



The Rewards of Work: Lessons from the Fair Labor Standards Act – Transcript

Hosted by the Aspen Institute Economic Opportunities Program

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Description

The Fair Labor Standards Act (FLSA) of 1938 established the federal minimum wage and overtime pay, created a standard work week, and prohibited children's employment in dangerous conditions. Leaders passed the FLSA not only to ensure "a fair day's pay for a fair day's work," as FDR said, but also to end a race to the bottom on wages and working conditions that were driving business competition.

The law raised wages for hundreds of thousands of workers at the time, but also deliberately excluded a number of industries, which uncoincidentally employed a large number of people of color and women. These exclusions continue to negatively affect opportunity for these groups today. The FLSA has suffered some additional wear and tear in recent decades. The failure of the minimum wage to keep pace with inflation, weak enforcement on issues such as wage theft and misclassification of independent contractors, and a failure to update the tipped minimum wage have minimized the rewards of work for many workers. While federal policy has been slow to respond, some state and local governments and businesses are addressing some of the FLSA's weaknesses by increasing wages and improving job standards in sectors such as domestic and gig work, among others. What innovations can create a more just economy that rewards work fairly? What lessons can we learn from the FLSA and its history to help us restore the commitment to a fair day's pay for a fair day's work?

This is the second conversation in our five-part series, "[The History and Future of U.S. Labor Law: Conversations to Shape the Future of Work.](#)"

Opening Remarks



David Weil

Dean and Professor, The Heller School for Social Policy and Management, Brandeis University

David Weil is dean and professor at the Heller School for Social Policy and Management at Brandeis University. Prior to joining the Heller School, he was appointed by President Barack Obama to be the administrator of the Wage and Hour Division of the U.S. Department of Labor and was the first Senate-

confirmed head of that agency in a decade. He led the Wage and Hour Division from 2014 to January 2017. He was nominated to return to that post by President Joe Biden in 2021. Weil is an internationally recognized expert in employment and labor market policy, along with regulation, transparency policy, and the impacts of industry restructuring on wages, employment, and work outcomes. He has advised government agencies at the state and federal levels and international organizations on employment, labor, and workplace policies. He is the author of more than 125 articles and five books including “The Fissured Workplace” (Harvard University Press). He has received many awards including the Frances Perkins Intelligence and Courage Award. Weil received his bachelor's degree at Cornell University and his master's and doctorate degrees in public policy at Harvard University.

Speakers



Rebecca Dixon

Executive Director, National Employment Law Project

The National Employment Law Project (NELP) is led by Executive Director Rebecca Dixon. Rebecca is a respected national leader in federal workers' rights advocacy and the go-to resource for state and local worker movements centered on racial, gender, and economic justice and dignity in the workplace. Rebecca's motivation for advancing workers' rights and commitment to economic justice is deeply rooted in her lived experience growing up in rural Mississippi at the intersection of race, class, and gender—characteristics that have long defined our ability to participate in our democracy and economy. As the descendant of enslaved people and daughter of sharecroppers and domestic workers, Rebecca knows firsthand what is lost when workers of color are relegated to the lowest rungs of our labor market, without respect, rights, and protections.

Prior to taking the helm in early 2020, Rebecca served on NELP's executive management team as chief of programs. Since joining NELP in 2010, she has advanced NELP's growth and impact while serving in a number of positions, including policy analyst and senior staff attorney. During the Great Recession and its aftermath, Rebecca was a leader in winning unprecedented state unemployment insurance (UI) coverage expansions in 20 states and multiple extensions of federal emergency UI benefits for the long-term unemployed.

Rebecca is in great demand for her thought leadership at the intersection of labor and racial equity. In 2012, she was selected by the State of New York for its Empire State Leadership Fellows program and served in the Office of the Governor in its Labor and Civil Rights Division. She is a board member of the Hope Enterprise Corporation, the Jessie Smith Noyes Foundation, and the Women's Institute for Science, Equity and Race; a member of the Georgetown Center for Public & Nonprofit Leadership Racial Equity Working Group, the Economic Analysis and Research Network in the South, and the Insight Center for Community Economic Development's Closing the Racial Wealth Gap Initiative and Expert of Color Network; and a past member of the USDA Food and Nutrition Service and Supplemental Nutrition Assistance Program (SNAP) “New Faces” of SNAP workgroup.

Rebecca holds bachelor's and master's degrees in English from Duke University and a law degree from Duke University School of Law.



Michael Lastoria

Co-Founder and CEO, &pizza

Michael Lastoria is an American serial entrepreneur and co-founder of &pizza, a creatively led, mission-driven, culture carrying, pizza chain voted one of Fast Company's Most Innovative companies in 2018 and 2019 for Social Good. Referred to by Bloomberg as "what Jesus might look like if he walked in a Yohji Yamamoto show," Lastoria grounds &pizza in a commitment to better flavor,

quality ingredients, livable wages, and real actions.

Lastoria has appeared on Fox Business, CNBC, MSNBC, and Yahoo, and has been featured in Forbes, AdWeek, the New York Times, and the Washington Post as a distinguished entrepreneur and thought leader in the industry. Speaking on topics including the value of design-based thinking, innovation, and entrepreneurship, Lastoria has talked at Harvard Business School, the George Washington University, and Georgetown University to inspire the next generation of business leaders. Lastoria co-founded Innovation Ads, which sold to a private equity firm in 2006, and JWALK, which sold to beauty powerhouse Sheiseido in 2017, before starting &pizza.

Lastoria is a fair wage fighter and member of the advocacy network Business at a Fair Minimum Wage. He's promoted increases in minimum wage across the Mid-Atlantic and Northeast and with Barack Obama's Secretary of Labor, Thomas Perez. He introduced the Raise the Wage Act with Senator Bernie Sanders, House Minority Leader Nancy Pelosi, and Senator Chuck Schumer in 2016 and 2017. At Lastoria's direction, &pizza was the first national restaurant chain to commit to a \$15 minimum wage and has donated to over 1,000 local causes aligned with the company's core values.

Lastoria has been identified as one of the country's top executives, listed in QSR's 2019 and 2020 Readers' Choice Awards as a Most Admired Fast-Casual Leader, as the 2018 Icon of Culture by ILC, on Nation's Restaurant News' Annual Power List in 2018, 2019, 2020, and 2021, on Fast Casual's Movers and Shakers List in 2018, 2019, 2020, and 2021, in the Washington Business Journal's 40 Under 40, and as the Small Business Council of America's Business Person of the Year in 2017.



Teresa Romero

President, United Farm Workers

The first Latina and the first immigrant woman to become president of a national union in the United States, Teresa Romero replaced Arturo S. Rodriguez as the third president of the United Farm Workers of America (UFW) in December 2018. Formerly the union's No. 2 officer as secretary-treasurer, she has years of experience overseeing the complex financial management,

administrative, staff recruitment, personnel, fundraising, IT, and social media operations of a far-flung organization involved in field organizing, contract bargaining and administration, legislative and legal affairs, and far-reaching international initiatives. Teresa worked closely with elected UFW leaders as chair of the union's audit and finance committee. She ran fundraising efforts that collected \$1 million to build the UFW's new state-of-the-art 10,294-square foot facility in Salinas, California, serving the largest concentration of unionized farm workers in the nation. Before joining the UFW, she managed a construction company and a law firm that helped workers with immigration and workers' compensation claims. Teresa is an immigrant from Mexico who is proud of her US citizenship and Mexican and Zapotecan heritage. She has played an important part in many recent successful union efforts and is admired by her peers for her work ethic, calm competence, organizational skills, ability to build relationships, and "Si Se Puede!" spirit.

For the last few months, Teresa has attended several immigration negotiation meetings for the Blue Card legislation sponsored by Congresswoman Zoe Lofgren. This legislation would give farmworkers and their families a path to citizenship if they have worked and continue to work in the agricultural industry for a certain number of years.

In May 2019, she received the Ohtli award by the first Mexican woman ambassador in the US. This award is given on a yearly basis to Mexican citizens who work in the US and help promote their culture while opening paths for other Mexican nationals. As president of the UFW, she has been in discussions with the Mexican government to help put emphasis on the dairy and agricultural industries that refuse to hire woman. She is dedicated to changing that type of atmosphere and create a system to apply in both the US and Mexico to hire woman while also helping create an environment in which woman are no longer enduring verbal, mental, and sexual abuse. Teresa is aware and humbled by the fact that many farmworker women see themselves in her. She's helping pave the way and empowering women. Si Se Puede!



Ben Zipperer

Economist, Economic Policy Institute

Ben Zipperer joined the Economic Policy Institute (EPI) in 2016. His areas of expertise include the minimum wage, inequality, and low-wage labor markets. He has published research in the *Quarterly Journal of Economics* and the *Industrial and Labor Relations Review* and has been quoted in outlets such as the *New York Times*, the *Washington Post*, *Bloomberg*, and the *BBC*.

Prior to joining EPI, Zipperer was research economist at the Washington Center for Equitable Growth. He is a senior research associate at the Center for Economic and Policy Research, a research associate at the Center on Wage and Employment Dynamics at the University of California, Berkeley, and an associate at the Johns Hopkins Bloomberg School of Public Health.

Moderator



Noam Scheiber

Labor Reporter, The New York Times

Noam Scheiber is a Chicago-based reporter who covers workers and the workplace. Before coming to the *New York Times*, he spent nearly 15 years at *The New Republic* magazine, where he covered economic policy and three presidential campaigns.

His book, "The Escape Artists," is a narrative of the Obama administration's efforts to save the economy from the Great Recession. He holds a master's degree in economics from the University of Oxford, where he was a Rhodes Scholar, and undergraduate degrees in math and economics from Tulane University.

About

Opportunity in America

The Economic Opportunities Program's [Opportunity in America](#) discussion series has moved to an all-virtual format as we all do what we can to slow the spread of COVID-19. But the conversations about the changing landscape of economic opportunity in the US and implications for individuals, families, and communities across the country remain vitally important. We hope you will participate as we bring our discussions to you in virtual formats, and we look forward to your feedback.

We are grateful to Prudential Financial, Walmart, the Surdna Foundation, the W. K. Kellogg Foundation, Bloomberg, and the Mastercard Center for Inclusive Growth for their support of this series.

Economic Opportunities Program

The Aspen Institute [Economic Opportunities Program](#) advances strategies, policies, and ideas to help low- and moderate-income people thrive in a changing economy. [Follow us on social media](#) and [join our mailing list](#) to stay up-to-date on publications, blog posts, events, and other announcements.

Transcript

Maureen Conway (00:01:07)

Welcome to the Rewards of Work, Lessons from the Fair Labor Standards Act. This conversation is part of the Economic Opportunities Program's ongoing Opportunity in America discussion series, in which we explore the changing landscape of economic opportunity in the United States, the implications for individuals, families, and communities across the country, and ideas for change. We are grateful to Prudential Financial, Walmart, the Surdna Foundation, the W.K. Kellogg Foundation, Bloomberg, and the Mastercard Center for Inclusive Growth for their support of our Opportunity in America discussion series.

Welcome to our regular participants and if this is your first time joining us, a special welcome to you. We record all of our events, and all our previous events can be found on our website as.pn/opportunityinamerica. Today's discussion is the second event in a set of conversations, titled [The History and Future of U.S. Labor Law: Conversations to Shape the Future of Work](#). In this series, we are exploring the history of US labor laws, how these laws affect opportunity and job quality today, and exploring what we need to do to help improve conditions for workers now and into the future. In this second conversation, we'll be discussing the Fair Labor Standards Act of 1938, which established the federal minimum wage, overtime pay, the standard work week, and prohibited child labor. So we have an amazing panel to talk with us about all of this today.

I'm really excited to welcome them in a minute. Also, a quick note, we have a couple of other exciting events. Coming up on April 19th, we'll host Sarita Gupta of the Ford Foundation and Erica Smiley of Jobs With Justice to discuss their new book, "The Future We Need: Organizing for a Better Democracy in the 21st Century." On April 27th, we'll have our next event in this series, "Title VII of the Civil Rights Act: Fulfilling the Promise of Equal Opportunity." So I hope you can join us for those events as well. Also, before we begin, just a quick review of our technology. All attendees are muted. Hopefully I am no longer muted. We welcome your questions. Please use the Slido box on the right side of your screen for questions or comments.

Questions can be submitted and uploaded through the Q&A tab. We also know we have a great audience with lots of experience and perspective on these issues. If you have ideas, examples, resources, things to share about today's topic, please share those in the Ideas tab, which is also in your Slido box. Lastly, we also very much appreciate your feedback. Please, before you leave, there is a feedback survey. You'll find it in the Polls tab in the Slido box, and we hope you'll let us know what you think. We're thrilled with the participation in today's event. Thank you to many of you who submitted questions in advance. We'll try to get to as many questions as we can in the Q&A session. So please do keep questions coming.

We also encourage you to tweet about today's event. Our hashtag is #talkopportunity. If you have any technical issues, you can message us in the chat or email us at eop.program@aspeninstitute.org. The webinar is being recorded and will be shared via email and posted on our website following this event. Closed captions are available. Please click the "CC" button at the bottom of your video screen to activate those if you need them. Okay, and now, it is my great pleasure to introduce our opening speaker, David Weil. David is just an amazing scholar. David is a dean and professor at the Heller School for Social Policy and Management at Brandeis University. David led the Department of Labor's Wage and Hour Division during the Obama Administration from 2014 to 2017.

He's an internationally recognized expert. Many of you may be familiar with his book, "The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done." He's just an incredible scholar, and I can't think of anybody better to kick off this conversation. So David, thank you so much for joining us and let me turn it over to you.

David Weil (00:05:26)

Thank you, Maureen for the invitation to participate today and for the patients in figuring out under what guys I would be appearing. I had hoped to be making this talk as the administrator of the Wage and Hour Division, but I got caught in a 53 to 47 car pile up on the road to Senate confirmation. As tempted as I am to comment on some of the vehicles involved in that accident, I'm going to reserve my remarks on that for some future occasion, but we'll make a few comments at the end about the political economy surrounding workplace policy at this very troubled moment. I wanted to open this important session with the same thoughts I would've offered if I was wearing the administrator hat. What I want to do is make the case why the Fair Labor Standards Act and its robust enforcement is fundamental to providing the kind of treatment and protections workers in the US should demand and expect.

Let me start with a little history about why the FLSA is such a powerful document in law. When Franklin Roosevelt's new deal legislation, establishing the National Recovery Act was struck down by a conservative majority of the Supreme Court, Frances Perkins, FDR's secretary of labor, told him something to the effect, "Don't worry, I have two bills locked in the lower left hand drawer of my desk, prepared against such an emergency." One of those bills was a Public Contracts Act that set labor standards for goods produced under government contract, it became the Walsh-Healey Act. The other was a fair labor standards bill that set minimum wages, maximum hours, overtime conditions and other labor standards for working people in the private sector, and of course that latter bill became the Fair Labor Standard Act

It's too easy to think about the new deal era as part of a golden age of progressive enlightenment where anything that was possible happened, given the huge democratic majorities Franklin Roosevelt enjoyed in the Senate and House. In fact, the Fair Labor Standards Act was the last major piece of progressive legislation about the workplace of that era. It faced fierce opposition from the business community and from the powerful block of Southern Democrats in Congress. So despite a huge democratic majority, what FDR signed was radically different from what Perkins had pulled out from her drawer a year earlier. In particular, it contained ... the final bill contained huge exclusions for industries

where black workers predominated, agriculture in particular, but also many parts of what we would now call the service economy.

As Ira Katznelson documents in his terrific book, *Fear Itself*, that exclusion was explicitly motivated by race. To illustrate that, he quotes representative Martin Dies, a Texas Democrat and fierce opponent of the FLSA who stated on the House floor that the proposed law was wrong and that it, "What is described for one race must be prescribed for others, and you cannot prescribe the same wages for the black man as for the white man,". So sadly the exclusion of black workers from the protection of workplace laws was not unique to the FLSA and it certainly shaped its impact for decades to come. Yet, in the end, I want to make the case of the importance of act at the time of its passing. I think it still rings true today.

When it was first passed, the very first Wage and Hour administrator, Elmer Andrews stated, "The Fair Labor Standards Acts has been a strong floodlight thrown upon the dark places of American industry, the unpleasant things we could not see before and the things we did not wish to see stand revealed. We cannot duck them. No amount of talk about the beauties of rugged individualism will obliterate them." FDR's assessment of the FLSA was a bit more upbeat. He said, "I do think that next to the Social Security Act, it is the most important act that has been passed in the new deal." So why is the act so foundational? Well around the time of its passage, a more progressive Supreme Court began to turn away from overturning state and federal workplace laws in the basis of, in the past, protecting liberty of contract of individuals.

Instead, the court recognized the inherent disparity in power that was present in the labor market. In that context, the importance of that term, that's so important term Fair Labor Standards is all about establishing workplace norms. Those norms don't arise from the voluntary agreement of a specific company or group of companies and aren't reliant on the forces of supply and demand, which we know from recent growing evidence currently are very subject to labor market power that often leads to lower wages, instead the power of the FLSA emanates from its creation of wage norms by the force of law, that is fundamental in understanding how it shapes employment decisions that are made and how our labor markets operate. Second, the FLSA is foundational and that the rights and responsibilities it creates represent a bedrock for other workplace rights.

One is unlikely to exercise a right to complain about a health and safety risk or discrimination or sexual harassment, or certainly to take the risk of supporting a union, if the bedrock principle that's protected by the FLSA of being paid for work itself or protections against long uncompensated hours are daily flouted. Third, the FLSA is foundational in its definitions, defining employment matters because it sets the boundaries of rights and protections that then shape everything built on that. Despite what is argued by many, including opposition to my nomination, the broad definition of what it means to employ are not outdated concepts. In fact, they are groundbreaking and recognizing the many ways that responsibilities for conditions at work can play out.

That is precisely the reason why it's definitions of employment, which represent the broadest of any federal legislation for the workplace have been contested since the Act's earliest days, and that is a sign in my view of its resilience, not its obsolescence. The foundational nature of the FLSA is revealed also by how its expansion over time has come to improve conditions for the workers once excluded from its protections in their brilliant paper, the economist Ellora Derenoncourt and Claire Montialoux show that the 1966 expansion of minimum wage coverage under the FLSA to include agriculture restaurants, nursing homes and other services were nearly a third of black workers were employed at that time, account for as much as 20% of the large reductions in racial earnings and income gaps of the civil rights era.

The impact of the FLSA in a broader scope was further illustrated by the expansion of its coverage to two million home care workers during the Obama administration. I also want to point out, even though foundationally, the law itself is so important and so fundamental, the FLSA is only as good as its

implementation, and this has been a challenge once again, from the Act's inception and the creation of the Wage and Hour Division. Elmer Andrews, again, the first Wage and Hour administrator and a personal hero, noted in 1939, "We began enforcement six months ago with a small headquarters staff, and with only 23 inspectors in the field to cover the whole of this enormous country. In 1939, we have a field force of 131."

"It is still a skeletal staff, inadequate fully to render the service to which employees and employers are both entitled." Now, if we take the numbers that Andrew cited, in 1939, with their 131 inspectors, the agency was in charge of 29,442 establishments, which means about 4.5 inspectors for every thousand establishments and Andrews and his successors struggled with how do you do the work given that imbalance? Well, obviously that resource challenge has not disappeared. The agency is currently ramping up after reductions arising from the failure to replace investigators during the Trump administration to have roughly around 800 investigators currently. Now, those 800 investigators are in charge of about 11 million workplace establishment.

So that's about 0.07 investigators for every 1000 establishments, which means the Wage and Hour Division of 1939 had about 60 times greater a ratio of investigators to workplaces than the present agency today. That means the Act's aims can only be accomplished through strategic and proactive application of its resources, to who enforcement outreach and education and from ultimately increased funding and resources from the budget. Now we changed the approach from a complaint driven to a more proactive approach during the Obama Administration. The current Wage and Hour Division is building on those models, but the ratios and even more, the growing complexity of work means the bar for effective enforcement and the need for serious increases in resources keeps going higher.

In particular to achieve its ends, the agency must be ever more directed towards focusing on where problems are most severe, increasing its deterrent impacts and seeing that everything it does in enforcement, in education and outreach, create maximum ripple effects. That is a must, but it also can only work if responsible employers comply with it or as one of our panelists who we'll hear from today, exceed its baseline standards. It fails if employers flout it, directly harming workers and undermining employers who are doing the right thing. I know from my firsthand experience being honored to lead the Wage and Hour division during the Obama administration of the pernicious impacts arising when firms in an industry find new ways to evade the Act. Those practices spread quickly like weeds and lead to the erosion of standards for workers across a geographic area, an occupation, or even an industry.

Implementation of the Act also rests fundamentally on the presence of partners beyond the compliance of employers. It requires the community of unions, worker advocates, state and local agencies, as well as progressive employers to move the needle and build on the foundations created by the law. And we're going to hear a lot more about this from the wonderful panelists today. Let me say just a couple words about political economy and then wrap up. Now, it's always been the case that powerful interests seek to weaken workplace protections. Their ability to do so ebbs and flows, but that has been a constant, I must say I was bemused if that's the right term, when one of the senators who opposed my nomination noted that some employers in the state opposed my nomination, presumably because the law requires them to do something they do not wish to do on their own.

Look, that source of opposition to workplace laws was present in 1939, it remains present today and it will always be present. It is suggestive of the imbalance of power, that is the reason for the Fair Labor Standards Act in the first place. Beyond that normal tension of the political economy, we are at a perilous moment in my view, in terms of workplace protections, that kind of political dominance has been enabled by Citizen United, where the capacity of dark money to change legislation is at an all time high. It's certainly indicative of the amount of money that flowed to oppose my nomination from the day it was announced, but that is only one of many signs about how powerful interests are undermining worker protections today through the political process in unprecedented ways.

Look at the success of a few large platform companies to reshape public policies in ways they see fit in California with Prop 22, as well as in many other states, including currently my own state of Massachusetts, where those companies have sought to exclude themselves from workplace laws. These actions are not only detrimental to working people, but corrosive to democracy itself. So let me say a final word about pulling together the themes of what I've just said and why this is such a critical moment for improving labor standards and fair labor standards. As the economy recovers from the pandemic, workers who have, for too long, been disadvantaged have for the first time in decades, more leverage in the labor market. Low wage workers have outside alternatives in the labor market that allow them to push for higher wages and better conditions.

The movement of workers in the labor market, like the recent successes of union organizing are signs of pushing back against decades of erosion, but left to its own, this trend won't last. Labor markets will adjust, and while some employers will hopefully adjust their policies to continue to improve conditions for their workforce, we're already seeing stories in the press about efforts to curb this restiveness. See, for example, a story earlier this week about a leaked memo by a senior executive at Applebee's touting a rise in the price of gas as dampening the ability of its workforce to have sufficient earnings to demand better pay. This moment represents an important opportunity to seal in better and sustainable norms through the full and fair enforcement of the FLSA.

By doing so alongside increasing the minimum wage at the federal level as states have already done so across the nation, we can achieve the time honored phrase, a fair day's pay for a fair day's work, and we can see that the gains from a growing economy are shared with the working people who make it possible. Thank you so much for allowing me to join you today.

Maureen Conway (00:22:11)

Thank you so much, David. That was terrific. I think that sets a perfect foundation for the conversation that we're about to have. So I will just very quickly introduce today's panel. We have a terrific panel with us today. There's more details about them on our website, so I won't go into their bios but just briefly, today, we have Rebecca Dixon, executive director of the National Employment Law Project. Michael Lastoria, co-founder and CEO of &pizza. Teresa Romero, president of United Farm Workers. Ben Zipperer, economist at the Economic Policy Institute. We're delighted to have Noam Scheiber of the New York Times moderating today. Noam covers workers and workplace issues, at the Times. Before coming to the Times, he spent nearly 15 years at New Republic Magazine where he covered economic policy and three presidential campaigns.

He is author of the book, the Escape Artists, which is the narrative of the Obama administration's efforts to save the economy from the great recession. So I'm sure many of you have enjoyed his reporting in the Times and we're delighted to have him to moderate this conversation today. So Noam let me turn it over to you.

Noam Scheiber (00:23:25)

Great, thanks Maureen. I'm really delighted to be here. I'm a huge fan of the other people on this panel. Some of whom I've been in touch with over the years and have really helped expand my understanding of these issues and inform my reporting. So thank you all for being here. I just want to briefly pivot off of what David said. He's someone I've learned quite a bit from over the years, both directly from conversations and from reading his book, the Fissured Workplace. The one thing that I wanted to seize on from his remarks, which comes up in my work all the time is this question of flexibility. David alluded to gig work and gig platforms and I think the FLSA looms over a ton of what's going on in the workplace at this moment, but probably maybe none more than gig work and its various manifestations.

I just can't tell you the number of times where I've spoken to an employer and whether they're being willfully misleading or whether they just don't understand the FLSA, they insist that classifying workers as employees will destroy the flexibility that workers and employers really crave. So, they have to stick with the contractor model because otherwise, there's no way to get at that flexible relationship, and if we just set aside for the moment, the fact that it's not actually up to the employer, whether to classify a worker as a contractor or an employee that has to do with the actual, real world circumstances of their relationship with their employee this idea that the FLSA is something that destroys flexibility, I think is one of the biggest misnomers in the economy, in the labor market.

We have tons of examples of flexible work relationships with employees. We have part-time employees. We have seasonal employees. We have employees who work from home. We have employees who work partly from home and partly from an office. We have employees who work full-time but at odd hours. There's almost no limit to the amount of flexibility that you can introduce into the employment relationship when you have employees. This just comes up time and again, as David alluded to, it came up a lot in the fight around AB5 and Prop 22 in California. The gig companies, again, insisted over and over that the flexibility was going to be endangered, imperiled, there would be no way to salvage the flexible relationships that drivers have to the platforms.

I just recall having these enormously strange conversations where I would go almost in circles with people from Uber and Lyft, and I would say, "Well, can you point to me like where in the FLSA does it say that classifying drivers as employees would destroy the flexibility," and they couldn't because it's not in there. Finally, after we sort of got done going back and forth, where we sort of landed was, there's nothing in the law that prevents this, but they have concerns that if they classify drivers as employees and they create these minimum standards or they abide by minimum standards, then you're going to have some driver somewhere who decides he or she is going to go drive at three in the morning in the middle of a suburb, where there are no customers around and just hang out in their car and earn \$15 or \$20 an hour to do no work.

Because they'll have to pay minimum wage. I think that's, for reasons I can elaborate on, highly unlikely scenario and even if it were something that they would have to restrict, there's nothing in the FLSA that requires them to not allow that. It just, I think, pointed to ... what can be very bizarre in these conversations is that there ends up being this huge uproar around flexibility, and when you peel back the different leaves of the artichoke, you realize that if there is even a kernel of truth, it's these like extremely remote, extremely obscure hypothetical scenarios that actually have nothing to do with the law, but their own assessment of supply and demand. So all of which is to say that I think, the work that David has done and that some of the folks at NELP and EPI and some of the unions, and just a lot of economists have done to sort of clarify what the FLSA requires and what it doesn't and what it would preclude and what it wouldn't, is extremely valuable.

That's why I think a panel like this is so important. So let me get right to it. I'll start with Rebecca. As someone who advocates for workers, often very vulnerable workers, workers who face all manner of exploitation in the workplace, what tools does this law give you? What kind of power does it give you and people who do what you do to redress the issues that arise in the workplace for these workers?

Rebecca Dixon (00:28:40)

So I think it's really important to build on what David said. We tend to think that the labor market and the economy in this country, we tend to think equal opportunity when we see that, but that's actually not the case. Opportunity is quite segregated in this country, and our labor law is really key in enshrining that and perpetuating that segregation. So for example, 40% of our jobs in this economy pay poverty level wages, but the burden of these bad jobs is uneven. It falls most heavily on women and workers of color, and we know that discrimination accounts for 38% of the gender wage gap and for black women, that's even worse because they're in a double bind situation. We know that the black earn occupation

is or becomes the lower the wages and the more female dominated an occupation is, the more undervalued that work is, especially when we're talking about care work, which we've seen a lot in this pandemic.

Consequently, what I'm describing, this is called occupational segregation and it means that persistently across time, so from the new deal time and before that, women and people of color are shunted into low paying precarious and often unsafe work and they end up staying there for years, sometimes a lifetime. So with the Fair Labor Standards Act, what we would like to see is being able to have people not stuck in these bad jobs, across a lifetime. We know that essentially once you're stuck there, it's really hard to get out. So, for us really trying to make it clear what the Fair Labor Standards Act, what the strengths were and what the weaknesses are. So the strengths, of course, we know like foundational setting a wage floor for millions of workers, but a substantial weakness was leaving out large portions of workers.

To talk about scale, we're talking about half of black men, half of Mexican American men, native American men and women and significant numbers of Asian American workers. Here's really where the political gets personal because 90% of black women were left out of their Fair Labor Standards Act when it was created because they worked in farm and domestic work. For me, I grew up in rural southwest Mississippi. So my great-grandmother was a sharecropper and my grandmother worked as a domestic and they were a part of these 90% of women. So, for me, policy has real impacts and I deeply understand what's at stake in this work and the work that I do to make sure that race and gender don't determine your fate.

So, we are really trying to work to support workers who are fighting to expand their rights in this moment of great realignment, resignation, whatever you want to call it, but workers are standing up. They are demanding their rights and we are right there with them to support.

Noam Scheiber (00:31:48)

Thank you for that, Teresa. Let me go to you. Can you just tell us ... I think a lot of people know the United Farm Workers from some of the iconic organizing battles of decades pass and Cesar Chavez and some of the heroes of the labor movement. Can you tell us about the workers that you represent today across what industries, the range of jobs they do and just the biggest issues they face on the job today?

Teresa Romero (00:32:17)

Sure, of course. First, thank you for having me here today. This is a very important conversation. This year, the United Farm Workers is celebrating our 60th anniversary, six decades of representing workers and working not only in organizing but legislative bills to improve their working conditions. Currently, we represent workers in the vegetable industry mushrooms, berries, apples. I mean, it is a variety of fruits of vegetables workers that we represent, unfortunately, because workers were excluded from FLSA, the work that we need to do to improve the working conditions is slow. I'm going to tell you that this is the first year that farm workers in California are earning overtime pay, after eight hours of work or 40 hours a week.

Another states don't do it. We were able to get a bill passed also in Washington state and Oregon to give workers overtime pay. In California, we have heat illness protections for farm workers that actually is saving lives. As we all know, last year, the temperatures here in the West Coast were incredibly high. Farm workers were working under 120 degrees and because we have now those protections, lives are being saved and it's basic protections, allowing farm workers to have fresh water, having a shaded area for farm workers to rest or to have their meal periods, educating workers of what heat illness

symptoms are so they can recognize them, and most of us don't recognize them. And have a paid 10 minute break every two hours when the temperatures are 95 degrees or over.

These are just basic things that any other industry would have, but it takes us decades to be able to get these protections. We were able to work with growth organizations and members of Congress from both sides of the aisle and has a Farm Workforce Modernization Act, which would have given farm workers the opportunity to get a path to legalization. We know that we need 60 senators to support this bill and unfortunately, we have not been able to get the senators to support it. This bill of course, is important not only for the farm workers and their families, but also to have a stable workforce in agriculture. The great majority of people who work in agriculture right now are immigrants.

The great majority are undocumented and without these workforce, the agriculture industry in this country would probably disappear. We know that not all of us can perform this work. We actually send an invitation to all 100 senators to work one day in the fields, so they have an idea of what it takes to do the work. We received only a response from two senators that agreed to it. It was Senator Padilla and Senator Booker. So we're going to be working with them so they can experience firsthand what it is that it takes to be a farm worker. Just one day.

Noam Scheiber (00:36:04)

That seems like a fair ask. Ben, let me turn to you for a moment. Ben is someone who in the first few years that I did this job, was incredibly helpful and just helping me kind of survey the landscape of research that was available. I read his own work and the work of his collaborators. Ben, can you just describe the kind of consensus among economists on the effects of the minimum wage on employment, and particularly as we've experimented with raising the minimum wage in some cases by very significant amounts in states and localities around the country, how that consensus has evolved and what economists have learned about how high it can go, but without significant employment effects.

Ben Zipperer (00:36:55)

Yeah, sure. Yeah. I think minimum wages have always been a very well-studied topic in economics, and that's because of its political importance, but also because it teaches economists and us the lessons about how labor markets actually work and provide us with information about what you were talking about earlier about how you can actually have an economy that allows a lot of flexibility, but still has mandates or policies that improve working conditions. So if you look back about 40 or 50 years ago, I think it would be fair to say that many economists and also basically liberal economic opinion, generally, have the mindset that minimum wages do more harm than good. The story went that is if you raise the minimum wage, you were going to make the cost of labor more expensive.

Employers would hire fewer workers, and ultimately you're going to end up hurting the low wage workers that you're trying to help. Even in the 1980s, the New York Times Editorial Board was saying that the right minimum wage is \$0 an hour. At the same time, you saw a huge slowdown in the frequency and the size of federal minimum wage increases. Before then minimum wage increases were relatively frequent, mostly track the growth of labor productivity in the economy until about the 1970s and 80s, until the business community and political leaders really turned against the minimum wage increases and using the support of economic research at the time. Now in the 1990s and 2000s, economic research on the minimum wage really started to change.

There was more data available and economists generally became more careful and more transparent in how they conducted economic analysis. Today, if you were to look at an apples to apples comparison of studies published in the last couple of decades or so, they show that the typical or the middle of the road employment effect of the minimum wage is actually very small and nothing like the

scare stories that critics of the minimum wages often talk about. Minimum wages tend to raise wages, but without much job loss, and the fact that the minimum wage increases can lead and have led to little or no job loss has very profound implications for what is possible with good economic policy. Just on minimum wages, we've seen much higher minimum wages in recent years with larger increases and they have in my view, according to the best research, led to very little job loss.

So, that means that we have a lot of room to raise minimum wages even higher, but also minimum wage research and economic research, it really has now demonstrated that employers have a lot of power in the labor market, and they have latitude to set wages and unrestricted, they will tend to under-provide decent working conditions. So, what that means is that there is a scope for countervailing institutions to improve working conditions without a lot of negative consequences, like minimum wages, but also paid leave mandates or making it easier for workers to bargain collectively.

Noam Scheiber (00:40:19)

Thank you. So, Michael, let me turn to you. You're someone who lives this reality from the perspective of an employer. You said that you pay typically \$16 an hour minimum wage at your restaurants, obviously, it varies a bit by market and geography. How has that worked for you as a practical matter, as an employer? How has that affected your bottom line? How has that affected the labor that you're able to attract? What have you seen in terms of kind of turnover, productivity? How has it all add up in your balance sheet, in your business balance sheet?

Michael Latoria (00:41:01)

Yeah, of course, first off, I'm never sure I'm going to get entirely used to staring at myself while I'm speaking. I miss actual audiences of people and faces, so you know who you're talking to. Yeah, I mean, my approach to advocacy has been a little bit different. I set out on this journey about decade ago and the whole notion behind &pizza was the and. The and came before the pizza and the and for us was always about promoting unity and uniting the working class around fair wages and really trying to help the food service industry more broadly speaking, and the restaurant industry as a sub-sector to start shifting and shaping the conversation towards, we've got to do a much better job of taking care of our workforce, making sure they feel appreciated, engaged and supported.

Just quick background on &pizza, if you are unfamiliar, we have 65 company locations, company owned and operated, multi-state operator from Boston down to Virginia. We're going to be opening another 35 locations this year, and that's important only because my answer to the question around what are we doing with respect to wages and democratizing decision-making in our organization, the answer is we're doing a lot and that a lot is contributing to the outsize growth and impact. We will be one of the fastest growing restaurant chains with some of the highest margins, but it all starts with our focus really being on providing quality jobs. We really apply the good jobs thesis to the organization and for us higher wages is the single clearest way to say to our workforce, "We value you."

That really is important to us and to our brand, that really is the symbol. That's about uniting the working class, and we kind of live by this notion of all of our work counts for nothing, if our people cannot live on the wages we pay them. Currently, we are right around a starting minimum wage of about \$18 an hour, that's shifted upwards and we've been making a really, really big push to try to get that closer and closer to \$20 an hour, I think for obvious reasons. Something that gets lost in the conversation about wages in particular, it's actually good business. Higher wages for us has led to greater consumer spending, greater workforce productivity, things every company benefits from, and there's been a lot of chatter around the notion of a labor shortage.

I think the frustration from where I sit is that really ignores the realities of the food service industry. I can tell you that millions of restaurant workers were fired or furloughed during the pandemic. Those who weren't were often forced to put their health at risk by potentially exposing themselves to COVID-19 at work or were subjected to abuse by customers when they tried to enforce their company's COVID protocols. The pandemic has highlighted like systemic issues that have been problems in restaurant and food service for decades, low wages, lack of benefits, dangerous working conditions, the cyclical nature of literally laying off and rehiring staff when it's only convenient for the employer's balance sheet.

So like these aren't new problems. These have been around for a long time, but we do need new solutions and so the body of work that we've really been focused on are how do we create a case study that we can take to much larger businesses? How do sales grow to a place where we'll be taken serious around, there is a better way to do it, there's a way to treat people with dignity and respect and to have really strong margins, lower turnover and quite frankly, above and beyond all, a workforce that shows up and cares about the work that they're doing and if you can convince people that are working largely part-time and hourly to care about your company, to care about your business, gosh that shows up.

We have some of the best GX scores, as I mentioned before, one of the top performing from a revenue perspective, pizza chains in the US with the highest margins next to Domino's, but Domino's is a largely franchise system. So when they report, they're reporting a subset of their company owned that their cherry picking and holding on for themselves, I would argue probably one of the highest margin, if not the highest margin restaurant chain out there, one of the fastest growing and it's all because of us approaching things with what's the right thing to do, leading with that and letting the data and results we treat people the right way show for itself.

Noam Scheiber (00:45:34)

So just to stick with you for a sec, I think your experience is validated through some of the research that we've seen about high road models versus low road models. Zen Upton at MIT has done great work on this, showing that you pay higher wages, you get more productivity, you get lower turnover, you save on training, customers like the experience a lot better. We've seen it in case studies of like Costco versus Walmart, Trader Joe's all the ... a variety of employers that do this, but you know better than I do, they're the minority. Why do you think that when you present other employers with this evidence, they still, for whatever reason, don't seem to buy it or you can show them studies, you can show them rivals that are pursuing this high road model, and you can show that it has either a neutral or a positive effect on the bottom line. Yet, we don't see it taken off. What's deal? Where is the disconnect coming?

Michael Lastoria (00:46:40)

Yeah, I think ... look, it starts with a legacy mindset that has now become dated and quite frankly more irrelevant every single day that passes, right? There's very little diversity in leadership at the executive ranks, boards look almost identical. You could copy and paste one company's board that looks identical to a brother or sister companies. So, there hasn't really been a lot of diversity and thought, and I think oftentimes in the public markets, the way that the incentives are for short-term performance over long-term sustainability, some of the best food service brands to be candid, have been doing this, with arguably questionable politics in other directions, but you can look to the in and outs and the Chick-fil-A's of the world. To some extent, at one point, prior to the last decade, Starbucks was probably further distanced with progressive workforce policy.

These companies have outperformed virtually every other brand that's focused on reducing or stifling pay and benefits for their workforce, so there's plenty of examples. It just takes longer, and it's the road less traveled. Now, what I will say about that is this doesn't really matter as much as it used to matter,

right? And I talk often about like, the irony is that minimum wages don't matter if you can't get workers to show up. Minimum wages aren't mandated wages and \$15 an hour is the floor. My phone has been ringing more in the last three to six months from executives actually wanting to have a conversation when before, they weren't interested, because their way simply isn't working, right? This isn't a great resignation or labor short.

This is a labor revolution. Wages are rising. Unemployment is falling. Workers for the first time in a long time are using their power to demand better. Part of that, and we talk about like the market catching up on sustainable businesses that for decade relied on suppressed wages for profit, this is I think one of the largest like wave of minimum wages ... like minimum wage raises in the history of the country. I love the fact that a lot of this organization is happening online, like go to the Reddit anti work channel and you can see like growing by the tens of thousands a week of people that now in partnership with unions that provide a tremendous amount of structure are giving them the confidence to speak up and speak out and know that there's a different way to do this.

I mean, we have 81 states in cities that are raising minimum wages this year, 44 cities are increasing minimum wages above \$15 an hour. Once considered crazy, when I was beating the drum on this 10 years ago, \$15 an hour is now becoming the reality for over half of the country. I just think that's important to like lock in and on and identified and we were the first restaurant chain to go to \$15 an hour. Like I said, I wouldn't change it and if anything, I would've done it earlier. So a lot of it has to do with an old approach. That's fastly becoming outdated and I do believe that this revolution is going nowhere and businesses are going to be forced to, if you want your restaurants or if you want your manufacturing to be staffed, you have to be approaching this differently, and that's a really good thing.

Noam Scheiber (00:50:04)

So, Ben, I just want to circle back to you. I think one of the most controversial corners of this debate is whether there's a kind of upper limit. I think, as you said, the consensus now is we have a lot of room to maneuver. We can raise minimum wage statutorily by quite a bit over certainly over the federal minimum wage, even as Michael was saying, 15 and up. At some point there arises this question, like how far is too far, how far can we go? Obviously, inflation concerns proliferate, this becomes a part of the conversation too. What have you learned ... I remember having a conversation with you years ago about drawing some insights from the FLSA in the early days when as a practical matter, the ratio of the federal minimum wage to the local median wage in a place like ... someplace in the deep south or a very rural place, would mean that it was very, very high, 60, 70% of the median wage, 80%.

What have we learned either from historical studies that look ... that it kind of exploit that relationship or from foreign countries, other examples where the ratio of the minimum wage to the typical wage or median wage was very, very high?

Ben Zipperer (00:51:28)

Yeah. So I think that one of the most striking historical experiences we had was, what David Weil talked about earlier in the late 1960s in the United States. So, as he mentioned, the original FLSA didn't actually cover large portions of the economy and Rebecca Dixon mentioned this earlier. Basically as a part of a political compromise, several industries that primarily black workers worked in were excluded from, in this case, minimum wage protection, but the FLSA generally. So, in contrast, as some of what seems to be happening today, where we're actually kind of like carving ... seem to be carving out exceptions in labor laws for like gig workers, back then, there were expansions in FLSA to actually cover the large portions of ... those excluded portions of the workforce.

For example, laundries, hospitals, nursing homes, even the retail sector, restaurants were not covered by the FLSA or under minimum wage regulation until the late 1960s, and what we know from economic research on that is that those were extremely large increases in the minimum wage, larger than we have mostly experienced since then and they raised wages with very little overall effect on the number of low wage workers working. In fact, they had ... it caused extremely large changes in black workers' wage, like David Weil mentioned that basically helped reduce the black to white earnings gap at the time. That's in contrast to what we're seeing today, where we have gig worker companies that are basically arguing that they're not subject to minimum wage protection or anti-discrimination protection workers' compensation, unemployment benefit.

So, I think it's important to recognize that we have historical precedent for very large increases in minimum wages or expanding workplace protections generally. They have mostly benefited workers with very little downside. Other countries have recognized that they also have a lot of scope to raise wages ... minimum wages much higher. So for example, the UK is raising its will by 2024, in just a couple of years, raised its minimum wage to essentially the equivalent of like a \$15 minimum wage in the United States. So they're raising their minimum wage to two thirds of the median wage. That's because they have ... that's because partly because of the economic research supporting that. And also that they have what's called a low pay commission that actually studies low pay in the UK and makes recommendations to raise the minimum wage to an appropriate target that can reduce poverty and reduce inequality.

Noam Scheiber (00:54:50)

Cool. Rebecca, I want to go back to you, a few of the panelists have alluded to workers leverage and the great resignation and just the tightening of the labor market that normally gives workers more power. I think that theory would be that as workers get more leverage, things like misclassification and wage theft should recede. Are we actually seeing that? As workers get more power or at least as we read about workers getting more power, are we seeing fewer abuses or not really?

Rebecca Dixon (00:55:27)

I think the answer is not really. So we've seen a lot in this economic time of increased wages, which is wonderful and great. We've also seen that being kind of eaten up by inflation in some places, right? What we haven't seen is employers saying, "Okay, we're going to give you paid time off." We're going to give you a predictable schedule from week to week or predictable hours from week to week. So we are seeing a lot with wages, but not a ton with other things because a lot of this, and I think one of the other panelists touched on this, the government needs to create the floor for what happens. In the case of gig workers, we haven't done that and I think we often see the perspective of this being like a new thing in the 21st century work.

The truth is that this type of precarious and contingent work is nothing new. So we hear about independent contracting in the gig economy, but it's actually prevalent in lots of different sectors of the economy. So you don't hear about the issue with businesses that treat workers like independent contractors in things like home care, janitorial, construction, personal services. So really sort of this gig company thing is dressing it up with technology, but it's a decades old problem that's been happening, and sort of like thinking about the scope, we're talking about around 23 million workers. Of course, I mean, I say this a lot but it is not even. It's uneven, right? So, we do see workers of color being the ones who don't have the bargaining power because they don't have the options in the labor market to actually turn down these jobs, right?

People don't take these jobs because they have other options. So if you are a person who your options to work in the service sector or to work in retail and the hours that you get are unpredictable, you are

trying to create some flexibility and predictability for yourself by driving for a company, because you can decide when those hours are, right? They're both bad jobs and you're taking the best of a bad option. That's because you don't have power in the labor market, which is deeply rooted in race and gender discrimination and our history of structural racism in this country.

Noam Scheiber (00:57:55)

Teresa, I wanted to just follow up on where you left off in your last comments about the exclusions to the FLSA and how that's being addressed. Obviously, as you said, we've seen some encouraging signs in California and Washington and a few other states that have started capping the work week and mandating over time for farm workers. I guess the question I wanted to ask is how much of this is about the law and gaps in the law and how much of this is just, even when we have laws on the books, employers just flout it. I think some of the most egregious examples you guys have certainly dealt with, I know in reporting on work that the Coalition of Immokalee Workers has done in Florida and parts of the south, we see this there too, where you just get these horrific egregious stories of assault in fields.

Even wage slavery, essentially none of that is legal and yet, we see it happen. So how much of it is actually about the law and how much of it is just scrutinizing employers, even if the laws exist?

Teresa Romero (00:59:08)

Sorry, thank you for that question. Now, this is very important. In the farm worker movement, we'd like to say the laws in the books are not the laws in the fields. There are laws that exist to protect workers, but there is no way to enforce them. The only way we have been able to enforce these laws is through a union contract. We have and we're working right now with administration on protecting not only domestic workers. If you think about the domestic workers, the majority of them work seasonal work. In many cases, their children have to work with them because they don't make enough money to support their family. If they work five to six months out of the year, there is not enough to support a family.

In addition to that, there are states where it is a lot that need ... lots that need to change because it is legal for 12 year old, 13 year old to work during the week when the school is off season and they can work in the fields and that happens in Washington state. In Oregon, according to the Oregon state law the minimum age at which a minor may work in agriculture within school hours is 16 years old. This is a work that is very difficult. That is very demanding. That is very physically demanding and a child should not be doing that. So we need to do both, we need to be able to enforce the laws and we'd be able to change the laws. When you have a lawsuit with H-2A workers, which are the guest workers that come to the United States during a season.

We have right now ... there is a lawsuit in Georgia with an employer that has applied for up to 70,000 H-2A workers during several years, is being now sued by the state because of women being raped, workers died, workers not being paid, enslaved. These are things that should not happen in our country. These are things that we should not allow to happen. If we're bringing these workers, we should make sure that they are safe, that they're getting paid, what they are offered, and this program, unfortunately has workers under the employer control to 100%. They gave an employer housing. They are transported to work by the employer. In many cases, although it is illegal, workers pay up to eight, \$10,000 to recruit ... to process their visas.

It is illegal, but until there is a way to enforce these laws, to protect these laws, to protect these workers, to represent these workers, nothing is going to be changed. This is something that just came out, but how many other stories of farm workers that are going through the same conditions, so through the same circumstances, through the same horrible working and living conditions. We don't know anything

about it. The only way we're going to do it is if we find a way to implement and ensure that all the regulations and laws of this country are being respected. Right now, it's not happening.

Noam Scheiber (01:02:40)

With some of these new laws about overtime and work week, like in California and Washington state, what are you finding so far? Are employers abiding by them or how is that working out so far?

Teresa Romero (01:02:53)

Some employers are ... the only ones that I can testify, 100% are employers that are under union contract. What we are hearing from farm workers is that what many employers are doing right now is they're paying the workers through payroll for 40 hours. Then, they ask them to work overtime, but they're paying in cash and not the overtime rate. So they are still finding a way to do it to not pay the workers, what they deserve. Unfortunately, because workers need the money because workers are mostly undocumented, they accept these changes, these way of doing business by the employer because they need the work. They know that if they say something, they're going to be threatened with being fired, and because we have many family members that work in the same farm, it is not just one person that might get fired. It is the entire family that might get fired.

Noam Scheiber (01:03:59)

So I'm just going to go ask one or two more questions on my own, and then we'll take some questions from the audience. There's a question, I guess, just to go back to Ben on some of the innovations that we've seen in cities and states for the past 10 years. Of Those innovations, what do you think would be the biggest bang for our buck in incorporating on the federal level, besides simply just increasing the wage floor. I guess one other piece of low hanging fruit would just be adjusting for automatic inflation adjustments over time, but are there other sort of innovative elements of city and state statutes that you think would really scale nationally?

Ben Zipperer (01:04:42)

In terms of the new minimum wage, yeah. Raising the minimum wage to a decent level so that the minimum wage is not a poverty wage and then automatically increasing it with inflation or with wage growth so that it doesn't erode over time. I think ... I don't know if this is what you're getting at, but I think it's also important to realize that while raising the minimum wage, I think it will reduce poverty. I think the evidence is very clear on that. Evidence is clear that it raises wages without much job loss. It primarily affects just the bottom of the wage distribution by definition. So we need other policies to improve working conditions generally, overtime policies, just like Teresa mentioned, they're not well enforced.

There are a lot of loopholes just within the law, like setting salary thresholds, like way too that make it easy for employers to misclassify or avoid paying those protections. Then finally, I think what would go ... if you're talking about biggest bang for the buck, then what would go a long way is restoring and strengthening the protections for workers to collectively bargain and organize their workplaces. I mean, many workers are misclassified as independent contractors, preventing them from organizing undercurrent labor law. Even when workers in principle are allowed to organize, they face enormous and illegal employer resistance and pressure because the penalties for violating labor laws, as you know, our minuscule.

My co-authors and I have found that employers were charged with violating federal labor law in four, out of every 10 supervised union elections and that's because it's very cost effective, unfortunately, because penalties are so low for employers to violate laws like that. So I think helping workers collectively bargain and organize, like through something like the pro act, the protecting the right to organize act would help to address employer misclassification by increasing the penalties for employer aggression and do a lot to increase worker bargaining power and affect wages throughout the wage distribution.

Noam Scheiber (01:07:01)

So let me just cut back to Rebecca one last time here. I do have a few questions from the audience, but some of them are in this same ... just on that same question, Rebecca, sort of you alluded to this earlier, but sort of federal legislation that you think would be sort of biggest bang for its buck that Congress could take up and the president could sign?

Rebecca Dixon (01:07:25)

Right. I don't know that this is like on the table, but we never did actually go back and include all the workers that we excluded to begin with. So thinking about how that can be done in a way that is sensitive to what the workers need, but there's options to expand rights and we really should be taking measures to do that. I think one important thing to mention about the minimum wage ... the federal minimum wage is that even though we are seeing wages increase because of the economic situation we're right now, we know that for black workers in particular, the majority of them live in the south. The Southern states generally don't have a statement of wage. So, the only way those workers are going to get a raise to 15 is if the federal government passes a 15.

So, there is really a racial justice element to the wage floors that the federal level, the Fair Labor Standards Act was supposed to put in place in the first place. So for folks who are included in it, and also, for folks who are excluded from it.

Noam Scheiber (01:08:39)

Thank you. So I'm just going to ask a few questions from the audience. Some of them we've hit on in our conversation. I don't know if David is still here, but there was a good question about enforcement, David and his remarks alluded to strategic enforcement. Maybe he could say a little more about how that works, and then I guess the other question for the audience was just, how should we think about kind of enforcement through litigation, kind of private litigation versus getting the federal government involved.

David Weil (01:09:11)

So strategic enforcement is really the idea of moving away from complaint driven enforcement activity, which dominated how Wage and Hour did its work for many, many decades and how a lot of state agencies acted. The problem with that is workers who sometimes are often the most subjected to the worst conditions are the least likely to actually exercise those rights. So a complaint driven mechanism pushes you not towards the places where the biggest problems are, and it also ties up resources that can have much more impact if you think about systemic problems and trying to root out some of the underlying economic drivers for non-compliance and wage theft, by thinking more proactively.

What's very exciting is in the Obama administration, we really piloted a lot of these things and kind of built it into the way the agency acts, but a lot of states have really taken this up and really continue to push for new ways to think about using enforcement. There's sort of a ... I call it ratcheting federalism that originally the FLSA learned from the states where there had been state level minimum wages and the federal government adopted it. Elmer Andrews, who I keep talking about was actually from New York State first. The feds kind of got ahead of where states were. I think we're at a point now that a lot of states are doing things that the federal government can learn from and leverage and really build on these ideas.

Noam Scheiber (01:10:54)

As someone who enforced these laws during the Obama administration, how did you think about private litigation? I mean, would you collaborate with private parties bringing litigation, would you just monitor it closely and kind of try to be complimentary in your enforcement? How did you think about that piece of it?

David Weil (01:11:14)

No, that's a great question. I think it's more of the latter, that's trying to be complimentary to it. It's a very important provision of the FLSA giving workers private rights of action. Again, often the workers who are more likely to use those private rights of action are not the ones who most need that assistance. The other thing that we did, I mean, if you're going to tell some people that there's not going to be a complete response to their complaint, the existence of private rights of action was something that we could actually make sure that people could still get, let's say back, wages they were entitled to, where the assessment was they could take those actions individually or through class, and in ways that complimented what we were trying to do as an enforcement agency. Again, I think many states take that same approach.

Noam Scheiber (01:12:10)

Thank you. So we've gotten a question or two on a sub minimum wage workers, tipped workers are probably the most prominent examples. There's been a lot of energy in the past several years around removing the sub-minimum and just making everyone subject to the same wage floor. Michael, as someone who probably has workers, who get tips, how do you think about tipping? How do you think about where the tip fits into the workers take home pay? Do you do anything like tip pooling just in general, as this conversation on tips have evolved, how have you gone about it?

Michael Lastoria (01:12:49)

Yeah, we actually are in a tipped business, right? So we kind of fall more into the fast food side of the restaurant sector. That being said, I'm a huge fan of the one fair wage movement. That's probably a much meatier conversation than likely what we have for today, given there's a lot to talk about, a lot to dig into. I think a lot that Rebecca probably could share as well, given all the work that she's done, but the bottom line is that there shouldn't be a sub minimum. Everyone should be working off of a minimum wage, minimum wages need to increase across the board in this country. We've seen it even the difference between Washington DC and Virginia minimum wage, and the way people are treated in Virginia.

So, it's practically absurd, quite frankly, how long it's been and we need to address things far beyond the minimum wage, there needs to be a set of rules, and I think to the question you've asked earlier to

bend around, is there a ceiling with respect to wages? The reality is people are smart. They will figure it out. I'm always a big believer that entrepreneurs are executives. If you make something cost more, they're not going to stop doing the job or doing the work, or building out their companies. They have an opportunity to earn. It's what they do. If all of a sudden you tell me, "Michael, your business is going to cost 30% more to run and operate," I'm not going to run away, fold up my tent, right, and go hide in the corner. I'm going to figure out how to absorb that 30%, look for efficiencies, make some profit elsewhere or just deal with the fact that 10% is the new 20% or 20% is the new 30%.

People are always going to be creative, and we have to lean on the fact that as a country, if we're lifting up the lowest wage workers, if we're taking care of them, any policy that does that is good policy, everything else will be figured out along the way.

Noam Scheiber (01:14:44)

Let me just bring in Rebecca here, one last time for the last question. Rebecca, I don't know if you have thoughts on the sub-minimum or if you wanted to hit on something else, but please feel free to weigh in one last time.

Rebecca Dixon (01:14:55)

Sure. I wanted to circle back to the strategic enforcement. So one of the important things to be aware of is that in a lot of these low wage jobs, workers have to sign an arbitration agreement to take the job, which means they are signing away their right to private action around these issues. So that takes private right of action off the table, which means ... and they also are prevented by signing these coercive waivers, also can't do a class action lawsuit. So, it means that the enforcement from the federal and state agencies is the only game in town for some of them. So, it's very crucial that those resources are able to have them the biggest impact. So, there is this project in California that we are a central hub ... a part of it where 18 community based organizations partner with the labor commissioner's office.

They're looking at specific industries where there are high violations of wage theft, and they've been able to recover so much money for workers in this. Also, as part of this, the community based organizations have been transforming the culture for workers around speaking up and using their power. So, that's just one example of like really using the community involvement to increase the effectiveness of enforcement.

Noam Scheiber (01:16:23)

Great. Thank you guys. Thank you, Rebecca. Thank you all for a great discussion and thanks for the questions from the audience. I'll throw it over to Maureen at this point.

Maureen Conway (01:16:37)

Great. Thank you all. Thank you, David, Noam, Rebecca, Michael, Teresa, and Ben. That was just a fantastic conversation. Clearly, we could have gone on longer. You guys have a tremendous amount of knowledge and information to share. So really appreciate all of that. Thanks very much to our audience for joining us, for your questions and comments. Please do take a moment to respond to our feedback survey, if you haven't already done so, before you leave. It's in the Polls tab in the Slido box on the right side of your screen. You can also send us an email at eop.program@aspeninstitute.org. We'd love to hear from you. I want to take a moment to say many thanks to my behind-the-scenes

colleagues who make all these events work. It's definitely a team effort. So many thanks to Matt Helmer, Tony Mastria, Adrienne Lee, Victoria Prince, and Yoorie Chang. Really appreciate all your efforts.

Just another reminder to join us, April 19th, for "The Future We Need: Organizing For a Better Democracy in the 21st Century" and again, on April 27th for "Title VII of the Civil Rights Act: Fulfilling the Promise of Equal Opportunity." I think all of these conversations, we can see how the different laws and these issues of principles of democracy are all interrelated. So please join us for those conversations, and we hope to see you then. Thanks everybody.