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Government Paves the Way

A decent work agenda for the Obama administration.

Paul Sonn and Annette Bernhardt | *September 21, 2009*

The trends described in this special report paint a picture of an economy that was in trouble long before the current recession took hold -- at least from the standpoint of the American worker. Whether their distress is measured by stagnant wages or contingent jobs or violations of core labor laws, today's workers face a daunting labor market likely to provide them with fewer opportunities than their parents had.

Unless, of course, we do something about it. It took years to dismantle the good-jobs framework that this country tried (however imperfectly) to put together from the 1930s until the 1970s, and it will take years to build it back up. But someone needs to pave the way, and we nominate government for the job.

Business may have once engaged in a form of self-regulation during the heyday of managerial capitalism, but those days are long gone. Unions are struggling just to maintain their current share of the work force and cannot carry the burden alone. Community organizing has proved surprisingly robust (witness the living-wage movement and immigrant worker centers), but the larger promise of sustained civic engagement in things economic has yet to materialize.

What we need is more scale and power, and government has both. Government's levers on the private sector are plentiful -- but underused. Public money touches millions of private-sector jobs, whether by purchasing goods and services for the government or by funding the public goods that make our economy run -- everything from roads and bridges and the new green economy, to health care, education, and social services. Tens of millions more jobs are touched by employment and labor laws, and government's willingness to enforce them.

That means there's potentially an entire toolbox of policies that flow from government contracts and funding and from regulatory and enforcement authority that we should be

activating. Though these tools have sat idle for the past eight years, we can revive them to restore an economy based on decent work.

A laborer paving an Atlanta highway, a home aide caring for a Detroit senior, and a cafeteria worker serving meals at a Tucson veterans' hospital share one thing in common: All three work in federally funded jobs that pay \$10 an hour or less with limited benefits. They are examples of the millions of jobs across our economy financed by the roughly \$1 trillion that the federal government spends each year on the combination of federal contracting and grant-in-aid programs to the states.

The federal government's vast and diverse economic footprint gives it a powerful tool for promoting a decent work agenda. Already, living-wage laws and community-benefits agreements in states and cities across the country have established the principle that employers that seek government funding should in return be asked to pay decent wages and benefits. If the Obama administration is to achieve its goal of rebuilding middle-class jobs, it should do the same at the federal level. Promoting good jobs not only helps working families, it provides one of the most sustained forms of economic stimulus, as workers spend their higher wages -- not just once but paycheck after paycheck.

Prevailing Wage Reforms. A decent work agenda should start with modernizing the prevailing wage laws: the 1931 Davis-Bacon Act for construction, the 1936 Walsh-Healey Act for goods, and the 1965 Service Contract Act for services. On paper, all three laws require that federal contractors mirror the wages and benefits that are provided by the better-paying employers operating in their industry and labor market. However, the prevailing wage laws are currently falling well short of that goal. For example, Reagan-era regulations that watered down the wage-setting methodology under Davis-Bacon need to be reversed. Exemptions that exclude a range of service jobs from the Service Contract Act's coverage need to be repealed. And Walsh-Healey's prevailing wages for contractors that sell goods to the government -- not implemented since the 1960s -- should be resuscitated to promote good jobs in industries as diverse as the meatpacking plants that supply veterans' hospitals and the garment factories that produce U.S. military uniforms.

Responsible Contractor Requirements. Prevailing wage laws alone can do little to promote good jobs in industries and regions that are overwhelmingly low-wage or that have little union presence. The federal government should therefore turn to a second set of tools: responsible contracting reforms and living-wage policies of the kind that states and cities have pioneered over the past decade. These policies employ rigorous screening to weed out violators of minimum wage, proper classification of regular workers, overtime, workers' compensation, and tax laws. They also have requirements or incentives for employers to provide decent wages, affordable health insurance, and other benefits like paid sick leave. States across the country have found that these reforms not only create better jobs but also attract a better pool of contractors, resulting in better highways and bridges and more reliable security and maintenance services.

Wage Standards in Federal Grants-in-Aid. The policy framework for promoting good jobs through federal grant programs is far less developed than for federal contracting -- even though grant-in-aid programs under which federal funds flow to states and cities touch broad swaths of our economy. Prevailing wage requirements "flow down" to state and local construction jobs financed with federal funds. But there are no corresponding job standards for service jobs created at the state and local levels with federal dollars. As a result, many federal grant-in-aid programs and tax incentives are financing the creation of poverty-wage jobs across the nation. Women bear the brunt of this omission because they are disproportionately represented in the service sector.

One solution is to ensure that the Service Contract Act's prevailing wage and benefits standards are applied to state and local projects receiving federal funds. A good first candidate would be the proposed Rubbish to Renewables Act, which would create new federal subsidies to finance (among other things) modern recycling centers. Without standards, many recycling jobs are highly casualized, paying \$9 or \$10 per hour with no benefits. Service Contract Act standards would boost pay to \$19.12 in Los Angeles and \$14.96 in Houston, for example.

Federally Funded Human-Service Work. By far the industries in which federal grant programs are creating the largest number of substandard jobs are health care and human services. Through Medicaid, for example, Washington finances much of the nation's home health-care services. Every day, more than a million home-care workers in the U.S. (the overwhelming majority of them women, immigrants, and people of color) provide the vital care that allows seniors and persons with disabilities to live in their own homes with dignity when they can no longer care for themselves. Home care is one of the nation's fastest-growing fields but also one of the lowest paying, trapping the workers in poverty and causing serious labor shortages and high turnover (which in turn undermines the quality of services). A similar story holds for day-care jobs subsidized by the Child Care and Development Block Grant, and school cafeteria positions financed by the National School Lunch Program.

Here, prevailing wage standards will not help because in these jobs virtually all employers pay poverty wages. Instead, the federal government needs to establish living-wage and benefits standards to upgrade these industries. Doing so will entail some cost -- but the cost of continuing to operate these programs on poverty wages is simply too high to ignore.

Reversing Outsourcing. Finally, a decent work agenda should include re-evaluating the scale of federal outsourcing and bringing back "in house" many functions that today are performed by federal contractors (as the Obama administration has already begun to do). Not only is direct federal employment the most dependable source of good jobs, but experience suggests that many functions that were outsourced during the Bush years (when federal contracting doubled in scale) can more accountably and efficiently be performed by federal employees.

Of all the policies needed to rebuild an economy based on decent work, none is more straightforward than having government simply enforce the laws that are on the books. Last October, a federal judge in New York ordered the Saigon Grill restaurant chain to pay an astonishing \$4.6 million to its delivery workers, revealing a grim set of business practices that had gone unchecked for years. The delivery men earned as little as \$1.60 an hour, for working up to 13 hours a day, six or seven days a week. Illegal deductions were taken from their pay, in the form of fines and kickbacks. When they tried to organize, they were summarily fired.

The scale of the wage theft in this case is astonishing -- some workers were owed as much as \$328,000 -- but the practice itself is not an outlier. As the other articles in this special report have described, growing numbers of workers are not being paid the minimum wage or overtime, health and safety violations are on the rise in industries like residential construction, and employers are misclassifying their employees as independent contractors or outsourcing work to unscrupulous contractors.

More Funding for Investigators. Reactivating these agencies will require that we restore funding levels to increase the number of investigators on the ground. By our calculations, between 1980 and 2007, the number of inspectors enforcing federal minimum-wage and overtime laws declined by 31 percent and the number of enforcement actions fell by 61 percent. By contrast, the labor force grew by 52 percent during this same time period. Similarly, the AFL-CIO reports that the budget of the Occupational Safety and Health Administration (OSHA) has been cut by \$25 million since 2001; at its current staffing and inspection levels, it would take the agency 133 years to inspect each workplace under its jurisdiction just once.

Robust Enforcement of Workplace Laws. But numbers alone aren't enough; *how* agencies enforce the law needs a complete overhaul as well. A good illustration here is the Labor Department, which can become much more aggressive in enforcing minimum-wage and overtime laws, simply by changing the way it implements existing laws.

First, the Labor Department should move toward proactive, "investigation driven" enforcement in low-wage industries, rather than waiting for complaints to come in. This means taking the initiative, identifying industries where violations are systemic, conducting strategic and repeated workplace audits, and cracking down on employers who misclassify their workers. Employers must be held responsible for their workers -- especially in cases where subcontracting is being used as an evasion strategy. The goal is to send industry-wide signals that the government will pursue violations and that there is a tangible likelihood of inspection.

Second, the department needs to increase its reach and effectiveness by partnering with immigrant worker centers, unions, service providers, and community groups, as well as responsible employers that understand the need to ensure full compliance in their industry. Government alone will never have enough resources to monitor every workplace in the country; partnerships can provide the vital "ears on the ground" to identify where workplace violations are most concentrated.

Third, the Labor Department needs to better protect workers who file complaints, especially those who are vulnerable because of their immigration status. This will mean re-establishing a strong firewall between workplace and immigration inspections, so that information gathered during a wage-and-hour case, for example, is kept confidential and not shared with immigration authorities. Otherwise, undocumented workers will be driven further underground, too scared to come forward and assert their right to basic workplace protections like the minimum wage. And when workers aren't able to complain (regardless of whether they're born in the U.S. or abroad), labor standards suffer.

Leveraging Regulatory Powers. The Labor Department can also strengthen workplace standards by issuing or clarifying regulations pursuant to authority that Congress has already given it. For example, the nation's home-care workers not only receive poverty wages but are excluded from even basic minimum wage and overtime protections under an outdated exemption. The Labor Department can end this improper and unfair exclusion by reissuing a regulation that was proposed by the Clinton administration (but withdrawn by the Bush administration) clarifying that most home-care workers are indeed covered.

By implementing these and other strategies to fully harness the power of federal regulatory agencies (the Department of Labor, OSHA, the Equal Employment Opportunity Commission), the Obama administration can make giant strides in re-establishing decent work as the baseline standard in our labor market. On the spectrum of strategies to regularize work, this really is low-hanging fruit.

Stronger Laws. Simply doing a better job at enforcement, however, won't be enough; the laws have to be strengthened as well. Weak standards in employment and labor law send the wrong signal, inviting low-road business strategies to cut labor costs. When the bar is set too low, the incentive is to ratchet down to it. Raising the minimum wage, updating health and safety standards, expanding overtime coverage, and strengthening the right of workers to organize -- all are key improvements that will raise standards in the workplace and improve the competitive position of employers who play by the rules.

Even during the current recession, many employers are showing that it is possible to compete using a business model based on providing stable employment and decent wages. Government policies need to reinforce their good behavior, not undermine it. In cities and states across the country, innovative policies are being developed every day to harness public resources to create and sustain good jobs. And in low-wage service industries, unions and community groups are organizing workers and winning important policy changes (showing that there is nothing inherently contingent or low-wage about these jobs).

It is time to lift these lessons to the federal policy arena and for the administration to lead with a strong and resounding vision for decent work -- and then to put it into action. This

is not just feel-good public policy (though many workers will feel better as a result of it). It's about the concrete costs of workers being misclassified as independent contractors, robbing federal and state governments of billions of dollars in tax revenues. It's about the very real pressure that responsible employers feel when unscrupulous employers break the law and set off a race to the bottom. And it's about how to use public dollars wisely and efficiently to create the jobs our communities need. The tools stand ready: job-quality standards on government contracts and program funding as well as robust labor laws that are fully enforced. All that remains is to use them.



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