



POLICY BRIEF

Citizens' Guide to Spokane Proposition 1: The Worker Bill of Rights

Erin Shannon
Director, Center for Small Business

September 2015

1. *Proposition 1 would require Spokane city businesses with 150 or more employees to pay an unspecified "family wage." City officials would set the wage based on certain rules.*
2. *Spokane workers already enjoy one of the nation's highest real minimum wages because of the city's low cost of living. With cost of living taken into account, Spokane has the second highest real minimum wage of any U.S. city.*
3. *Proposition 1 would establish "equal" pay rules so broadly that everyone would become a member of a protected class. Employers would feel pressure to pay the same wages to workers with different experience, skills and productivity to avoid lawsuits.*
4. *Washington workers are already protected by the Equal Pay Act, the Civil Rights Act and the Washington Law Against Discrimination.*
5. *Proposition 1 would require employers with 10 or more employees to prove "cause" to fire or lay-off a worker, ending at-will employment in Spokane. "Cause" would be defined by union collective bargaining rules. Forty-nine states are at-will employment states.*
6. *Proposition 1 would take legal rights away from citizens who form a corporation to start a business, in conflict with laws that say business owners have the same rights as other citizens, including free speech and access to the courts.*
7. *Spokane taxpayers could be required to defend the measure against the city's own anti-discrimination laws.*
8. *Proposition 1 would reduce jobs, drive up costs and take away the rights of law-abiding business owners. It would harm the economic climate, encourage businesses to leave Spokane, and would likely require local taxpayers to pay for a flurry of lawsuits.*
9. *The City would be required to promulgate the rules and policies necessary to implement Proposition 1. Failure to do so would leave Spokane open to "action against the city" by any person. However, the measure does not include any way to fund the city's new costs associated with Proposition 1.*



Policy Brief

Citizens' Guide to Spokane Proposition 1: The Worker Bill of Rights

Erin Shannon
Director, Center for Small Business

September 2015

3	<i>Introduction</i>
3	<i>Background</i>
4	<i>Policy Analysis</i>
8	<i>Rules and Enforcement</i>
10	<i>Legal Concerns with Proposition 1</i>
10	<i>Conclusion</i>

Citizens' Guide to Spokane Proposition 1: The Worker Bill of Rights

Erin Shannon
Director, Center for Small Business

September 2015

Introduction

Envision Spokane is a community action group funded by organized labor and environmental activists. The group has filed an initiative to amend the City of Spokane charter to include a “Worker Bill of Rights.” If approved by voters in November, Proposition 1 would impose a broad set of new labor mandates on public and private employers in Spokane.

The group describes the Worker Bill of Rights as building “the people’s vision” of an “economically just, and democratic community.” The measure includes four key sections. The Worker Bill of Rights would require an undefined “family wage” for most employees of larger companies, equal pay and the right not be wrongfully terminated, and would make corporate rights subordinate to people’s rights.

This Citizens’ Guide summarizes the ballot proposal and describes how the policy changes it requires would affect people in the City of Spokane.

Background

Founded by the Community Environmental Legal Defense Fund, Envision Spokane is comprised of more than two-dozen unions, community organizations and groups with ties to national organizations.

The group has tried three times to pass a “Community Bill of Rights” initiative in Spokane, with no success. The three past efforts were in 2009, 2011 and 2013.

These efforts focused on reducing the power of the elected City Council in favor of unelected members of neighborhood councils; guaranteeing the Spokane River and Spokane Aquifer “inalienable rights to exist and flourish” and allowing citizens to file lawsuits on behalf of the River and Aquifer; protecting workers’ constitutional rights by granting all unionized workplaces the right to collectively bargain, and; stripping the current legal rights and protections of incorporated businesses.¹

The 2009 measure was rejected by 80 percent of voters, the 2011 pared-down proposal failed by two percentage points and the 2013 version was pulled from the ballot after a legal challenge by the business community. That case is currently pending before the Washington State Supreme Court

1 “Citizens Guide to Spokane Proposition 1: The Community Bill of Rights Proposal,” by Chris Cargill, Washington Policy Center, September 2011 at www.washingtonpolicy.org/publications/notes/citizens-guide-spokane-proposition-1-community-bill-rights-proposal.

After the three unsuccessful Community Bill of Rights proposals, Envision Spokane created a political committee, Envision Worker Rights, to push the current Worker Bill of Rights measure. The group says the goal of the Worker Bill of Rights is to “establish legally enforceable rights for workers to protect the local economy and build the people’s vision of a healthy, sustainable, economically just, and democratic community.”² After gathering more than 2,600 signatures (2,477 were needed) of registered voters, the measure qualified and will appear on the November 3, 2015 ballot.³

Policy Analysis

The provisions of the Worker Bill of Rights that establish the “right to equal pay” and declare the rights of corporations “subordinate” to the rights of people apply to all workers, while the provisions mandating a “family wage” and prohibiting “wrongful” termination apply only to workers employed by businesses of a certain size.

Similar to Seattle’s \$15 minimum wage law, franchise businesses in Spokane would be treated as a single employer with the national franchisor and parent corporation, with workers employed outside of the City of Spokane by the franchisor and parent corporation counting toward an employer’s company size.

Like Seattle’s paid sick leave law, workers who spend any time in Spokane during work hours would be covered, even if their employer is located in another city. However, unlike Seattle’s paid leave law, which specifies that a worker must clock at least 240 hours a year in Seattle to be covered, the Spokane measure includes no minimum threshold. A worker who spends “any portion” of his employment “physically present” within Spokane city limits would be covered by the “Worker Bill of Rights.” The moment an employee crosses the city line, he would fall under the full provisions of the new law.

“Right to a Family Wage”

The cornerstone of the Worker Bill of Rights would require an undefined “family wage” indexed to inflation for workers in the city who are employed by businesses with 150 or more employees. Proposition 1 does not specify what the “family wage” level would be. Instead it would charge city officials with making that determination later. While the city could determine the actual “family wage,” the initiative sets parameters the city must follow in calculating the wage, and specifies that it must provide “for basic needs and a limited ability to deal with future emergencies without the need of public assistance.”

City officials would be required to base the wage on a household size of two with one person employed and the wage rate could not be less than the Self-Sufficiency Standard for Washington State 2014. The problem is the initiative language does

2 “Worker Bill of Rights,” Envision Spokane, 2015, at <http://envisionspokane.org/worker-bill-of-rights>.

3 “Workers Bill of Rights proposal qualifies for ballot,” by Nicholas Deshais, *The Spokesman Review*, July 25, 2015 at www.spokesman.com/stories/2015/jul/25/workers-bill-of-rights-proposal-qualifies-for/.

not specify whether the person not working in the two-person household is an adult, an infant, preschooler, school-age child or teenager. The state's Self-Sufficiency Standards wage rates vary greatly depending on the age of the non-working person in the household.

For example, for Spokane County the Self-Sufficiency hourly wage for an adult and an infant is \$18.13, and for an adult and teenager it is \$11.85. The Self-Sufficiency hourly wage for two adults is \$14.06.⁴

These Self-Sufficiency wages do not include the monthly contribution amount (ranging from \$62 to \$82 per month)⁵ the Standards specify are needed for an "emergency savings fund," which the initiative's "family wage rate" would specifically include.

The Worker Bill of Rights specifies that the "family wage" determined by the city must provide for "basic needs" and "limited ability to deal with future emergencies without the need of public assistance," so the City would have to include the emergency savings fund amount when calculating the required family wage.

If the City does not calculate a "family wage," employers would be required to pay wages of three times the federal poverty level for a family of two,⁶ or any family wage previously calculated by the City of Spokane, whichever is higher. Three times the 2015 poverty level for a family of two is \$47,790 per year. How an employer would be required to convert this to hourly wages is not explained. Assuming the national average of 1,700 hours per year,⁷ the hourly wage would be about \$28.11 per hour.

It is unknown what wage, ranging from \$11.85 to \$28.11 per hour, would be the mandated family wage rate under Proposition 1.

In any case, employers would face significantly higher labor costs. However, employers would be able to pay less than the family wage if they provide benefits by which "one or more basic needs are covered elsewhere in a workers' compensation package." The amount of the allowed deduction is not specified or defined.

The new wage mandate would be phased in over a two-year period. Employers would be required to pay 60 percent of the required wage on the effective date (one year after the issuance of the certificate of election), and 80 percent of the required wage one year from the effective date.

Extensive economic research shows that sharply increasing the minimum wage results in fewer job opportunities for entry-level workers. These starter jobs provide such workers, usually the young, unskilled and less-educated, with the skills and work experience they need to command higher wages in the future.

4 "Find the Self-Sufficiency Standard for Your State: Washington-2014," Center for Women's Welfare at www.selfsufficiencystandard.org/pubs.html.

5 Ibid.

6 "2015 Poverty Guidelines for the 48 Contiguous States," Office of the Federal Register at www.federalregister.gov/articles/2015/01/22/2015-01120/annual-update-of-the-hhs-poverty-guidelines#t-1.

7 "Average Annual Hours Worked by Persons Engaged for United States," Federal Reserve Economic Data, at <https://research.stlouisfed.org/fred2/series/AVHWPEUSA065NRUG>.

A recent National Bureau of Economic Research study found that fewer job opportunities for such workers lead not just to lower incomes, but causes a reduction in their economic mobility over time.⁸ As minimum wage hikes reduce entry-level jobs for low-skilled workers, the future earnings of these workers are stunted, since those workers cannot gain the work experience and skills they needed to move up the earnings ladder.

This reinforces the fact that entry-level, low-wage jobs are a key steppingstone to earning more money later in life. That is why labor economists who support increasing the minimum wage to \$10, indexed to inflation, are opposed to sharp increases, such as the \$15 wage recently adopted in Seattle, San Francisco, Los Angeles and New York. These economists believe such large increases do more harm than good, hurting young and less-educated workers the most.⁹

What is more, Spokane workers already enjoy one of the nation's highest "real" minimum wages. According to a recent report, once the cost of living has been considered, the city of Spokane has the second highest "real" minimum wage of any U.S. city. Adjusting Spokane's current \$9.47 minimum wage to the city's cost of living, workers in Spokane make the equivalent of \$9.83 an hour.¹⁰

"Right to Equal Pay"

This section of Proposition 1 would establish rights to equal pay for equal work, regardless of "gender, sexual orientation, gender identity, gender express, familial status, race, ethnicity, national origin, citizenship, economic class, religion, age or developmental, mental or physical ability."

Essentially, everyone would become a "protected class." Employers would feel immense pressure to unfairly pay the same wages to workers with different experience, skills and productivity, just to avoid lawsuits and negative news coverage. Employers would be reluctant to tie compensation to work performance, so some workers would unfairly receive higher wages for unequal work.

Washington already has the Equal Pay Act, the Civil Rights Act and the Washington Law Against Discrimination to guard against unfair treatment in the workplace, in addition to federal laws that protect all Washington state workers.

-
- 8 "Minimum Wage and the Great Recession: Evidence of Effects on the Employment and Income Trajectories of Low-Skilled Workers," National Bureau of Economic Research, by Jeffrey Clemens and Michael Wither, University of California at San Diego, November 4, 2014 at <http://econweb.ucsd.edu/~mwithers/pdfs/Effects%20of%20Min%20Wage%20on%20Wages%20Employment%20and%20Earnings.pdf>.
 - 9 "A \$15-hour minimum wage could harm America's poorest workers," by Harry J. Holzer, *Fortune Magazine*, July 30, 2015 at <http://fortune.com/2015/07/30/1223726-15-hour-minimum-wage-workers-fast-food/>.
 - 10 "Kennewick, Yakima highest 'real' minimum wage in nation," KEPR TV, August 12, 2015 at <http://www.keprtv.com/news/local/Kennewick-Yakima-highest-real-minimum-wage-in-nation-321571591.html>.

“Right Not to be Wrongfully Terminated”

This provision would require employers in Spokane with 10 or more full-time equivalent workers to show “just cause” to terminate an employee, nullifying the “at-will” employment relationship that allows employers to lay-off or fire employees as needed.¹¹ Washington is one of 49 “at-will” states (Montana is the exception). Employers in “at-will” states do not need to prove cause to fire an employee. Conversely, employees have the right to quit at any time, inducing employers to treat productive workers well.

According to the Worker Bill of Rights, “just cause” would be interpreted in accordance with “established, common law principles of collective bargaining and labor relations.” Employers would be required to demonstrate any termination is for “work performance reasons,” unless they can demonstrate the lay-off is “necessary for economic hardship.”

Employers would be required to prove they provided “timely and adequate work performance warnings and opportunities to correct work performance,” and that there was a “fair, objective, and non-discriminatory termination process” that allowed the worker to oppose the termination.

Just-cause employment can create many legal problems for employers if an employee is terminated and the proper documentation is not on file, was not thorough enough, or the employee claims the termination was simply not justified. These problems are why 49 states are “at-will” employment states.

Research correlates at-will employment, specifically the flexibility to hire and fire workers quickly, as a major factor in some companies’ technological and economic growth.¹² When employers fear a potential future lawsuit if they cannot support a decision to terminate a worker with “just cause,” they become less likely to hire new workers in the first place.

This impact is greatest on workers who may already have a difficult time finding a job, such as workers with little on-the-job experience, those with less education, who have previously been fired, or who have a criminal record. And when employers fear being sued, they are less likely to fire workers who are doing a poor job. When under-performing workers are shielded, it erodes the morale and productivity of other workers.

Employers already have sufficient incentive not to fire workers unfairly. It is expensive to replace an employee. A study by the liberal Center for American Progress shows replacing an employee costs employers at least 16 percent of the worker’s annual wages.¹³

11 “Termination: What rights does a worker have whose job is being terminated?” Washington state Department of Labor and Industries, at www.lni.wa.gov/WorkplaceRights/ComplainDiscrim/Termination/.

12 “Working in Silicone Valley: Economic and Legal Analysis of a High Velocity Labor Market,” by Alan Hyde, 2003.

13 “There are significant costs to replacing employees,” by Heather Boushey and Sarah Jane Glynn, Center for American Progress, November 16, 2015, at <https://cdn.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>.

If the cost is not incentive enough, there are already laws protecting against wrongful termination. Federal anti-discrimination laws prohibit firing an at-will employee because of race, gender, color, religion, national origin, age or handicap status. Other laws protect at-will workers from being fired for refusing to commit illegal acts, for taking family or medical leave, for working to unionize a workplace, for whistleblowing and for other myriad reasons.

“Corporate Powers Subordinate to People’s Rights”

This provision would strip any current legal rights the owners of any corporate or business entity have to challenge the measure in court or otherwise “interfere with the rights enumerated” in the initiative. Arguing that Proposition 1 violates state or federal laws or saying voters lack the authority to adopt the measure would be considered interfering and thus prohibited.

This conflicts with state and federal law that recognizes the owners of corporations engaging in legal commerce as having the same legal rights as individuals, including the right to speak and the right to seek justice in the courts.

Federal laws define corporations as legal persons, with specific rights and responsibilities under the law. The U.S. Supreme Court has confirmed this principle by describing corporations as “associations of citizens,” which the government may not prohibit from engaging in free speech.¹⁴

Similarly, Washington state law recognizes corporations as having the same right as individuals to engage in legal commerce. The Revised Code of Washington states, “Every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.”¹⁵

The mayor of Spokane filed a legal challenge to the corporate subordination provision of Proposition 1, arguing it conflicts with state and federal law and “exceeds the jurisdictional limits of the initiative power.” The lawsuit sought to stop the measure from appearing on the November ballot. A Superior Court judge denied the attempt, ordering Proposition 1 to be put before voters. The judge did not rule on the constitutionality of the provision, rather that such questions are “not grounds to prevent an election from going forward.”¹⁶

Rules and Enforcement

The City of Spokane would be required to promulgate the rules and policies necessary to implement the Worker Bill of Rights. Failure to do so would leave Spokane open to “action against the city” by any person. However, the measure does not include any way to fund the city’s new costs associated with Proposition 1. Spokane City Councilmember Mike Allen says these new costs would be substantial:

14 *Citizens United v. FEC*, United States Supreme Court, Opinion of the Court, Page 33, www.law.cornell.edu/supct/pdf/08-205P.ZO.

15 Revised Code of Washington, 23B.03.020

16 “Judge rejects Condon’s attempt to block vote on workers rights,” *Spokesman Review*, by Nicholas Deshais, August 14, 2015 at www.spokesman.com/stories/2015/aug/14/judge-rejects-condons-attempt-to-block-vote-on/.

*“There are significant costs involved and they will have a significant impact to the general fund on an annual basis. How do they [voters] want us to pay for it? Do they [voters] want us to reduce services or increase taxes to pay for it? If we have some sort of unfunded mandate, the council will have to make a decision to do one of those two things. I’d like to have the voters’ input.”*¹⁷

Accordingly, the Spokane City Council has voted to include two advisory questions on the 2015 ballot with Proposition 1. The questions ask voters whether the city should increase taxes or cut services to free up funding to pay for the measure.¹⁸

Councilmember Allen says such questions will help voters make an “informed decision.” Envision Spokane has argued against including such advisory questions, saying they “taint” the ballot. “Voters won’t be able to judge the merits of the measure itself...it will most definitely affect the vote,” said a spokesperson for Envision Spokane.¹⁹

Additional information seems to have affected the vote on past ballot measures promoted by Envision Spokane. When similar advisory questions were included on the ballot with Envision Spokane’s 2009 measure, over 80 percent of voters rejected the measure. Absent advisory questions on the ballot, the measure failed by just two percentage points in 2011.

Interestingly, Proposition 1 does not hold the City accountable for actually enforcing the new rules:

*“No action shall lie against the City for failure to enforce the rights contained within this section.”*²⁰

Instead, it appears legal action would be the primary vehicle by which the new laws would be enforced. In addition to allowing “any person” to bring a lawsuit against the City for failure to promulgate the rules and policies necessary to implement Proposition 1, the measure would allow “any worker, government entity, or nonprofit entity” to “bring action against an employer for violation of these rights.”²¹ If successful these plaintiffs would be able to collect attorney fees and costs. However, the measure specifies that employers who prevail would not be similarly entitled to attorney fees and costs.

17 “Worker Bill of Rights proposal qualifies for Spokane ballot,” *Spokesman Review*, by Nicholas Deshais, July 25, 2015, at www.spokesman.com/stories/2015/jul/25/workers-bill-of-rights-proposal-qualifies-for/.

18 “Condon sues to keep Worker Bill of Rights off ballot,” *Spokesman Review*, by Nicholas Deshais, August 4, 2015, at www.spokesman.com/stories/2015/aug/04/condon-sues-to-keep-envisions-worker-bill-of/.

19 “Worker Bill of Rights proposal qualifies for Spokane ballot,” *Spokesman Review*, by Nicholas Deshais, July 25, 2015, at www.spokesman.com/stories/2015/jul/25/workers-bill-of-rights-proposal-qualifies-for/.

20 “Worker Bill of Rights,” Envision Spokane at <http://envisionspokane.org/worker-bill-of-rights>.

21 Ibid.

Legal Concerns with Proposition 1

Contradicting federal and state law, Proposition 1 says that people in Spokane who join together voluntarily in a corporation have less right to engage in legal commerce than people who are not part of a corporation. It is unlikely this form of discrimination would survive legal challenges in state or federal court.

The Worker Bill of Rights proposal raises another important legal question. The measure contains more than one subject and could be challenged and possibly struck down as unconstitutional by state courts.

Washington state's constitution (Article 2, Section 19) says "no bill shall embrace more than one subject, and that shall be expressed in the title."²² This provision also applies to ballot measures, which are treated as bills under state law.

In the Washington State Supreme Court opinion *Burien vs. Kiga*, the court defined a violation of the single-subject rule: "When a measure embodies two unrelated subjects, it is impossible for the court to assess whether each subject would have received majority support if voted on separately.... It necessarily required the voters who supported one subject of the measure to vote for an unrelated subject they might or might not have supported."²³

Likewise, the city of Spokane's own charter requires that no ballot measure contain "more than one subject."

According to the Spokane City Charter, the subject of any ordinance (in this case a proposed measure), "shall be set out clearly in the title thereof, and no ordinance except one making appropriations shall contain more than one subject. Ordinances making appropriations shall be confined to the subject of appropriations."²⁴

Lawsuits on the single subject rule and the corporate discrimination provision are almost a certainty, should Provision 1 pass in November. Ironically, if voters approve the measure, the city could be required to spend taxpayer dollars in court to defend it against the city's own laws and against state law.

Conclusion

While proponents of Proposition 1's Workers Bill of Rights say the measure would bestow more "rights for workers" while "protecting the local economy," it is likely Proposition 1 would have a much different impact.

Forcing Spokane's employers to pay an artificially high "family wage," justify the different wages their workers earn in the name of "equal pay" and provide "just cause" for firing an employee would hurt the business climate and make it more difficult to create new jobs.

22 Washington State Constitution, Article 2, Section 19 at <http://leg.wa.gov/LawsAndAgencyRules/pages/constitution.aspx>.

23 *Burien v. Kiga*, Washington Supreme Court, 144 Wn.2d 819, September 2001.

24 City of Spokane—City Charter, Article 3, Section 13, at <https://my.spokanecity.org/opendata/charter/article-03/>.

The measure would ultimately result in fewer job opportunities for the city's most disadvantaged workers. Workers who already have trouble finding work, such as those with few skills, a poor work history or a criminal record, would find their job search even more difficult.

Creating more uncertainty and legal liability for job creators does not help workers or the economy. Nor does demonizing job creators and stripping business owners of their legal rights and protections.

What helps workers and the economy is a free marketplace unfettered by unnecessary and crippling rules and regulations. Workers in Spokane enjoy the second highest "real" minimum wage of any city in the nation, and are protected by a multitude of state and federal laws to ensure they are treated fairly and not discriminated against.

Contrary to the hostile image promoted by Envision Spokane activists, business owners are not greedy, corporate overlords who seek to exploit workers. They are important members of the community, and it is in their own self-interest to treat and pay their employees fairly.

The provisions of Proposition 1 would increase the incentive of many of these small business owners to relocate to bordering communities in Idaho or the Spokane Valley and would likely cause other businesses thinking of expanding or relocating to Spokane to move elsewhere.

Proposition 1 would reduce job opportunities for low-skill and less-educated workers, curtail the rights of residents doing legal business in the city of Spokane, harm the economic climate, encourage businesses to shift away from Spokane, and would require local taxpayers to pay for a flurry of lawsuits.

Published by Washington Policy Center

Washington Policy Center is an independent research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Chairman	Craig Williamson
President	Daniel Mead Smith
Vice President for Research	Paul Guppy
Communications Director	Lisa Shin

If you have any comments or questions about this study, please contact us at:

Washington Policy Center
PO Box 3643
Seattle, WA 98124-3643

Online: www.washingtonpolicy.org
E-mail: wpc@washingtonpolicy.org
Phone: (206) 937-9691

© Washington Policy Center, 2015

About the Author



Erin Shannon is director of WPC's Center for Small Business. Before joining Washington Policy Center in 2012, she was the Public Relations director of Washington state's largest pro-small business trade association, and was formerly a Legislative Correspondent for U.S. Congressman Randy Tate in Washington, D.C. Over the past 15 years Erin has appeared regularly in print, broadcast and radio media. She was a recurring guest on ABC's "Bill Maher's Politically Incorrect" until the show's cancellation in 2002, and participated in a live, on-stage version of Politically Incorrect in Seattle with Bill Maher. Erin has served as the spokesperson for several pro-small business initiative campaigns including Referendum 53, repealing increases in unemployment insurance taxes; Initiative 841, repealing the state's ergonomics rule; and Initiative 1082, to end the state's monopoly on workers' compensation. Erin holds a bachelor's degree in political science from the University of Washington.