THE HAMILTON PROJECT

POLICY PROPOSAL 2018-07 | FEBRUARY 2018

Strengthening Labor Standards and Institutions to Promote Wage Growth

Heidi Shierholz

MISSION STATEMENT

The Hamilton Project seeks to advance America's promise of opportunity, prosperity, and growth.

We believe that today's increasingly competitive global economy demands public policy ideas commensurate with the challenges of the 21st Century. The Project's economic strategy reflects a judgment that long-term prosperity is best achieved by fostering economic growth and broad participation in that growth, by enhancing individual economic security, and by embracing a role for effective government in making needed public investments.

Our strategy calls for combining public investment, a secure social safety net, and fiscal discipline. In that framework, the Project puts forward innovative proposals from leading economic thinkers — based on credible evidence and experience, not ideology or doctrine — to introduce new and effective policy options into the national debate.

The Project is named after Alexander Hamilton, the nation's first Treasury Secretary, who laid the foundation for the modern American economy. Hamilton stood for sound fiscal policy, believed that broad-based opportunity for advancement would drive American economic growth, and recognized that "prudent aids and encouragements on the part of government" are necessary to enhance and guide market forces. The guiding principles of the Project remain consistent with these views.

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Economic Policy Institute

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This policy proposal is a proposal from the author(s). As emphasized in The Hamilton Project's original strategy paper, the Project was designed in part to provide a forum for leading thinkers across the nation to put forward innovative and potentially important economic policy ideas that share the Project's broad goals of promoting economic growth, broad-based participation in growth, and economic security. The author(s) are invited to express their own ideas in policy papers, whether or not the Project's staff or advisory council agrees with the specific proposals. This policy paper is offered in that spirit.

BROOKINGS

Abstract

For most of the period since the 1970s the United States has suffered from two trends: stagnant wages for most workers, and rising inequality. While these trends have a number of causes, nearly all involve reductions in the relative economic leverage, or bargaining power, of low- and moderate-wage workers. This paper focuses on one particular set of factors: the erosion of labor standards, institutions, and norms. I show how this erosion has been facilitated by and has exacerbated the problem of low worker bargaining power, and propose a suite of remedies to help strengthen worker bargaining power and increase wages. These remedies include increasing the real value of the minimum wage and the overtime salary threshold, passing fair scheduling laws, boosting unionization, supporting joint employer standards, passing paycheck transparency laws, passing laws that make W-2 the default employment status, limiting the use of non-competes, banning the use of mandatory arbitration for statutory labor and employment claims, ensuring immigrant workers have full labor rights, boosting enforcement of labor standards, and leveraging procurement dollars to boost compliance.

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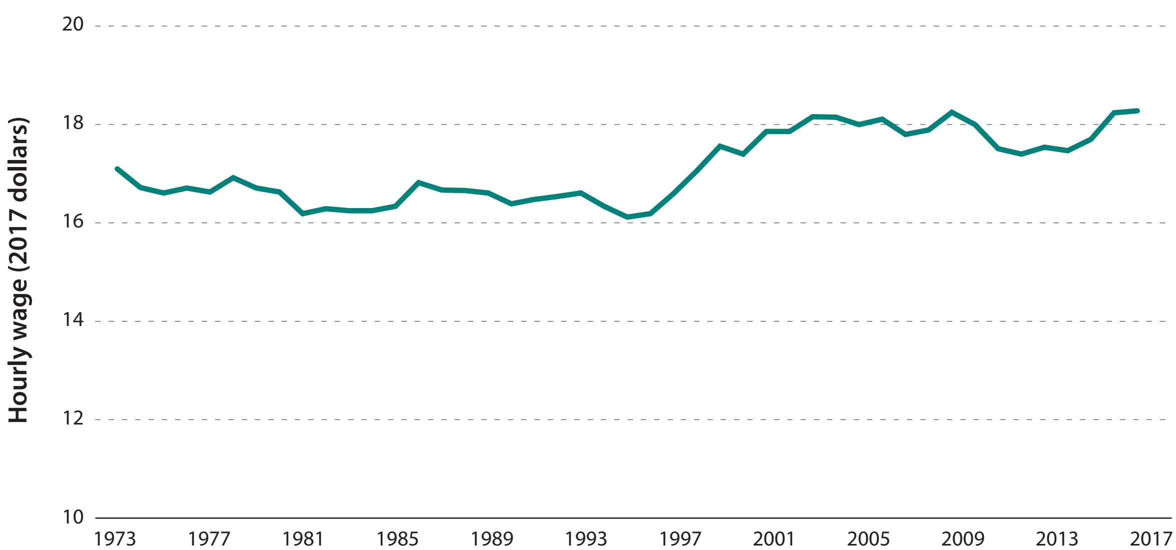
Introduction

For most of the past four and a half decades, the United States has suffered from stagnant wages for most workers. Figure 1 shows the real median hourly wage (including both hourly and salaried workers) from 1973 to 2017. The median hourly wage is arguably the best summary measure of how American workers are benefiting from work, and the current level is not impressive. The typical worker in our labor market earns $18.28 an hour. For a full-time, full-year worker, that hourly wage translates into around $38,000 a year. Moreover, the median wage has grown very little since the early 1970s. In 1973 it was $17.10 in inflation-adjusted terms, so it has grown just 6.9 percent over this period—less than 0.2 percent per year on average.

There is no one cause of this wage stagnation, but the declining relative economic leverage, or bargaining power, of low- and moderate-wage workers is common to the various causes. This paper focuses on one particular set of factors: the erosion of labor standards, institutions, and norms. In what follows, I first describe the nature of wage stagnation and rising inequality in more depth, then show how the erosion of labor standards, institutions, and norms has contributed to those trends. Finally, I propose a suite of remedies.

FIGURE 1.

Real Median Hourly Wage, 1973–2017



Source: Bureau of Labor Statistics (BLS) 1973–2017; Economic Policy Institute analysis.

Note: Population is all workers, including both supervisory and nonsupervisory and both hourly and salaried workers.

The Challenge

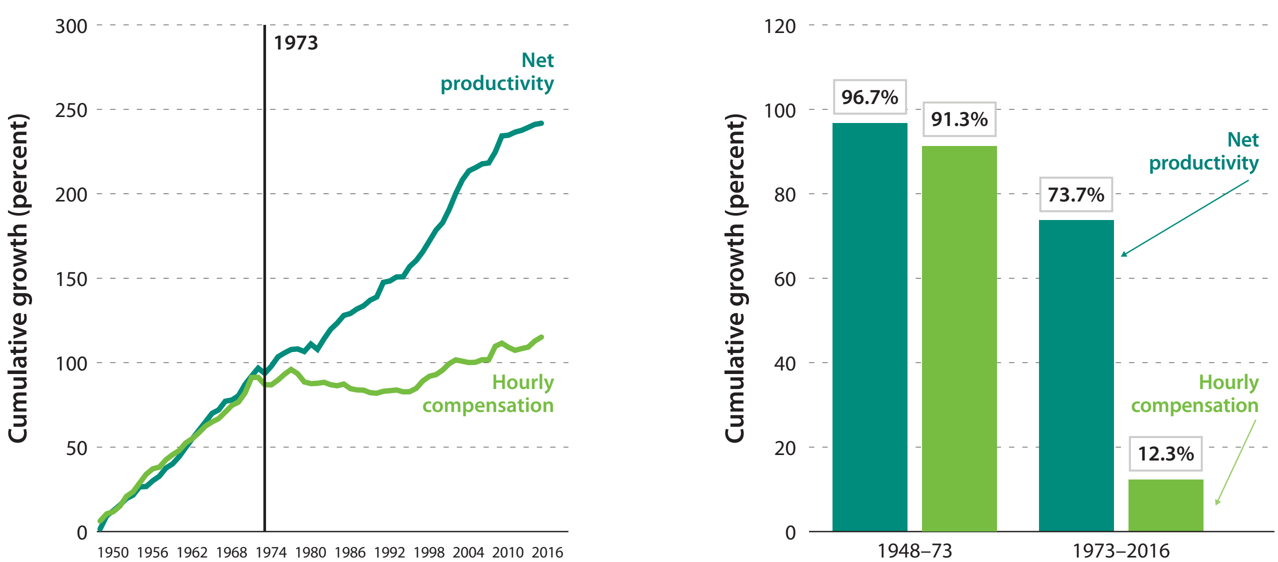
One could look at figure 1 and wonder if median wage stagnation constitutes a problem, given that wages are not falling. However, merely holding steady is counter to typical middle-class aspirations, in which each successive generation does *better* than the one that came before it. That used to happen, but is not happening anymore. In fact, the early baby boomers were the last cohort to have higher incomes than preceding cohorts (Mishel et al. 2012, fig. 3A).

In addition, productivity growth over the last forty years was substantial; had that growth been broadly shared, the median worker would have seen significant improvement in their earnings. Figure 2 shows growth in net productivity and hourly compensation (including wages and benefits) over time.[1] Between 1973 and 2016 productivity grew six times as fast as compensation for the typical worker. That gap between economy-wide productivity growth and increases in the typical worker's pay is the footprint of an economy in which the benefits of growth are largely being captured by those at the top of the income distribution, leaving most workers behind (Bivens and Mishel 2015). Importantly, this was not the economy of the 1948–73 period, when net productivity and wages for typical workers increased by similar amounts.

These trends are also evident in rising wage inequality. Figure 3 shows the cumulative percent change from 1979 to 2016 in real annual wage and salary earnings of workers at various levels of the earnings distribution. It illustrates how the growing gap between productivity and compensation of most workers is largely accounted for by rising inequality of wages.[2] The wages of the top 1 percent grew nearly 150 percent over this period, while the average of the entire bottom 90 percent of workers grew just over 20 percent. Furthermore, a worker must be well into the top 10 percent of the wage distribution to see wage growth that even matches economy-wide net productivity growth.

FIGURE 2.

Cumulative Growth in Net Productivity and Average Hourly Compensation of Nonmanagerial Workers, 1948–2016

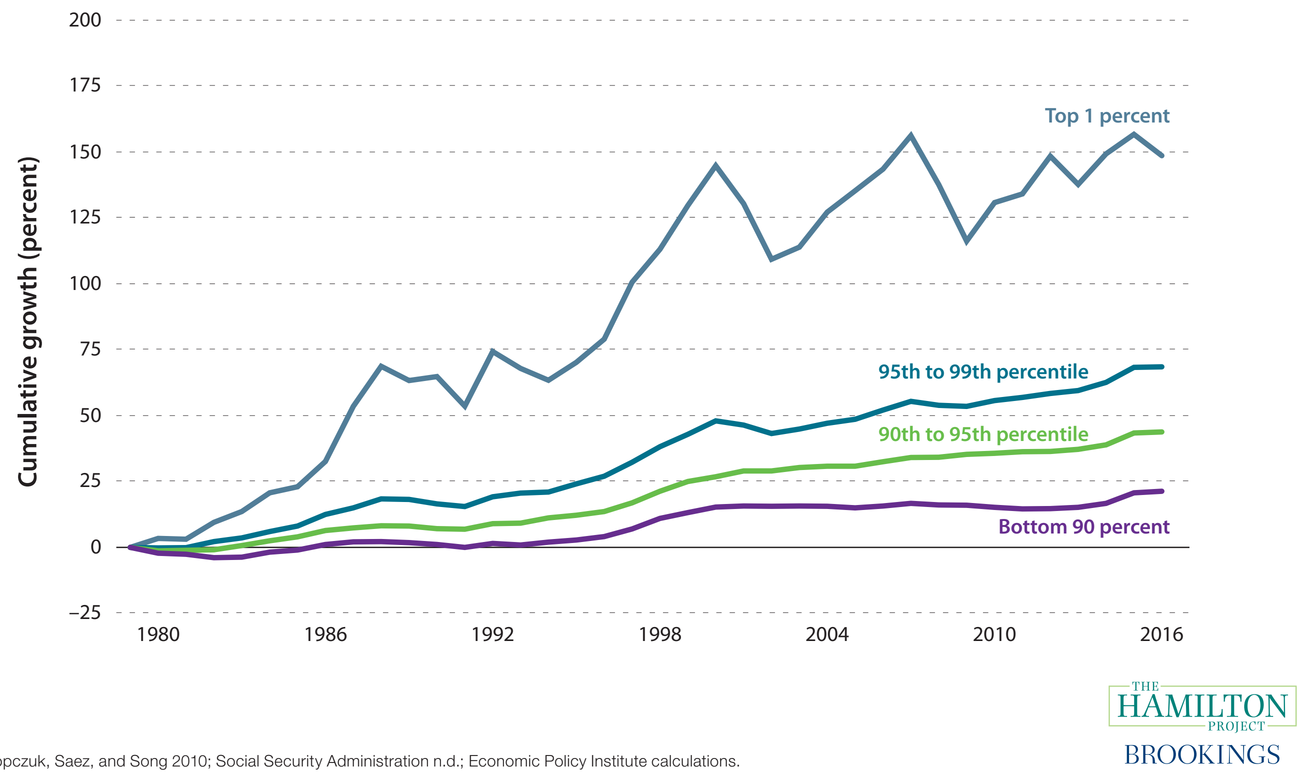


Source: Bivens et al. 2014; author's calculations.

Note: Data are for compensation (wages and benefits) of production and nonsupervisory workers in the private sector and net productivity of the total economy. Net productivity is the growth of output of goods and services less depreciation per hour worked.

FIGURE 3.

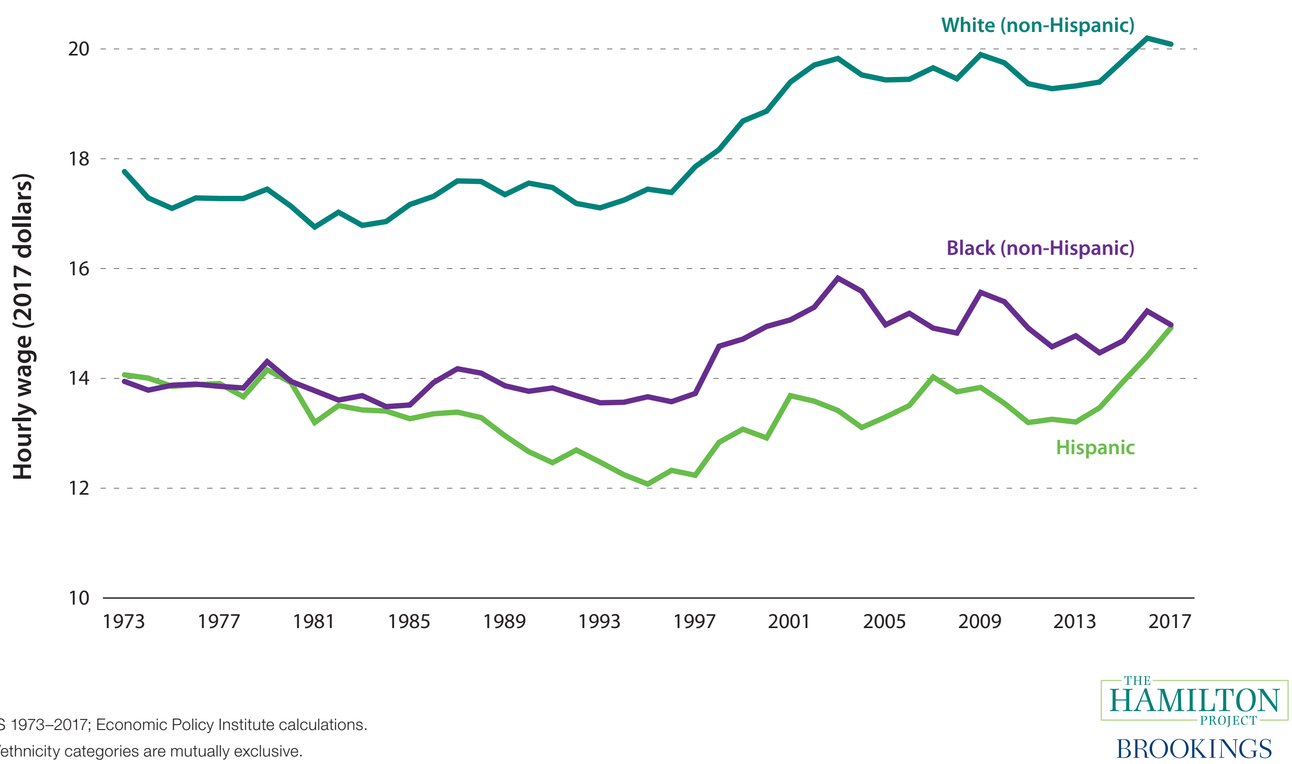
Cumulative Growth in Real Annual Wage by Percentile, 1979–2016



Source: Kopczuk, Saez, and Song 2010; Social Security Administration n.d.; Economic Policy Institute calculations.

FIGURE 4.

Real Median Hourly Wage by Race and Ethnicity, 1973–2017



Source: BLS 1973–2017; Economic Policy Institute calculations.

Note: Race/ethnicity categories are mutually exclusive.

Although net productivity grew 64.2 percent between 1979 and 2016, figure 3 shows that the wages for the 90th–95th percentiles of the wage distribution grew just 43.8 percent over that period. This means there was an enormous transfer from the bottom 95 percent to the top few percent over this period. When typical workers are essentially treading water, but the top is pulling away, the economy is not working for most families.

An additional core problem in our labor market is that wages remain very unequal by race, ethnicity, and gender. Figure 4 shows one aspect of these disparities—differing median hourly wages by race and ethnicity—for the 1973–2017 period. In 2017 the median wage for white non-Hispanic workers was $20.10, which translates into less than $42,000 for a full-time, full-year worker. For black workers and Hispanic workers, hourly wages were about 25 percent less, at $14.99 and $14.94, respectively—a little over $31,000 for a full-time, full-year worker.

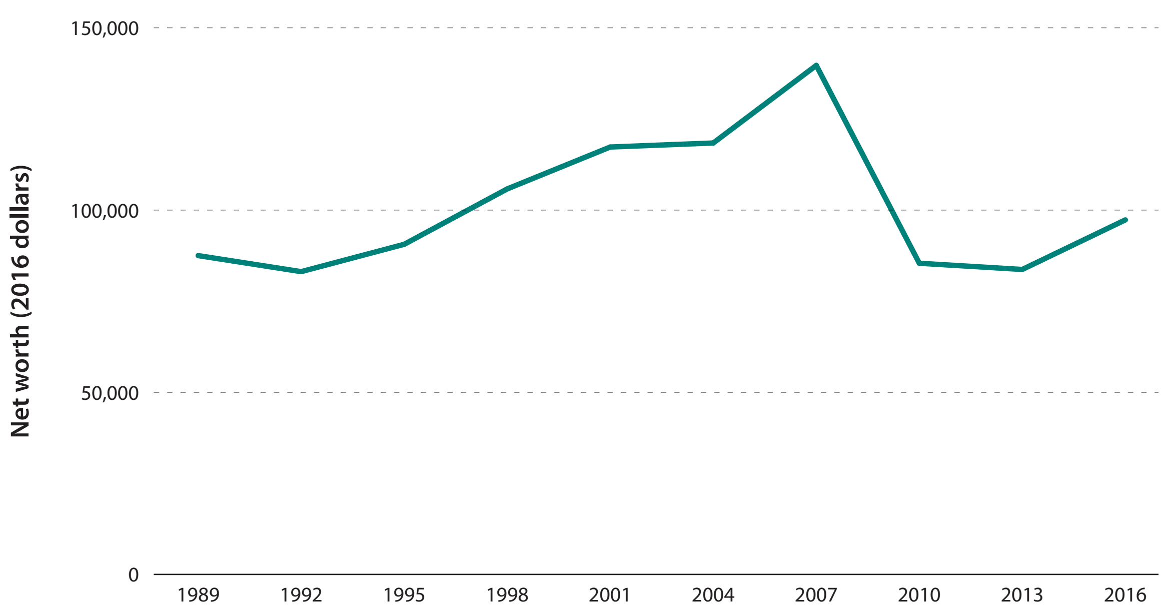
One consequence of relatively low wages for most workers is that a large share of families do not have sufficient savings to access for unanticipated expenses and to build retirement wealth. The relatively low wages most workers receive mean typical families struggle to meet everyday expenses, and they are unable to meaningfully save. Figure 5 shows that median wage stagnation is mirrored by median net worth stagnation. The typical family's entire net worth—the total value of all assets (house, car, stocks, retirement accounts, cash value of life insurance, etc.) minus all debts (mortgage, car loans, credit card debt, student debt, etc.)—was only $97,300 in 2016.

The problem with stagnant wages is not just about day-to-day living standards, but also workers' ability to save for retirement, children's college education, or an emergency. In other words, it is about families' economic security. The problem with low net worth, and the economic insecurity that goes hand in hand with it, is not going to be solved without policies that begin to generate meaningful wage growth for typical workers. Thus, in what follows, I will not focus further on wealth or net worth, but will instead return to a focus on wages and compensation.

Prior to the 1970s wages rose for typical workers (see figure 2), and not just for a thin slice of workers at the top of the distribution. This earlier period was certainly characterized by huge economic disparities, including those along race and gender lines. But a key dynamic was different during that period: low- and moderate-income families saw real gains as the economy grew. What changed starting in the 1970s?

FIGURE 5.

Real Median Family Net Worth, 1989–2016



Source: Board of Governors of the Federal Reserve System 1989–2016; Economic Policy Institute calculations.

Note: The Board of Governors conducts the Survey of Consumer Finances every three years.

THE CAUSES OF WAGE STAGNATION AND RISING INEQUALITY

As mentioned previously, rising inequality and wage stagnation have many causes, but nearly all entail deterioration in the relative economic leverage of low- and moderate-wage workers. For example, one cause of rising inequality is that the labor market experienced excessive unemployment for much of this period. High unemployment reduces worker bargaining power because one main point of leverage that workers have is the implicit threat that they can leave their job and work somewhere else. When workers have fewer outside options, employers can pay lower wages and still recruit and retain the workers they need. Research shows that this effect on wages is larger for middle-wage workers than it is for high-wage workers, and larger still for low-wage workers (Mishel et al. 2012).

Globalization has also contributed to rising inequality because it has been managed in a way that shifts leverage away from lower-paid workers as firms have expanded their ability to source inputs or production from countries with plentiful lower-cost workers (Autor, Dorn, and Hanson 2013; Bivens 2017; Feenstra and Hanson 1999). And changes in taxes (both lowering top marginal rates and changing the tax treatment of corporate executive pay) have incentivized capital owners and corporate managers to claim a larger share of firms' output relative to moderate-wage workers (Balsam 2012; Piketty, Saez, and Stantcheva 2014).

Another category of factors underlying or related to the shift in economic leverage from workers to employers is the erosion of labor standards, institutions, and norms. In the remainder of this section, I will describe core examples of this erosion.

THE DECLINE OF THE MINIMUM WAGE

Minimum-wage workers are almost by definition the workers in the economy with the least bargaining power. These workers depend on minimum wage statutes to offset a lack of individual bargaining power and so achieve fairer pay. But at $7.25 per hour, the federal minimum wage is more than 25 percent below where it was in real terms in the late 1960s. The erosion of the federal minimum wage has been a substantial drag on wage growth for low-wage workers and has increased wage inequality in the bottom half of the wage distribution, expanding the 50/10 wage gap (Autor, Manning, and Smith 2016). The erosion of the minimum wage is primarily due to the failure to increase it during the 1980s, followed by relatively modest increases in the 1990s and 2000s after this decade of neglect. Furthermore, at $2.13 per hour the tipped minimum wage has not been increased for more than a quarter-century.[3]

THE EROSION OF OVERTIME PROTECTIONS

The minimum wage affects the low end of the wage distribution. A labor standard that affects—or should affect—more middle-wage workers is overtime pay protection, which ensures that employees who lack bargaining power can avoid working long hours without fair compensation. The overtime pay provisions of the Fair Labor Standards Act (FLSA) are designed to ensure that most workers who put in more than 40 hours a week get paid 1.5 times their regular pay for the extra hours they work. Almost all hourly workers are automatically eligible for overtime pay, but workers who are paid on a salary basis are automatically eligible for overtime pay only if their earnings fall below a certain salary threshold. Above that level, workers are eligible for overtime protections only if they are *not* a bona fide executive, administrative employee, or professional employees.

However, as inflation accumulated, the real value of the salary threshold was allowed to decline so dramatically that, at $455 per week, or $23,660 for a full-time full-year worker, it is lower than the poverty threshold for a family of four. The overtime salary threshold is now too low to serve as a useful line of demarcation between those who do and those who do not have enough bargaining power with their employer to need overtime protections. Millions of low- and moderately-paid workers are currently not benefiting from overtime protections.

IRREGULAR AND UNPREDICTABLE SCHEDULING

The U.S. labor market continues to see an elevated share of workers who want full-time jobs but have had to settle for part-time employment. In 2017 there were 5.3 million involuntary part-time workers, or 3.6 percent of all employed workers. This was down from its highest annual value during the Great Recession of 6.6 percent in 2009, but still elevated above 3.1 percent in 2007 and 2.5 percent in 2000. If the rate of involuntary part-time work were 2.5 percent today, there would be 1.6 million fewer involuntary part-time workers.

Not only are involuntarily part-time workers scheduled for fewer hours, days, or weeks than they prefer, but the daily timing of their work schedules can often be irregular or unpredictable, imposing significant costs on those workers. Irregular and unpredictable work schedules affect more than involuntary part-timers, however. Evidence suggests that at least 10 percent of the workforce is assigned to irregular and on-call work shift times. With the addition of the roughly 7 percent of the employed who work split or rotating shifts, about 17 percent of the workforce has unstable work shift schedules (Golden 2015).

These scheduling practices do not just complicate the daily lives of affected workers—particularly those trying to navigate multiple jobs and/or responsibilities such as caregiving or schooling—they also lead to irregular and unpredictable earnings. The employer practice of assigning unstable work hours means employers are benefiting economically not just from employees' hours worked but also from their mandatory flexibility. This practice is facilitated by affected workers' lack of bargaining power while also further eroding it; for example, when employers can punish workers with undesirable work schedules, it reduces workers' ability to bargain for wages.

DECLINING UNIONIZATION

The spread of collective bargaining that followed the passage of the National Labor Relations Act (NLRA) in 1935 contributed to decades of broadly shared economic growth that persisted until the 1970s. Since the 1970s, though, declining unionization has fueled rising inequality and stalled economic progress for the broad American middle class. The decline in unionization—fueled by dramatically increased employer aggressiveness in fighting unions, and an absence of new labor laws to provide countervailing leverage to organizing efforts (Bivens et al. 2017)—has been a major force in the stagnation of middle-class wages over the past four and a half decades.

There are three main channels through which unions boost pay and benefits of typical workers (and therefore through which the decline in unionization hurts pay and increases inequality). First, unions boost compensation for those who are in unions relative to similar workers who are not in unions, so a smaller share of workers in unions hurts workers' wages directly. Second, in a given occupation or industry, unions help workers in that occupation or industry who are not in unions by helping set standards: nonunion employers might have to increase pay to get and keep the workers they need. When a smaller share of the workforce is unionized, this spillover effect is diminished. Third, the union pay boost is largest for low-wage workers, larger at the middle than at the highest wage levels, larger for black and Hispanic workers than for white workers, and larger for those with lower levels of education. Union pay premiums for these groups help narrow wage inequalities (Bivens et al. 2017).

FISSURING OF THE WORKPLACE

In recent decades business employment practices have evolved such that many businesses contract out for services that are not a core competency of the business, instead of directly employing people to do that work (e.g., janitorial work, payroll, accounting, human resources, security, and facilities maintenance). Often, companies that win the contracts then subcontract to smaller businesses, which provide the workers. This dynamic is known as the fissuring of the workplace (Weil 2017). This fissuring leads to substantially reduced bargaining power of affected workers, as evidenced by the fact that earnings for workers doing contracted-out work tend to be much lower than they were when these jobs were performed by employees of the main firm (Goldschmidt and Schmieder 2017).

Once a firm contracts out for services, it is no longer directly setting the wages of the workers who perform those services—the wages are now being set by contractors who are competing on price with other firms providing the same services. Since a large share of the overall costs of these services tends to be labor, there are enormous pressures to cut wages, reduce benefits, and even violate labor standards. This includes not just wage and hour standards, but also health and safety standards, particularly as the responsibility to provide a safe workplace becomes murkier (Occupational Safety & Health Administration 2015). Also, because these workers' pay is set outside the firm, considerations like within-firm equity or sharing economic rents no longer apply, allowing larger wage gaps to develop (Appelbaum 2017).

INCREASE IN WORKER MISCLASSIFICATION

Independent contracting appears to have grown markedly over the past decade; one estimate finds it has risen from 6.9 percent of employment in 2005 to 9.6 percent in 2015 (Katz and Krueger 2016). As independent contracting has risen, so has misclassification, which is the classification of workers as independent contractors when they should be classified as payroll employees, with all the rights and protections that status entails.

A worker who is classified as an independent contractor is not covered by some of the most basic labor standards like the minimum wage and overtime protections, the requirements of the Occupational Safety and Health Act, and the opportunity to be represented by a union under the NLRA. These workers are also not covered by important social safety net protections like unemployment insurance and workers' compensation. The increasing practice of employers misclassifying workers is facilitated by workers' lack of bargaining power and can lead to the underpayment of wages, the absence of benefits, and workers being increasingly exposed to a variety of risks. It also leads to a race to the bottom: employers who misclassify workers are at a competitive advantage relative to responsible employers who comply with labor standards and responsibilities.

SIGNING AWAY RIGHTS AS A CONDITION OF EMPLOYMENT

As a condition of employment, workers are increasingly asked to sign away their rights through contracts like non-compete agreements and mandatory arbitration agreements with class action waivers.

Recent studies find that nearly one in five U.S. workers is covered by a non-compete agreement; these agreements limit workers' ability to move from one employer to another (U.S. Department of the Treasury 2016). Importantly, the data suggest that non-competes are not limited to workers who have access to trade secrets: 14.3 percent of workers without a four-year college degree are currently bound by a non-compete agreement and 13.5 percent of workers earning less than $40,000 a year have non-competes (Starr, Prescott, and Bishara 2017). Given that one of the most important points of leverage nonunionized workers have is the implicit threat that they can quit and work somewhere else, non-competes meaningfully reduce worker bargaining power, which can lead to a reduction in pay.

In addition, a recent survey found that 56 percent of private sector nonunion employees are subject to mandatory arbitration agreements. Among those, 41 percent were also required, as a condition of employment, to waive their right to be part of a class action claim (Colvin 2017). Mandatory arbitration takes away a crucial labor standards enforcement mechanism. To successfully pursue a claim against a corporation, nonunionized workers typically need a way to join together. Employment class actions have helped to combat race and gender discrimination, including sexual harassment, and are fundamental to the enforcement of wage and hour and safety standards. Furthermore, without the ability to aggregate their claims, it is difficult if not impossible for workers to find legal representation in employment matters because individual claims are typically not economically feasible to pursue. In all these ways, forcing workers into individual arbitration shifts leverage from workers to employers.

It is worth noting that although mandatory arbitration for individual nonunionized workers is a drain on worker leverage, arbitration clauses in collective bargaining agreements are not. Arbitration in a union setting is a bilateral system jointly run by unions and management that deals with the enforcement of a contract they privately negotiated, whereas mandatory employment arbitration is a process that is unilaterally defined by employers—right down to picking the arbitrator—and deals with employment laws established in statutes. In addition, arbitration procedures in a union setting typically do not bar employees from bringing statutory employment claims separately through the courts (Stone and Colvin 2015).

IMMIGRATION POLICIES THAT CREATE LAWLESS ZONES IN THE LABOR MARKET

The weight of the evidence suggests that immigration has a positive impact on the economy and little impact—likely slightly positive—on the wages of most workers in the United States, including most low- and moderate-wage workers (National Academies of Sciences, Engineering, and Medicine 2017). In particular, permanent immigrants who have the full rights and workplace protections of U.S.-born workers likely have a meaningfully positive impact.

What is a problem are the lawless zones of the labor market where immigrant workers have few rights in practice. This hurts not just their bargaining power (and thus their wages and working conditions), but also the bargaining power of other workers who work alongside them. This is true in the case of undocumented immigrants who, because their status makes them and their families so vulnerable, are much less able to speak out when faced with an unsafe workplace or when their employer violates wage and hour regulations. Recent estimates put the number of undocumented workers at 8 million—roughly 5 percent of all workers—in the U.S. labor market (Krogstad, Passel, and Cohn 2017).

Temporary guestworker visas create another zone in the labor market where workers have limited rights. Temporary guestworkers are foreign-born workers who are in the United States on work visas for a limited time period. Recent estimates put their number at roughly 1.4 million, about 1 percent of all workers in the U.S. labor market (Costa and Rosenbaum 2017). A key issue is that these guestworkers are typically tied to one employer, meaning that if they are mistreated or not paid what they are worth, they cannot change jobs because they would lose their visa and be deported. This means they have essentially zero bargaining power. Furthermore, loopholes in the regulations related to the wage requirements of temporary guestworkers mean that in many cases these workers are significantly underpaid, putting downward pressure on the wages of permanent immigrants and U.S.-born workers who are in the same occupations (Costa and Rosenbaum 2017).

A New Approach

The previous section showed how our labor market has been affected by the erosion of standards and institutions that support workers. Worker bargaining power has suffered with developments like the decline in the real values of the minimum wage and the overtime salary threshold, the decline in union coverage, and the increase in temporary guestworkers who have few rights. The previous section also showed how our labor market has seen changes in employer norms and practices that both capitalize on the lack of worker bargaining power and further reduce it, including increased misclassification, changes in scheduling practices, increased incidence of non-competes and mandatory arbitration agreements, and workplace fissuring. Each of these trends has adversely affected workers, contributing to the dynamic of rising inequality and stagnant wages for most workers. But, as the rest of this section shows, these trends also provide a roadmap for policies that will help halt and reverse that dynamic.

INCREASE THE MINIMUM WAGE AND ELIMINATE THE TIPPED MINIMUM WAGE

The minimum wage is now more than 25 percent below where it was in real terms in the late 1960s, lowering the wage floor for those workers with the least bargaining power. Furthermore, this erosion has occurred despite substantial productivity growth over this period. Productivity data for low-wage workers alone are not available, but economy-wide net productivity has nearly doubled since the late 1960s. Thus, even if low-wage workers have experienced productivity growth that is significantly lower than the rate of economy-wide productivity growth, it is likely that minimum-wage workers receive a smaller share of their output than they did half a century ago and that there is room for the minimum wage to be higher in real terms than it was at that time.

Any effort to meaningfully increase the minimum wage beyond the 1968 inflation-adjusted value will require proposals substantially bolder than the increases legislated in the 1990s and 2000s. The Raise the Wage Act of 2015 would have increased the minimum wage to $12.00 by 2020 and indexed it to growth in the median wage thereafter, along with gradually eliminating the subminimum tipped wage. More recently, the Raise the Wage Act of 2017 was introduced, and referred to committee. If passed, it would raise the federal minimum wage gradually to $15.00 per hour by 2024, and index it to the median wage thereafter; it would also gradually phase out the tipped minimum wage. Given inflation expectations, $12 in 2020 would be $11.21 in 2017 dollars, while $15.00 in 2024 would be $12.74 in 2017 dollars (Congressional Budget Office [CBO] 2017; author's calculations). These two proposals would place the minimum wage 13 and 29 percent above its 1968 value in real terms, respectively.

Is 29 percent above the inflation-adjusted 1968 value of the minimum wage an appropriate level for the minimum wage in 2024? One gauge is whether net productivity for low-wage workers will have grown 29 percent between 1968 and 2024. Unfortunately, as mentioned above, data on productivity growth for low-wage workers does not exist. Assuming that economy-wide net productivity growth continues at the same pace of the past 10 years, net productivity will have increased a total of 106 percent between 1968 and 2024, considerably more than the increase in the minimum wage envisioned. Ultimate employment effects would depend on specific productivity paths as well as the substitutability of capital for labor in the work performed by affected workers.

The weight of the academic literature shows that the more-modest increases in the minimum wage in the 1990s and 2000s did not lead to substantial employment declines (Schmitt 2013). That means that policymakers could have implemented larger increases that further benefited low-wage workers. Importantly, researchers should move beyond measuring and describing the effect of higher minimum wages exclusively in terms of employment versus nonemployment, and put more focus on a broader cost-benefit analysis. Similarly, it is important for policymakers to move beyond "no employment effect" as a litmus test for whether a particular minimum wage is good policy. In fact, if there is no employment decline in response to a minimum wage increase, that is evidence that the increase was not as large as it could have been to help boost low-wage earnings.

A distinguishing feature of the low-wage labor market is the high degree of churn of workers into and out of employment. As many as 10 percent of the lowest-paid workers move from employment to nonemployment or from nonemployment to employment each month (Economic Policy Institute analysis of Current Population Survey data). Thus, a measured employment decline as a result of a minimum wage increase does not necessarily mean that any individual worker sees a reduction in annual earnings. Given the high level of churn, an employment decline could instead take the form of more workers working fewer annual hours (e.g., workers spending somewhat more time looking for work in between jobs, or working one job instead of two), but with few if any workers experiencing a decline in annual earnings due to the increased hourly pay they receive. It is important to move beyond a focus on annual employment levels in assessing minimum wage policy and instead conduct a much more comprehensive assessment of the costs and benefits received by low-wage workers.

Due to both the lack of action on the minimum wage at the federal level and the fact that even if there were a strong federal floor, higher-wage states and localities could sustain higher minimum wages, many states and localities have moved independently to increase their minimum wages. These moves can and should continue. Furthermore, given the wide range of state and local minimum wage increases in recent years, more evidence will accumulate on how minimum wage increases affect a range of workers, providing more evidence for a national minimum wage increase.

INCREASE THE OVERTIME SALARY THRESHOLD

A 2016 federal rule would have boosted the pay of many low- and moderate-wage low-level supervisors who have little bargaining power. In particular, the rule would have raised the salary threshold below which workers are automatically eligible for overtime pay from $23,660 to $47,476 per year for a full-year worker, and would have automatically updated the threshold every three years, giving millions of workers either the right to overtime pay when they work more than 40 hours in a week, or a pay increase to the new threshold. The increase in the overtime threshold would have been large, but the size of the increase was entirely a function of how far the threshold had been allowed to erode. In 1975 more than 60 percent of full-time salaried workers were under the salary threshold and hence automatically eligible for overtime, but by 2016 that share had dropped to less than 7 percent. The 2016 overtime rule would have partially restored that share, bringing it to 33 percent. If the threshold had simply been adjusted for inflation since the 1970s, it would be well over $50,000. In other words, the threshold increase in the 2016 rule was in fact quite modest relative to history. However, a district court in Texas determined that the rule was invalid, and the Trump administration Department of Labor has signaled its intent to undertake a new rulemaking process that will likely set the threshold at a much lower level—one that would leave millions of workers unprotected. The overtime salary threshold should be set to *at least* the level of the 2016 rule.

IMPLEMENT FAIR SCHEDULING POLICIES

Unpredictable scheduling can be addressed with policies that include the following principles: (1) a right to request (i.e., giving employees the right to make scheduling requests without retaliation), (2) advance notice of scheduling, and (3) extra compensation for on-call scheduling or other schedule changes that occur without sufficient warning. These kinds of standards provide protections to workers who lack the bargaining power that would otherwise keep employers from assigning unpredictable work hours with no regard to the impact such assignments have on workers. In a similar spirit to time-and-a-half for overtime hours, extra compensation when schedules are changed without reasonable lead time shifts leverage to workers. Extra compensation would give employers skin in the game when they make decisions that add chaos to workers' lives, in addition to helping workers defray the impact with extra compensation. It also increases worker leverage by removing employers' ability to punish workers with bad schedules if they try to organize or bargain for higher wages.

BOOST UNIONIZATION

Federal labor law guarantees most private sector workers' rights to join together to improve their wages and working conditions. However, the decline in unionization in recent decades has shown that, in the face of increased employer aggressiveness in fighting unions, current protections are no longer strong enough to ensure these rights. Policies should be enacted to do the following:

1. *Ensure that workers who want to form a union are able to do so free from employer intimidation and retaliation.* This would include substantial civil penalties for employers who commit unfair labor practices, something the law does not currently provide. It would mean tripling the backpay that employers must pay to workers if they illegally fire them or retaliate against them, regardless of the workers' immigration status. It would mean providing a process to immediately return fired workers to their jobs. It would mean that, as long as a majority of employees had signed authorization cards within the previous 12 months, the National Labor Relations Board would be allowed to issue a bargaining order if it finds that an employer prevented a free and fair election. It would mean providing workers with a private right of action to bring suit to recover monetary damages and attorneys' fees in federal district court (just as workers already can do under other worker protection statutes like the FLSA).
2. *Ensure that when workers join a union they are able to successfully reach a first contract* by creating a mandatory mediation and arbitration process to ensure the parties reach a contract.
3. *Ban right-to-work laws.* Federal law requires that unions provide equal representation to all workers whether or not they are members of the union. Twenty-eight states have passed right-to-

work laws that prohibit unions from charging fees to nonmembers for the costs of these required services. These laws are intended to starve unions by allowing workers to get all the benefits of being in a union without paying for their operations.

SUPPORT JOINT EMPLOYER STANDARDS

Joint employer standards help offset the impact of workplace fissuring and the erosion of worker bargaining power that comes with it. Under the FLSA, the NLRA, and the Occupational Safety and Health Act, employers who share control over working conditions with their contractors are also allowed to share accountability as joint employers for any violations of workers' rights. When two or more businesses codetermine or share control over a worker's terms of employment (e.g., pay, schedules, and job duties), then both (or more) businesses may be considered to be employers of that worker, or joint employers.

Consider a common employment arrangement in which a staffing agency hires a worker and assigns her to work at another firm. The staffing agency determines some of the worker's terms of employment (hiring and wage rate), but the other firm directs her daily tasks and sets her schedule and hours. Because both entities codetermine and share control over the terms and conditions of her employment, both businesses could be found to be joint employers. Joint employers are responsible, both individually and jointly, to employees for compliance with worker protection laws. This is particularly important as workplaces become fissured, which creates an environment that is ripe for the violation of labor standards as the lines of responsibility for complying with standards become murkier. Under joint employment—when both the main firm and the contractor are held responsible when violations occur—there is likely to be much better oversight of working conditions and compliance with labor standards.

Joint employer standards are also crucially important for unions. Without joint employment, firms could retain influence over the terms and conditions of the employment of the contract workers in their firm without being required to bargain with the workers' union as their employer. This would mean that it would be much more difficult for contract workers to bargain over the terms and conditions of their jobs. In other words, without joint employment firms could retain a great deal of control over the conditions of work but avoid the bargaining table by contracting out for services.

ENHANCE PAYCHECK TRANSPARENCY AND MAKE W-2 THE DEFAULT STATUS

Paycheck transparency helps reduce worker misclassification and other violations of labor standards by reducing the noncompliance that results from employers being able to more easily hide violations. It also increases worker leverage by providing employees with necessary documentation to pursue a claim in the event of a violation, which can lead to higher wages. All employers should be required to provide workers with a statement of pay that includes worker status (including whether the worker is an employee or an independent contractor and, if an employee, whether they are exempt or nonexempt from the overtime protections of the FLSA) and clear rationale for their classification, name of legal employer(s), rate of pay, hours worked, and all deductions from pay.

In addition to paycheck transparency, an approach that holds promise for reducing misclassification of workers as independent contractors is to make payroll employment status the default status. Under such a policy, workers would be assumed to be payroll employees, providing them with baseline leverage. Employers who want to assert that a particular worker is an independent contractor would have to provide the worker with an affirmative attestation to that effect (e.g., a signed affidavit or notarized document).

BAN NON-COMPETES EXCEPT IN LIMITED CASES, AND BAN MANDATORY ARBITRATION OF STATUTORY LABOR AND EMPLOYMENT CLAIMS

The use of non-compete agreements should be banned, with very limited carveouts for highly compensated workers who have access to trade secrets. Non-competes are addressed in more detail in a proposal by Matt Marx, as well as a proposal by Alan Krueger and Eric Posner, both of which are part of this volume. In addition, the FLSA should be amended to make it a violation of the Act for an employer to ask an employee to agree to arbitrate statutory labor and employment claims or to waive the latter's right to class actions.

ENSURE THAT IMMIGRANT WORKERS HAVE FULL RIGHTS

To address the loss of bargaining power faced by groups of immigrant workers who have few rights (namely unauthorized immigrants and temporary guestworkers), and the associated loss of bargaining power of other workers who work alongside them, a path to citizenship for undocumented immigrants should be created. In addition, temporary guestworkers should be provided with full job mobility, employment rights, and strong protections against being underpaid.

BOOST ENFORCEMENT AND LEVERAGE PROCUREMENT DOLLARS TO BOOST COMPLIANCE

Of course, labor standards are only as strong as their enforcement. Employers steal billions from workers' paychecks each year by misclassifying workers, paying less than legally mandated minimums, failing to pay for all hours worked, and not paying overtime premiums. All of these actions substantially reduce the economic leverage that labor standards effectively provide to workers. Recent estimates find that minimum wage violations alone are likely on the order of at least $15 billion per year (Cooper and Kroeger 2017). Penalties and remedies for violations of labor standards should be increased, protections against retaliation should be enhanced, and additional resources should be devoted to enforcement efforts and the recovery of wages and damages owed to workers. Efforts to collect and analyze data to identify gaps and strategically target enforcement efforts should also be increased.

Federal procurement is another policy lever that can boost the effectiveness of labor standards. Every year the federal government spends hundreds of billions of dollars on contracts for everything from building interstate highways to serving concessions at national parks. Currently, there is no effective system to ensure that taxpayer dollars are awarded only to contractors who abide by basic labor and employment laws. The federal government awards billions of dollars in contracts to companies that harm workers financially and endanger their health and safety (Warren 2017). This creates a race to the bottom on labor standards by rewarding employers who cut corners with workers' pay and with their health and safety, thereby putting responsible firms at a competitive disadvantage.

One approach to addressing this situation was embodied by the 2016 Fair Pay Safe Workplaces rule, which required that companies vying for federal contracts disclose previous workplace violations and that those violations be considered when awarding new contracts. However, Republicans struck down the rule in early 2017 by deploying the Congressional Review Act (CRA)—a law that gives Congress the power to fast-track the reversal of regulations. New legislation that would accomplish the goals of the Fair Pay Safe Workplaces rule is needed. Importantly, this legislation should go farther than the Fair Pay Safe Workplaces rule to boost workers' economic leverage by also giving preference in awarding contracts to unionized firms.

Questions and Concerns

1. How much would these proposed policies cost?

The solutions presented here to strengthen labor standards, institutions, and norms are intended to enhance worker bargaining power and discourage some of the worst outcomes of weak employee leverage. If implemented, they would help typical workers to strike a better bargain. Apart from the proposal to increase resources for the enforcement of labor standards, the policies proposed here would not meaningfully increase government spending, but would all provide a meaningful boost to workers' wages.

2. If the policies proposed here are not enacted at the federal level, could they be implemented at the state or local level?

An attractive feature of most of the policies presented here is that they can be implemented at the state and local levels, in addition to the federal level. States and localities can increase their minimum wage, increase their overtime threshold, pass fair scheduling laws, adopt joint employer standards, pass paycheck transparency and W-2-as-default-status laws, limit non-compete agreements, boost enforcement, and leverage procurement dollars to boost compliance. The only policies proposed here that require federal action (due to preemption by federal statutes) are those banning mandatory arbitration and boosting unionization.

3. Won't strengthening nonwage standards (e.g., advance notice of schedules) put downward pressure on wages? Similarly, if employers must provide extra compensation for last-minute schedule changes, won't that mean employers will reduce base wages?

With proper planning and worker input, advance notice of scheduling would not have to be significantly costly to employers, and any increased cost could be largely recouped in other ways. For example, advance notice of schedules could lead to reduced turnover, thereby lowering employer costs. To the extent there is any downward pressure on wages, it would underscore the need for the labor standards described here to work in tandem. In particular, strong minimum wage laws and overtime standards would minimize the extent to which employers could reduce wages in response to bolstered nonwage labor standards.

In addition, we can appeal to evidence on overtime protections, since overtime pay for hours worked more than 40 hours in a week is similar in spirit to extra pay if schedules are changed at the last minute. Research on how businesses respond to overtime pay regulations finds that businesses do reduce base wages somewhat in response to overtime protections, but not enough to fully offset the increased pay from the extra compensation. Thus, workers end up with greater take-home pay on net when overtime protections are in place (Barkume 2010; Trejo 1991). Assuming similar results obtain for extra compensation for last-minute schedule changes, this implies that while there might be some downward adjustment of base wages, workers would still be better off with strong fair scheduling laws.

Conclusion

Rising inequality and ongoing wage stagnation for the broad middle class has afflicted the U.S. labor market for most of the past four decades. While there is no one cause for these trends, declining economic leverage, or bargaining power, of low- and moderate-wage workers is a central part of the challenge. In this paper I have focused on one broad category of solutions: strengthening labor standards, institutions, and norms. These are not the only policies needed to improve wage growth. Nevertheless, the policies described here represent important steps toward closing the productivity–pay gap and boosting typical workers' wages.

A final consideration is important when implementing these policies: even if all of the proposals described here were to be implemented, employer practices would almost surely continue to evolve in new and creative ways to shift bargaining power away from workers and to increase executive pay and profits. An ongoing commitment to new policymaking that counterbalances these efforts is a vital part of maintaining worker bargaining power.

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Shierholz was an economist at EPI from 2007 to 2014 and she rejoined EPI in 2017. From 2014 to 2017, she served under the Obama administration as chief economist at the Department of Labor. There she worked with Labor Secretary Thomas Perez and other DOL leaders on developing and executing initiatives to boost workers' rights, their wages and benefits, protect savings, and increase workplace safety. She also provided economic analysis on the wages of jobs being added in the recovery, brought heightened attention to the need for paid family leave, and fought for new regulations guaranteeing overtime pay to millions of workers and paid sick leave for over a million workers on federal contracts.

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Acknowledgments

I am grateful to Jay Shambaugh, Ryan Nunn, and Becca Portman for their exceptionally useful comments. I would also like to thank the participants at the authors' conference at the Brookings Institution for insightful feedback on an earlier draft.

Endnotes

1. Net productivity is output of goods and services less depreciation per hour worked. Since depreciation is essentially the output that must be dedicated to simply preventing erosion of the nation's capital stock, it cannot be passed on to either workers' paychecks or corporate profits. It is thus excluded from productivity in this context.
2. In fact, rising inequality in compensation is not the only way the growing gap between pay and productivity plays out on the ground. Another factor is the decline in labor's share of income—the share of income in the economy received by workers in wages and benefits, rather than by owners of capital. For more on this, see Bivens and Mishel (2015).
3. The tipped minimum wage was last increased in 1991. Federal law and all but seven states allow employers to pay a subminimum wage to workers who earn tips. States' subminimum wages for tipped workers vary, but almost all are well below the full federal minimum wage of $7.25 per hour. Employers are required to ensure that workers' wages equal at least the full minimum wage after tips are included, but that does not always happen (Cooper and Kroeger 2017).

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Highlights

In this paper, Heidi Shierholz of the Economic Policy Institute focuses on the erosion of labor standards, institutions, and norms that has reduced the bargaining power of low- and moderate-wage workers. She proposes a suite of remedies to help strengthen worker bargaining power, representing an important step toward closing the productivity–pay gap and boosting typical workers' wages.

The Proposals

Increase the minimum wage and eliminate the tipped minimum wage.

Increase the overtime salary threshold and automatically readjust for inflation on a regular basis.

Implement fair scheduling policies, giving employees the right to make scheduling requests without retaliation, receive advance notice of scheduling, and earn extra compensation for on-call scheduling or other last-minute schedule changes.

Boost unionization by implementing civil penalties for employer retaliation, creating a mandatory mediation and arbitration process, and banning right-to-work laws.

Ensure enforcement of labor standards by supporting joint employer standards, increasing penalties for violations, and leveraging federal procurement dollars to boost compliance.

Enhance paycheck transparency and reduce the misclassification of workers by requiring employers to provide clear documentation of pay and worker status and making payroll employment the default status for all workers.

Restrict the use of non-compete agreements and mandatory arbitration in order to increase workers' leverage on the job market.

Ensure that immigrant workers have full rights by creating a path to citizenship for undocumented immigrants and offering full employment rights to temporary guestworkers.

Benefits

These policies would strengthen worker bargaining power and boost wages for low- and middle-income workers. As employer practices continue to evolve in new and creative ways to shift bargaining power away from workers, an ongoing commitment to new policymaking that counterbalances these efforts is a vital part of maintaining worker bargaining power.

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