, Minimum Wage Laws*, SmartPros, at <http://finance.pro2net.com/x28658.xml>. (last visited Dec 18, 2003).

¹² Richard Lacayo, *Take This Job and Starve*, TIME, Feb. 16, 2004, at 76-77.

II. DEFINITION AND FEATURES OF LIVING WAGE

Living wage ordinances (or statutes) require wages to be paid based upon some definition of need rather than skill. These types of ordinances have generally been applied to private sector employers who receive payment of public funds to pay their employees, as well as to the employees of the political entity itself. The concept is to create a threshold or minimum wage level that keeps the employee out of poverty. The Economic Policy Institute estimates that most living wage ordinances cover less than one percent of the local workforce.¹³ Indeed, even supporters of living wages understand the campaigns to be a mere but necessary "first step" in poverty alleviation.¹⁴ Pollin and Luce argue in their influential book that "among other things, successful living wage campaigns create political momentum that can be used to build support for more ambitious measures to eliminate low-wage poverty in the United States."¹⁵

The proposed wage rates are usually designed to lift individual workers' wages to some point above the federal poverty level for a family of four. Some municipalities, such as Denver, Colorado, have elected to make the living wage equivalent to the federal poverty index. Others have calculated a living wage by multiplying the federal poverty index by as much as 110 percent. Madison, Wisconsin, for example, is incrementally increasing the percentage of the poverty index on which its living wage will be based. As for yearly adjustments, some ordinances also look to the annual update of the federal poverty index. Some calculate adjustments according to an inflationary index. Still others mandate that both of the above adjustment methods be computed and that the one producing the highest living wage be implemented. The "living wage" label communicates that the higher wage levels are closer to the pay that full-time workers need to support themselves and their families at a subsistence level.¹⁶ The goal of living wage laws, according to many local governments, is to create city contracting and business subsidy programs that prioritize high-wage job creation and do not perpetuate poverty. Advocates justify such market interventions by arguing that public tax dollars should not be used to subsidize employers who pay poverty-level wages.¹⁷

Supporters of living wage contracts argue that requiring a set level of wages in government contracts is nothing new. In 1931, the federal Davis-Bacon Act was enacted requiring that union-level wages (typically higher than non-union wages) be paid to all workers on federal or federally funded construction projects. This concept was incorporated into many state laws and local ordinances which are commonly referred to as "prevailing wage" laws. This mandate is still in force throughout the U.S. and is commonly accepted by both the buying and selling communities.¹⁸

¹³ Economic Policy Institute, *Living Wage: Facts at a Glance*, Economic Policy Institute, at http://www.epinet.org/content.cfm/issueguides_livingwage_livingwagefacts (last viewed March 3, 2004).

¹⁴ Selena Spain & Jean Wiley, *The Living Wage Ordinance: A First Step in Reducing Poverty*, Sept-Oct CLEARINGHOUSE REVIEW 252-267 (1998).

¹⁵ ROBERT POLLIN & STEPHANIE LUCE, *THE LIVING WAGE: BUILDING A FAIR ECONOMY* 3 (1998).

¹⁶ *Id.*

¹⁷ National Priorities Project, Inc. in Cooperation with Jobs with Justice 1998, at <http://www.natprior.org/> (last visited February 26, 2004).

¹⁸ Darin Matthews, *Living Wage Requirements in Public Contracts*, *THE PUBLIC MANAGER* (Winter 2002) at 29, 29-31.

In 1994, Baltimore, Maryland was the first major U.S. city to pass a living wage ordinance. That ordinance was quickly followed a year later by similar ordinances in Milwaukee, Wisconsin and Santa Clara County, California. A total of 31 ordinances were passed between December 1994 and July 1999. By the end of 2003, according to ACORN's Living Wage Resource Center,¹⁹ there were 116 entities (cities, counties, schools boards, colleges, and universities) with living wage policies. ACORN also reported that initiatives are underway in 70 additional cities, counties, and universities, such as Little Rock, Arkansas; Jacksonville, Florida; Atlanta, Georgia; Richmond, Virginia; Knoxville, Tennessee; the University of Pittsburgh, Swathmore College, and Valdosta State College.²⁰ While the campaigns are many, they collectively address two basic moral claims: 1) tax dollars should not subsidize poverty level jobs and 2) an insistence that those who work full-time should not be mired in poverty.

Living wage regulations vary considerably in coverage and scope (see Table 1). Many ordinances include requirements for health benefits. For example, the Hartford Municipal Code provides that if health benefits are not given, compensation must be made based on the average cost of comprehensive health insurance in Connecticut. Most ordinances clearly state that no employer shall respond to its provisions by reducing health insurance benefits. Some living wage laws exempt certain categories of city contractors, such as non-profit agencies. Many apply the Table 1 information on living wage law (after ACORN*; Neumark & Adams**) requirements only to service contracts

Table 1. Political Entities with Living Wage Ordinances

City	Coverage Specified in Legislation	Wage Provisions
Baltimore, MD	Construction and service contracts > \$5000.	Passed in December 1994 but wage requirements were as follows: July 1995 (\$6.10); 2003 (\$8.70)
Cincinnati, OH	The city itself as well as any city service contractor with a contract > \$20,000	2003 (\$8.70, \$10.20 w/o health benefits)
Hartford, CT	Contractors > \$50,000; commercial development projects receiving subsidies > \$100,000	110% of poverty level with health benefits; 2003 (\$9.54; \$11.55 w/o health benefits)
Berkeley, CA and Marina	Direct city employees, businesses with city contracts, financial assistance recipients, and businesses that lease land from the city; later amended to include the Berkeley Marina, which is City-owned public land thereby creating first area-based living wage policy	2003 (\$10.76; \$12.55 w/o health benefits)

¹⁹ Acorn, *supra* at 4.

²⁰ *Id.*

St. Louis, MO	Contractors and businesses receiving tax breaks	130% of poverty level for family of three (assuming 2080 hours annual hours with benefits, plus \$1.39 per hour for health insurance: 2003 (\$9.54, \$11.63 w/o health benefits)
Burlington, VT	Direct city employees and employees working on city service contracts or for businesses that have received grants from the city of at least \$15,000	2003 (\$11.67; 13.49 w/o health benefits); wage rate adjusted annually guided by a state-issued "basic needs budget;" at least 12 compensated days of leave

*ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), (last visited December 16, 2003) at <http://livingwagecampaign.org/campaigns.php>.

**David Neumark & Scott Adams, *Do Living Wage Ordinances Reduce Urban Poverty?*, 38 THE JOURNAL OF HUMAN RESOURCES 490, 490-521 (2003).

or business subsidy awards above a specific size, or to firms with a certain minimum number of employees. Most laws require employers to pay the higher wages and benefits only during the time that employees actually perform the publicly funded work. Under some laws, the city or county may grant exemptions to individual firms that demonstrate that they cannot reasonably afford to pay their employees a living wage due to budgetary or other constraints.²¹

Posting, record keeping, and reporting requirements, as well as penalties for violations, are often included in living wage ordinances. Actual compliance with the living wage laws are generally left to the employer, subject to audit and verification by the political entity. If an employer is discovered to have violated the specific provision by not paying a living wage, the statutes generally impose some form of a penalty. Just like the formula for defining living wage, there is also no uniformity among the existing statutes with respect to penalties. A Somerville, Massachusetts ordinance²² not only suspends contract payments to employers if they fail to comply, but also imposes a \$500 a week penalty for each employee found to have not been paid correctly. Similarly, Hartford, Connecticut demands that an employer provide adequate restitution as well as \$100 a day for each violation. Hartford also exacts \$100 for each day of non-compliance with posting requirements.²³ There are three prominent features of living wage laws nationwide.²⁴

First, all living wage ordinances feature a minimum wage floor that is higher—and often much higher—than the traditional minimum wages set by state and federal legislation. Table 2 provides wage data regarding cities and counties that have passed living wage ordinances in 2003.

²¹Elmore, *supra* at 10.

²² CITY OF SOMERVILLE ORDINANCE NO. 1999-1, available at <http://www.the-ville.com/slwc/text.html> (last visited March 3, 2004).

²³ The Employment Policy Foundation, *Penalties on Employers Imposed by Living Wage Ordinances* (2004) at <http://www.livingwageresearch.org/factsheets/penalties.asp>. (last viewed March 3, 2004).

²⁴ David Neumark & Scott Adams, *Do Living Wage Ordinances Reduce Urban Poverty?*, 38 THE JOURNAL OF HUMAN RESOURCES 490, 490-521 (2003).

Table 2. City and County Living Wage Ordinances Passed in 2003 (Adapted from ACORN*)

City/County	Living Wage	Living Wage w/o Health Benefits
Sacramento, CA	\$ 9.00	\$10.50
Sebastopol, CA	\$11.70	\$13.20
Lawrence, KS	\$ 9.53	\$11.03
Port Hueneme, CA	\$ 9.00	\$11.50
Lansing, MI	\$11.50	\$11.50
Orlando, FL	\$ 8.50	\$ 8.50
Lakewood, OH	\$ 9.20	\$10.20
Dayton, OH	\$ 8.80	\$10.60
Arlington, VA	\$10.98	\$10.98
Ingham County, MI	\$ 9.20	\$11.50
Prince George's County, MD	\$10.50	\$10.50
Santa Fe, NM	\$ 8.50	\$ 8.50

*ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), <http://livingwagecampaign.org/campaigns.php> (last reviewed December 16, 2003).

Many ordinances are directly tied to guidelines establishing the federal poverty level; therefore, automatically establishing a new wage level needed for a family each year, which is above this poverty level, e.g., Milwaukee, Wisconsin; San Jose, California; and St. Paul, Minnesota.²⁵ Thus, when the federal government defines new poverty guidelines each year, the living wages in such jurisdiction increase. Other localities set an initial wage that is increased annually to take into account increases in the cost of living, such as Los Angeles and Oakland, California.²⁶ Although these latter ordinances may not explicitly state the basis for setting the initial wage, poverty is undoubtedly an underlying factor.²⁷

A second feature of living wage ordinances is the inflexibility regarding family size, even though poverty levels vary dramatically depending on number of children and adults in a household. Generally, the ordinances do not consider the income of other family members. For example, if two adults of the same family work for a covered

²⁵ ACORN, *Living Wage Ordinances: Stats at A Glance*, at <http://www.livingwagecampaign.org/stats.php>. (last viewed Dec.16, 2003).

²⁶ *Id.*

²⁷ David Neumark & Scott Adams, *Detecting Effects of Living Wage Laws*, 42 INDUSTRIAL RELATIONS 531, 531-564. (2003).

contractor both would receive the living wage, placing their combined family incomes well above the poverty level. The disparity in economic benefit is apparent when comparing the foregoing to a situation where only one family member works. These situations suggest that living wage laws may not well target family needs, a criticism also leveled at minimum wages.²⁸ However, living wage laws may affect a substantially different set of workers than do minimum wages, implying that the effects of living wages on poverty require separate study.

Finally, coverage by living wage ordinances is far from universal. The most common coverage, and also the most narrow, is restricted to companies under contract with a given city or public entity. Some living wage laws are applied to companies receiving business assistance from the city.²⁹ The least living wage coverage is that imposed on the cities themselves in covering their own employees which applies to nearly all workers. Thus, living wage laws impose high wage floors.

Regardless, narrow coverage contrasts with minimum wage laws have an antipoverty objective that is often reflected in the choice of the wage floor, and often apply to what may constitute a relatively limited group of workers. In considering a living wage ordinance a number of factors must be addressed: 1) wage level, 2) inclusion of health benefits and/or paid leave, 3) scope of coverage, 4) covered individuals, 5) thresholds for coverage (e.g., by dollar value of contract or subsidy), 6) monitoring, disclosure, and enforcement, 7) sanctions, 8) duration of coverage, and 9) possible exceptions to the law.³⁰ An example of a living wage ordinance incorporating many of these factors was recently passed in Lawrence, Kansas.³¹

III. EFFECTS OF LIVING WAGE ORDINANCES

As living wage ordinances become more popular, it is important to consider the effects of these laws on communities, low-wage workers, poor families, and employers. Only then can policymakers, employer organizations, labor unions, worker rights alliances, and voters make informed judgments regarding the merits and drawbacks of these laws. Each community or public entity must determine whether or not the benefits

Table 3. Pros and Cons of a Living Wage

Pros	Cons
1. Raise the living standard of individual workers and reduce urban poverty	1. Higher costs for employers will force them to cut jobs, increasing unemployment, and making poverty and welfare more likely
2. Reduce taxpayer costs and the need for services that subsidize poverty wages—like food stamps and food banks, energy assistance programs, and so on	2. Living wage ordinances will create a hostile business climate, discouraging firms from locating to cities having such wages

²⁸ Neumark & Adams, *supra* note 24.

²⁹ ACORN, *Introduction to ACORN's Living Wage Web Site*, at <http://www.livingwagecampaign.org/>. (last viewed March 3, 2004).

³⁰ ACORN, *Elements of a Living Wage Ordinance*, at <http://livingwagecampaign.org/ordinance.php> (last visited Dec 18, 2003).

³¹ LAWRENCE KANSAS LIVING WAGE ORDINANCE, available at <http://www.kawlivingwage.org/Images/2003%20OLW%20Ordinance-final.htm> (last visited Dec 16, 2003).

3. Firms impacted by living wage ordinances benefit through increased morale and lowered turnover that a living wage workplace encourages	3. A better policy to create income and jobs is to provide an environment conducive to business investment, technology formation, and entrepreneurial initiative. Markets are powerful devices in creating good quality jobs. Fewer government mandates on wages let market forces work.
4. Communities in which the affected workers live will gain modestly when the workers bring home increased spending power into their communities	4. Public money, our taxpayer money, should not be used to subsidize poverty jobs
5. Full-time workers deserve a living wage because the minimum wage has not kept up with the rate of inflation.	5. Raising the minimum wage to a living wage is a very blunt instrument for fighting poverty, since low-wage workers are not always from low-income families.
6. Ensure that families removed from welfare will be able to support themselves	6. Currently employed low-wage workers may be displaced by better-qualified workers following the enactment of living wage laws. Employers will simply swap those unskilled laborers for more desirable employees. As long as they are paying the higher salary, they may as well hire the best person they can
7. A living wage is the proper, just, and ethical thing to do	7. Living wage hikes fail to accomplish their principal policy goal of raising incomes of poor or low-income families
8. Using tax dollars to maintain or create decent living standards in affected communities	8. Research conducted by independent economists report that the living wage laws have adverse economic consequences
9. Expand the tax base	9. Living wage ordinances will increase the costs of city contracts
10. Living wage ordinances enhance the skills of lesser skilled workers by providing them job experience.	10. Living wage ordinances ignore the fact that affected workers are paid so little because they have few skills.

of living wages outweigh the detriments. Legislative groups which are socially oriented are more likely to adopt such a concept, while those which are more fiscally oriented are less likely. Table 3 provides a summary of the pros and cons of living wage ordinances. Proponents argue that recent experiences with living wage ordinances do not result in increased costs to taxpayers. They point to Baltimore, for example, asserting that the real cost of city contracts actually decreased after Baltimore's living wage ordinance was enacted, and that administrative costs for the program amounted to about 17 cents per taxpayer annually.³² Proponents also cite Los Angeles's living wage ordinance which they contend will save state and local taxpayers \$33.3 million, primarily by reducing the need for food stamps and health entitlements.³³

Opponents generally maintain that a living wage law is not the best way to achieve a livable income and communities should instead focus on education, training, employment and counseling, thus decreasing the tax burden for low-income workers. Opponents also argue that the living wage results in increased municipal budgets and

³² Mark Weisbrot & Michelle Sforza-Roderick, *Baltimore's Living Wage Law: An Analysis of the Fiscal and Economic Costs of Baltimore City Ordinance 442 (October 1996)*, at http://www.cepr.net/columns/weisbrot_II/baltimore.html. (last viewed March 3, 2004).

³³ Mary O. Estudillo, *Working Hard for the Money*, THE UCSD GUARDIAN ONLINE (December 2, 2002) at http://www.ucsdguardian.org/cgi-bin/opinion?art=2002_12_02_01. (last viewed March 3, 2004).

taxes because of the increased administrative costs associated with compliance. A 1999 study by the Vermont Legislature was critical of local living wage provisions, concluding that they have a negative effect on the availability of jobs.³⁴

Another issue regarding living wages relates to who actually benefits from such programs. The living wage calculation appears to rely on the assumption that there will be one wage earner supporting a four-person household. Admitting that many beneficiaries of living wage ordinances are teenagers, proponents cite statistics from recent research indicating that 72 percent of the 11.8 million people who would benefit from a living wage are older than 20. Opponents counter that the primary beneficiaries of minimum wage are not heading households and have other income sources, such as their parents.

Supporters of living wages make strong claims that poverty will be reduced, even though a true level of poverty cannot be established. Pollin and Luce, for example, advocate living wages as a viable poverty-fighting tool that will deliver a higher standard of living for low-income families³⁵ and ACORN states in their website that "Our limited public dollars should not be subsidizing a poverty-wage" noting that in such cases "tax payers end up footing a double bill: the initial subsidy and then the food stamps, emergency medical, housing and other social services low wage workers may require to support themselves and their families even minimally."³⁶ To address this issue Neumark and Adams, in a well-designed study, compared the changes in poverty for workers in cities that have adopted living wages to changes in poverty for workers in cities that have not adopted them and found some evidence that living wage ordinances result in modest reductions in the likelihood that urban families live in poverty.³⁷

Living wage laws differ from minimum wage laws but because both provide a legally mandated wage floor there is an obvious parallel. Consequently, an examination of the effects of a minimum wage on employment levels may be helpful in determining the impact of living wages on employment. Research found that the elasticity of employment of low-skilled workers with respect to minimum wages was most likely between -0.1 and -0.2, that is, for every ten percent increase in the minimum wage, employment of these low-skilled individuals falls by one to two percent.³⁸ Additionally, Fuchs, Krueger, and Poterba conducted a survey of economists who were asked to provide their best estimates of minimum wage effects on employment.³⁹ They found that the median "best estimate" of the minimum wage elasticity was -0.1, whereas the mean estimate was -0.21.⁴⁰ Neumark, noting that empirical estimates from minimum wage studies may not carry over to living wages, conducted a study of 36 cities that had

³⁴ Thomas Kavet, Deborah Brighton, Douglas Hoffer, & Elaine McCrate, *Act 21. Research and Analysis in Support of the Livable Income Study Committee*, Vermont State Legislature, Nov 9, 1999, at <http://www.leg.state.vt.us/jfo/Act21%20Report%20-%20All%20Parts.PDF>. (last viewed March 3, 2004).

³⁵ POLLIN AND LUCE, *supra* note 15.

³⁶ ACORN, *supra* note 29.

³⁷ Neumark & Adams, *supra* note 24.

³⁸ Charles Brown, Curtis Gilroy, & Andrew Kohen, *The Effect of the Minimum Wage on Employment and Unemployment*, 20 JOURNAL OF ECONOMIC LITERATURE 487, 487-528 (1982).

³⁹ Victor R. Fuchs, Alan B. Krueger, & James M. Poterba, *Economists' Views about Parameters, Values, and Policies: Survey Results in Labor and Public Economics*, 36 JOURNAL OF ECONOMIC LITERATURE 1387, 1387-1425 (1998).

⁴⁰ *Id.*

adopted living wage laws and found that they appear to reduce employment among the affected workers.⁴¹ Neumark estimates that a 50 percent increase in the living wage would reduce the employment rate for workers in the bottom tenth of the skill distribution by seven percent.⁴² These disemployment effects offset to some extent positive effects of living wage laws on the wages of low-wage workers, pointing to the trade-off between wages and employment that economic theory would predict.⁴³ It seems then that living wages reduce employment of those with low skills, although the effect is relatively weak. It should be mentioned that the study's approach and findings have been called into question by other researchers.⁴⁴

Neumark found evidence for sizeable wage gains for unionized municipal workers when narrow living wage laws covering city contractors were implemented.⁴⁵ This evidence is consistent with living wage laws reducing the incentives for cities to contract out work that would otherwise be done by municipal employees, which in turn would be expected to increase the bargaining power of municipal unions and lead to higher wages. As further evidence, labor unions have generally been very active in living wage campaigns.⁴⁶

IV. PRACTICAL CONSIDERATIONS

Like any new directive, living wage policies bring their share of challenges to the affected political entity. Because living wage statutes have been designed to target organizations having contractual relationships with a jurisdiction (or wishing to have a contractual relationship) the following challenges of implementing a living wage policy relate to working with contractors and include:

- Integrating social policy within existing practices;
- Providing clear direction to the contractor community;
- Ensuring policy compliance through contract administration; and
- Facing the dilemmas of fiscal impact and cost control.

⁴¹ David Neumark, *How Living Wage Laws Affect Low-wage Workers and Low-income Families*, Public Policy Institute of California, at http://www.ppic.org/content/pubs/R_302DNR.pdf. (last visited March 3, 2004).

⁴² *Id.*

⁴³ David Neumark and Scott Adams, *supra* note 27.

⁴⁴ Mark D. Brenner, Jeannette Wicks-Lim, and Robert Pollin, *Measuring the Impact of Living Wage Laws: A Critical Appraisal of David Neumark's How Living Wage Laws Affect Low-Wage Workers and Low-Income Families*, University of Massachusetts, Political Economy Research Institute, manuscript forthcoming at <http://www.umass.edu/peri/pdfs/WP43.pdf> (last visited Dec 21, 2003).

⁴⁵ Neumark, *supra* note 41

⁴⁶ ALF-CIO, at <http://www.alfcio.org/yourjobeconomy/livingwage/> (last visited Dec. 21, 2003).

A. INTEGRATION WITH EXISTING PRACTICES.

Public procurement is highly regimented and rule-bound. A given agency can have countless policies and procedures on everything from bid advertisement to bid opening to contract award. To protect the integrity of the public bidding process, and to ensure a fair and level playing field for all contractors, many entities adopt procedures that are consistent with the American Bar Association's Model Procurement Code for State and Local Governments.⁴⁷ These practices have withstood the ravages of time, but with the adoption of a living wage policy, they need to be revised since a living wage requirement effectively increases bid prices for contracts. This can create a quandary for public officials, who are taught early in their careers to secure the lowest-priced contract.

B. NOTICE TO CONTRACTOR(S).

It is not a coincidence that the service areas targeted by living wage policies (e.g., custodial, security, parking attendant) are historically some of the lowest paid. Within these affected industries, contractors must learn to adjust their way of doing business. To assist potential contract holders in structuring their bids and to make them aware of the living wage requirements, the solicitation documents need to provide clear direction. Public purchasing officers use standard documents for both invitations to bid and request for proposal (RFP) processes. These standard boilerplates may need to be revised in order to more accurately reflect the new living wage expectations during contract performance. Whether communicated in writing, verbally, or both, the message of living wages needs to be heard "loud and clear". Political entities enacting a living wage should consider including the requirements within their public notice. Other methods of highlighting this unique contractual obligation could include bolding or underlining the area of the bid that describes living wages, and discussing the issue with potential contractors at a pre-bid conference.

C. COMPLIANCE REQUIREMENTS AND PROBLEMS.

A key challenge for governmental units is the enforcement of the living wage policy during contract performance. After all, the governing body's intent in passing such a resolution is to have the contractor's employees actually receive the proper wages. One of the worst things that could happen is to work through the political process and adopt a living wage policy, only to find a year later that the contractor doing the work is ignoring the requirement.

It is therefore imperative that controls be put in place when drafting the contract that allow for the enforcement of properly paid employee wages. These controls might include posting a notice in the work area of the affected workers, or even auditing the contractor's payroll records. The latter method is commonly used when a governmental unit receives a wage complaint from a worker.

⁴⁷ American Bar Association. Model Procurement Code for State and Local Governments (1979).

The oversight and control will require the most attention right after the policy implementation or whenever a new contractor begins work. Once procedures are established and both parties are clear about compliance with the wage requirements, it is likely that the contract will require less time and administration. Rather than continual oversight, a quarterly review may be more practical.

D. FISCAL IMPACT AND COST CONTROL.

As governments at all levels face shrinking budgets, the tendency is to outsource services in an effort to reduce operating costs.⁴⁸ Many types of services that historically have been performed by a political entity's workforce, including those covered by living wage policies, are now being contracted out to private industry firms. The driving motivation, of course, is the need to reduce costs. However, in the case of living wages, a requirement is established that will inevitably increase costs. When governments build such a requirement into its' service contracts, the cost of providing for it will be ultimately passed on to the governments adopting such legislation. When companies are preparing their bids and proposals, they factor in wages, benefits, overhead, profit, etc., and they will need to adjust their bid amounts to cover the increased wages.

The dilemma for public managers is that they are faced with implementing a public program that is potentially costly, while being asked to "do more with less" at the same time. Undoubtedly, as economies weaken and budgets are tightened, issues of cost will come to the forefront in the decision-making process regarding living wage policies. Just as other social programs come under scrutiny, so will the living wage(s). As with other controversial and costly programs, public officials will need to provide the necessary leadership to the organization's administration. New approaches to purchasing which look beyond total cost and employee wages in contractor selection may be appropriate in addressing this tension.⁴⁹

V. CONCLUSIONS

In recent years, living wage ordinances and campaigns have emerged as a grassroots response to the declining real value of the minimum wage, the growth of a low-wage service sector, and widening economic disparities. In an effort to improve the lot of low-income families, the living wage movement seeks to pass local ordinances requiring private businesses benefiting from public money to pay their workers a living wage. While living wage ordinances have been passed in over one hundred jurisdictions, it should be noted that some municipalities and counties have repealed such legislation, and some ordinances declared in violation of state constitutions.⁵⁰ For example, the city council of Omaha, Nebraska simply repealed the ordinance after one year (over the veto

⁴⁸ Guy Callendar and Darin Matthews, *The Economic Context of Government Procurement: New Challenges and New Opportunities*, 2 JOURNAL OF PUBLIC PROCUREMENT 2, 2-8 (2002).

⁴⁹ Darin Matthews, *supra* note 18.

⁵⁰ ACORN, *Living Wage Victories*, at <http://www.acorn.org/index.php?id=878>. (last viewed March 3, 2004).

by the mayor)⁵¹ and the living wage ordinance passed by the city of New Orleans, LA was subsequently invalidated by the state supreme court as being unconstitutional because it was said to usurp the power of the state.⁵²

A review of other political entities that have repealed or invalidated living wage laws did not seem to illustrate a pattern or logic for such repeals, nor does there appear to be a consistent legal theory regarding the unconstitutionality of such ordinances. Nevertheless, when a jurisdiction is considering the implementation of living wages it would behoove all concerned parties, specifically the members of the legislative authority, to thoroughly review past decisions in which living wage legislation has been overturned.

Additionally, employers with operations in different localities, especially those with municipal contracts, should keep abreast of developments in this area, both to ensure compliance in cities where living wage provisions have already been enacted, and to have meaningful input in cities where such provisions are under consideration. Analysts assessing living wage laws, and policymakers, contemplating their implementation, should give due consideration to comparisons among alternative methods of reducing poverty. For example, in 1999, after first considering a living wage proposal Montgomery County, Maryland, opted instead for a local Earned Income Tax Credit.⁵³

In addition, many other issues need to be explored before policy analysts can feel confident that they have a well-established set of findings from which to draw strong conclusions. These other issues might include the effect of living wages on municipal budgets, the extent to which higher labor costs are absorbed by contractors or passed through to cities, the implications of living wages for economic development, their effect on productivity and the provision of city services, the effectiveness of compliance and enforcement, and the effects of living wages on overall economic welfare. The findings in each case may well differ, depending on the local economy and the specific law considered.

⁵¹ The Employment Policy Foundation, *Omaha City Council Kills Living Wage Law to Help Budget*, at http://www.epf.org/LWsite/ordinances/Omaha_Repeal.asp (last visited Feb 23, 2004).

⁵² *New Orleans Campaign for a living wage, et al. v. City of New Orleans, et al.*, Case No. 2002-CA-0991, Sup.Ct. Louisiana; 146 Lab. Cas. 59, 8 Wage & Hour Case 2d (BNA) 170 (2002).

⁵³ *Montgomery County Earned Income Credit*, at http://www.peoples-law.org/tax/montgomery_county_earned_income.htm. (last viewed March 3, 2004).