



# NELP

National Employment Law Project

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## REBUILDING A GOOD JOBS ECONOMY: A Blueprint for Recovery and Reform

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Even before the latest financial crisis set off alarm bells about the health of our economy, America's workers were in deep trouble. This year's surging unemployment is only the latest symptom of a profound deterioration in the labor market over the past thirty years, in which the foundations of opportunity—living wages, job stability and upward mobility—have been dismantled, leaving millions of workers behind. The result has strained our families, our communities, and our nation's economic health.

The next administration and Congress inherit an economy that is struggling on many fronts and that demands both immediate and long-term solutions to help working families. Front and center is the urgent need to put a brake on job loss and to support our unemployed workers. But at the same time, we must seize the moment to lay the groundwork for rebuilding a good jobs economy: if America's workers succeed, America's economy will as well.

In this blueprint, the National Employment Law Project (NELP) sets out a four-pronged strategy to help inform priority-setting by the new administration and Congress on workplace and economic policy. Developed through collaborations with local, state and national partners, the blueprint lays out concrete and affordable steps that respond to the immediate unemployment crisis while at the same time putting into place a policy framework to restore opportunity and drive growth.

The *Blueprint for Recovery and Reform* calls on the next administration and Congress to:

1. **Strengthen and modernize the safety net** for unemployed and dislocated workers to help them navigate today's turbulent economy.
  2. **Enforce core workplace standards** to guarantee workers the fair pay they are due, capture needed public revenues, and level the playing field for law-abiding employers.
  3. **Restore strong minimum wage and overtime protections** to lift working families out of poverty.
  4. **Focus public policy and public resources on creating good jobs** and ensure that everyone in our society—including immigrants, women and people of color—has access to them.
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## **AMERICA'S WORKERS: EARLY CASUALTIES OF THE ECONOMIC CRISIS**

America's credit and financial crises have galvanized national attention and prompted quick and dramatic action by policymakers, as well they should. But long before these crises unfolded, working families were already struggling to survive in a brave new world of stagnant wages, disappearing benefits, no job security and few opportunities for mobility. At the start of the 21st century, American workers face a daunting labor market that—absent coherent and sustained policy intervention—will very likely provide them fewer career opportunities and less economic security than their parents enjoyed.

For the past three decades, economic restructuring and the failure of public policy to mediate it have combined to undermine the promise of economic opportunity. Even though workers are more productive now than ever, a shrinking share of corporate profits is going to their wages. Despite working harder and for longer hours, their upward mobility is stunted. Job instability has become a fact of life in many occupations, even as safety net programs have weakened. And in an emerging trend, core workplace standards are increasingly fragile, in part because of declining resources for enforcement.

Things have only gotten worse this year. Still reeling from the 2001 recession and the protracted jobless recovery, the nation has lost more than one million jobs so far in 2008. Unemployment—especially long-term unemployment—has jumped dramatically, and more workers are forced to work part-time because they are not able to get full-time hours. And real wages have fallen with a decline in work hours combined with skyrocketing costs for basics like food and energy.

In the last year alone, we have lost 517,000 well-paying manufacturing jobs (with typical hourly wages of \$17.85), 508,000 construction jobs (with typical hourly wages of \$22.14) and 300,000 business and professional services jobs (\$21.50 typical hourly wages). The loss of “good” jobs—those paying at least \$17 per hour, with employer-provided health care and retirement coverage—has been far steeper during the current business cycle than during comparable periods in the 1980's and 1990's.

Equally important, these harsh cyclical trends are playing out against a labor market that for several decades had already experienced a great hollowing out of middle-class jobs. Since the end of 2000, the nation's manufacturing sector, once the backbone of our economy and the incubator of our middle class, has shed almost four million jobs. For workers without a four-year college degree—still the large majority of Americans—the biggest source of jobs is now the low-wage service sector.

Every day, tens of millions of workers labor as hotel room cleaners, dishwashers, retail sales workers, home health aides, taxi drivers, dry cleaners, cafeteria servers, mail room clerks, child care workers, and other service providers. Starting wages are low and usually stay low, benefits are rare, and the opportunities for on-the-job training and promotion are minimal. In many of these industries, growing numbers of unscrupulous employers violate our core employment and labor laws, pay less than the

minimum wage, fail to pay overtime, and subject their employees to unsafe working conditions. All workers are affected by these practices, especially women, immigrants and workers of color. And all signs are that these trends will only continue. According to the Bureau of Labor Statistics, eight of the top ten occupations projected to generate the most jobs by 2016 are low-wage service jobs.

Continuing on this path of rising inequality is not inevitable. In industries across our economy, high-road employers are showing that it is possible to invest in workers and compete with a high-wage, high-productivity business model. 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 and sectors rife with manipulative work arrangements, unions and community-based worker centers are organizing workers and winning important policy changes (showing that there is nothing inherently low-wage about these jobs). It is time to bring these lessons to the federal policy arena.

History tells us that it is precisely in times of economic crisis that we can and must imagine a new social contract that values working families as much as growth and profits. It was on the heels of the Great Depression that our country put into place the core policy and legal anchors—the Fair Labor Standards Act, the Social Security Act and the National Labor Relations Act—that formed the basis for several decades of strong economic growth and shared prosperity.

In short, we see both challenges and opportunities for the next administration to put America's working families back on track. To help inform priority-setting, NELP has developed a *Blueprint for Recovery and Reform* that lays out concrete, affordable and, in some instances, revenue-raising steps that the new administration and Congress can take to restore opportunity and drive growth. Developed through our collaborations with local, state and national partners that have hands-on experience in serving workers and shaping policy reform, the blueprint focuses on measures that will bring economic security to working families, while at the same time laying the groundwork for rebuilding a good jobs economy.

## **A BLUEPRINT FOR RECOVERY AND REFORM: FOUR STRATEGIES TO RESTORE OPPORTUNITY AND DRIVE GROWTH**

The urgent economic crises facing America's workers demand equally urgent responses by the President, Congress, and the agency that oversees much of workplace policy, the U.S. Department of Labor (DOL). NELP proposes the following four strategies to accelerate recovery and put into place a policy framework to restore opportunity and drive growth: strengthen and modernize the unemployment safety net; enforce core standards in the workplace; restore strong minimum wage and overtime protections; and focus public policy and public resources on creating good jobs.

Each policy recommendation that follows is accompanied by a timeline for action: **Near term, 2009,** and **2009/2010.**

## 1

**STRENGTHEN AND MODERNIZE THE UNEMPLOYMENT SAFETY NET**

For more than 70 years, America's unemployment insurance (UI) program has served as the first line of defense to help prevent financial hardship for millions of families of unemployed workers and to stabilize and stimulate the economy during downturns. Economic research has established that every dollar in unemployment benefits generates \$2.15 in economic growth. UI benefits play a substantial role in preserving labor standards and promoting economic opportunity.

Despite its indispensable role, the program has long been neglected by policy makers, seriously undermining its effectiveness and reach. For example, only 37 percent of the unemployed receive benefits today, a significant decline since the 1950's. Women, low-wage and part-time workers are especially likely to fall through the system's cracks, with low-wage workers twice as likely as higher wage earners to become unemployed, but only one-third as likely to collect benefits. And the average unemployment check is now just \$297 a week, replacing only 35 percent of the average worker's weekly wage. To make matters worse, states have failed to maintain responsible financing of their programs, threatening their ability to meet demands during downturns, at the same time that the federal government is itself providing fewer direct services to the unemployed.

Workers who lose their jobs due to trade have access to a richer program of benefits and services than the regular UI program offers. The Trade Adjustment Assistance Act (TAA) provides for up to two years of training and unemployment benefits, along with a health coverage tax credit (HCTC) that pays for up to 65 percent of the costs of continuing health care. But like UI, the TAA program falls far short of its promise. Access to the program is constrained by outdated eligibility requirements, the funding for retraining is severely limited by congressional caps, and even with the HCTC, health costs are prohibitive for most displaced workers. Furthermore, TAA is marked by serious implementation challenges for states that operate the federally-funded program.

**THE PRESIDENT AND CONGRESS SHOULD:****■ Expand the federal emergency unemployment compensation program to provide more assistance to more long-term jobless workers****Near term**

- The federal emergency unemployment compensation (EUC) program serves as a crucial safety net during recessions, providing additional benefits to millions of jobless workers who have exhausted their regular benefits but are still without work. It also functions as an economic stimulus, providing a vital boost to communities and states hit hardest by the downturn.
- In June 2008, Washington approved an initial 13 weeks of extended benefits for long-term jobless workers. Since then, the economy has only worsened, and experts predict the unemployment rate will rise to at least 8 percent next year, with job losses averaging 200,000 each month through the middle of 2009.

- To respond to the deepening recession, the EUC program should be expanded to provide at least 20 weeks of benefits to long-term jobless workers in all states, and 33 weeks to workers in high unemployment states. In addition, Congress should extend the program through December 2009, and suspend federal taxation of UI benefits, to provide stability during this deeply uncertain time.

■ **Enact the Unemployment Insurance Modernization Act to fill serious coverage gaps in the program and increase funding for neglected front-line state services**

*Near term*

- Outdated eligibility rules in the UI program currently shut out millions of workers from unemployment benefits, especially groups like women, low-wage and part-time workers.
- The Unemployment Insurance Modernization Act (UIMA) would provide incentive grants to states to close these coverage gaps, resulting in a fairer and more effective UI program that reaches significantly more workers. Specifically, the bill would use \$7 billion in available UI revenues for incentive grants to reward states that fill their coverage gaps.
- The bill also sets aside \$500 million that would help all states provide much-needed services to help unemployed workers access benefits and find new work.

■ **Ensure responsible federal and state financing of the unemployment insurance system**

*2009/2010*

- The UI system cannot provide adequate benefits to workers, particularly during recessions, unless states maintain robust UI trust fund reserves. But because many states have slashed their UI taxes in recent years, state UI trust fund reserves are in a far weaker position now than prior to the 2001 recession.
- Congress should increase the minimum federal “taxable wage base” (TWB), which has been frozen at \$7,000 per worker since 1983. Raising the federal wage base will propel increases in the states, strengthening trust fund solvency overall and better positioning state programs to meet the dual goals of helping jobless workers and stabilizing and stimulating economies.
- To protect the national interest in responsible financing of the unemployment program, the federal government should adopt new standards to evaluate the solvency of state trust funds and create incentive measures to ensure that states raise sufficient revenue in good times to pay benefits during recessions.

■ **Reauthorize and improve the Trade Adjustment Assistance Act to better respond to job loss and economic dislocation resulting from globalization**

**Near term**

- Manufacturing employment in the U.S. has shrunk by 23 percent since December 2000. Huge losses in auto, steel, apparel and other industries have devastated families, communities and state economies. At the same time, rapid technological advances have rendered the service sector vulnerable to offshoring as well, potentially impacting many millions of jobs.
- To help workers and communities survive job loss and transition to new employment, the Trade Adjustment Assistance Act (TAA) should be expanded to increase training funds during major economic downturns, cover service workers and public sector employees whose jobs are moved offshore, and make the health care tax credit more affordable for displaced workers by lowering their premium costs.
- Washington must also renew America's commitment to a vibrant manufacturing sector that creates good jobs, supports families and strengthens our nation. The first step is a thorough evaluation of the crisis, followed by a concrete action plan by the federal government to put the sector on the road to growth and recovery. The plan should include substantial resources and coordination at the federal level to reclaim prosperity for the nation's heartland.

■ **Reform the federal Disaster Unemployment Assistance program to respond more effectively to the next federal disaster**

**2009/2010**

- Disasters such as the 9/11 attacks and the Gulf Coast hurricanes caused massive job loss and economic upheaval. Disaster Unemployment Assistance (DUA) is meant to provide a safety net for workers and communities affected by such crises. But many workers fall through the cracks because of outdated state and federal rules that unreasonably limit coverage and benefits.
- The DUA program should be reformed to increase benefit levels and relieve the states from funding unemployment benefits for workers who lose their jobs as a result of a disaster.

## THE DEPARTMENT OF LABOR SHOULD:

- Ensure that employers pay their fair share of UI taxes, and help states provide the essential services required for workers to access UI benefits** | *2009*
  - The DOL should target abusive tactics by employers attempting to sidestep their UI obligations, such as illegal misclassification of employees as independent contractors, which rob the program of hundreds of millions of dollars in revenue every year.
  - The DOL should ensure that states promptly pay unemployment benefits and provide multilingual access in their application procedures.
  - The DOL should promote state reforms that expand UI coverage, such as policies to increase coverage among low-wage workers, outreach programs to encourage more workers to apply for benefits, and technical assistance and administrative funding to help states implement reforms.
  - The DOL should review the DUA program for its effectiveness, revise restrictive interpretations and regulations limiting DUA coverage, and integrate federal DUA operation into monitoring and oversight of state programs.
  - The DOL should actively monitor actions by states that undermine the solvency of their UI trust funds, develop federal and state recommendations for achieving solvency, and help states identify and remedy funding shortfalls.
  - The DOL should evaluate and improve states' efforts to move unemployed workers into living wage jobs with benefits by enforcing federal standards that preclude the states from denying UI and DUA benefits for workers who refuse substandard work.
  
- Reform administration of the TAA program to maximize access to benefits** | *Near term*
  - To ensure that all eligible workers receive their full TAA benefits, the DOL should prioritize substantive education and training for workers who qualify for the program; allocate annual funding to states based on projected need as well as past usage; issue far more timely and accurate certification decisions; and consider reforming the rule that unfairly recoups TAA overpayments from workers who did not defraud the program.
  
- Reform federal policies to ensure that all states adopt “layoff-aversion” programs and “rapid response” systems to reach workers and their communities well in advance of anticipated layoffs** | *Near term*

## 2 ENFORCE CORE STANDARDS IN THE WORKPLACE

Across the country, growing numbers of employers are violating our nation's core workplace standards by not paying the minimum wage or overtime to their workers. In low-wage industries ranging from construction and building services to restaurants and home health care, these practices are driving down standards throughout the labor market, hurting workers and responsible employers alike, and costing federal and state governments billions of dollars in tax revenues.

One driver of this trend is the changing organization of work in the United States, and the failure of our enforcement systems to respond. Employers have contracted-out a wide range of functions to low-cost vendors, seeking to cut wages and evade legal responsibility for their workers. Firms and their subcontractors also misclassify employees as independent contractors in an effort to sidestep workplace protections. The vulnerability of new immigrant workers further strengthens the hand of employers willing to exploit workers' fears of retaliation if they stand up for their rights.

Compounding these trends is the failure of the DOL to vigorously enforce our nation's wage and hour laws, documented this year by two Government Accountability Office reports. Most of our recommendations in this section focus on relatively straightforward reforms that are well within the DOL's existing powers—many of which were implemented by the agency in the later Clinton years but curtailed by the Bush Administration. Returning the DOL to its mission of safeguarding workplace standards is one of the most important steps a new administration can take to reverse the race to the bottom that is hurting working families and costing our economy billions of dollars in lost tax and payroll revenues.

### THE DEPARTMENT OF LABOR SHOULD:

- Proactively target and investigate high-violation industries to send a strong signal across the labor market that employment and labor laws will be vigorously enforced** 2009
  - Our complaint-driven system hinders adequate enforcement in low-road industries, where immigrants and low-wage workers are highly vulnerable to employer intimidation. Affirmatively targeting jobs with persistent violations, without relying solely on worker complaints, will reduce pressure on workers and encourage employer compliance.
  
- Consult regularly with community groups, worker centers, unions and other stakeholders to get their help in identifying high-violation industries, and partner with them in efforts to serve underpaid workers** 2009
  - The DOL should create a community liaison office for ongoing consultation with community representatives. Doing so will restore agency credibility and more effectively leverage its limited resources. New York State created such an office, with impressive results.

- **Hold subcontracting employers and those that misclassify employees as independent contractors responsible for violations of workplace standards** | *Near term*

  - The DOL should exercise its “hot goods” power to seize goods produced by subcontractors under substandard working conditions, and go after “joint employers” in subcontracting schemes that result in worker underpayment.
  - The DOL should prioritize scrutiny of employers that use independent contractors, require recordkeeping on worker classification, and seek full damages against companies found to misclassify their employees.
  - The DOL should share data with the Internal Revenue Service (IRS) and appropriate state agencies to maximize efforts to discourage independent contractor misclassification.
  
- **Seek the full remedies available under law, including liquidated monetary damages, and pursue aggressive injunctive relief when complaining workers are fired or subjected to retaliation** | *Near term*
  
- **Protect all workers who file complaints, particularly those vulnerable to retaliation due to their immigration status** | *Near term*

  - The DOL should protect workers’ identities when they file complaints and as long as possible during the agency’s investigation; it should also permit employee representatives to file complaints.
  - The DOL should resurrect its Memorandum of Understanding with the Bureau of Immigration and Customs Enforcement (ICE) to ensure that there is a complete firewall between labor standards inspections and immigration investigations. In addition, the DOL should encourage ICE to strengthen its own policies and procedures and renew its commitment to the firewall. This means stopping ICE worksite enforcement actions wherever there are labor disputes of any kind.
  - The DOL should provide sufficient interpretation and translation for non-English speaking workers seeking to assert their rights.
  
- **Keep detailed data on incoming complaints and their resolution, and report on results** | *2009*

  - The DOL should significantly improve its recordkeeping of the details of all complaints and their resolution, including independent contractor misclassification claims, and report this information at least annually.

■ **Promote private enforcement of wage and hour laws by partnering with private attorneys and groups with the capacity to bring litigation** | **Near term**

- In the past, DOL regional administrators have recognized referral panels of private attorneys willing to take worker wage and hour cases that the DOL cannot handle. This approach leverages scarce public resources and should be reinstated.

**THE PRESIDENT AND CONGRESS SHOULD:**

■ **Address independent contractor abuses that cost our economy billions annually and exclude workers from the most basic job protections** | **2009**

- As proposed by the Employee Misclassification Prevention Act bills filed in the Senate and the House, the Fair Labor Standards Act (FLSA) should be amended to require recordkeeping of independent contractors' hours worked and pay received, notice to workers of their employment status and its consequences, additional damages for erroneous classification of employees as independent contractors, and coordination with state agencies.
- The overly-expansive "safe harbor" protections in the Internal Revenue Code that protect employers that misclassify their employees as independent contractors should be narrowed, as contemplated by the Independent Contractor Proper Classification Act introduced in the Senate. Current law bars the IRS from requiring employers to fix their independent contractor classification for future years, even where the IRS has found that the classification is wrong. This affords employers an undeserved, permanent multi-million-dollar payroll tax break based on classifications that have already been ruled erroneous.

■ **Restore funding levels for the Wage & Hour Division to greatly increase the number of investigators and adequately support enforcement needs** | **2009**

- Federal resources for enforcing wage and hour laws have declined significantly over the past several decades. Between 1980 and 2007, the number of wage and hour inspectors declined by 31 percent (from 1,059 to 732) and the number of enforcement actions fell by 61 percent (from 76,452 to 29,584). By contrast, the civilian labor force grew by 52 percent during this same time period.
- To ensure adequate enforcement of core workplace standards, the DOL should restore its inspection capacity to match its level in 1980, adjusted for the growth in the civilian workforce. This would mean a staffing level of 1,610 inspectors reached over several years, and adjusted annually thereafter to match the growth in the labor force.

- **Enhance FLSA remedies and make them non-discretionary in order to send a clear message that failing to pay workers what they are due has significant costs** | 2009/2010

  - Congress should amend the FLSA to provide for additional nondiscretionary damages equal to two times the amount due for unpaid wages. The DOL can but does not currently seek *any* additional damages, undermining the deterrent effect of the statute’s remedial scheme.
  - Congress should amend the FLSA to permit individual workers to seek injunctive relief for minimum wage and overtime violations. Currently, only the DOL can seek injunctive relief, leaving the majority of enforcement actions without ongoing monitoring.
  
- **Remove the ban on class actions under the FLSA, to enable low-wage workers fearful of retaliation to pursue fair pay as a group** | 2009/2010

  - Employers caught cheating their workers on wages frequently end up repaying only a small number of them, since most workers are too fearful to bring a claim on their own or join in a collective action.
  - Congress should amend the FLSA to permit employee representatives to bring class claims on behalf of all workers with wage and hour violations at a given workplace, as permitted in the majority of states and in virtually all other areas of federal law.
  
- **Ensure that everyone who works in America—immigrant and non-immigrant alike— receives the full protection of all labor laws, so that standards are upheld across the labor market** | 2009/2010

  - Congress should regulate the international labor brokers that supply guestworkers by outlawing recruitment fees, requiring licensing, bonding and written disclosures of terms and conditions of employment, and making certain that the employers who use brokers are jointly liable for recruitment abuses.
  - Congress should establish that all workers are entitled to full remedies for violations of their labor rights and full benefits under workers’ compensation laws, regardless of immigration status.
  - Congress should strengthen whistleblower protections for immigrant victims of labor law violations, so that workers with valid claims are able to remain in the United States and present them.

# 3

## RESTORE STRONG MINIMUM WAGE AND OVERTIME PROTECTIONS

A strong minimum wage is essential for rebuilding the base of family-supporting jobs in our economy—and especially for improving pay in the low-wage service industries in which millions of Americans today spend their careers. It also generates economic growth, as working families spend their wages on basic necessities in their communities.

But Washington has neglected the minimum wage for decades, fueling the spread of working poverty. The long-overdue federal minimum wage increase in 2007 was just a first step. Even after it fully phases in by 2009, the real purchasing power of the federal minimum wage will still be nearly 30 percent less than it was 40 years ago. And working families are losing ground quickly as rising food and energy costs are cutting sharply into their already precarious standard of living.

At the same time, outdated and unfair loopholes continue to exclude low-wage workers in fast-growing industries like restaurants and home healthcare from adequate minimum wage protections. And overtime protections, which ensure fair pay for employees who must work long hours, are eroding in the same way because they have not been updated for inflation.

### THE PRESIDENT AND CONGRESS SHOULD:

- Restore the federal minimum wage to its historical level and enact annual indexing so that it does not erode again**
*2009/2010*
  - When our minimum wage was approximately 50 percent of the average hourly non-supervisory wage, it raised pay broadly across the bottom end of our economy. But today it has fallen to only about 35 percent of average wages. We need to restore the minimum wage to its former level so that it once again boosts pay for our growing low-wage workforce.
  - Equally crucial, we must do for the minimum wage and overtime what ten states already do, and what we did for the tax code more than twenty years ago: index it annually so that it does not erode again each year. Indexing could be based either on average wage growth or on the cost of living.
  - Last year, worker advocates, President-elect Obama and congressional leaders called for amending the FLSA to index the minimum wage and raise it to \$9.50 by 2011, which at that time was projected to be half of the average non-supervisory wage. However, because of higher than expected inflation in recent months, half of average wages is now expected to be greater than that. The President and Congress should therefore raise the target wage level to \$10.00 by 2011—or the equivalent if phased in over a longer period—and move quickly to enact it.

■ **Raise the unfair sub-minimum wage for tipped workers, which since 1991 has been frozen at just \$2.13 per hour** | **2009/2010**

- Under the FLSA, employers may pay tipped workers like waitresses and nail salon workers as little as \$2.13 per hour and apply their tips to make up the rest of the minimum wage. This often overlooked wage rule disproportionately hurts working women, who make up the majority of the tipped workforce.
- The President and Congress should restore the minimum wage for tipped workers to at least 60 percent of the full minimum wage, its level until 1989. Setting the tipped worker minimum wage as a fixed percentage of the full minimum wage will also protect it against erosion by ensuring that it increases automatically whenever the minimum wage increases.
- Over the longer term, federal law should guarantee tipped workers the full minimum wage by following the lead of the states, such as Minnesota, Montana, Nevada and California, that have phased out this sub-minimum wage altogether.

**THE DEPARTMENT OF LABOR SHOULD:**

■ **End the unfair exclusion of home care workers from basic minimum wage and overtime protections** | **Near term**

- Our nation’s millions of home care workers—the overwhelming majority of them women, many of them 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. But these workers have been excluded from basic minimum wage and overtime coverage under a mistaken DOL interpretation of a FLSA provision.
- The DOL should 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 home care workers are indeed covered.
- The President and Congress should then statutorily lock in this corrected interpretation by enacting the Fair Home Health Care Act.

■ **Stop the erosion of overtime protections by updating for inflation and indexing the salary cut-off below which all workers are guaranteed overtime pay**

2009

- The right to overtime pay is one of our most basic workplace safeguards, ensuring fair pay for those who must work long hours. Workers who earn less than a basic salary threshold automatically qualify for overtime pay when they work more than 40 hours in a week.
- But because it has not been consistently updated, that basic threshold has fallen by 28 percent since 1975. As a result, many low-level, low-wage employees like assistant managers at fast food restaurants are not guaranteed overtime protection.
- The DOL should restore the overtime salary threshold to a meaningful level—at least to \$33,000 in 2008 dollars, the level it would be if it had kept pace with inflation. As with our proposal for the minimum wage, the DOL should then make sure the salary threshold does not erode again by indexing it so that it increases automatically each year, based either on average wage growth or the cost of living.

## 4

**LEVERAGE PUBLIC POLICY AND PUBLIC RESOURCES TO CREATE GOOD JOBS**

One of the key factors fueling our nation's growing economic insecurity is the dwindling base of family-supporting jobs across our economy. The manufacturing sector, which helped sustain our middle class in past decades, has shrunk in the face of global competition. At the same time, most of the fastest growing service industry jobs that are replacing manufacturing jobs pay very low wages. As a result, young adults today increasingly doubt that they will be able to attain the standard of living that their parents' generation took for granted, and income inequality is greater than at any time since at least 1979.

Continuing on this path of rising inequality is not inevitable. In industries across our economy, high-road employers are showing that it is possible to compete by investing in their workers. States and cities are developing innovative new policies to harness public resources to create and sustain good jobs. And unions and their employer partners are figuring out how to move low-wage industries towards providing middle-class jobs (showing that there is nothing inherently low-wage about them). It is time to bring these lessons to the federal policy arena.

The solution should combine new initiatives to grow industries that offer better paying jobs, with strategies to begin shifting the industries that currently pay low wages towards higher wage, higher productivity business models. At the same time, we should dismantle barriers that limit access of broad segments of our population, especially workers of color and immigrants, to the jobs that build our middle class.

**■ Invest public resources in growing and sustaining industries that create good jobs****2009**

- Washington should make targeted, strategic investments to promote the growth of industries that provide better paying jobs for non-college bound workers. For example, new green industries have the potential to create millions of new jobs in construction and manufacturing. And rebuilding our crumbling infrastructure offers a way to increase our economic competitiveness while shoring up the middle class. But as many states and cities now require, federal investments should include standards to ensure that the jobs created provide the family-supporting wages, benefits and training that workers and communities need.
- New federal job creation programs such as green jobs financing should therefore incorporate living wage and prevailing wage guarantees. And new infrastructure spending that already includes prevailing wage safeguards should go further and encourage the use of project labor agreements to promote good jobs.
- In addition, in order to ensure that these jobs train a diverse, skilled workforce for the next generation, all of these investments should promote employer participation in joint apprenticeship programs—the construction industry's best sources of quality training—and also encourage linkages to community-based pre-apprenticeship programs that provide a pipeline for disadvantaged communities into apprenticeships.

- In many sectors, labor-management partnerships have also been a proven approach, enabling employers to join together with unions across an industry to grow more good jobs while providing workers the skills and training they need to fill these jobs. As it did during the Clinton Administration, the federal government should provide grant funding for these important collaborations and help spread them to more industries.
- The Manufacturing Extension Partnership (MEP) should be a key component of a strategy for retaining a competitive manufacturing sector—a vital source of middle-class jobs. But currently, the program is not achieving that potential. The new administration should review, overhaul and expand the program. With increased funding, the program focus should include helping manufacturers increase their value-added and helping firms that pay living wages find new markets.

### ■ Leverage government spending to improve low-wage jobs

2009

- The federal government finances millions of jobs across our economy through federal purchasing, human services programs and incentives. But too many of these jobs currently pay very low wages and provide limited or no benefits. This not only hurts families and communities, it also costs taxpayers as more households are forced to rely on safety net programs for support. Washington should lead by example by ensuring that when the government spends taxpayer funds, it raises living standards for all workers by rewarding employers that create good jobs.
- For example, the new administration should reform the federal contracting process to encourage agencies to contract with employers that pay living wages, provide quality affordable health benefits, participate in apprenticeship training, and respect workers' rights.
- Similarly, the Service Contract Act and the Davis Bacon Act are meant to ensure decent pay for employees working under federal contracts. But the wages and benefits that they guarantee are currently very low in some industries and some parts of the country. The DOL should improve its wage-setting process to more consistently guarantee family-supporting wages and benefits. Key approaches should include: drawing on stronger wage-setting practices developed under state wage laws; closing gaps in coverage; and for the Service Contract Act, more faithfully looking to federal employee wage scales as benchmarks, as Congress has instructed.
- The new administration should also adopt “displaced worker” protections to minimize the harmful job losses that federal contract workers suffer when agency contracts are re-awarded (as they frequently are). New safeguards should allow contract workers to keep their jobs with the new contractor (provided that they perform satisfactorily).

- Washington should play a leadership role in ending poverty wages for our nation’s millions of “caregivers” such as nursing home, home health care and child care workers—a fast-growing workforce that provides vital care financed by the Department of Health and Human Services under the Medicaid, Medicare and Child Care Block Grant programs. Key strategies should include: expansion of opportunities for caregivers to choose a representative to give them a voice in improving their jobs and the services they provide; new minimum standards for wages and benefits paid to caregivers; new federal financing for the industry upgrading process; requirements that state agencies implementing these programs develop industry upgrading plans; expanded educational opportunities and career ladders for caregivers; and creation of new provider registries to track trends in the labor force. Because of the vast size and projected growth of this sector, targeted federal investment will serve as an ongoing economic stimulus as it improves jobs for this deserving workforce.
- Federal economic development grant and incentive programs administered by a range of federal agencies currently include no job quality safeguards to ensure that jobs subsidized under these programs pay the living wages that communities need. The federal government should follow the example of the many states and cities that have adopted such standards to ensure that these programs in fact deliver good jobs.

■ **Restore workers’ ability to form unions and bargain collectively with employers to improve jobs and industries**

*Near term*

- It was workers’ ability to form unions and bargain collectively that transformed manufacturing into a source of middle-class jobs during the post-World War II decades. Today it is doing the same for janitors, nursing home workers and hotel room cleaners.
- But our nation’s labor law system is broken and effectively prevents millions of workers from forming unions to help improve the quality of jobs in their industries. In particular, the rules governing the process of union selection today are so one-sided that they allow employers to delay, impede and intimidate workers from exercising their right to choose.
- The President and Congress should enact the Employee Free Choice Act to guarantee that workers have access to a union selection process that is fast, fair and free of intimidation and abuse.

## ■ Remove barriers that shut workers out of good jobs

*Near term*

- At the same time that we work to grow more middle-class jobs in our economy, we need to ensure that all Americans have fair access to them by dismantling arbitrary barriers and helping build pipelines to good jobs for disadvantaged communities.
- While a range of barriers currently limit access, one of the most serious is the proliferation of overly broad criminal background check requirements. Their growing use potentially limits access to jobs for a large swath of American workers, as one in five adults has a record that shows up on a routine background check. The impact is especially serious among young men of color.
- To address the growing problem of the racial impact of increased and overly broad criminal background checks and disparities in the criminal justice system, the Equal Employment Opportunity Commission (EEOC) should update its Title VII guidances outlining procedures for fair consideration of criminal background as part of the hiring process. The EEOC should also strategically publicize the new procedures.
- With new criminal background checks required of more than two million transportation workers in the trucking and maritime industries, the Transportation Security Administration (TSA) should improve the accuracy and fairness of its screening procedures, which currently deny or unreasonably impede clearance for large numbers of valued and experienced workers who pose no security risk.
- The Federal Bureau of Investigation (FBI) conducts more than five million criminal background checks each year, using a database that, according to the Attorney General, is inaccurate or incomplete in 50 percent of all records. To improve the integrity of this far-reaching system of background checks, Congress should enact new legislation that extends basic consumer protections to the FBI screening process.

## Additional NELP Resources

For more information on the policy recommendations outlined in this *Blueprint for Recovery and Reform*, see the following resources at [www.nelp.org](http://www.nelp.org):

### 1. Strengthening and Modernizing the Unemployment Safety Net

[Helping the Jobless Helps Us All: The Central Role of Unemployment Insurance in America's Economic Recovery \(2008\)](#)

[Changing Workforce, Changing Economy: State Unemployment Insurance Reforms for the 21st Century \(2004\)](#)

[Getting Certified for Trade Adjustment Assistance: A Guide for Unions, Workforce Agencies and Community Groups \(2005\)](#)

### 2. Enforcing Core Standards in the Workplace

[Labor's Wage War, Fordham Urban Law Journal \(2008\)](#)

[Protecting New York's Workers: How the State Department of Labor Can Improve Wage-and-Hour Enforcement \(2006\)](#)

[Unregulated Work in the Global City: Employment and Labor Law Violations in New York City \(2007\)](#)

[Testimony Before the U.S. House of Representatives, Committee on Education & Labor, Subcommittee on Workforce Protections, "Providing Fairness to Workers Who Have Been Misclassified as Independent Contractors" \(2007\)](#)

[Solutions, Not Scapegoats: Abating Sweatshop Conditions for All Low-Wage Workers as a Centerpiece of Immigration Reform, NYU Journal of Legislation and Public Policy \(2006/2007\)](#)

### 3. Restoring Strong Minimum Wage and Overtime Protections

[NELP's Federal Minimum Wage Issue Page:](#)

[http://www.nelp.org/index.php/site/issues/category/federal\\_minimum\\_wage](http://www.nelp.org/index.php/site/issues/category/federal_minimum_wage)

### 4. Leveraging Public Policy and Public Resources to Create Good Jobs

[One City / One Future: A Blueprint for Growth that Works for All New Yorkers \(forthcoming 2008\)](#)

[Winning Construction Jobs for Local Residents \(2005\)](#)

[Testimony Before the U.S. House of Representatives, Judiciary Committee, Subcommittee on Crime, Terrorism & Homeland Security on Criminal Background Checks and Employment \(2007\)](#)

## ABOUT THE NATIONAL EMPLOYMENT LAW PROJECT

For nearly 40 years, the National Employment Law Project (NELP) has worked to restore the promise of economic opportunity for working families across America. In partnership with national, state and local allies—grassroots and national organizations, worker centers and unions, policy makers and think tanks—NELP promotes policies and programs that create good jobs, strengthen upward mobility, enforce hard-won worker rights, and help unemployed workers regain their economic footing through improved benefits and services.

NELP works from the ground up to build needed economic change. With our staff of lawyers, policy experts and researchers, we provide the following:

- *Solid empirical research*, documenting economic trends and spelling out effective solutions.
- *In-depth policy and legal analysis*, developing innovative options to create good jobs, improve working conditions and bolster economic security.
- *Expert legal advice and technical assistance*, helping workers and advocates enforce workplace protections.
- *Campaigns, conferences and strategic discussions*, bringing together diverse stakeholders in a growing economic justice movement.
- *Ongoing communications and media outreach*, shining a spotlight on workers' struggles in the 21st Century economy and galvanizing support for change.

NELP developed this *Blueprint for Recovery and Reform* in consultation with grassroots organizations and national partners with whom we collaborate to promote good jobs, rebuild the safety net, and improve wages and benefits for all who work in America. We express our appreciation to these partners for their input, and are honored to work with them every day to restore the promise of opportunity for America's workers.

For further information about NELP, please visit our website, [www.nelp.org](http://www.nelp.org), or contact us at:

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