



POLICY BRIEF

Citizens' Guide to Proposition 1: To enact mandated worker benefits in SeaTac

Unions and certain businesses would be exempt from labor mandates

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Director, Center for Small Business

October 2013

Key Findings

1. *Proposition 1 is sponsored by labor unions, but they have exempted themselves from their own proposal. Non-union employers and workers would have no ability to escape the new mandates and would be subject to the full force of the law.*
2. *Proposition 1 could result in \$72 million a year in higher costs for doing business in SeaTac. Many employers would not be able to pay this dramatic increase in labor costs with no corresponding increase in productivity.*
3. *Some businesses may close down, some may cut employee benefits, hours and non-mandated benefits, while others may opt to downsize to avoid triggering the ordinance mandates. Some businesses may relocate to bordering cities.*
4. *Because Proposition 1 targets certain employers, their competitors would not have to meet the same 63% increase in payroll or provide paid sick leave. In short, the proposal would give some businesses an unfair market advantage over others.*
5. *The new obligations of the City of SeaTac in monitoring, investigating and enforcing the new law could strain the city's limited resources.*
6. *SeaTac could experience a decrease in tax revenue, as businesses relocate to escape the ordinance. The increase in the cost of doing business in SeaTac could lead to a reduction in economic development and a drop in the value of commercial property, resulting in yet another reduction in revenue for the city.*
7. *The potential reduction in revenue combined with the increase in services could lead to an increase in current taxes or to a new tax imposed on all SeaTac residents.*



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by Erin Shannon
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Introduction

On November 5, 2013, voters in the City of SeaTac will vote on a controversial initiative (Proposition 1) that would impose a very high minimum wage and other rules on certain hospitality and transportation industry workers within city limits. The law would apply to employees working for businesses at Seattle-Tacoma International Airport and to nearby businesses that rely on the airport such as hotels, car rentals and parking lots.

Dubbed the “SeaTac Good Jobs Initiative” by supporters, Proposition 1 most notably would codify into the city’s law a series of labor mandates, including mandatory paid sick leave and a \$15 per hour minimum wage to every worker, regardless of experience, education or skill. The Initiative would also establish union-style requirements dictating how employers hire employees and what hours they may work.

While Proposition 1 is heavily supported by labor unions, the measure would ironically allow unions to waive the labor mandates in a collective bargaining agreement. Non-union employers and workers would have no negotiating power to waive the mandates and would be subject to the letter of the law.

This study explains what the initiative would do, gives a short background on paid sick leave and high minimum wages, and history of labor issues related to SeaTac Airport. This study summarizes the initiative’s main provisions and analyzes the impact such policies would have on hospitality and transportation jobs in the City of SeaTac.

Background

Efforts to impose paid sick leave and a very high minimum wage have been attempted at the state level and in various municipalities in Washington state in recent years.

Most recently, the City of Seattle imposed a paid sick leave ordinance that went into effect in September 2012.¹ The law requires employers with more than four employees to provide up to 72 hours per year of paid sick and other leave in the event an employee or specified family members become ill or are the victim

1 Council Bill Number: 117216, Ordinance Number: 123698, Office of the City Clerk, Seattle, at www.clerk.seattle.gov/~scripts/nph-s.exe?s1=paid+sick&s3=&s4=&s2=&s5=&Sect4=AND&l=20&Sect2=THESON&Sect3=PLURON&Sect5=CBORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F%7Epublic%2Fcopy.htm&r=1&f=G.

of domestic violence, sexual assault or stalking. Officials in Tacoma are currently considering whether to impose a paid sick leave ordinance based on Seattle's law.²

Advocates of paid sick leave argue workers face an unfair dilemma when ill—come to work sick (or send their child to school sick) or lose a day's wages. Opponents argue a paid sick leave mandate increases employers' business costs and is a one-size-fits-all attempt by government to solve a problem that does not exist.³

While mandatory paid sick leave has won a foothold in the largest city in Washington, the push to impose a higher than state mandated minimum wage has been less successful.

Baltimore was the first city to impose a very high minimum wage (in 1994), but it applied only to companies that provided contracted services for the city. Almost all of the 120 very high minimum wage laws currently in effect in U.S. cities and counties apply only to government contracts with private companies, not to general businesses or industry-specific companies.⁴

In Washington, only Bellingham has imposed a very high minimum wage (in 2002), which, like almost all other high minimum wage ordinances, applies only to certain private companies that contract services with city government. Less than one percent of Bellingham contractors are impacted by that city's law.⁵ Restricting very high minimum wage mandates to a few city contractors prevents most of the broad economic harm and job destruction that would otherwise be imposed on lower wage workers.

A number of efforts in Washington to impose a very high minimum wage mandate have failed. In 2007, Spokane residents declined to provide enough signatures to put a very high minimum wage mandate on the ballot.⁶

SeaTac is now the forum for debating a very high minimum wage proposal.

On July 20, 2013 supporters of an initiative petition titled "Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Employers" submitted sufficient signatures to place the measure before the SeaTac City Council.⁷ The proposed ordinance targets the three largest local economic sectors of the city—airlines, lodging and rental cars.⁸

2 "Group seeks sick leave for all who work in Tacoma," The News Tribune, May 29, 2013, at www.thenewstribune.com/2013/05/29/2617576/group-seeks-sick-leave-for-all.html.

3 "Paid Sick Leave in Seattle: Examining the Impact on the Service Industry," Employment Policies Institute, August 2013, at www.epionline.org/wp-content/uploads/2013/08/130801_EPI_PolicyBrief_final.pdf.

4 "Local Living Wage Ordinances and Coverage," National Employment Law Project, July 2011, at www.nelp.org/page/-/Justice/2011/LocalLWLawCoverageFINAL.pdf?nocdn=1.

5 "Bellingham living-wage law aids few," Sam Taylor, The Bellingham Herald, February 20, 2007.

6 "A National Movement Hits Close to Home: The Living Wage Proposal in Washington State," by Carl Gipson, Director, Center for Small Business, Washington Policy Center, November 2007, at www.washingtonpolicy.org/sites/default/files/LivingWagePBText.pdf.

7 "Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Industry Employers," at www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=7321.

8 "City of SeaTac 2013-2014 Biennial Budget Message," Todd Cutts, SeaTac City Manager, at www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=7236.

The council chose to place it before voters in the general election on November 5, 2013.

History

In 2003 the Port of Seattle, which owns Sea-Tac Airport, reformed how it operates the Northwest's largest airport transportation hub. Eliminating the use of a single master concessionaire contract for food establishment and retail stores, which closed jobs to all but union-approved workers and required a mandatory collective bargaining agreement, the port instead opened concessions to individual businesses, some of which offer jobs to non-union workers. The port's goal was to emphasize local businesses and lower prices through competition.⁹

The policy change worked. Concessions sales volumes and jobs grew dramatically after terminating the master agreement. Between 2003 and 2010, airport concession sales rose 75 percent increasing the port's revenue by 82 percent and more than doubling the number of jobs.¹⁰ Union executives, however, continue to complain about the policy change and the loss of their favored position.

Union executives expressed further opposition when Alaska Airlines began contracting out baggage handling services to a non-union business in 2005.¹¹ Outsourcing airport services to non-union contractors soon became the policy of many airlines, resulting in lower costs and improved airport services.¹²

The proposal to impose a very high minimum wage and other requirements on SeaTac-related jobs occurs in the context of long standing union opposition to recent policy changes in the operation of the airport.

9 "Approved Minutes Commission Regular Meeting," Port of Seattle, December 13, 2011, at www.portseattle.org/About/Commission/Meetings/Meeting%20Agendas/2011_12_13_RM_Minutes_LINKED.pdf.

10 Ibid.

11 "Alaska's baggage handlers lose suit," The Seattle Times, June 2, 2005, at www.seattlepi.com/business/article/Alaska-s-baggage-handlers-lose-suit-1175053.php.

12 "A Synthesis of Airport Practice," by the Transportation Research Board of the National Academies, Airport Cooperative Research Program, sponsored by the Federal Aviation Administration, 2011, at www.nap.edu/catalog.php?record_id=14599.

Description of Proposition 1

Proposition 1 would target hospitality and transportation employers of a certain size operating in the City of SeaTac with a comprehensive set of labor mandates.¹³ The mandates would apply to:

- Any hotel that has 100 or more guest rooms and 30 or more workers or who operates any institutional food service or retail operation (those provided in hotels, public facilities, corporate cafeterias, conference centers or meeting facilities, but does not include preparation of food or beverage to be served in-flight by airline) employing 10 or more non-managerial, non-supervisory employees.
- A person, excluding certificated air carriers performing services for itself, which operates or provides the following services and employs 25 or more non-managerial, non-supervisory employees:
 - Curbside passenger check-in services, baggage check services, wheelchair escort services, baggage handling, cargo handling, rental luggage cart services, aircraft interior cleaning, aircraft carpet cleaning, aircraft washing and cleaning, aviation ground support equipment washing and cleaning, aircraft water or lavatory services, aircraft fueling, ground transportation management, janitorial and custodial services, facility maintenance services, security services or customer service performed in any facility where the above services are performed.
- Any person who operates or provides rental car services utilizing or operating a fleet of more than 100 cars and employs 25 or more non-managerial employees.
- Any person who operates or provides shuttle transportation utilizing or operating a fleet of more than 10 vans or buses and employs 25 or more non-managerial employees.
- Any person who operates or provides parking lot management controlling more than 100 parking spaces and employs 25 or more non-managerial employees.

Paid Sick and Safe Leave

Every worker employed by these hospitality or transportation employers in the City of SeaTac would accrue one (1) hour of paid sick and other paid time off for every 40 hours worked.

Very High Minimum Wage

Every worker employed by a hospitality or transportation employer in the City of SeaTac would earn a wage of no less than \$15 per hour. Every January 1st the minimum wage requirement would increase by the rate of inflation, based on the consumer price index for urban wage earners and clerical workers (CPI-W).

¹³ “Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Industry Employers,” at www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=7321.

Full-Time Employment

Hospitality or transportation employers with additional hours of work to provide in positions held by covered workers would be required to offer those hours of work first to existing part-time employees before hiring additional part-time employees or subcontractors.

Worker Retention

Hospitality and transportation employers who replace a predecessor employer's concession contract with the airport and provide substantially similar services would be considered a "successor employer."

Before hiring off the street or transferring workers from elsewhere, successor employers would be required to offer employment to qualified employees of any predecessor employer (known as retention employees) that has provided similar services at the same facility. Retention employees would be included on a "qualified displaced worker list" from which successor employers must draw when hiring new employees.

If there are not enough positions available to employ all retention employees, the successor employer would be required to hire retention employees according to seniority within each job classification. Any additional positions that become available during the first 90-day period of the successor employer's new contract would be considered retention jobs as well and subject to the hire-by-seniority requirement.

Successor employers would be prohibited from terminating a retention employee without just cause during the initial 90 days of employment.

Requiring Service Charges and Tips to Go to Those Performing the Service

Any service charge imposed on customers of, or tips received by employees of, a hospitality or transportation worker, shall be paid to or retained by the non-managerial, non-supervisory workers who perform the service for the customers from whom the tips are received or the service charges are collected.

Record Keeping and Enforcement

The City of SeaTac would be given the authority to inspect the records of hospitality and transportation employers documenting hours worked, accrued and paid sick and safe time, and wages and benefits provided to employees. Those records would be available to the City Manager for a two-year period. Failure to maintain "adequate" records documenting hours worked and paid sick leave earned and taken by employees would presume an employer's violation of the law.

The City Attorney would be authorized to investigate and initiate legal action to remedy any violation of the ordinance.

Additionally, employees would have the option to file a private cause of action against an employer in King County Superior Court.

Waivers

No waivers would be permitted to any of the measure's provisions between an individual covered worker and a hospitality or transportation employer, except by a collective bargaining agreement.

Analysis

The scope of the ordinance proposed in SeaTac is much broader than that of any other jurisdiction in the country. Just five cities and one state have passed paid sick leave laws, and those are much more restrictive than what is proposed for SeaTac hospitality and transportation companies.

While 120 municipalities around the country have passed high minimum wage laws, those laws typically apply only businesses that contract with or receive economic grants from local governments, not to general businesses in the community.¹⁴ The SeaTac proposal would impose the very high minimum wage mandate broadly on private companies in targeted economic sectors.

Supporters of the measure estimate 72 SeaTac businesses and over 6,000 workers will be impacted by the new labor mandates.¹⁵ And while these supporters argue other west coast airports pay higher minimum wages than workers receive at Sea-Tac Airport, those higher minimum wages are contracted minimums for airport workers on airport premises, while Proposition 1 targets businesses and workers beyond Sea-Tac Airport premises.

The Impact of Paid Sick and Other Paid Leave Laws

Paid sick leave comes with a significant cost for business, especially small employers.

A recent survey by the Employment Policies Institute (EPI) on Seattle's paid sick leave ordinance reveals the new policy is already increasing the cost of doing business.¹⁶ The survey examined service industry employers, such as restaurant and retail businesses. More than 56 percent of these employers said the new mandate would increase their cost of doing business, with over one quarter of those saying the increase would be "big."

Proponents of paid sick leave argue employers will offset increased costs through reduced employee turnover. But the EPI survey shows two-thirds of Seattle employers who have started providing mandated paid sick leave do not believe the law will reduce turnover, and one third of Seattle employers think the law will

14 "Local Living Wage Ordinances and Coverage," National Employment Law Project, July 2011, at www.nelp.org/page/-/Justice/2011/LocalLWLAwsCoverageFINAL.pdf?nocdn=1.

15 "Who is Covered by SeaTac's Proposition 1 (and Who is Not)?," Nicole Vallesterro Keenan, Puget Sound Sage, September 12, 2013, at <http://soundprogress.wordpress.com/2013/09/12/who-is-covered-by-seatacs-proposition-1-and-who-is-not/>.

16 "Paid Sick Leave in Seattle: Examining the Impact on the Service Industry," Employment Policies Institute, August 2013, at www.epionline.org/wp-content/uploads/2013/08/130801_EPI_PolicyBrief_final.pdf.

increase unscheduled absences among employees taking paid days off even though they are not sick.

A survey by the Urban Institute in San Francisco found few employers reported reduced employee turnover as a result of that city's paid sick leave law.¹⁷ As one business owner pointed out in that survey, if every employer is required to provide paid sick leave, turnover becomes a moot point because that benefit is no longer an incentive for an employee to remain with one employer over another. Workers receive the mandated benefit anyway, so there's no added reason to stay with one employer.

Overall, the paid sick leave mandate has increased costs. In Seattle, employers report that in response to the new paid sick leave mandate they have taken one of the following cost-cutting measures:

- 15.7% of employers raised prices on consumers.
- 18.3% of employers reduced hours and staff, reducing employment and take home pay for workers.
- 17.3% increased the cost to employees of current benefits or eliminated benefits they used to offer, again increasing the burden of the mandate on workers.

These survey results are not unusual; surveys in San Francisco and Connecticut, which both mandate paid sick leave, revealed similar results. A survey of San Francisco employees by the Institute for Women's Policy Research found nearly 30 percent of the lowest-wage employees were laid off or given reduced hours after passage of that city's paid sick leave mandate.¹⁸

The Urban Institute survey similarly found some San Francisco employers had cut back employee bonuses, vacation time and part-time help to absorb the new costs. In Connecticut, employers reported that state's paid sick leave law forced them to raise prices, reduce hours and wages, and sometimes eliminate jobs.¹⁹

Mandatory paid sick leave laws increase costs because employers are forced to pay the wages of the worker who has called in sick, while paying another worker to fill in for the absent worker. Alternatively, the employer can opt to let the sick employee's work go unfinished and sacrifice service, productivity and sales (while still paying the absent worker). Either way, costs increase and service to consumers declines.

17 "Employer's Perspectives on San Francisco's Paid Sick Leave Policy," by Shelley Water Boots, Karin Marstinson and Ann Danzinger, Urban Institute, March 2009, at www.urban.org/UploadedPDF/411868_sanfrancisco_sick_leave.pdf.

18 "San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees," by Robert Drago, Ph.D., Vicky Lovell, Ph.D., Institute for Women's Policy Research, February 2011, at www.iwpr.org/publications/pubs/San-Fran-PSD.

19 "Paid Sick Leave in Connecticut: A Pilot Study of Businesses' Responses to the Law," by Michael Saltsman, Employment Policies Institute, February 14, 2013, at www.epionline.org/study/paid-sick-leave-connecticut/.

SeaTac's Proposition 1 goes much further than paid sick leave laws currently in effect in other jurisdictions (San Francisco, District of Columbia, Connecticut, Seattle, Portland and New York).

Unlike the paid sick leave laws in other cities, there would be no wait period for the accrual or use of the paid leave for SeaTac employees. Accrual of leave time would begin immediately and workers could claim the paid time off immediately.

Another difference is Proposition 1 requires employers to pay out unused leave as cash at the end of every year. No other paid sick leave law requires employers to cash out unused sick time, reasoning sick leave is a safety-net to allow workers to earn wages when legitimately ill, not a way to earn more money. A cash-out policy defeats one of the claims of paid leave proponents, because it encourages employees to come to work while ill so they can save sick days for cash-out purposes.

Yet another difference is that in SeaTac, workers would not need to provide any medical documentation or proof of real illness. Every other paid sick leave ordinance requires medical documentation for extended leave or if there is evidence of sick leave abuse.

The Impact of Very High Minimum Wage Laws

The wages paid by some hospitality and transportation employers in SeaTac would increase 63 percent, from the current state minimum wage of \$9.19 per hour (already the highest of any state) to \$15 per hour. This would calculate to an annual salary of over \$31,000 for a full-time worker covered by the new law, in addition to tips, gratuities and service charges earned by the worker. It is estimated more than 6,000 workers would earn the new wage.

The result could be \$72 million a year in higher costs for the 72 businesses doing business in SeaTac that would fall under the new law. Many employers would not be able to pay this dramatic increase in labor costs with no corresponding increase in productivity. Nor could they simply pass the costs along to consumers.

Because Proposition 1 targets certain employers, their competitors would not have to meet the same 63 percent increase in payroll. In short, the proposal would give some businesses an unfair market advantage over others. Restaurants located within hotels would similarly be at a competitive disadvantage, because the proposal would not apply to restaurants located outside of hotels. So a restaurant inside a hotel would suddenly face a significantly higher cost of conducting business, while a nearby competitor would be exempt.

Employers holding concession contracts with the Port of Seattle to operate in Sea-Tac Airport would face an even bigger obstacle to absorbing the increased cost. The Port of Seattle requires concessionaires to set prices in line with non-airport prices, known as "street pricing," so air travelers are not forced to pay artificially inflated prices.

For example, the owner of a Quiznos sandwich shop in the airport has to match the prices of other Quiznos restaurants, regardless of the increased costs to do business there. A business like Quiznos pays around \$14,000 per month to lease

space in the airport, compared to the typical \$2,500 to \$3,000 a Quiznos franchise pays in off-airport locations.²⁰

If employers holding concession contracts to operate in Sea-Tac Airport are forced to significantly increase the wages they pay their workers, many will not survive if they cannot correspondingly increase the prices they charge consumers. According to the Port of Seattle, labor executives want in-airport businesses to charge higher-than-street prices, for the sole purpose of securing higher employee wages and benefits for their union members. Consumers, on the other hand, have expressed their preference for maintaining the current policy of keeping prices low through street pricing.²¹

Whenever government imposes a higher cost of staying in business, in this case through a proposed mandatory \$15 per hour wage, employers are forced to raise prices or take other mitigating steps. While the competitive disadvantage inherent in Proposition 1 means raising prices on consumers may not be an option for many of the affected SeaTac businesses, likely mitigating steps include:

- Laying off employees or reducing employee hours;
- Reducing employee benefits;
- Cancelling expansion plans;
- Relocating the business;
- Going out of business.

All these actions, in some form, ultimately harm the worker the very high minimum wage law is supposed to help.

Studies vary about the scale of economic impact, but they all agree that a very high, mandated wage results in lost jobs and decreased employment.

Most reports assume a negative 0.1 to negative 0.2 labor elasticity for every 10 percent increase in the minimum wage. In other words, each 10 percent increase in the mandated minimum wage results in a decrease in employment of one to two percent for low-skilled workers.²²

This equation means a mandated 63 percent increase in the minimum wage on SeaTac's hospitality and transportation workers would reduce employment between 6.3 percent to 12.6 percent. Since an estimated 6,000 employees in SeaTac would be affected by the proposed very high minimum wage, this could result in a net loss of 378 to 756 jobs in SeaTac.

20 "Employer says raising SeaTac minimum wage to \$15 an hour would put him out of business," by Jamie Skorheim, MyNorthwest.com, July 28, 2013, at www.mynorthwest.com/76/2322267/Employer-says-raising-SeaTac-minimum-wage-to-15-an-hour-would-put-him-out-of-business.

21 "Approved Minutes Commission Regular Meeting," Port of Seattle, December 13, 2011, at www.portseattle.org/About/Commission/Meetings/Meeting%20Agendas/2011_12_13_RM_Minutes_LINKED.pdf.

22 "The Economic Impact of Mandated Wage Floors," David Neumark, Public Policy Institute of California, 2004 at www.ppic.org/content/pubs/op/OP_204DNOP.pdf.

In a wage survey of 336 labor economists, the University of New Hampshire Survey Center found that three-fourths believe a national increase in the minimum wage would result in employers hiring higher skilled applicants than they hired before the increase and three-fourths believe it would result in employment losses. And 93 percent of the labor economists surveyed believe a very high minimum wage law is not an efficient way to address the income needs of poor families.²³

The analysis shows workers lucky enough to keep the mandated, high minimum wage jobs would likely be better off. The social price, however, would make it tougher for those who are laid off and for those without jobs to enter into the ranks of the employed.

Full-Time Employment

Proposition 1 would remove employers' independent decision-making rights by requiring additional hours be offered to current part-time employees before hiring additional part-time employees.

Under the proposal city law, not business managers, would determine whether a business and its customers are best served with a workforce comprised of part-time or full-time employees. Employers and workers need the flexibility to determine the staffing needs that allow them to deliver the best product or service, not a government mandated one-size-fits-all policy.

Worker Retention

The creation of "successor employers" is another provision of Proposition 1 that would remove employers' ability to make important hiring decisions based on what is best for their business. Instead of choosing which employees to hire, employers would be forced to hire employees from a "qualified displaced workers list."

Washington is an "at will" state, meaning businesses may fire, and employees may quit, at any time, with or without notice or cause.²⁴ The proposed SeaTac ordinance policy would undermine the at-will presumption of employment by prohibiting "successor employers" from dismissing employees within the first 90-day period of employment without "just cause."

Further, many legal scholars argue the National Labor Relations Act (NLRA) preempts state and local worker retention laws, because such laws interfere with labor management relations and employers' right to hire whomever they want.²⁵ Congress established the National Labor Relations Board (NLRB), for the express purpose of ensuring fairness in negotiations between labor and management

23 "The Living Wage: Survey of Labor Economists," University of New Hampshire Survey Center for the Employment Policies Institute, August 2000 at www.epionline.org/study/r13/.

24 Washington State Department of Labor & Industries website, at www.lni.wa.gov/WorkplaceRights/ComplainDiscrim/Termination/.

25 "NLRA Preempts Worker Retention Laws Because They Interfere with Successor Employers' Established Right to Hire Whomever They Want," Tyler M. Paetkau, CA Labor & Employment Bulletin, January 2012, at www.hartnettsmith.com/wp-content/themes/hartnettsmith/inc/NLRA_preemption_article_January2012.pdf.

and preventing the regulation of “conduct that Congress intended to be free of regulation and left to the free play of economic forces.”²⁶

The freedom of employers to choose whom they hire was part of the U.S. Supreme Court’s 1937 decision upholding the constitutionality of the NLRA, based on the court’s finding that the NLRA, “does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them.”²⁷

Legal scholars argue an employer’s right to choose whom they hire, including whether to hire a predecessor’s employees, is precisely why the NLRA was enacted and the very type of activity intended by Congress to protect. “Congress intended the NLRA to prevent states and locales from interfering with the employer’s right to choose its employees...employer’s free selection of employees has always been a fundamental part of national labor policy.”²⁸

Finally, the proposed worker retention provision of Proposition 1 could impact whether an employer is considered a “successor employer” under federal law, and thus required to bargain with the existing union representing the employees. Under the NLRA successorship analysis, a company replacing an employer and providing similar services that chooses to hire a majority of the previous employer’s workers is deemed a “successor” and obligated to continue a collective bargaining agreement with the existing union representing the employees.

The NLRA “successor” designation relies on the voluntary decision of the new employer to retain the predecessor employer’s workers. By forcing new employers to retain predecessor workers, employers would be forced into “successor” status under federal law, and could be forced to continue to bargain with a union representing the forcibly retained employees.

This has already happened in New York. A company was forcibly identified by the NLRB as a successor employer as the result of a worker retention law and required to bargain with the retained workers’ union. A court later overturned the decision, but employers could face similar legal challenges from labor unions, as the interpretation of worker retention laws remains unclear.²⁹

Requiring Service Charges and Tips to Go to Those Performing the Service

In a free society, the distribution of tips, like wages and other compensation, should be negotiated between employers and employees. Many businesses require tip sharing to ensure employees who provide valuable support services, but do not meet customers, are rewarded for their work. The policy is intended to treat employees as members of a team, all working to serve customers, even if many employees, for example kitchen staff, remain unseen by the public.

26 Int’l Ass’n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm’n, 427 U.S. at 140 (1976) (quoting NLRB v. Nash-Finch Co., 404 U.S. 138, 144 (1971)); Chamber of Commerce v. Brown, 554 U.S. at 65 (2008)

27 NLRB v. Jones & Laughlin Steel Corp., 301 U.S. at 45 (1937)

28 California Grocers Association v. City of Los Angeles, 52 Ca. 4th at 224

29 “NLRB Not Entitled to Injunction Directing NYC Property Management Company to Bargain with Incumbent Union,” National Law Review, by Jerry F. Goldberg, December 15, 2012 at www.natlawreview.com/article/nlrb-not-entitled-to-injunction-directing-nyc-property-management-company-to-bargain.

The proposed SeaTac ordinance would bar some employees by law from sharing in the tip compensation received by the business. The result would be lower wages for some workers.

Record Keeping and Enforcement

Employers would be required to maintain detailed employee records of hours worked, wages earned, paid sick and other paid leave accrued, taken or cashed out and benefits provided for a two year period, with those records open to inspection by city officials. Failure to maintain “adequate” records would result in a presumption of guilt for violating the law.

The city would be responsible for monitoring compliance, investigating complaints of potential violations and enforcing the law.

The City of SeaTac would incur significant cost increases related to administering and enforcing the new law.

Like many municipalities, SeaTac has in recent years, experienced budget difficulties. The city reduced expenditures in 2009, 2010 and 2011, which included significantly reducing the workforce.³⁰

Adding new duties and responsibilities would further strain the city’s budget. This is not even taking into consideration the possibility that the costly new mandates could drive some businesses and their tax revenue, out of SeaTac into bordering municipalities, reducing the city’s income.

At the same time, employers would be subject to costly lawsuits from employees. The ordinance specifically states that a plaintiff who prevails in an action to enforce the law would have their legal fees and expenses paid by the employer, but no such consideration is stated for employers who prevail over the plaintiff in such an action.

Waivers

Proposition 1 would prohibit any covered employer and employee from negotiating or altering these requirements—unless the employer and employee are union-shop and the negotiating or altering is part of a collective bargaining agreement. So non-union employers and workers would be held to the strict letter of the law, while unions would be free to negotiate the wages and benefits that work best for employers and their workers.

This union exemption is fundamentally unfair because it would result in unequal treatment under the law. This unfair and unequal treatment could incentivize businesses to unionize for the sole purpose of taking advantage of more advantageous terms offered by the union exemption.

Hypocritically, labor unions worked aggressively to collect the signatures necessary to qualify Proposition 1 for the ballot and they have spent heavily on

³⁰ City of SeaTac 2013-2014 biennial budget message, Todd Cutts, City Manager, at www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=7236

the campaign to pass Proposition 1, yet unions would essentially be exempt from the measure's mandates. So the low wage workers that labor unions argue must be protected by Proposition 1 could continue to earn substantially lower wages and benefit from none of the labor standards mandated by the measure if a union represents them.

Conclusion

Leaders in SeaTac say one of their goals is to “foster a positive business environment and aggressively pursue economic development opportunities to attract and retain businesses and jobs while maintaining reasonable laws and regulations.”³¹ Passage of the proposed “Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Employers” would do the opposite, by creating a business climate that discourages jobs, competition and growth.

Some businesses may close down and some may cut employee benefits and hours, while others may opt to downsize to avoid triggering the ordinance mandates. Some businesses may relocate to bordering cities such as Burien, Tukwila and Des Moines. Employees could face reduced hours, layoffs or loss of non-mandated benefits.

SeaTac could experience a decrease in tax revenue, as businesses relocate to escape the ordinance. The increase in the cost of doing business in SeaTac could lead to a reduction in economic development and a drop in the value of commercial property, resulting in yet another reduction in revenue for the city.

The new obligations of the City of SeaTac in monitoring, investigating and enforcing the new law could strain limited resources. Existing city staff would experience an increase in their workload, or additional staff may need to be hired. The city, which has already experienced budget difficulties and corresponding reductions in workforce in recent years, could find itself overextended.

The potential reduction in revenue combined with the increase in services could lead to an increase in current taxes or to a new tax, imposed on all SeaTac residents.

While it would likely increase the wages of some workers, overall, Proposition 1 would treat workers unequally, reduce job opportunities and harm the economic and business climate of the City of SeaTac.

³¹ City of SeaTac 2013-2014 biennial budget, at www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=7236.

Appendix

The Impact on Real Businesses

Case Study #1

Brent Habernicht, owner of the Quiznos sandwich shop in Sea-Tac Airport, says if Proposition 1 passes, he will go out of business.

According to Habernicht, the costs of conducting business at the airport are already dramatically higher than similar non-airport businesses, making the profit margins for his business slim. Habernicht says if voters approve the measure in November, he would be forced to shut his small business.

“The \$15 an hour minimum wage would - I’ll tell you right now frankly, and I’m not exaggerating - it would put us out of business. It would absolutely put us out of business,” says Habernicht.

Habernicht warns his Quiznos shop likely would not be the only one to be forced to go out of business due to added costs. “If this initiative passes, they are literally going to have to pay people to do business within the Port of Seattle at the airport because there is absolutely no way to make a profit.”³²

Case Study #2

Scott Ostrander, general manager of the Cedarbrook Lodge in SeaTac, says Proposition 1 would have a significant effect on his 104-room hotel that employs 117 workers.

“In order for us to mitigate the significant impact of the passage of this initiative we would have to implement a combination of layoffs, position eliminations, reduction of hours, elimination of services and charging for some services that are currently complimentary,” says Ostrander.

“And even if we do all of those things, we would be put in the position of no longer being competitive, not only in the airport marketplace, but it would put us and SeaTac as a whole in a competitive disadvantage to hotels in neighboring cities by the airport as well as it relates to Seattle, Tacoma and Bellevue.”³³

Case Study #3

Doris Cassan, owner of the SeaTac Dollar Rent A Car and Dollar Park N Fly, says passage of Proposition 1 would significantly change the business model for her car rental and parking lot businesses.

32 “Employer says raising SeaTac minimum wage to \$15 an hour would put him out of business,” by Jamie Skorheim, MyNorthwest.com, July 28, 2013, at www.mynorthwest.com/76/2322267/Employer-says-raising-SeaTac-minimum-wage-to-15-an-hour-would-put-him-out-of-business

33 “Hoteliers say mandated wages are a threat,” by Ed Watkins, Hotel News Now, August 5, 2013, at www.hotelnewsnow.com/Article/10987/Hoteliers-say-mandated-wages-are-a-threat.

Cassan says the very high \$15 per hour minimum wage and government encroachment into employers' personnel decisions would give businesses like hers more incentive to eliminate paid staff in favor of self-service or fully automated business models. Eliminating cashiers, valet services, luggage assistance and parking lot attendants are cost-cutting steps taken by many parking lot operators. Self-service is also a trend in the car rental business.

While Cassan has resisted self-service and automation along with the corresponding layoffs of employees, she says passage of the ordinance would leave her no option.

"I believe in the power of customer service that one can only get through a person-to-person service experience, and this has been the cornerstone of our business in SeaTac for over 40 years" said Cassan. "But I simply could not afford to pay wages of \$15 per hour with paid sick leave for all my employees when many of my competitors not impacted by the proposed Ordinance would continue to pay the state minimum wage of \$9.19 with no paid sick leave."³⁴

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³⁴ Telephone interview with Doris Cassan, August 26, 2013.