

Dr. Dave, I understand a number of cities have passed minimum wage laws. Is that legal? Doesn't it encourage businesses to leave the city and reduce jobs for entry-level unskilled workers?

A. Let me begin with a very brief history of U.S. minimum wage laws.

In the early part of the 20<sup>th</sup> century states began to enact minimum wage (and maximum hour) statutes. The U.S. Supreme Court overturned these statutes, ruling that states were unconstitutionally interfering with employers' Constitutional right to freely contract with their workers.<sup>[1]</sup> In 1937, at the height of the Great Depression and widespread labor unrest, the Supreme Court overturned its previous rulings and supported the states' authority in this area.<sup>[2]</sup> The next year, the federal government enacted the Fair Labor Standards Act (FLSA), which established a nationwide minimum wage and maximum hour standard.

The FLSA explicitly gave states and municipalities the power to establish a higher minimum wage or set minimum wages in industries not targeted in the FLSA.<sup>[3]</sup> At present 12 states have done so.<sup>[4]</sup> Many of state statutes explicitly allow their localities to enact minimum wage laws exceeding the statewide standard.

In the 1960s, several cities, including Baltimore, New York City and Washington, D.C. enacted minimum wage ordinances that preceded statewide legislation in this area. Their authority to do so was upheld in several federal courts.<sup>[5]</sup> In March 2004, Madison, Wisconsin became the most recent city to adopt a broad minimum wage statute.

If the federal minimum wage had kept pace with inflation, the 1968 minimum wage of \$1.60 per hour would be \$9.15 per hour in 2004. The current federal minimum wage, last raised in 1996, is \$5.15 per hour. This slow rate of increase, coupled with cut backs in federal and state spending for social services, has led cities to enact their own minimum wage ordinances.

The vast majority of these ordinances do not cover all businesses operating within the city or county, but rather narrowly focus on businesses that sell goods or services to local governments, or received subsidies from that government (e.g. grants, loans, bond financing, tax abatements, etc.) These are called living wage or livable wage ordinances and their level reflects the income needed to maintain a family at the poverty level in that area.

In 1988, Des Moines, Iowa passed the first so-called livable wage ordinance. Gary, Indiana followed suit in 1991. Beginning in 1994, with the passage of a living wage ordinance by Baltimore, scores of cities and counties debated such legislation. Today there are about 125 cities and counties with living wage ordinances.<sup>[6]</sup> In June 2004, for the first time, a federal court upheld a city living wage ordinance. In its decision supporting Berkeley's ordinance, the court noted, "More and more frequently, full time, minimum-wage workers are unable to support their families' basic needs." <sup>[7]</sup> It held that the city's authority to protect the public welfare (i.e. "the police power") allowed it to legislate in this area.

Justifications for living wage ordinances usually note that cities often pick up the social service costs that result when families cannot earn a living wage. ACORN, a national leader in the living wage movement, notes, "Our limited public dollars should not be subsidizing poverty-wage work. When subsidized employers are allowed to pay their workers less than a living wage, tax payers end up footing a double bill: the initial subsidy and then the food stamps, emergency medical, housing and other social services low wage workers may require to support themselves and their families even minimally."<sup>[8]</sup>

Increasingly living wage statutes include more than just wage levels. They also impose standards regarding health benefits, vacation days, public disclosure, and environmental standards. One of the latest statutes, enacted by the City of Sonoma, California in mid-2004, requires covered employers to pay a wage of \$11.70 if they provide health benefits or \$13.20 if they do not. The wage is indexed annually to the consumer price index. Covered employers must also provide 12 compensated days off, as well as 10 uncompensated days. The statute covers city employees and companies over a certain size that have a city service contract worth at least \$10,000, non-profits with city contracts of at least \$75,000, and companies receiving loans or economic assistance worth \$100,000 or more. (See [New Rules: Equity](#) for a selected list of cities and the text of living wage statutes.)

What has been the impact of these ordinances? At least half a dozen studies have been done to answer this question.<sup>[9]</sup> On the whole these studies have found that there is a significant and positive impact on workers, although the number of workers affected tends to be modest (e.g. 1500 directly affected in Baltimore). The impact on businesses has been very low (around 1% increase in costs). No businesses appear to have relocated as a consequence. The impact on contract prices for local governments ranges from a slight drop to a slight increase.

One interesting conclusion of a study estimating the probable impact of Los Angeles' living wage

ordinance is it would bring a 50 percent reduction in the amount of government subsidies received by affected workers and their families.<sup>[10]</sup>

On the national level there has been a vigorous debate for several decades about the impact of raising the minimum wage. Many economists believe it inevitably reduces entry-level jobs and raises the cost of private business. Others argue that it does not. Those who hold this view argue that employers see a significant saving in hiring and training costs because higher wages lead to reduced turnover and higher worker productivity. (For a full discussion of both sides of the national minimum wage issue see [AmericanVoice2004: Minimum Wage.](#))

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[1] See *Adkins v. Children's Hospital*, 261 U.S. 525 (1923).

[2] *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

[3] "No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter..." See 29 U.S.C. §218(a).

[4] The latest state to adopt a minimum wage higher than that of the federal government was Florida, by popular referendum, in November 2004. For a complete list of state minimum wage laws, see: [Map of State Minimum Wage Laws](#). U.S. Department of Labor

[5] *McMillen v. Browne*, 200 N.E. 2d 546 (NY. Ct. Appeal) 1964; *Mayor of Baltimore v. Sitnick*, 255 A.2d 376 (Md. Ct. App. 1969). The courts are not unanimous on this issue. In 2002, the Louisiana Supreme Court overturned a New Orleans minimum wage statute enacted in February of that year. Voters supported the statute by a wide margin – 63 percent in favor, 37 percent against. The statute established a local minimum wage that would always be \$1 higher than the federal minimum wage.

[6] For a complete list of cities and counties and contact information, see the [Living Wage Campaign](#) at ACORN.

[7] *RUI One Corp. v. City of Berkeley*. United States Court of Appeals, Ninth Circuit. June 16, 2004.

[8] [Living Wage Campaign](#), Op. Cit.

[9] For a good list, visit the [Living Wage Resource Center](#) at the Brennan Center for Justice at New York University School of Law. One can find case law material there as well.

[10] See Robert Pollin and Stephanie Luce. *Los Angeles: Economic Analysis of the Los Angeles Living Wage Ordinance*. October 1996. For a post-implementation analysis see: E. Douglass Williams and Richard H. Sanders, *An Empirical Analysis of the Los Angeles Living Wage Ordinance*. January 1997.

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