THE LOST ECONOMY®

How Labor Regulations are Raising Consumer Prices, Costing U.S. Jobs, and Impeding Economic Growth

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The Lost Economy:

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Foreword

by Dr. Joseph Fuhr[1]

The U.S. labor market looks distinctly different today than it did just three decades ago. It has been reshaped by dramatic events like the Great Recession but also by a more silent ongoing evolution of technological innovations that accelerate the pace of change of how jobs are created and increased labor market mobility.

One of the American economy's greatest strengths is its ability to adapt to changing economic conditions. As a result, individuals and businesses in the United States have benefited greatly from this changing environment, which gives them the freedom to adapt to modifying market conditions. For example, the gig and sharing-economies have given workers increased opportunities and job flexibility, while providing entrepreneurs the ability to enter competitive businesses with low entry barriers.

While 99.9% of U.S. businesses are small and eight million minority-owned, new labor regulations are becoming an impediment to economic growth and job creation, thereby subjecting workers and employers to massive costs and burdens with long-term ramifications.[2]

Some of the most recent legislative and regulatory threats have come from well-intentioned attempts to increase the minimum wage to $15 per hour; the imposition of predictive scheduling, which works to restrict the efficient utilization of labor; efforts to increase access to paid family leave; and joint employer mandates imposed on small business franchises. Such legislative and regulatory efforts restrict flexible work arrangements and job mobility by creating new compliance issues that benefit some but overall harm employees and employers.

Laws and regulations can affect more than the level of employment. When input costs are increased, the economic output of firms will decrease, leading to a reduction in sales.

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[2] "2018 Small Business Profile," U.S. Small Business Administration, Office of Advocacy, 2018, https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf.

Higher labor costs will also encourage a labor to capital substitution, which can lead to loss of jobs. In addition, under realistic scenarios, increases in costs can lead to increases in prices, and decreases in economic output as well as decreases in service quality – both of which can and will affect consumer welfare, a broad measure of consumer benefits.

This study reviews the literature, and it identifies and quantifies the costs and burdens created by these laws and regulations and provides information to policymakers and the public. The study's results are important to the policy debate because it provides a comprehensive overview of the impact federal, state, and local laws have – both qualitatively and quantitatively.

The implications of this study are of critical importance, especially when good-intentioned policies do not always result in good outcomes and have unintended consequences. Some federal, state, and local area policymakers are currently considering legislation on the issues discussed in this study, and the study provides empirical evidence on how such well-intentioned policies would be particularly damaging in today's economy. Policymakers would be better served looking at solutions that drive technology, encourage innovation and agile markets, and generate faster economic growth, which would lead to rising wages, increased productivity, and more opportunities for workers and employers.

In summary, policymakers will be well-served to rely on economic analysis to ascertain how these regulations impact consumers, workers, commerce and entrepreneurship, and the general economy. This study provides a good empirical foundation for policymakers. The data, analysis, and basic economic principles in this paper can help shape sound policymaking.

Executive Summary

Service-providing industries are projected to account for more than 90 percent of the job growth in the U.S. economy before 2026, making the service sector the primary engine of the American global competitiveness and prosperity. Yet, a series of misguided legislative and regulatory initiatives are jeopardizing the growth of the service sector and threaten to unleash a host of unintended consequences across states and cities around the country.

This report focuses on four issues in particular: imposition of a $15 minimum wage, mandatory paid family leave, predictive scheduling rules, and the imposition of a joint employer standard.[3]

A $15 minimum wage has already destroyed hundreds of small businesses and many more jobs in cities like New York and San Francisco, and – with the ongoing interest in Congress, state and local governments – it now threatens millions of jobs nationwide. Mandatory paid family leave programs are costly to firms, inefficient, and threaten to backfire on those they seek to help by incentivizing employers to avoid hiring individuals disproportionately likely to take paid leave. Predictive scheduling rules, on the other hand, which require managers to give employees ample notice of alterations to work schedules, increase the risk to reduce business profitability and undermine the scheduling flexibility that many hourly employees depend upon.

To make matters even worse, in 2015, the National Labor Relations Board overturned 30 years of precedent and broadened the definition of "joint employer" under its rules. As a result, a franchisor can now be dragged into a franchisee's employment-based legal disputes. To avoid triggering the new joint employer standard and exposing themselves to costly litigation,

[3] A special thanks to Krisztina Pusok, Liam Sigaud and Steve Pociask, all from The American Consumer Institute, who contributed to the research in this study. For more information about the Institute, visit www.TheAmericanConsumer.Org or follow us on Twitter @ConsumerPal.

franchisors have distanced themselves from their franchisees. Hundreds of thousands of small franchisees could see their operational costs rise and profits fall, endangering jobs.

After reviewing a plethora of economic studies and estimates of the cost impact of these regulations, this study provides independent measures of the impacts at state level, including lost economic output and jobs, resulting from the implementation of these labor regulations. In analyzing major labor regulations, the report's findings are as follows:

- Setting a $15 per hour **minimum wage** will lead to over 2 million unemployed workers, as well as reduce economic output by nearly $190 billion per year. Because higher wages will lead to higher consumer prices, we estimate that consumer welfare will fall by nearly $140 billion per year.

- While **predictive scheduling** may be presented as fair for workers, its unintended consequences spell doom for some workers and their employers. Our analysis shows that, if implemented nationwide, predictive scheduling will result in nearly $44 billion in lost of economic output and a half million lost jobs.

- **Paid family leave** mandates trigger serious negative consequences. An examination of such mandates in Seattle, San Francisco, and New York show that small businesses that operate with narrow profit margins are hardest hit, ultimately resulting in job losses and business closures. We conservatively estimate the expansion of paid family leave will result in nearly a $25 billion decrease in Gross Domestic Product and a loss of nearly 190,000 jobs.

- **Joint-employer standards,** if implemented, would raise operating costs and shutter many franchise businesses. We conservatively estimate the impact will decrease total economic output by $74 billion dollars per year and losses in the range of 800,000 to 990,000 jobs.

In summary, these policies have shown to have threatening implications for the U.S. economy, making it harder for small businesses to thrive, discouraging hiring, and stifling market forces that have historically improved working conditions. This study estimates that

these policies, if applied nationwide, would result in economic losses exceeding one-third of a trillion dollars and 4 million lost jobs, as well as decreasing consumer welfare by increasing the costs of goods and services. On a value-added basis, the total economic losses of these four labor regulations would be greater than the value-added output derived from restaurants, food and beverage stores, and general merchandise stores – combined.

Because these regulations could disproportionately affect small businesses and businesses that hire hourly workers, the economic impact would be unequivocally devastating to employers, and therefore workers and consumers. If the intent of these labor regulations is to benefit workers, these policies fail miserably.

In the sections to follow, this study will investigate these four regulations in detail: review the literature; discuss economic principles that explain how markets, workers, employers and consumers are affected; and provide empirical evidence of the impacts associated with these labor regulations.

The qualitative and quantitative analyses set forth in the study suggest an overarching simple, but profound conclusion – the job losses are avoidable. The key is avoiding these stifling labor regulations.

Minimum Wage

Overview

During 2019, minimum wages are expected to rise in 21 states and the District of Columbia, and many states have already approved further minimum wage increases in the years ahead.[4] A number of jurisdictions, including California, Illinois, Maryland, Massachusetts, New Jersey, New York, and the District of Columbia are phasing-in $15 minimum wages, following the example of cities like New York City and San Francisco.[5]

Minimum wage hikes are intended to provide a "living wage" to entry-level workers, reduce poverty, and counteract income inequality. The real-world effects of these policies, however, are much different. Just as elementary economic theory suggests, government-imposed price floors on labor discourage hiring and incentivize businesses to substitute from low-skill employees in favor of high-skill workers and automation. Minimum wage increases – particularly large, rapid increases like those being approved around the country – make it more difficult for workers with little or no work experience to find a job and become upwardly mobile.

Young workers just entering the labor force and minority groups are the most disadvantaged by these regulations. In 2015, the American Action Forum, relying on the latest academic research, estimated that adopting a federal $15 minimum wage would kill 6.6 million jobs.[6] Even Princeton economist, Alan Krueger, whose research helped fuel the movement to

[4] "State Minimum Wages: 2019 Minimum Wage by State, National Conference of State Legislatures, January 7, 2019, http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx.
[5] Ibid. Also see, "Officials: San Francisco is 1st Major US City with $15 Wage," Associated Press, updated July 1, 2018, https://www.seattletimes.com/business/apxofficials-san-francisco-is-1st-major-us-city-with-15-wage/.
[6] Douglas Holtz-Eakin and Ben Gitis, "Counterproductive: The Employment Effects of Raising America's Minimum Wage to $12 and to $15 per Hour," American Action Forum, July 27, 2015, https://www.americanactionforum.org/research/counterproductive-the-employment-and-income-effects-of-raising-americas-min/.

raise the minimum wage, pressed for caution: "...a $15-an-hour national minimum wage would put us in uncharted waters, and risk undesirable and unintended consequences."[7]

The Evidence from Studies: Increasing the Minimum Wage Leads to Fewer Jobs

Policymakers should be transparent about the effects of minimum wage increases. Distorting the labor market has serious adverse consequences for workers, consumers, and businesses.

The effects of minimum wages on employment and other labor market dynamics has been one of the most exhaustively studied topics in all of labor economics. Since the 1990s, when some empirical papers began to challenge the conventional belief that minimum wage hikes reduce employment in low-skill industries, hundreds of dueling studies have employed increasingly sophisticated econometric approaches to measure the effects of minimum wage laws. [8] We can only scratch the surface of this research.

Nonetheless, the preponderance of the evidence is noticeable: the central finding of economic theory and empirical research over the past 75 years is that minimum wage increases tend to reduce employment, particularly among the inexperienced and low-skill workers.

In 2006, the National Bureau of Economic Research published a comprehensive review of more than 100 studies of the minimum wage conducted over the previous dozen years. The meta-analysis found that "a sizable majority of the studies surveyed in this monograph give a relatively consistent (although not always statistically significant) indication of negative

[7] Alan B. Krueger, "The Minimum Wage: How Much is Too Much?" *The New York Times*, October 9, 2015, https://www.nytimes.com/2015/10/11/opinion/sunday/the-minimum-wage-how-much-is-too-much.html.
[8] David Card and Alan Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania," *American Economic Review*, September 1994, http://davidcard.berkeley.edu/papers/njmin-aer.pdf.

employment effects of minimum wages." In addition, of the 33 most influential studies, 28 pointed to negative employment effects.[9]

A 2015 paper by economists Jonathon Meer and Jeremy West used novel statistical techniques to study the long-term dynamic effects of minimum wage increases on employment, rather than the short-term effects that most previous scholars had examined. Using three different datasets, Meer and West consistently found that minimum wage increases slowed job growth. Though different model specifications generated differing employment elasticities, their primary long-run estimate suggested that a 10 percent minimum wage increase causes a 0.8 percent drop in employment.[10]

A report by the Congressional Budget Office (CBO) released in July 2019, drawing on nearly one hundred academic research studies, estimated that a $15 federal minimum wage phased-in by 2025 would eliminate 1.3 million low-income jobs, with the likely range extending from zero employment effects to nearly 4 million job losses. The agency predicted that 17 million workers currently earning less than $15 per hour, as well as nearly 10 million workers currently earning slightly more than $15 per hour, would benefit from wage increases under the policy.[11]

While job losses from the minimum wage are well documented in the literature, empirical evidence casts doubt on the assumption that low-wage workers who keep their jobs benefit from a minimum wage increase. Although the hourly earnings of low-wage workers increase in response to minimum wage hikes, their hours often decline, resulting in a net reduction in income.[12]

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[9] David Neumark and William Wascher, "Minimum Wages and Employment: A Review of Evidence from the New Minimum Wage Research," National Bureau of Economic Research, November 2006, https://www.nber.org/papers/w12663.pdf.

[10] Jonathan Meer and Jeremy West, "Effects of the Minimum Wage on Employment Dynamics," *Journal of Human Resources*, August 2015, http://people.tamu.edu/~jmeer/Meer_West_Minimum_Wage.pdf.

[11] "The Effects on Employment and Family Income of Increasing the Federal Minimum Wage," Congressional Budget Office, July 8, 2019, https://www.cbo.gov/publication/55410.

[12] David Neumark, Mark Schweitzer, and William Wascher, "The Effects of Minimum Wages Throughout the Wage Distribution," National Bureau of Economic Research, February 2000, https://www.nber.org/papers/w7519.pdf.

Empirical research also debunks popular misconceptions about a $15 minimum wage, particularly the notion that poor Americans would be the primary beneficiaries of such a policy. Poverty is based on family income, while minimum wages affect individual workers' earnings. *This is a crucial distinction.* According to the CBO analysis discussed above, only 12 percent of low-wage workers (defined as those earning less than $19 per hour) belong to families living in poverty. Much of the low-wage labor force is made up of teenagers and young adults living in middle-income households and older second-earners supplementing a partner's income.

In addition, the majority of poor families have no workers in the household, and among poor families headed by a worker, their income is often limited by low hours, not low wages.[13] As a result, academic research has consistently noted that the minimum wage is an inefficient anti-poverty measure.

One study by the American Action Forum found that only 6.7 percent of the net change in wage gains from a federal $15 minimum wage would go to workers in poverty. More than twice as much, 14.7 percent specifically, would go to workers with family incomes over six times the poverty threshold.[14]

Although the employment effects of minimum wages have generally attracted the most attention, employers sometimes absorb higher labor costs in other ways. Minimum wage laws disadvantage workers in the form of reduced hours, reduced fringe benefits, and reduced on-the-job training. Cuts to workforce development may adversely impact the quality of services and products provided to consumers. A review of 50 years of academic research compiled by

[13] David Neumark, "Reducing Poverty via Minimum Wages, Alternatives," Federal Reserve Bank of San Francisco, December 28, 2015, https://www.frbsf.org/economic-research/publications/economic-letter/2015/december/reducing-poverty-via-minimum-wages-tax-credit/.

[14] Douglas Holtz-Eakin and Ben Gitis, "Counterproductive: The Employment and Income Effects of Raising America's Minimum Wage to $12 and to $15 per Hour," American Action Forum, July 27, 2015, https://www.americanactionforum.org/research/counterproductive-the-employment-and-income-effects-of-raising-americas-min/.

Congress's Joint Economic Committee in 1995 found that minimum wage increases have provoked a wide range of direct and indirect effects, including:[15]

- Increasing the duration of unemployment for low-wage workers;
- Reducing training opportunities available to employees;
- Increasing job turnover;
- Reducing school attendance among high schoolers;
- Encouraging employers to cut back on fringe benefits;
- Encouraging employers to invest in labor-saving automation;
- Increasing teenage crime rates as a result of higher unemployment;
- Encouraging employers to hire undocumented immigrants; and
- Raising consumer prices for goods and services.

The last effect, raising consumer prices, is especially noteworthy because it erodes low-income families' purchasing power.[16] Price increases driven by the minimum wage disproportionately affect goods and services purchased by the poor. In the aftermath of the 1996-97 minimum wage increase (from $4.25 to $5.15 per hour), for example, the average family in the bottom income quintile with no minimum wage worker (78 percent of all families in the bottom quintile) paid $74 per year in higher prices caused by the minimum wage hike.[17]

[15] "50 Years of Research on the Minimum Wage," Joint Economic Committee, February 15, 1995, https://www.jec.senate.gov/public/_cache/files/c876c468-ffca-47ed-9468-7193d734bde9/50-years-of-research-on-the-minimum-wage---february-15-1995.pdf.

[16] Daniel Aaronson, Eric French and James MacDonald, "The Minimum Wage, Restaurant Prices, and Labor Market Structure," *The Journal of Human Resources*, Vol. 43:3, 2008, pp. 688-720, https://pubag.nal.usda.gov/download/36647/PDF.

[17] Thomas MaCurdy, "How Effective Is the Minimum Wage at Supporting the Poor?," *Journal of Political Economy*, April 2015, https://www.journals.uchicago.edu/doi/abs/10.1086/679626. Also, see "Fighting $15? An Evaluation of the Evidence and a Case for Caution," Employment Policy Institute, January 2019, https://www.epionline.org/wp-content/uploads/2019/01/EPI_Bookv5.pdf.

Thus, increasing the minimum wage leads to losses in consumer welfare, a general economic measure of consumer benefits.

A 2008 meta-analysis, for example, surveyed dozens of studies and found that a 10 percent minimum wage increase raises overall prices by about 0.2 percent to 0.3 percent.[18] A specific study focused on restaurant prices found that a 10 percent increase in the minimum wage raises prices in the restaurant sector by roughly 0.7 percent. The effects are significantly stronger among limited-service, fast food restaurants that rely heavily on low-wage workers.[19]

Small businesses – which are responsible for nearly half of all private sector employment in the United States and have accounted for about two-thirds of employment gains each year – are hit the hardest by minimum wage increases.[20] Many of these businesses operate on razor-thin profit margins and have few options to offset higher labor costs. In 2013, a Gallup poll revealed that six in 10 small-business owners believed a $9.50 federal minimum wage would "hurt most small-business owners."[21]

One study estimated that a 10 percent increase in the minimum wage is associated with a 0.8 to 1.2 percent reduction in small business employment.[22] Minimum wage hikes also stifle entrepreneurship and make it significantly harder for start-ups to thrive.[23] A recent analysis showed that a 1 percent increase in the minimum wage decreases average startup survival

[18] Sara Lemos, "A Survey of the Effects of the Minimum Wage on Prices," *Journal of Economic Surveys*, January 31, 2008, https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-6419.2007.00532.x.
[19] Daniel Aaronson, Eric French, and James MacDonald, "The Minimum Wage, Restaurant Prices, and Labor Market Structure," *Journal of Human Resources*, August 2007, https://pubag.nal.usda.gov/download/36647/PDF.
[20] "2019 Small Business Profile," U.S. Small Business Administration, Office of Advocacy, 2019, https://cdn.advocacy.sba.gov/wp-content/uploads/2019/04/23142719/2019-Small-Business-Profiles-US.pdf; "Small Business Administration and Job Creation," Congressional Research Services, CRS Report R41523, Prepared for Congress and updated December 20, 2018, https://fas.org/sgp/crs/misc/R41523.pdf; and Barnini Chakraborty, "Minimum Wage Hikes Trigger 'Payroll Tsunami,' as Small Business Cut Back," April 8, 2019, https://www.foxnews.com/politics/15-minimum-wage-hikes-payroll-tsunami-hurt-small-businesses.
[21] Andrew Dugan, "U.S. Small-Business Owners Split on Raising Minimum Wage," November 22, 2013, https://news.gallup.com/poll/165995/small-business-owners-split-raising-minimum-wage.aspx.
[22] Joseph J. Sabia, "The Effect of Minimum Wage Increases on Retail and Small Business Employment," Employment Policies Institute, May 2006, https://www.epionline.org/wp-content/studies/sabia_05-2006.pdf.
[23] Ibid.

rates by 3.5 percent – and these effects are more pronounced in poorer states with lower levels of economic output.[24]

Decades of empirical economic research corroborates that minimum wage hikes reduce employment among low-skill workers, raise prices for consumers, and heavily burden small firms and entrepreneurs. Moreover, policymakers have far more effective and efficient tools at their disposal, such as the Earned Income Tax Credit, to combat poverty. Based on the empirical evidence in the existing literature, a federal $15 minimum wage would have a devastating impact on the U.S. economy.

Local Market Impacts

Real-world examples of unintended consequences that accompany a higher minimum wage are evident in cities that have recently implemented significant wage hikes, including Seattle, New York City, and San Francisco.

Seattle

Research from the University of Washington has found that although the wages of many low-wage workers increased slightly when Seattle raised the minimum wage to $13 an hour in 2016, employers responded by cutting hours by 9 percent. As a result, low-wage employees' earnings in the city declined by an average of $125 per month.[25]

Small businesses are worse off, too. Heidi Mann and her husband, co-owners of a Subway franchise in Seattle, had seven employees in 2015, before the recent minimum wage hikes. By 2017, because the law considers her franchise to be a large business, Mann was

[24] Xiaohui Gao, "Do Minimum Wage Hikes Hinder Entrepreneurship?" University of Maryland, Robert H. Smith School of Business, working paper, February 22, 2017, http://scholar.rhsmith.umd.edu/sites/default/files/xiaohui/files/minimum_wage_and_entrepreneurship.pdf?m=1504707392.

[25] Ekaterina Jardim et al., "Minimum wage increases, wages, and low-wage employment: evidence from Seattle," National Bureau of Economic Research, June 2017, https://evans.uw.edu/sites/default/files/NBER%20Working%20Paper.pdf.

required to pay a $15 minimum wage, forcing her to let four of her workers go. To offset the higher costs, Mann also raised the prices of sandwiches an average of 86 cents, which drove away some customers.[26] "We used to have the ability to hire and train younger and entry-level employees, but now we don't have the margins to hire inexperienced workers anymore. Now, we're faced with the very real prospect of closing," Mann said.[27]

In 2016, Louisa's, a Seattle cafe and bakery that served the Eastlake community for more than two decades, abruptly shut down, leaving 20 people out of work. Alcena Plum, Louisa's former owner, made the decision just weeks before Seattle's minimum wage increased to $11 an hour. Plum said ever-rising labor costs had made it difficult to stay afloat. "This type of business doesn't necessarily bring in enough revenue to employ as many people as I was able to employ before," Plum said. "Then service goes down because I don't have enough staff or our wait times are longer for food because I can't afford to hire enough people in the kitchen. Never mind the huge labor shortage for kitchen staff in this city." Plum also said residents of Seattle should expect to see menu prices continue to increase as business costs escalate.[28]

New York

In New York City, where the non-tipped minimum wage is $15 for businesses with more than 10 employees, imposing substantially higher labor costs has killed thousands of jobs. At the end of 2018, there were fewer restaurant workers in the city than in November 2016, even though total employment grew by more than 163,000 workers.[29] When a new study by the New York City Hospitality Alliance asked 574 restaurants how they plan to respond to further

[26] Janet I. Tu, "Latest study: Seattle's wage law lifted restaurant pay without shrinking jobs," *Seattle Times*, June 20, 2017, https://www.seattletimes.com/business/retail/latest-study-seattles-wage-law-lifted-restaurant-pay-without-shrinking-jobs/.
[27] "Real Stories of Small Biz Owners Harmed By Wage Hikes," MinimumWage.Com, Facts and Analysis, February 14, 2019, https://www.minimumwage.com/2019/02/real-stories-of-small-biz-owners-harmed-by-wage-hikes/.
[28] Kipp Robertson, "Beloved Seattle cafe 'crushed' by ever-growing costs," KIRO Radio, January 2, 2017, https://mynorthwest.com/491148/louisas-ownKer-seattle-too-expensive/.
[29] "$15 Minimum Wage Sparks A Jobs Recession In New York," *Investor's Business Daily*, February 20, 2019, https://www.investors.com/politics/editorials/minimum-wage-new-york-jobs-recession/.

minimum wage hikes in 2019, three-quarters of full-service establishments said they would cut employee hours, and 47 percent intend to eliminate jobs entirely.[30]

Jon Bloostein, who operates six New York City restaurants with 50 to 110 people each, including Heartland Brewery and Houston Hall, told CBS News that he scaled back employee hours, no longer uses hosts and hostesses during lunch on light traffic days, and has begun staggering employees' start times to rely on fewer workers.[31] Bloostein has also raised menu prices to cope with the "immense cost" of the minimum wage. Susannah Koteen, owner of Lido Restaurant in Harlem since 2011, has been forced to combine jobs to reduce workers' hours. Her servers now bus their own tables, reducing opportunities for entry-level staff.[32]

Rosa Mexicano's four Manhattan locations decided to trim their usual pre-shift staff meetings, and the positive atmosphere they fostered, in order to offset the $600,000 cost of the $15 minimum wage. The restaurants now stagger their start times for shifts and employees receive a document with the day's updates when they arrive. "The bottom line is, we have to reduce the number of hours we spend," said Chris Westcott, Rosa Mexicano's CEO. "And unfortunately, that means that, in many cases, employees are earning less even though they're making more."[33]

Increasingly, New York City restaurant owners are looking to automation to replace workers and mitigate the rise in the minimum wage. The *Wall Street Journal* reports that tasks like slicing a sushi roll into uniform pieces or mixing cocktails are increasingly performed by machines in eateries throughout the city, reducing the demand for workers.[34]

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[30] "Rising Labor Costs Survey," New York City Hospitality Alliance, 2018, https://thenycalliance.org/assets/documents/informationitems/021lb.pdf.
[31] Megan Cerullo, "NYC restaurants cutting staff hours as minimum wage hits $15," *CBS News*, January 16, 2019, https://www.cbsnews.com/news/nyc-restaurants-cut-staff-hours-to-cope-with-minimum-wage-hike-hitting-15/.
[32] Ibid.
[33] M. Tara Crowl, "Restaurateurs Are Scrambling to Cut Service and Raise Prices After Minimum Wage Hike," Eater New York, February 19, 2019, https://ny.eater.com/2019/2/19/18226831/minimum-wage-restaurant-reaction-nyc-finances.
[34] Charles Passy, "My Compliments to the Chef, Er, Robot," *Wall Street Journal*, July 20, 2019, https://www.wsj.com/articles/my-compliments-to-the-chef-er-robot.

Often, automating certain tasks, cutting hours, and raising menu prices aren't enough for restaurants to stay afloat. In the first two months of 2019, after the minimum wage for most New York City restaurants rose to $15 an hour, close to a hundred restaurants were shuttered, including the Greenwich Village location of Amy's Bread, which faced an estimated $500,000 increase in labor costs due to the minimum wage hike.[35]

Even before New York City's $15 minimum wage was fully phased in, small businesses throughout the city began to close. After the city's minimum wage rose from $11 to $13 in December 2017, The Coffee Shop, a Union Square icon, struggled to cover its costs. The restaurant finally shut its doors in October 2018, ending a 28-year run and leaving its 150 employees without a job. Co-owner and President Charles Milite told the *New York Post* that with labor costs mounting, he could no longer afford to stay in business. "The times have changed in our industry," he said. "The rents are very high and now the minimum wage is going up and we have a huge number of employees."[36]

San Francisco

A recent study from Harvard Business School examined past minimum wage hikes and Yelp reviews in San Francisco and found significant impacts on the decisions of restaurants to raise their prices or exit the market entirely.[37] The results suggest that a one dollar increase in the minimum wage leads to a 14 percent increase in the likelihood of exit for a 3.5-star restaurant, while a 10 percent increase in the minimum wage causes profits among low-rated restaurants to fall by nearly 2 percent – enough to erase virtually all their profits.[38]

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[35] Kayla Kumari Upadhyaya, "2 Longtime Williamsburg Dives Shutter Tonight — and More Closings," Eater New York, February 28, 2019, https://ny.eater.com/2019/1/3/18166953/winter-spring-recent-restaurant-closures-nyc-2018.

[36] Lisa Fickenscher, "Famed Coffee Shop in Union Square to close after 28 years," *New York Post*, July 12, 2018, https://nypost.com/2018/07/12/famed-coffee-shop-in-union-square-to-close-after-28-years/.

[37] Dara Lee Luca and Michael Luca, "Survival of the Fittest: The Impact of the Minimum Wage on Firm Exit," Harvard Business School, 2018, https://www.hbs.edu/faculty/Publication%20Files/17-088_9f5c63e3-fcb7-4144-b9cf-74bf594cc308.pdf.

[38] Ibid.

In early 2017, mere months before San Francisco's minimum wage increased to $14 an hour, AQ – a finalist for the James Beard Award for the best new restaurant in America in 2012 – announced plans to close.[39] Rising costs, including growing employee health care and labor expenses, had narrowed its profit margin from 8.5 percent when it opened in 2012 to just 1.5 percent in 2015. Net profits had shrunk to only $40,000.[40]

Restaurants Unlimited, a company that operates 35 restaurants located primarily on the West Coast, including some in San Francisco, filed for bankruptcy protection in July 2019, putting hundreds of jobs at risk.[41] "Over the last three years, the company's profitability has been significantly impacted by progressive wage laws along the Pacific coast…the result was to increase the company's annual wage expenses by an aggregate of $10.6 million," the company wrote, noting that San Francisco's minimum wage has climbed 41 percent to $15.59 per hour. Despite raising menu prices and even adding an extra surcharge to customers' bills, Restaurants Unlimited was still not profitable.

State Economic Impacts

As noted earlier, numerous anecdotal examples and economic empirical studies have shown that increasing wages above market rates will lead to a decrease in employment and in the number and size of employers, and lead to a substitution away from labor-intensive activities. This is not only supported by well accepted economic theory, but it is also corroborated by the empirical evidence.[42] In this section, we independently estimate the

[39] "James Beard Awards 2012: Finalists Announced," *Huffington Post*, March 19, 2012, https://www.huffpost.com/entry/james-beard-awards-2012_n_1363447.
[40] Stefanie Tuder, "AQ to Shutter This Month, Joining the Mid-Market Massacre," Eater New York, January 3, 2017, https://sf.eater.com/2017/1/3/14154844/aq-closing-san-francisco.
[41] Dan Springer, "Seattle-based restaurant chain blames high minimum wage for bankruptcy," Fox News, July 17, 2019, https://www.foxnews.com/us/restaurant-chain-blames-high-minimum-wage-for-bankruptcy.
[42] On the production side, this decrease in labor inputs and substitution to other productive inputs, such as capital, has a similar phenomenon on the consumption side -- where an increase the price of normal goods and services above market prices signals to consumers to buy less of the product or service or to substitute to alternative goods and services.

economic impact of increasing minimum wages for all states, as well as the effects on consumer welfare.

Economic Effects: Methodology

This study seeks to estimate the economic impact of setting minimum wages higher than the market wages. This was done by first calculating the direct impact that higher prices have on employers, which is approximated by the incremental increase in annually wages, fully loaded for benefits and taxes. These direct costs can then be used to estimate the total economic effects on the economy, as explained in this section.

Minimum wages are available for each state from multiple sources, such as the National Conference of State Legislatures, which updates this information and makes it available online.[43] These figures reflect the current state minimum wages which may or may not exceed the federal minimum wage of $7.25 per hour. When state minimum wages exceed the federal floor, the increase in annualized wages for hourly workers can be estimated, incorporating the estimated average hours per week for hourly workers, part-time and full-time, including tipped hourly employees.

The increase in wages paid to minimum wage workers was then annualized. To estimate the total labor costs, the average annual wage increase in each state was be multiplied by the number of workers subject to the minimum wage (or below minimum wage), which includes those hourly workers currently receiving minimum wage in the state.[44] The estimation of those additional workers now subject to the higher minimum wage was based on an ordinary least squares model based on the wage distribution among hourly workers. We assume that these additional minimum wage workers will receive a boost in their wage equal to one-half of the increase in minimum wage. The resulting product (the increase in hourly minimum wage times

[43] For 2019, see "State Minimum Wages 2019: Minimum Wage by State," National Conference os State Legislatures, January 7, 2019, http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx.
[44] "Characteristics of Minimum Wage Workers, 2018," Bureau of Labor Statistics, Report 1078, March 2019, https://www.bls.gov/opub/reports/minimum-wage/2018/home.htm.

the annual hours worked times the number of affected workers equals total increase in annual wages paid to hourly workers.

As noted earlier, the increase in annual wages was grossed up to include additional employer taxes for each state.[45] This aggregate figure can be represented as a percent increase in fully loaded wages, which then can be used to estimate the percent price increase of goods and services that would be necessary to offset the increase in labor and tax costs. For simplicity, assuming unity elasticity, the increase in price leads to a reduction in aggregate economic output. The difference between current GDP and the resultant GDP after the increase in minimum wage represents an estimate for the direct loss in economic output.

In addition, there are multiplier effects that ripple through the economy and produce losses greater than the estimate direct losses. Specifically, because the loss in direct output produces cascading effects through various stages of production, they affect interdependent industries, leading to less output, fewer employees and lower employment earnings. Also, there are induced losses, because newly unemployed workers have less money to spend, which leads to additional demand repression, which too ripples through the economy. The sum of direct, indirect, and induced effects equals the total multiplier effect, and approximates the total reduction in economic output (GDP), jobs and employment earnings.

To calculate the additional indirect and induced effects, we rely on the Bureau of Economic Analysis (BEA) Type II multipliers – specifically, economic multipliers for GDP, employment and employment earnings – covering a cross-section of industries and including all 50 states.[46] For our estimates, the BEA's multipliers were combined for food and beverage stores, general merchandise, administrative support, entertainment and accommodations, and food and drinking places, other service-sector industries, construction and manufactured goods – all weighted into composite multipliers using the number of hourly workers for each industry. The weights used are reflective of the composition of minimum wage workers in represented

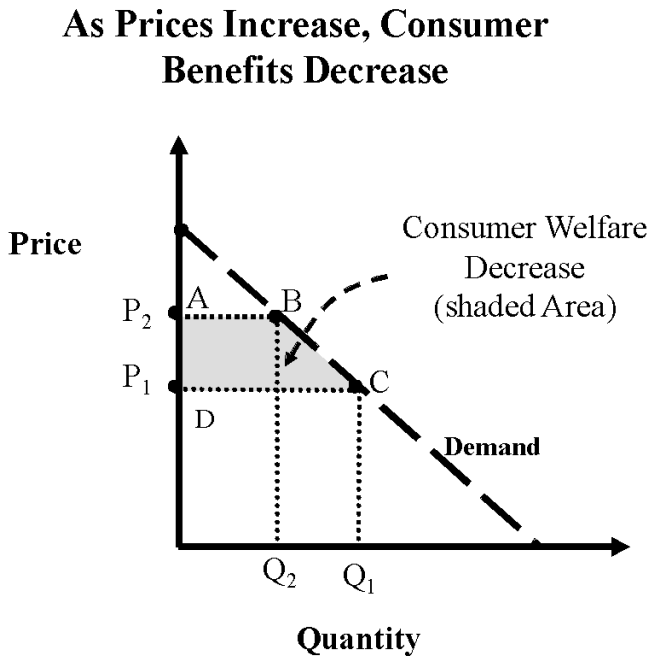
[45] Jared Walczak, Scott Drenkard and Joseph Bishop-Henchman, "2019 State Business Tax Climate Index," Tax Foundation, 2019, https://files.taxfoundation.org/20180925174436/2019-State-Business-Tax-Climate-Index.pdf.
[46] For more information about multiplier, its use, and the data, visit www.BLS.gov.

industries.[47] These estimates provide the relative direction and size of the increase, which can be gauged with other estimates presented in this study.

Consumer Welfare Effects: Methodology

When labor costs increase, so does the cost of goods produced. This means that consumers will need to pay more for normal goods and services. In addition to measuring the economic losses described earlier, increases in consumer prices decrease consumer welfare, a widely accepted measure of consumer benefits. The decrease in consumer welfare resulting from an increase in price is estimated and depicted as the shaded trapezoid ABCD (below), labeled as the *Consumer Welfare Decrease*. This welfare decrease can be approximated by the increase in price (noted as the change from P_1 to P_2) and the corresponding repression in demand (noted as the change from Q_1 to Q_2). For simplicity, we assume the price elasticity to be unitary.

Chart 1: Consumer Welfare



[47] "Characteristics of Minimum Wage Workers, 2018," Bureau of Labor Statistics, Report 1078, March 2019, https://www.bls.gov/opub/reports/minimum-wage/2018/home.htm.

Results

In general, increasing the cost of labor results in a decrease in jobs and an increase in marginal costs, which will then decrease economic output. For consumers, as labor costs increase, so will the cost of goods purchased, which will result in a decrease in consumer welfare.

For the purpose of illustrating the direction and potential magnitude of increasing minimum wages, we test two scenarios: 1) the impact of states that have already set minimum wage rates above the current federal minimum of $7.25 per hour (Table 1); and 2) the impact of an across-the-board increase of minimum wages from today's state minimum wage floor to a new federal floor of $15 per hour (Table 2). For context, a $15 federal wage floor was recently passed by the U.S. House of Representatives but failed to move in the Senate.[48]

The sum the two scenarios, shown in Table 1 and Table 2, provides an estimate for the combined effects of minimum wage policies, as represented Table 3.

[48] Dartunorro Clark, "House Passes $15 Minimum Wage Bill," NBC News, July 18, 2019, https://www.nbcnews.com/politics/congress/house-passes-15-minimum-wage-bill-n1031271.

Table 1: Current Losses from Setting Minimum Wages Above the Federal Floor

State	Welfare ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$0	$0	$0	0
Alaska	$50	$54	$17	608
Arizona	$944	$1,233	$393	14,324
Arkansas	$150	$186	$57	2,383
California	$7,449	$10,435	$3,276	104,041
Colorado	$758	$1,098	$346	11,626
Connecticut	$334	$414	$125	4,021
Delaware	$38	$45	$12	465
District of Columbia	$240	$281	$77	2,908
Florida	$594	$788	$254	9,366
Georgia	$0	$0	$0	0
Hawaii	$143	$174	$56	1,926
Idaho	$0	$0	$0	0
Illinois	$253	$381	$116	3,679
Indiana	$0	$0	$0	0
Iowa	$0	$0	$0	0
Kansas	$0	$0	$0	0
Kentucky	$0	$0	$0	0
Louisiana	$0	$0	$0	0
Maine	$210	$256	$83	3,189
Maryland	$569	$700	$203	6,915
Massachusetts	$1,511	$1,939	$587	19,006
Michigan	$582	$782	$248	9,477
Minnesota	$391	$557	$171	6,125
Mississippi	$0	$0	$0	0
Missouri	$215	$299	$87	3,428
Montana	$24	$26	$9	367
Nebraska	$98	$122	$38	1,512
Nevada	$62	$75	$24	857
New Hampshire	$0	$0	$0	0
New Jersey	$668	$919	$269	8,847
New Mexico	$12	$13	$4	169
New York	$2,503	$3,139	$923	30,334
North Carolina	$0	$0	$0	0
North Dakota	$0	$0	$0	0
Ohio	$406	$580	$177	6,667
Oklahoma	$0	$0	$0	0
Oregon	$584	$757	$233	8,125
Pennsylvania	$0	$0	$0	0
Rhode Island	$147	$175	$51	1,871
South Carolina	$0	$0	$0	0
South Dakota	$48	$57	$17	729
Tennessee	$0	$0	$0	0
Texas	$0	$0	$0	0
Utah	$0	$0	$0	0
Vermont	$105	$118	$36	1,459
Virginia	$0	$0	$0	0
Washington	$1,388	$1,778	$551	18,327
West Virginia	$64	$69	$20	879
Wisconsin	$0	$0	$0	0
Wyoming	$0	$0	$0	0
Total	**$20,542**	**$27,450**	**$8,456**	**283,631**

Table 2: Losses from Setting a $15 Wage Floor Wage Compared to Current

State	Welfare ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$2,483	$3,102	$958	40,870
Alaska	$197	$213	$67	2,378
Arizona	$1,852	$2,410	$768	28,001
Arkansas	$1,129	$1,391	$429	17,849
California	$7,152	$9,997	$3,139	99,675
Colorado	$1,313	$1,895	$598	20,074
Connecticut	$1,198	$1,481	$447	14,381
Delaware	$447	$521	$142	5,400
District of Columbia	$39	$45	$12	471
Florida	$9,020	$11,926	$3,837	141,722
Georgia	$5,120	$7,533	$2,330	88,429
Hawaii	$482	$583	$186	6,451
Idaho	$1,062	$1,248	$391	16,551
Illinois	$5,844	$8,799	$2,666	84,888
Indiana	$4,408	$5,926	$1,790	70,167
Iowa	$2,032	$2,474	$744	31,089
Kansas	$1,742	$2,238	$643	24,300
Kentucky	$2,611	$3,329	$968	36,947
Louisiana	$2,934	$3,560	$1,128	44,112
Maine	$385	$466	$151	5,810
Maryland	$1,911	$2,345	$680	23,159
Massachusetts	$1,382	$1,769	$535	17,337
Michigan	$4,225	$5,655	$1,791	68,567
Minnesota	$1,958	$2,782	$853	30,582
Mississippi	$1,694	$1,976	$594	25,808
Missouri	$2,919	$4,041	$1,169	46,325
Montana	$476	$526	$170	7,288
Nebraska	$922	$1,148	$355	14,236
Nevada	$1,611	$1,956	$617	22,271
New Hampshire	$917	$1,089	$326	11,284
New Jersey	$2,471	$3,392	$991	32,640
New Mexico	$1,180	$1,306	$410	16,969
New York	$4,364	$5,462	$1,606	52,795
North Carolina	$6,067	$8,277	$2,567	93,332
North Dakota	$457	$511	$150	6,065
Ohio	$5,741	$8,155	$2,485	93,806
Oklahoma	$2,131	$2,707	$846	32,475
Oregon	$975	$1,260	$388	13,516
Pennsylvania	$7,883	$11,101	$3,316	121,518
Rhode Island	$368	$435	$126	4,646
South Carolina	$3,018	$3,904	$1,202	47,785
South Dakota	$421	$491	$152	6,327
Tennessee	$4,133	$5,957	$1,793	61,528
Texas	$16,256	$24,489	$7,576	248,134
Utah	$1,717	$2,412	$749	29,382
Vermont	$212	$238	$73	2,938
Virginia	$4,575	$5,919	$1,781	65,109
Washington	$1,359	$1,736	$538	17,903
West Virginia	$761	$812	$238	10,406
Wisconsin	$3,958	$5,241	$1,628	63,865
Wyoming	$359	$363	$113	4,964
Total	**$137,872**	**$186,594**	**$57,213**	**2,072,525**

Table 3: Total Losses from a $15 Federal Minimum Wage (Table 1 and 2)

State	Welfare ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$2,483	$3,102	$958	40,870
Alaska	$247	$267	$84	2,986
Arizona	$2,797	$3,643	$1,160	42,324
Arkansas	$1,279	$1,577	$487	20,232
California	$14,600	$20,432	$6,415	203,716
Colorado	$2,071	$2,993	$945	31,700
Connecticut	$1,533	$1,895	$571	18,402
Delaware	$486	$566	$155	5,866
District of Columbia	$279	$326	$89	3,379
Florida	$9,614	$12,715	$4,091	151,088
Georgia	$5,120	$7,533	$2,330	88,429
Hawaii	$625	$756	$242	8,377
Idaho	$1,062	$1,248	$391	16,551
Illinois	$6,097	$9,181	$2,782	88,567
Indiana	$4,408	$5,926	$1,790	70,167
Iowa	$2,032	$2,474	$744	31,089
Kansas	$1,742	$2,238	$643	24,300
Kentucky	$2,611	$3,329	$968	36,947
Louisiana	$2,934	$3,560	$1,128	44,112
Maine	$595	$722	$233	8,999
Maryland	$2,480	$3,045	$883	30,073
Massachusetts	$2,893	$3,707	$1,122	36,342
Michigan	$4,807	$6,437	$2,039	78,045
Minnesota	$2,349	$3,339	$1,024	36,707
Mississippi	$1,694	$1,976	$594	25,808
Missouri	$3,134	$4,340	$1,256	49,753
Montana	$500	$553	$178	7,654
Nebraska	$1,020	$1,270	$393	15,748
Nevada	$1,673	$2,031	$640	23,128
New Hampshire	$917	$1,089	$326	11,284
New Jersey	$3,140	$4,312	$1,259	41,487
New Mexico	$1,192	$1,319	$414	17,139
New York	$6,867	$8,601	$2,529	83,129
North Carolina	$6,067	$8,277	$2,567	93,332
North Dakota	$457	$511	$150	6,065
Ohio	$6,147	$8,735	$2,662	100,473
Oklahoma	$2,131	$2,707	$846	32,475
Oregon	$1,559	$2,017	$621	21,641
Pennsylvania	$7,883	$11,101	$3,316	121,518
Rhode Island	$515	$611	$177	6,517
South Carolina	$3,018	$3,904	$1,202	47,785
South Dakota	$469	$547	$169	7,057
Tennessee	$4,133	$5,957	$1,793	61,528
Texas	$16,256	$24,489	$7,576	248,134
Utah	$1,717	$2,412	$749	29,382
Vermont	$317	$357	$110	4,397
Virginia	$4,575	$5,919	$1,781	65,109
Washington	$2,747	$3,514	$1,089	36,230
West Virginia	$825	$880	$258	11,286
Wisconsin	$3,958	$5,241	$1,628	63,865
Wyoming	$359	$363	$113	4,964
Total	**$158,414**	**$214,043**	**$65,669**	**2,356,156**

The results show that minimum wage laws are currently having an impact for those 29 states and the District of Columbia that have elected to set higher rate than the federal rate. Specifically, Table 1 emphasizes that that these jurisdictions have reduced consumer welfare in their state by $20.5 billion, lowered gross state product by $27.5 billion and lost 283,000 jobs because they elected to set their minimum wages higher than the federal floor.

However, increasing the federal minimum wage further, as proposed by some in Congress, would produce significantly higher losses. In this second scenario (shown in Table 2), the minimum wage is assumed to increase across-the-board $15 per hour. That increase only further raises the minimum wages for these 30 jurisdictions from the current state rate but also means a stark increase for the other 21 states that currently set rates at the federal $7.25 per hour rate. As Table 2 shows, a $15 per hour across-the-board increase in the minimum wage would lead to an estimated $138 billion in consumer welfare losses, a decrease in gross state product of $187 billion and the loss of 2.1 million jobs – a figure somewhat higher than the Congressional Budget Office's median estimate of 1.3 million jobs, but conservatively lower than their upper bounds estimate of $3.7 million jobs.[49] This increase is in addition to that estimated in Table 1.

When combined, the total impact of minimum wage deviating from the federal rate of $7.25 could put 2.3 million jobs at risk and reduce Gross Domestic Product by $214 billion per year, as shown in Table 3.

Summary

This chapter shows the vast majority of workers earning minimum wage are not heads of households, and they are most often unskilled, part time, younger workers or students. By

[49] Michael Carroll, "Raising Minimum Wage to $15 Would Cost up to 3.7 Million Jobs, CBO Study Finds," The Center Square, July 11, 2019, https://www.thecentersquare.com/national/raising-minimum-wage-to-would-cost-up-to-million-jobs/article_88904a88-a3f8-11e9-a0c1-5b447f33be2f.html.

setting rates higher in the hope of creating a living wage, policymakers are leading to significantly higher unemployment for these workers.

The overwhelming empirical evidence emphasizes that setting wages higher than market prices will discourage employers from hiring workers. This research specifically, finds that setting a $15 per hour minimum wage will lead to over 2 million unemployed workers, as well as reduce economic output and consumer welfare, because of higher prices. Raising the minimum wage is a policy that should be avoided.

Predictive Scheduling: How Employees, Employers, and Consumers are Hurt by Predictive Scheduling Laws

Overview

A growing number of states and localities – including Philadelphia, New York City, Washington, D.C., San Francisco, Seattle, and the state of Oregon – are adopting scheduling mandates that require employers to provide their employees with advance notice of their work schedules (two weeks is common) and be subject to fines if they change employee schedules within certain timeframes.[50] These so-called *predictive scheduling* mandates are spreading quickly, but policymakers should carefully consider their unintended consequences.

Advocates argue that tighter scheduling mandates are needed to deter last minute scheduling changes that can be costly and disruptive to workers. However, these laws severely limit an employer's flexibility to accommodate employee requests for time off, inhibit offers of additional hours for employees who want to pick up extra shifts, and can significantly increase the cost of doing business, especially for small firms.

While many businesses across the U.S. use flexible scheduling to attract and retain employees, as well as to accommodate changing market conditions, predictive scheduling mandates impose an overly restrictive, one-size-fits-all model that would take away the flexibility that workers want and restrict their opportunities to work. Such mandates harm employers and employees of every type and size, raising employment costs, reducing economic output, and deterring job creation.

[50] "State and City Laws mandate Predictive Employee Scheduling,: QuickBooks, T Sheets, Updated January 2018, https://www.tsheets.com/resources/predictive-scheduling-laws.

The Evidence: Scheduling Mandates Leads to Fewer Work Hours for Jobholders

There's no doubt that last-minute changes to work schedules can be a headache for some workers, but there is no evidence that this is a widespread issue in the U.S., or that predictive scheduling mandates are an appropriate solution. Even without restrictive scheduling requirements, the problem of employees being forced to work an unexpected shift is not pervasive.

Scheduling decisions in American workplaces are more collaborative and sensitive to employee preferences than many advocates of predictive scheduling policies suggest. An exhaustive study of scheduling practices in the retail sector by the University of Chicago interviewed 139 store managers located in midwestern and eastern states and found that about half of changes to posted schedules were employee-initiated; the most common employee-initiated schedule change involved coworkers switching shifts or covering for one another.[51] Eighty-six percent of the managers also said that employee preferences were important in scheduling staff. Moreover, management-initiated changes to posted schedules are infrequent: "The most frequently occurring management-initiated adjustments are reductions in hours when consumer demand is less than anticipated and those made to save hours for future weeks or to recapture additional hours used on a prior day. About a quarter of managers report that they decrease hours weekly or a few times a month."[52]

A stated goal of predictive scheduling mandates is to encourage employers to hire full-time workers, under the assumption that many part-time employees would rather work full-time if given the opportunity. However, in San Francisco, which passed the nation's first predictive scheduling mandates in 2014, just one in seven part-time workers are estimated to be working that schedule involuntarily. This suggests that predictive scheduling mandates that

[51] Susan Lambert and Julia Henly, "Work Scheduling Study: Managers' Strategies for Balancing Business Requirements with Employee Needs," University of Chicago School of Social Service Administration, May 2010, https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/3/1174/files/2018/06/univ_of_chicago_work_scheduling_manager_report_6_25_0-1gq8rxc.pdf.
[52] Ibid.

incentivize employers to rely more on full-time workers may actually run counter to workers' own preferences.[53]

A similar analysis in Washington, D.C., which adopted a predictive scheduling law in 2015, came to similar conclusions.[54] Many hourly employees value the scheduling flexibility that their jobs provide to help them balance going to school, taking care of their families, or working another job. According to the National Retail Federation, 76 percent of former retail employees and 66 percent of current retail employees have taken advantage of flexible scheduling.[55] And 40 percent of retail workers say they've been at their job longer than anticipated because the scheduling flexibility suits their needs.[56]

A study of "CitiSales," an anonymous Fortune 100 retail company, surveyed more than 6,000 employees in 388 stores throughout the country and found that nearly three-quarters of employees reported that they were satisfied or always satisfied with their weekly schedule during the past month. Seventy-six percent of employees reported having some to a lot of input into their weekly schedule, and the same percentage said that their schedule preferences are considered almost always or always."[57]

Employers respond to predictive scheduling mandates by making work schedules more rigid and less adaptable to the dynamic needs of their employees. Workers who previously valued the opportunity to pick up an occasional extra shift on short notice may lose this ability, reducing their income. At the same time, the administrative burdens of complying with the regulations make employers reluctant to hire workers, particularly for part-time, variable-hour

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[53] Aaron Yelowitz and Lloyd Corder, "Weighing Priorities for Part-Time Workers," Employment Policies Institute, May 2016, https://www.epionline.org/wp-content/uploads/2016/05/EPI_WeighingPriorities-32.pdf.
[54] Lloyd Corder and Aaron Yelowitz, "Fairness vs. Flexibility: An Evaluation of the District of Columbia's Proposed Scheduling Regulations," Employment Policies Institute, March 2016, http://www.yelowitz.com/EPI_FairnessFlexibility_v2.pdf.
[55] "Retail's Value on a Resume," National Retail Federation, https://6a83cd4f6d8a17c1b6dd-0490b3ba35823e24e2c50ce7533598b0.ssl.cf1.rackcdn.com/retail-on-a-resume-one-pager.pdf.
[56] "Scheduling," National Retail Federation, Policy Issues, https://nrf.com/on-the-hill/policy-issues/scheduling.
[57] Jennifer Dl Swanberg, Jacquelyn B. James, Mamta U. Ojah, Mac Werner and Sharon P. McKenchnie, "CitiSales Jobs That Work Study," CitiSales, Issue Brief No. 1, undated, https://www.bc.edu/content/dam/files/centers/cwf/research/publications3/researchreports/Introduction%20to%20the%20CitiSales%20Study.

positions – even though, as noted above, the vast majority of part-time workers are satisfied with their schedules. Shift-swapping – which requires extensive documentation under most predictive scheduling laws – is also discouraged, further reducing workers' flexibility.

In addition to reducing scheduling flexibility that many employees value, there is growing evidence that predictive scheduling policies have broader negative effects, especially on small businesses. A survey conducted by the Employment Policy Institute businesses affected by scheduling regulations offered fewer jobs, scheduled fewer employees per shift, and reduced customer service.[58]

Employers noted a shift in store culture away from open communication toward more scripted dialogue in order to minimize the risk that their actions could be construed as "coercive" under the ordinance. Employers also argued that the ordinance failed to consider the realities of the retail industry, where labor needs can fluctuate unexpectedly based on sales volume and consumer demand. By limiting employers' ability to adjust staffing levels at short-notice, predictive scheduling policies jeopardized business profitability. Employers also said that the high penalties for violating the ordinance had made them especially careful to avoid situations that could trigger these costs, resulting in last-minute unfilled shifts going unfilled, even when employees were willing to fill them.

Feedback from several employers on San Francisco's predictive scheduling ordinance highlights the policy's real-world impact:

- Employers are unable to adjust staffing levels based upon changes in consumer demand, since offering part-time employees additional hours or reducing hours triggers an obligation to pay costly penalties;

[58] Aaron Yelowitz and Lloyd Corder, "Weighing Priorities for Part-Time Workers: An Early Evaluation of San Francisco's Formula Retail Scheduling Ordinance," Employment Policies Institute, May 2016, https://www.epionline.org/wp-content/uploads/2016/05/EPI_WeighingPriorities-32.pdf.

- Employees do not always know their availability to provide input for a two-week schedule and are frustrated with the hours and days of work they ultimately are provided;
- Part-time employees who want additional hours of work, even last-minute offers, are not getting those hours because of the penalties that employers face; and
- Employee requests for schedule changes after the schedule is posted often cannot be accommodated, and employees are frustrated with the lack of flexibility.[59]

San Francisco's business community is also being harmed. A report by the California Retailers Association in 2015 warned that "the impact upon the local economy could become significant with decreased retail profitability, lower retail sales taxes, and the reduction in work hours and income to employees across the City."[60]

Market incentives already give employers strong reasons to voluntarily adopt advance scheduling practices that balance business needs with workers' scheduling preferences. An employer who consistently calls employees to work on short notice is unlikely to retain a quality workforce or stay in business long. On the other hand, employers who take care to give employees ample notice of scheduling decisions, and input in those decisions, will attract and retain more productive workers. Employers know this very well.

A survey of 200 human resource managers revealed that family-friendly policies, including flexible schedules, are the single most important factor in attracting and retaining employees.[61] Strict government mandates that ignore workers' needs do more harm than

[59] "Mandated Predictability Jeopardizes Workplace Flexibility," 2018, California Business Issues, CalChamber, January 2018, https://advocacy.calchamber.com/wp-content/uploads/policy/issues-guide/2018/Labor-Employment-Mandated-Predictability-2018.pdf.
[60] Lon Hatamiya, "A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment For Formula Retail Employees Ordinance," California's Retailers Association, December 2015, https://www.oregonlegislature.gov/dembrow/WGitemsscheduling/6-23%20Cal%20Retailers%20Assn%20analysis%20of%20SF%20FRERO.pdf.
[61] "Facts About Flexible Schedules," Family Friendly New Mexico Business Toolkit, Undated, https://www.nmfamilyfriendlybusiness.org/wp-content/uploads/2018/02/FlexibleSchedules-FFNM-Fact-Sheet-Jan-2018.pdf.

good. Expanding these policies would be a grave mistake and repealing those that already exist should be a priority for policymakers.

Empirical research shows that employees in retail are overwhelmingly satisfied with their schedules and value the opportunity to make scheduling changes on short notice. In jurisdictions that have adopted predictive scheduling rules, particularly San Francisco, these mandates have caused employers to reduce scheduling flexibility and take defensive precautions to avoid incurring penalties. Moreover, business operations have been negatively affected, leading to fewer jobs and a decline in customer service.

Local Market Impacts

Real-world examples of the unintended consequences that accompany mandated predictive scheduling, including increases in business costs and reductions in employment, are already evident in cities that have recently implemented these regulations.

Seattle

Billed as a way to ensure stable income and consistent hours to low-wage workers, Seattle's predictive scheduling ordinance has backfired. Simone Barron, who works in a full-service restaurant in Seattle, has witnessed the "damaging and limiting effects" of the policy in workplaces around the city. With more than 30 years of experience in the service industry, Barron has bussed tables, washed dishes, supervised staff, and managed businesses. Barron writes:

> "Restrictive scheduling removes the flexibility on which the hospitality industry is built. I've worked in restaurants in cities around the U.S. This career has allowed me to raise a son, pay rent, put myself through school and have the flexibility to pursue my hobbies. Restrictions on how I pick up extra shifts, work a double shift or work the close-open shift will no longer be allowed with my employer being penalized. The barrier will create financial losses, too. I will be unable to work large events or parties if they occur outside

my regular work schedule. This will directly impact my ability to earn a living and provide for my family."[62]

New York

Earlier this year, policymakers in New York State abandoned an effort to require employers to give workers extra "call-in pay" if they were on-call but not asked to come in, sent home early, or had a shift canceled less than 72 hours before it was scheduled to start. The decision came after an outpouring of objections from small and medium-sized businesses. "I learned a lesson many, many years ago," said Bob Duffy, CEO of the Rochester Chamber of Commerce. "Government cannot impact the market. The market will always adjust and make decisions, so as rules come down and put pressure on business owners, they're going to take a step back, because they have to make a profit….I think sometimes when government tries to make a rule, they don't remember or maybe don't understand that a lot of these CEOs and business owners care about their employees like family members and do take steps to do this. They also have to make money and stay in business."[63]

New York City's predictive scheduling ordinance has been challenged in court by a coalition of restaurants arguing that quick-service operators have faced hundreds of thousands of dollars in penalties and have lost control over their ability to hire.[64] "Over the past year, this so-called 'Fair Work Week Law' has resulted in large premium payments, additional administrative costs and increased difficulty providing fast and flexible customer service for the 1,796 affected New York City restaurants," said Matt Haller of the International Franchise Association.[65]

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[62] Simone Barron, "Save restaurant workers from restrictive scheduling practices," *Seattle Times,* February 15, 2019, https://www.seattletimes.com/opinion/save-restaurant-workers-from-restrictive-scheduling-practices/.
[63] Beth Adams, "New York labor department puts predictive scheduling regulations on hold," WXXI News, February 28, 2019, https://www.wxxinews.org/post/new-york-labor-department-puts-predictive-scheduling-regulations-hold.
[64] Peter Romeo, "Restaurants lodge court challenge of predictive scheduling," Restaurant Business, December 4, 2018, https://www.restaurantbusinessonline.com/workforce/restaurants-lodge-court-challenge-predictive-scheduling.
[65] Ron Ruggless, "Industry groups challenge NYC predictive scheduling law," *Nation's Restaurant News*, December 5, 2018, https://www.nrn.com/workforce/industry-groups-challenge-nyc-predictive-scheduling-law.

San Francisco

To avoid punitive fines, employers often respond to predictive scheduling mandates by making work schedules more rigid and less adaptable to the dynamic needs of their employees. Workers who previously valued the opportunity to pick up an occasional extra shift on short notice may lose this ability, reducing their income.

A study conducted by the Employment Policy Institute surveyed 52 businesses affected by San Francisco's 2014 predictive scheduling ordinance and found that employers were reacting to the policy in a variety of unintended ways, including offering fewer jobs, scheduling fewer employees per shift, and reducing customer service.[66]

Employer Reactions to Predictive Scheduling

Operational Changes Made Since the Adoption of the Scheduling Ordinance	Share of All Retail Businesses (N=52)
Offering employees less flexibility to make schedule changes	35%
Changing the hiring composition of full-time vs. part-time employees	13%
Offering fewer part-time positions	21%
Offering fewer jobs across the board	17%
Scheduling fewer employees per shift	19%
Reducing customer service	6%

An independent report prepared on behalf of the California Retailers Association in 2015 found that San Francisco's ordinance had resulted in difficult challenges for both

[66] Aaron Yelowitz and Lloyd Corder, "Weighing Priorities for Part-Time Workers: An Early Evaluation of San Francisco's Formula Retail Scheduling Ordinance," Employment Policies Institute, May 2016, https://www.epionline.org/wp-content/uploads/2016/05/EPI_WeighingPriorities-32.pdf.

employers and employees.[67] In surveys, employees revealed that they often did not know their own availability two weeks in advance (the predictive scheduling period mandated in the ordinance) and were frustrated that they could not change their schedules or request additional work hours when needed.

State Impacts

Demand and Supply Effects

The cost of predictive scheduling regulation varies tremendously from jurisdiction to jurisdiction, and can be influenced by a number of factors: the number of days required for advance notification of scheduling; the severity and escalation of fines; how is a predictive wage defined and calculated; the handling of overtime; and which industries, hourly occupations and firm sizes are subject to regulations; as well as a host of other factors.

If employers do not follow regulations as planned, they can be subjected to heavy fines. In Oregon, if employers need to call in an employee for coverage on short notice, "employers also must pay workers a fee."[68] New York imposes $500 penalties for first violations, with recurring fees between $750 and $1,000.[69]

On the demand side, predictive scheduling can create scheduling problems for employers in instances of increased or decreased sales and volumes of business. Some employees may gladly volunteer for more hours, but volunteers are often treated by the same predictive scheduling requirements as others. Some employees may close a store one evening and reopen it the next morning, but predictive scheduling regulations may prevent this "clopening," even when these employees want these additional hours. Some employees may want to be on-call, just in case additional hours become available. In these cases, hourly

[67] Lon Hatamiya, "A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment for Formula Retail Employees Ordinance," The Hatamiya Group, December 2015, https://www.oregonlegislature.gov/dembrow/WGitemsscheduling/6-23%20Cal%20Retailers%20Assn%20analysis%20of%20SF%20FRERO.pdf.
[68] Kat Tornone, "Oregon Becomes First State to Require Predictive Scheduling," HRDive, August 10, 2017.
[69] Specific civil penalties are outline in New York City's regulations, at §20-1209.

employees are clearly disadvantaged by these regulations, because they lose an opportunity to work more hours, earn more pay and progress in the business.

Making changes to schedules on short notice due to changes in demand can be costly, as employers may need to pay premiums or guarantee a minimum number of hours or both. As the cost of rescheduling increases, businesses pay more, or they let their customer service falter – both costly choices. As the price of labor increases, employers may choose to operate unstaffed.

Alternatively, on the supply side, unexpected events, such as absenteeism puts pressure on employers to call in employees to cover temporary staffing shortages. In some instances, employees are not sure of their availability to work two weeks in advance. As such, requiring work schedules to be set two weeks in advance could mean these employees are overlooked. In any case, predictive scheduling clearly ties employers' hands from keeping properly staffed.

Scheduling uncertainty is often caused by absenteeism – including employees that are late to work, have traffic delays and accidents, need to leave early due to a family emergency, unexpected issues involving childcare and elderly relatives, illnesses, conflicts with school and classes, depression, injuries, low morale, job hunting and quitting jobs unannounced. Just like demand-side scheduling pressures, backfilling absenteeism will affect business operations.

Estimation of Costs

To illustrate the potential burden that these rules place on businesses, we measure the cost associated with scheduling employees on short notice due to absenteeism. The cost of absenteeism has been estimated to cost approximately $2,660 per shift worker, and lost U.S. productivity of $225.8 billion per year, according to some reports.[70] With these staggering costs aside, predictive scheduling could require employers to call in unscheduled employees to cover

[70] "Shift Work and Absenteeism: The Bottom Line Killer," Circadian, October 14, 2014, https://circadian.com/blog/item/43-shift-work-absenteeism-the-bottom-line-killer.html; and Craig Fearon, "How Absenteeism is Killing Your Bottom Line," SumTotal Blog, June 19, 2017, https://www.sumtotalsystems.com/blog/2017/06/absenteeism-killing-bottom-line/.

for absent employees. Rules that require a predictive pay, minimum time slots (typically 4 hours of paid time), and other factors could require employers to expend more hours and labor expenses. Simply calling for volunteers to fill in does not remove the requirement for predictive pay. If an ill employee comes in the next day, but the employer finds a backup, a cancellation by the employer in less than a 24-hour period could require pay for the number of hours scheduled or four hours.[71]

Whether employers offer sick pay or not, the inflexibility of scheduling becomes an additional cost of the business as it relates to absenteeism. According to the Bureau of Labor Statistics, the average full-time wage and salary works are absent 2.9 times accounting for a loss of 1.5% of hours usually worked.[72] Taking into account the number of hourly workers in each state and the average hourly wage, we estimate the number of hours lost due to absenteeism, and then apply industry multipliers to gauge the effect on gross state product and jobs.

If we assume that one quarter of these hours are needed to reschedule absent employees and a similar number of costs to compensate for predictive scheduling due to demand requirements, an illustration of the rough magnitude of the costs can be calculated and is presented in Table 4 below. This calculation makes no attempt to estimate the cost of compliance, fines, lost quality of service and other factors, but it is designed to illustrate the relative costs that arise from modest changes in regulations.

The results show that restrictions on flexible scheduling can be costly for both employers and employees. Table 4 shows that the cost of predictive scheduling may result in nearly $44 billion in economic output and a loss of a half million jobs. While predictive scheduling may be presented as fair for workers, its unintended consequences spell doom for some businesses and workers.

[71] "Fair Workweek Ordinance," Emeryville, California, Predictability Pay Calculations, as set forth in Section 5-39.04(c), on page 5, part g, http://ci.emeryville.ca.us/1136/Fair-Workweek-Ordinance.
[72] Bureau of Labor Statistics, Labor Force Statistics from the Current Population, 2018, www.bls.gov.

Table 4: Job Losses from Predictive Scheduling
Cost of Managing Fluctuations in Personnel

	Direct Cost ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$269	$506	$156	6,667
Alaska	$51	$83	$26	929
Arizona	$458	$895	$285	10,404
Arkansas	$155	$288	$89	3,689
California	$3,117	$6,542	$2,054	65,230
Colorado	$353	$766	$242	8,111
Connecticut	$295	$548	$165	5,319
Delaware	$70	$123	$34	1,271
District of Columbia	$53	$92	$25	956
Florida	$1,138	$2,265	$729	26,919
Georgia	$582	$1,290	$399	15,146
Hawaii	$84	$152	$49	1,682
Idaho	$97	$171	$54	2,273
Illinois	$913	$2,067	$626	19,944
Indiana	$432	$875	$264	10,364
Iowa	$210	$384	$116	4,830
Kansas	$174	$337	$97	3,662
Kentucky	$249	$478	$139	5,308
Louisiana	$244	$446	$141	5,531
Maine	$76	$138	$45	1,723
Maryland	$398	$734	$213	7,245
Massachusetts	$576	$1,108	$335	10,856
Michigan	$695	$1,400	$443	16,976
Minnesota	$437	$934	$287	10,267
Mississippi	$133	$235	$71	3,064
Missouri	$380	$793	$229	9,087
Montana	$61	$101	$32	1,396
Nebraska	$126	$237	$73	2,937
Nevada	$219	$401	$126	4,567
New Hampshire	$103	$185	$55	1,912
New Jersey	$554	$1,142	$333	10,985
New Mexico	$111	$186	$58	2,411
New York	$1,469	$2,762	$812	26,695
North Carolina	$604	$1,242	$385	14,002
North Dakota	$55	$93	$27	1,108
Ohio	$758	$1,621	$494	18,640
Oklahoma	$205	$393	$123	4,713
Oregon	$270	$523	$161	5,615
Pennsylvania	$886	$1,880	$562	20,576
Rhode Island	$72	$129	$37	1,376
South Carolina	$241	$471	$145	5,765
South Dakota	$56	$98	$30	1,267
Tennessee	$397	$863	$260	8,918
Texas	$1,792	$4,065	$1,258	41,192
Utah	$191	$404	$125	4,920
Vermont	$39	$65	$20	806
Virginia	$539	$1,049	$316	11,540
Washington	$593	$1,138	$353	11,737
West Virginia	$97	$157	$46	2,009
Wisconsin	$411	$820	$255	9,992
Wyoming	$36	$55	$17	748
Total	**$21,523**	**$43,731**	**$13,417**	**473,282**

Summary

Predictive scheduling results in many unintended consequences that produce adverse impacts for workers, businesses, and consumers. The qualitative and quantitative analysis presented here show that predictive scheduling is harmful for employers and employees, because it adds a burden to production and reduces the flexible scheduling that hourly workers want. The result means lower service quality, lower levels of economic output and less demand for employees. As predictive scheduling appears in cities, employers would be wise to move elsewhere.

Paid Family Leave

Overview

A myriad of policy proposals from both sides of the aisle are aimed at increasing access to paid family leave for American workers.[73] Currently, four states -- California, New Jersey, New York, and Rhode Island -- require paid family leave.[74] In addition, paid family leave measures have passed in Washington, D.C. and the Washington state; benefit payments start in 2020 in both cases. Last year, Massachusetts, for example, enacted a paid family leave program that will begin in 2021. At the federal level, the Family and Medical Insurance Leave (FAMILY) Act has been introduced in both the House and Senate to establish 60 days of paid family and medical leave at a wage replacement rate of 66 percent, funded through a 0.2 percent payroll tax on employees and employers.[75]

The fiscal costs of these programs are substantial. In 2018, the American Action Forum conducted an analysis of a nationwide paid parental leave program offering modest benefits: eight weeks of 70 percent wage-replacement up to $600 per week for both new mothers and new fathers. The program would have cost $12.7 billion in 2017; depending on the state, expected benefits would equal 0.06% to 0.24% of total wages.[76]

Moreover, paid family leave mandates trigger serious unintended consequences. As a result, small businesses that operate with narrow profit margins are hit the hardest, ultimately resulting in job losses and business closures.

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[73] Abby Vesoulis, "Paid Family Leave Has Stalled in Congress for Years: Here's Why That's Changing," Times, May 4, 2019, https://time.com/5562960/paid-family-leave-congress/.
[74] "Paid Family Leave in the United States," Congressional Research Service, CRS Report R44835, May 29, 2019, https://fas.org/sgp/crs/misc/R44835.pdf.
[75] For the legislative specifics, for H.R. 11865 in the U.S. House of Representatives, see https://www.congress.gov/bill/116th-congress/house-bill/1185, and for S. 463 in the U.S. Senate, see https://www.congress.gov/bill/116th-congress/senate-bill/463/text.
[76] Ben Gitis, "The Fiscal Cost of a Paid Parental Leave Program by State," American Action Forum, September 24, 2018, https://www.americanactionforum.org/insight/the-fiscal-cost-of-a-paid-parental-leave-program-by-state/.

The Evidence from Studies: Mandating Paid Employee Leave Creates a Major Cost Burden for Small Businesses, Reducing Employment

While polls indicate that Americans favor mandatory paid leave in the abstract, public support drops off significantly when people become aware of the potential costs.[77] Advocates of paid family leave argue that such programs improve productivity, boost employee retention, and attract more talented workers. But, if offering paid sick leave was advantageous for all businesses, there would be no need for government coercion. Recognizing its value to their bottom line, all companies would be offering it already.

The truth is that paid family leave requirements impose significant burdens on employers, especially small businesses with few options to absorb labor cost increases. Losing an employee, especially one with supervisory responsibilities, can significantly disrupt business operations. The need to reallocate personnel, hire temporary workers, train existing staff, or make other changes to fill the void is time-consuming and expensive. These costs exist even if the business isn't directly responsible for making wage-replacement payments to employees on leave. As such, employers are eager to avoid these costs.

Mandatory paid family leave incentivizes employers to avoid hiring individuals who are more likely to use paid family leave benefits than others. Since businesses know that women, particularly young women, are far more likely to use paid family leave than other demographic groups, mandatory paid family leave policies make employers more reluctant to hire, promote, train, and pay women. As a result, these policies often backfire on one of the primary groups they seek to help.

Economists agree that paid family leave mandates carry heavy costs. In 1989, for example, Larry Summers, who would later serve as Treasury Secretary under President Clinton and work in the Obama White House, published a paper warning that businesses would offset

[77] Lorie Konish, "Americans are Wary of Paying for Trump's Family Leave Proposal," CNBC, February 6, 2019. https://www.cnbc.com/2019/02/06/americans-are-wary-of-paying-for-trumps-family-leave-proposal.html.

higher benefits by lowering pay or hiring workers with lower potential benefit costs.[78] "It is thus possible that mandated benefit programs can work against the interests of those who most require the benefit being offered."[79] Summers notes that if employment benefits are financed through taxation instead of an employer mandate, society incurs deadweight losses through allocative inefficiency:

> "Estimates of the marginal deadweight loss from a $1 increase in taxes range from the $1.07 suggested by Charles Stuart (1984) to the $1.21 suggested by Edgar Browning (1987) to the $1.33, as in Charles Ballard et al. (1985). These figures are probably underestimated since they recognize only a few of the many distortions caused by the tax system."

Hence, a paid family leave program financed through a payroll tax imposes high ancillary costs on the economy that benefits no one.

A 1994 analysis by Jonathan Gruber, an MIT economist and architect of the Affordable Care Act, echoed Summers' findings.[80] Gruber analyzed mandatory maternity benefits in health insurance and found "substantial shifting of the costs of these mandates to the wages of the targeted group…on the order of 100 percent." One of Gruber's estimates is that a $1 increase in the cost of an employee's mandated benefits would lead to a 0.22-percent fall in the probability of employment.[81]

More recently, researchers have evaluated the effects of state-based paid family leave programs. For example, the Institute for the Study of Labor published a paper in 2014, focusing on the effects of California's paid family leave program, which enabled workers to take a

[78] Lawrence H. Summers, "Some Simple Economics of Mandated Benefits," *The American Economic Review*, Vol 79, No. 2, Papers and Proceedings of the Hundred and First Annual Meeting of the American Economic Association, May 1989, pp. 177-183, https://eml.berkeley.edu/~saez/course131/Summers89.pdf.
[79] Ibid.
[80] Jonathon Gruber, "The Incidence of Mandated Maternity Benefits," American Economic Review, June 1994, https://www.ssc.wisc.edu/~scholz/Teaching_742/Gruber_Maternity.pdf.
[81] Ibid.

maximum of six weeks of leave to care for a newborn, an adopted child, or an ailing family member. Benefits consisted of 55% of normal pay, financed through a payroll tax.

Using the Census Bureau's Current Population Survey, the researchers identified substantial adverse effects on women's labor market performance, including a higher incidence of unemployment and longer duration of unemployment. The quantitative estimations indicated that the unemployment rate for young California females increased 0.346 percentage points (about a 5% increase) relative to older California women and all women in the rest of the country. The duration of unemployment for California young women rose by 0.73 weeks after the program was implemented. Overall, as many as 80,000 young women in California suffered spells of unemployment lasting up to two weeks longer than in other states.[82]

To summarize, researchers studying the effects of California's paid family leave program identified "significant and substantial" adverse effects on women's labor market performance, including a higher incidence of unemployment and longer duration of unemployment.[83]

In 2016, the National Federation of Independent Businesses (NFIB) conducted an analysis of the potential impact of a national paid sick leave policy on small businesses.[84] Specifically, the study examined the effects of H.R. 932 (the "Healthy Families Act"), which would have established a minimum time-off standard for paid sick leave by requiring employers with 15 or more employees to provide workers with up to 56 hours of paid leave per year.[85] Under the law, paid sick time could be used to cope with an injury or medical condition, care for family members, or deal with domestic violence. The mandate would have covered both full-time and part-time employees. It is important to note that the benefits under this proposal are

[82] Tirthatanmoy Das and Solomom Polachek, "Unanticipated Effects of California's Paid Family Leave Program," Institute for the Study of Labor, March 2014, http://ftp.iza.org/dp8023.pdf.
[83] Ibid.
[84] Michael J. Chow, "The Economic Impact of H.R. 932 and Mandatory Paid Sick Leave on U.S. Small Businesses," NFIB Research Foundation, January 13, 2016, https://www.nfib.com/assets/BSIM_HealthyFamiliesAct2015-Jan-14-20161.pdf.
[85] H.R.932 - Healthy Families Act, 114th Congress (2015-2016), Sponsored by Rep. Rosa DeLauro, https://www.congress.gov/bill/114th-congress/house-bill/932

significantly less generous than under the paid family leave programs in states like California and New Jersey.

To estimate the economic impact of H.R. 932, the NFIB study used the Business Size Insight Module (BSIM), which is based on the Regional Economic Models, Inc. (REMI) structural economic forecasting and policy analysis model. Using data from the Census Bureau and the Bureau of Labor Statistics, the NFIB estimated the number of workers in every state, industry, and firm size category who would become newly eligible for paid sick leave under H.R. 932.

Drawing on work done by the Institute for Women's Policy Research, the researchers estimated that newly eligible employees would annually use about 71 percent of the maximum amount of paid sick time available to them (5 days per year, on average). Assuming passage and implementation of H.R. 932 in 2016, the NFIB forecasted that the paid sick leave mandate would result in 430,000 jobs lost over a ten-year period spanning 2016 to 2025. The cumulative real output lost during this period was estimated to be $652 billion nationwide, with small firms shouldering at least half of these negative effects.

Similarly, researchers at the University of Denver recently published an analysis of the projected costs of adopting a paid family and medical leave program in Colorado. The program would provide wage replacement benefits equal to 90% of normal wages up to 50% of the statewide average weekly wage (AWW), with an additional 50% of wages above AWW up to $1000 per week, for up to 12 weeks of job-protected leave. The researchers assumed that 5% of all eligible workers would access paid leave benefits in a given calendar year.

This estimate is a compromise between the experiences of California and New Jersey, which report utilization rates of less than 2.5% in their paid family leave programs, and Rhode Island, which reports a utilization rate in excess of 6%. Also based on the experiences of other states, the authors assume the average duration of leave would be 9 weeks. The program

would cost about $816 million annually, requiring employees and employers to each pay a 0.339% payroll tax. The average worker would pay $207 per year into the program.[86]

Furthermore, experiences in other countries that have moved aggressively to mandate paid family leave, should also give us pause. A 2015 study, for example, found that American women are more likely than women in other countries to have full time jobs and to work as managers or professionals.[87] The paid leave and job entitlement policies in place abroad encourage part-time work among women and employment in lower level positions. A study of Nordic countries found similar results:

> "We demonstrate that, although the 'Nordic model' has been successful in boosting female employment, it is a costly solution. Furthermore, family-friendly policies mainly directed towards giving mothers the right to be on long paid maternal leave have adverse effects on women's wages with consequences for gender equality. Indeed, extensive family-friendly schemes may even have created a 'system-based glass ceiling' hindering women's career progression."[88]

Paid family leave mandates also ignore workers' different preferences. Consider a young woman who has decided not to have children. If it were up to her to negotiate the terms of her employment contract, she would naturally prefer to give up paid family leave benefits -- which she knows she is unlikely to use -- in return for a higher salary, a more generous health insurance plan, or other benefits. But under a government-mandated paid family leave policy, such a tradeoff is not possible. As a result, both the employer and employee are worse off.

The power of the free market -- without government coercion -- has already greatly expanded the availability of paid family leave for American workers. As workers have come to

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[86] Jennifer Greenfield, Nancy Reichman, Paula Cole, et al., "Projected Economic Impacts of Paid Family Leave in Colorado," University of Denver, 2019, https://socialwork.du.edu/sites/g/files/lmucqz281/files/2019-02/Paid-Family-Leave-Report.pdf.

[87] Francine D. Blau and Lawrence M. Kahn, "Female Labor Supply: Why is the US Falling Behind?" National Bureau of Economic Research, NBER Working Paper 18702, January 2013, https://www.nber.org/papers/w18702.pdf.

[88] Nabanita Datta Gupta, Nina Smith and Mette Verner, "Perspective Article: The Impact of Nordic Countries' Family Friendly Policies on Employment, Wages, and Children," Review of Economic of the Household, Volume 6, Issue 1, March 2008, pp. 65-89, https://link.springer.com/article/10.1007/s11150-007-9023-0.

value paid leave benefits, many employers have included such provisions in their employment contracts in order to attract the most qualified applicants. A recent paper by the Cato Institute's Vanessa Brown Calder reports:

> "...without the government mandating or paying for a paid parental leave benefit, between 45 percent and 63 percent of women report already having access to paid leave. The best part of this story is actually that the data show how the private sector has steadily increased its provision of paid leave to first-time mothers from 16 percent since the 1960s to over 50 percent in 2008 (the last time data were available). If you add disability (which is often used as paid leave), that number grows to 61 percent, which is a 280 percent increase over the period."[89]

There is no evidence of a market failure in the provision of paid family leave in the U.S. As such, leave has become more important to American workers, businesses -- of their own accord -- have greatly expanded these benefits. Both theoretical and empirical research indicates that mandatory paid family leave programs, whether implemented through an employer mandate or funded by taxes, impose unintended costs on employees, businesses, and the overall economy.

Examples of Local Market Impacts from Paid Leave

The deleterious effects of government-mandated paid leave programs are evident in cities that have embraced such policies, including San Francisco, Seattle, and New York City.

[89] Vanessa Brown Calder, "Parental Leave: Is There a Case for Government Action," Cato Institute, Policy Action, No. 850, October 2, 2018, https://object.cato.org/sites/cato.org/files/pubs/pdf/pa850.pdf.

San Francisco

When San Francisco passed one of the nation's first – and so far the most generous – paid parental leave law in 2016, observers predicted that small businesses and startups would struggle to stay afloat in the face of higher labor costs.[90] They were right.

San Francisco has been down a similar road before. After the city passed a mandatory paid sick leave policy in 2006, researchers discovered that small and medium-sized businesses were hiring fewer workers, canceling planned raises for staff, shifting resources outside the city to avoid the mandate, and struggling to cope with the administrative challenge of tracking leave. Contrary to proponents' predictions, few employers reported any early benefits from reduced absenteeism, lower turnover, or improved employee morale as a result of the paid sick leave ordinance.[91]

Even studies by the Institute for Women's Policy Research, an organization that advocates for paid leave programs across the country, have found that one-third of San Francisco employees affected by the paid sick leave ordinance faced increased work demands from their employers, reduced work hours, or reduced compensation.[92]

San Francisco's newer fully paid parental leave policy shows similar effects. "It's this piling on effect that is squeezing businesses," said Tom Scott, the California state director of the National Federation of Independent Business. "San Francisco wants to be a trendsetter on so many different levels. Ultimately whether it's the customer, whether it's reduction in employment (of) staff, somebody pays for this. I don't know where San Francisco thinks small

[90] Tess Townsend, "How San Francisco's New Parental Leave Policy Will Impact Startups," *Inc. Magazine*, April 7, 2016, https://www.inc.com/tess-townsend/san-francisco-parental-leave-impact-startups.html.
[91] Shelley Waters Boots, Karin Martinson, and Anna Danziger, "Employers' Perspectives on San Francisco's Paid Sick Leave Policy," Urban Institute, March 2009, https://www.urban.org/sites/default/files/publication/32961/411868-Employers-Perspectives-on-San-Francisco-s-Paid-Sick-Leave-Policy.PDF.
[92] Robert Drago and Vicky Lovell, "San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees," Institute for Women's Policy Research, February 2011, https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/A138_edited.pdf.

business comes up with this money," Scott said. "Policy makers seem tone deaf to the struggles small business owners face every day."[93]

Seattle

A survey conducted by the Employment Policies Institute of 301 Seattle businesses in the service industry in August 2013 – less than a year after the paid sick leave mandate went into effect – revealed that while one-third of businesses reported no increase in costs due to the law, more than one-quarter of respondents (28%) faced large cost increases and a similar percentage faced small cost increases. To mitigate costs, 16% of employers raised prices, 18% reduced hours and staff, and 17% either increased the cost to employees of their current benefits or eliminated benefits entirely.[94]

A similar study by Seattle's city auditor in 2014 revealed that about 3 in 10 businesses were struggling to understand the legal requirements of the ordinance or keep track of administrative records. Moreover, 16.5 percent of all surveyed employers reported decreased profitability, 7.1 percent raised their prices, 2.3 percent reduced the number of employees in Seattle locations, and 0.6 percent closed or moved out of the city.[95] In another follow-up survey, one business owner put it bluntly: "Liberal as I am and as much as I try to be an 'enlightened' employer, this city ordinance is the dumbest, most unrealistic law I've ever encountered in my 35 years of owning a 'closely held' company."[96]

David Santillanes, the owner of eight McDonald's franchises in Seattle that employ about 500 workers, knows first-hand the high costs of the city's paid sick leave mandate. Complying with the law meant updating his payroll software to keep track of the accrual and

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[93] Jessica Floum, "SF's new family leave rules put some businesses in a bind," *San Francisco Chronicle*, April 17, 2016, https://www.sfchronicle.com/business/article/SF-s-new-family-leave-rules-put-some-businesses-7254190.php.

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

[95] Jennifer Romich et al., "Implementation and Early Outcomes of the City of Seattle Paid Sick and Safe Time Ordinance," City of Seattle -- Office of City Auditor, April 23, 2014, https://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/PSSTOUWReportwAppendices.pdf.

[96] Ibid.

use of leave hours, covering the dual costs of paying workers on leave and other workers to fill in, and coping with the uptick in employees calling in sick. Overall, Seattle's paid sick leave policy cost Santillanes $17,600 per restaurant the first year, which rose to $19,200 per restaurant the second year -- an increase of $153,600 per year for all of his Seattle locations. With profit margins already low (5% to 6%) and no way to absorb such significant expenses, Santillanes was forced to raise menu prices in all his restaurants.[97]

New York

For "On Location Tours," which takes people to New York City's many places made famous by movies and TV shows, the city's paid sick leave mandate has made scheduling more difficult for owner Georgette Blau. She employs 30 guides, many of whom are actors and need scheduling flexibility to accommodate auditions and performances. When someone doesn't show, finding a substitute can be challenging. Blau has had to cancel tours when short-staffed, reducing her revenue. To track and report work hours and sick leave, Blau had to hire a payroll company for $15,000.[98]

Another entrepreneur in New York City explained that while she supports paid sick leave in principle, it imposes onerous costs on small employers:

> "Given the fact that an employer has to pay for staff coverage while also paying for an employee who is out sick, even if you have just 5 full-time employees, your costs still increase by thousands of dollars each year. This law also has unintended negative consequences on employees. I have found that employers are now very reluctant to give any one employee more than 15-25 hours per week. They would rather have more part-time employees and delay their accrual of paid sick days – it just makes financial sense. Even worse, some businesses are misinterpreting the law, thinking that employees only earn the accrual if they work 30 hours per week, rather than 30 hours at

[97] Kathleen Cooper and Kate Martin, "Businesses elsewhere report few problems with sick leave laws," *The News Tribune*, March 8, 2015, https://www.thenewstribune.com/news/politics-government/article26263825.html.
[98] Joyce M. Rosenberg, "Paid Sick Leave Is Great for Employees, But Some Business Owners Are Struggling to Make It Happen," *Inc. Magazine*, August 1, 2018, https://www.inc.com/associated-press/paid-sick-leave-great-for-employees-business-owners-struggle.html.

any point, so they are cutting back their employees' hours. As a result, employees work fewer hours and accrue paid sick days more slowly. This is a well-meaning but not well-thought-out law that ends up hurting the very people it aims to help."[99]

Now, with New York State's paid family leave program coming down the pike, experts have warned about the unintended effects on small businesses. Frank Kerbein, director of the Center for Human Resources at the Business Council for New York State, says that some small businesses will struggle to comply with the avalanche of rules and regulations. "The Federal Family Medical Leave Act has been around 23 years and is still not always administrated correctly," Kerbein told Small Business Trends. "In large organizations, it takes one person just to manage the program. A small business may not have an HR person, which means that, in spite of its best intentions, the company could fail to comply with the new law, resulting in fines and penalties."[100]

Economic Impacts

For the purpose of measuring the economic effects of paid leave mandates, we specifically focused on the law passed in San Francisco in 2006.

To estimate the economic effects of the paid leave mandates in the metropolitan area of San Francisco, we use a Synthetic Control Method (SCM).[101] The idea behind this approach is that, when the policy intervention takes place at an aggregate level and affects an entity (e.g. a state, metropolitan area), a combination of comparison units often provides a better benchmark for the unit exposed to the intervention than any single unit alone.

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[99] Victor Wong, "Can you give an example of the impact of City regulations on small business?" Gotham Gazette, https://www.gothamgazette.com/index.php/opinions/5297-small-business-costs-regulatory-hurdles-nyc-wong.
[100] Paul Chaney, "How the New York Paid Family Leave Act Affects Small Businesses," *Small Business Trends*, January 2, 2019, https://smallbiztrends.com/2016/06/new-york-paid-family-leave-act.html.
[101] SCM is an empirical approach developed by Abadie and Gardeazabal (2003) and extended in Abadie et al. (2010). See Alberto Abadie and Javier Gardeazabal, "The Economic Costs of Conflict: A Case Study of the Basque Country," *American Economic Review*, 93(1):113–132, 2003; and Alberto Abadie, Alexis Diamond, and Jens Hainmueller, "Synthetic Control Methods for Comparative Case Studies: Estimating the Effect of California's Tobacco Control Program," *Journal of the American Statistical Association*, 105(490):493–505, 2010.

Under this approach, a synthetic control is a weighted average of the available control units, constructed to approximate the most relevant characteristics of the treated one. In our case, the SCM is used to estimate the counterfactual situation in San Francisco in the absence of other paid leave mandates in other metropolitan areas in the U.S. by looking at the total gross product and employment in an artificial city (i.e. synthetic San Francisco).

SCM is particularly useful for examining the effects of institutions, economic shocks, or other interventions on large, aggregated units, such as countries, regions, or states.[102] The objective is to create an untreated "synthetic" version of a treated case through a weighted combination of the control cases in a "donor pool."

Several benefits of using SCM instead of other more traditional methodologies (e.g. differences-in-differences or fixed-effects models) have been extensively documented. The main attractive features of this approach are: i) transparency – SCM provides a systematic way to choose comparison scenarios, making explicit the relative contribution of each one and the similarities between the actual San Francisco and the synthetic San Francisco; ii) safeguard against extrapolation – weights are restricted to be positive and sum to one; iii) flexibility – the set of potential control provinces can be appropriately restricted to states with economic trajectories driven by a similar structural process as in San Francisco and that were not subject to structural shocks during the sample period; and iv) weaker identification assumption – the effects of unobservable confounding factors can vary with time.[103]

To examine the economic effects of San Francisco's paid leave mandate passed in 2006, we create a synthetic control version of San Francisco. The models we use consist of a cross-

[102] For more applications of SCM, see Alberto Abadie, Alexis Diamond, and Jens Hainmueller, "Comparative Politics and the Synthetic Control Method," *American Journal of Political Science*, 59(2):495–510, 2015; and Luke Keele, Neil Malhotra, and Colin H. McCubbins, "Do term limits restrain state fiscal policy? Approaches for Causal Inference in Assessing the Effects of Legislative Institutions," *Legislative Studies Quarterly* 38, no. 3 (2013): 291-326.

[103] Victoria Castillo, Lucas Figal Garone, Alessandro Maffioli, and Lina Salazar, "Tourism Policy, a Big Push to Employment: Evidence from a Multiple Synthetic Control Approach," Inter-American Development Bank, January 2015.

sectional time series of 23 metropolitan areas across U.S. from 2001 through 2017. The data was gathered from the U.S. Bureau of Economic Analysis.

We focused on one outcome variable – employment.[104] Next, we collected the following predictors (covariates) to construct the synthetic cases from the donor pool (areas that did not pass paid leave mandates) and personal income per capita. The predictors have a stable relationship with the outcome variable. The predictors' ability to explain variation over the pretreatment years, on the other hand, is less important because only their time averages over pretreatment years are used when creating the synthetic state.

We also include the lagged outcome variable. Including a lagged outcome variable for some pretreatment years is common, as it avoids the problem of omitting important predictors' effects by including the effects of any predictor variables whether or not they are gathered for the analysis.

Next, we identify the potential donors that synthesize the control metropolitan area. Because the control metropolitan area is a contrast to the treated metropolitan area after treatment, similar laws should not be enacted in any metropolitan area in any year during the study.[105]

Estimates of Job Losses

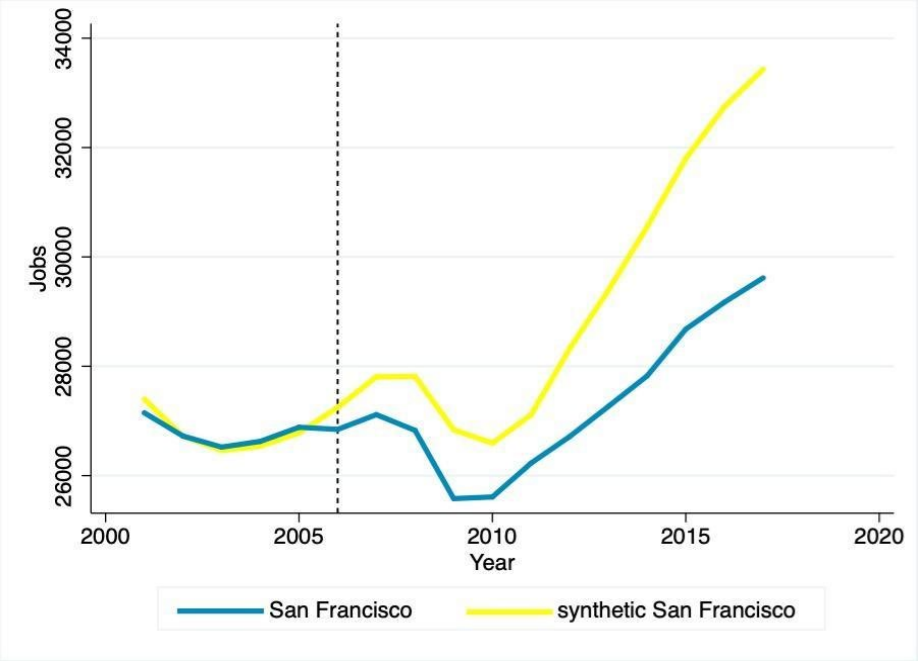
The modeled output is a pre-treatment and post-treatment path for the synthetic control metropolitan area's outcome variable that can be compared with the treated metropolitan area's outcome variable path. Ideally, the two paths follow each other closely before the treatment, so that divergence after that point can represent the treatment's effect. The goodness of fit of the modeled estimation can be assessed by calculating the root mean

[104] Total Nonfarm Employment is used as a proxy for employment, which is a measure of the number of U.S. workers in the economy that excludes proprietors, private household employees, unpaid volunteers, farm employees, and the unincorporated self-employed. This measure provides useful insights into the current economic situation because it can represent the number of jobs added or lost in an economy.
[105] As such, in the case of joint employer model, we dropped Seattle, which introduced paid leave mandates.

squared prediction error (RMSPE) between the actual and synthetic region during the pretreatment period.

Chart 2, for example, plots the effects on jobs for the metropolitan area of San Francisco, in which synthetic results were created by minimizing the RMSPE between the actual and synthetic value over the pretreatment years (2001–2005). The value for the RMSPE is 131.

Chart 2: Synthetic Estimates of San Francisco Employment
Before and After Paid Leave Mandate



As shown in the chart above, the impact of paid leave regulations in San Francisco has resulted in thousands of fewer jobs in the city, and if implemented nationwide, the impact of these regulations would be staggering.

Using a conservative estimate of the direct business costs from such a mandate, we can estimate the multiplier effects for economic output (as measured by Gross State Product), employment earnings and jobs for all fifty states and the District of Columbia (Table 5 below).[106]

[106] Ben Gitis, "The Fiscal Cost of a Paid Parental Leave Program by State," American Action Forum, Sept. 24, 2018, https://www.americanactionforum.org/insight/the-fiscal-cost-of-a-paid-parental-leave-program-by-state/#ixzz5tIVmDNn6.

Table 5: The Cost of Paid Parental Leave Benefits

State	Costs ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$170	$306.2	$82.6	2,768
Alaska	$30	$47.5	$13.6	365
Arizona	$260	$495.0	$138.7	4,035
Arkansas	$110	$191.2	$51.3	1,653
California	$1,580	$3,209.5	$896.3	22,277
Colorado	$260	$534.6	$149.8	4,094
Connecticut	$140	$253.3	$66.0	1,658
Delaware	$40	$61.1	$14.5	442
District of Columbia	$40	$50.4	$4.1	440
Florida	$760	$1,460.3	$410.7	12,335
Georgia	$410	$854.4	$233.5	7,017
Hawaii	$50	$86.2	$24.0	665
Idaho	$70	$118.1	$32.5	1,063
Illinois	$500	$1,063.5	$286.9	7,299
Indiana	$260	$489.5	$129.7	4,027
Iowa	$130	$220.8	$58.6	1,900
Kansas	$120	$219.0	$53.8	1,606
Kentucky	$160	$289.6	$74.6	2,286
Louisiana	$170	$297.3	$83.4	2,540
Maine	$50	$86.6	$24.3	757
Maryland	$240	$427.9	$107.8	2,867
Massachusetts	$280	$525.5	$138.3	3,472
Michigan	$370	$704.1	$195.3	5,902
Minnesota	$240	$482.3	$130.9	3,675
Mississippi	$110	$184.6	$48.6	1,656
Missouri	$240	$471.1	$120.6	3,700
Montana	$40	$64.3	$17.6	601
Nebraska	$80	$138.5	$37.5	1,186
Nevada	$120	$206.0	$56.7	1,672
New Hampshire	$50	$87.6	$22.5	612
New Jersey	$340	$667.2	$170.2	4,407
New Mexico	$70	$112.8	$30.8	994
New York	$770	$1,387.3	$349.4	8,872
North Carolina	$390	$767.3	$211.5	6,177
North Dakota	$40	$63.8	$16.1	488
Ohio	$440	$878.4	$237.5	7,113
Oklahoma	$150	$274.6	$76.1	2,309
Oregon	$170	$311.1	$83.7	2,347
Pennsylvania	$480	$966.2	$253.9	7,131
Rhode Island	$40	$67.4	$16.7	486
South Carolina	$180	$339.1	$90.8	2,894
South Dakota	$30	$50.1	$13.3	424
Tennessee	$260	$525.1	$139.3	3,977
Texas	$1,130	$2,460.4	$680.3	17,483
Utah	$140	$280.6	$78.2	2,405
Vermont	$20	$32.6	$8.7	273
Virginia	$340	$632.2	$162.3	4,722
Washington	$300	$549.1	$150.0	3,909
West Virginia	$60	$94.2	$23.8	801
Wisconsin	$240	$446.0	$121.5	3,784
Wyoming	$20	$29.5	$8.1	263
U.S. Total	**$12,690**	**$24,560.8**	**$6,626.6**	**185,827**

As family paid leave regulations expand in coverage and geographically, the costs to employers will be significant. Based on a scenario jointly developed by the American Enterprise Institute and the Brookings Institute, a "compromise" paid family and medical leave plan. That plan assumed a 70% replacement rate for up to $600 per will for a limited number of weeks.[107] When estimated, the direct cost of leave benefits from this plan was estimated to be $12.7 billion per year, conservatively assuming the same pattern and frequency of leave exhibited during the Family and Medical Leave Act of 1993.[108]

Based on these direct state costs and using industry multipliers from the Bureau of Economic Analysis, as shown in Table 5 (above), we estimate the lost Gross Domestic Product to be $24.6 billion, as well as 186,000 fewer jobs resulting in $6.6 billion less in paid job earnings. To be noted is that these estimates are very conservative and represent a compromise plan that caps weekly wage payments amounts and the length of time on leave. In addition, these plans often assume that employees will be no more likely to take paid leave than unpaid leave.

In short, the benefits to workers derived from paid parental leave policies will be dwarfed by the costs to the entire economy.

[107] "Paid Family and Medical Leave: An Issue Whose Time Has Come," Brooking, June 6, 2017, https://www.brookings.edu/research/paid-family-and-medical-leave-an-issue-whose-time-has-come/.
[108] Ben Gitis, "The Fiscal Cost of a Paid Parental Leave Program by State," American Action Forum, Sept. 24, 2018, https://www.americanactionforum.org/insight/the-fiscal-cost-of-a-paid-parental-leave-program-by-state/#ixzz5tIVmDNn6.

Joint-Employer Standard

Overview

In 2015, under the *Browning-Ferris* decision, the National Labor Relations Board (NLRB) overturned decades of legal precedent pertaining to the franchise industry by broadening the joint employer standard. Previously, a joint employer relationship was established when an employer exercised "substantial direct and immediate control over the essential terms and conditions of employment of another employer's employees in a manner that is not limited or routine."

The new standard significantly expanded the criteria for joint employer liability to include cases where an employer has indirect control or even unexercised potential control over another employer's employees.[109] Yet, the NLRB has never provided clear guidelines on how these terms are to be interpreted and applied in practice. As the Competitive Enterprise Institute noted in comments to the NLRB:

> "...the NLRB's Browning-Ferris decision did not adopt a test or rule to determine what contractual relationships establish joint employment. Without a bright-line rule, employers do not know if current business-to-business contracts establish joint employer liability or whether agreements need amendments to avoid responsibility for other companies' labor violations or bargaining responsibilities. With such a broad standard under Browning-Ferris, it will be unpredictable how the new policy will be applied in the future."[110]

The definition of joint employment is critical for hundreds of thousands of businesses in the U.S., particularly for the franchise industry, which consists of more than 733,000 franchise

[109] "Comments Submitted by Trey Kovacs" Competitive Enterprise Institute, Docket ID No. NLRB-2018-0001-0001, January 14, 2019, https://cei.org/sites/default/files/Trey_Kovacs_Competitive_Enterprise_Institute_Comments_NLRB_Joint_Employer.pdf.
[110] Ibid.

establishments and supports nearly 7.6 million jobs and $674.3 billion of economic output for the U.S. economy. Franchising benefits consumers by allowing them to purchase goods and services from familiar brands with reliable standards of service and quality, with the knowledge that the local business owner is responsive to consumer demands. Since the uniformity and quality of products offered by a brand is a key factor in the success of the franchising concept, most franchise agreements include contractual provisions specifying many aspects of business operation, some in great detail, but which have little or nothing to do with a franchisor's "control" of its franchisees' employees. Yet, under the current joint employer standard, previously mundane business relationships can attract scrutiny and expose franchisors to legal risks.

The Evidence from Studies: Treating Franchise Employees as Part of the Franchisor's Company Means Big Costs for Small Businesses

The *Browning-Ferris* ruling triggered an avalanche of charges filed against franchisors alleging joint employment with their franchisees. Compared to the previous four-year period, the four years since the ruling have seen a 57 percent jump in charges alleging joint employment and a 93 percent increase among franchising businesses specifically.[111]

The costs of joint employer litigation can be astronomical. According to a filing in an ongoing case against McDonald's over whether it can be held liable for the labor law violations of its franchisees, the company has spent over $2 million on discovery alone.[112] McDonald's has the resources to absorb these costs, but hundreds of thousands of small and mdeium-sized

[111] "The Economic Impact of an Expanded Joint Employer Standard," International Franchise Association (IFA), January 28, 2019. Also filed by Matthew A. Haller of the IFA in connection with "Proposed Rule Regarding the Standard for Determining Joint Employer Status, Docket 3142-AA13, 2019, https://www.franchise.org/sites/default/files/2019-05/JE%20Econ%20Impact%200128.pdf.

[112] "Urgent Appeal from the Administrative Law Judge's Order Granting Petitions to Revoke Subpoena DUCES *TECUM* and Orders Regarding Production of Expert's Report," Before the National Labor Relations Board, McDonalds' USA, LLC, A Joint Employer, et al., Cases 02-CA-093893, et al., https://www.scribd.com/document/368768728/Request-for-Special-Permission-to-Appeal?campaign=VigLink&ad_group=xxc1xx&source=hp_affiliate&medium=affiliate.

businesses vulnerable to similar litigation cannot afford the lawyers needed to defend themselves.

Due to uncertainty about what "indirect control" can be construed to mean, every interaction between franchisees and franchisors have become fraught with legal risk. For example, since the *Browning-Ferris* decision, a franchisor was alerted to a video in which a franchisee's employee mistreated a customer's pet. In today's digital world, such a video could spread quickly online and damage the franchisor's brand. But under the current joint employer standard, if the franchisor communicates with the franchisee to recommend any particular disciplinary action against the employee in order to mitigate negative publicity for the brand, the franchisor runs the risk of assuming joint employer liability.[113] *Browning-Ferris* has effectively handcuffed franchisors in dealing with situations in which inappropriate behavior by franchisee employees can damage the franchisor's entire brand and reduce the profitability of other franchisees.

As the Competitive Enterprise Institute explains, under the current indirect control standard, a joint employer relationship could be established by something as minor as a franchisor providing employees at franchisees with training or apprenticeship opportunities.[114] Consequently, several franchisors have reduced -- or cut entirely -- training and support to franchisee employees, including instruction in human resources practices, legal updates, and new technology. While franchisors previously embraced franchisee requests for advice on personnel matters such as compensation and disciplinary actions, some franchisors now merely offer options to consider, without making recommendations. Other franchisors refuse to

[113] "The Economic Impact of an Expanded Joint Employer Standard," International Franchise Association (IFA), January 28, 2019.
[114] "Comments Submitted by Trey Kovacs" Competitive Enterprise Institute, Docket ID No. NLRB-2018-0001-0001, January 14, 2019, https://cei.org/sites/default/files/Trey_Kovacs_Competitive_Enterprise_Institute_Comments_NLRB_Joint_Employer.pdf.

provide any assistance for fear of triggering joint employment liability, forcing franchisees to incur additional expenses like attorney fees to draft employee handbooks.[115]

Despite its crucial importance to hundreds of thousands of U.S. businesses, the *Browning-Ferris* decision has attracted limited academic attention. Consequently, think tanks, trade organizations, and private consulting groups have led the effort to examine the ruling's impact on the franchising industry and the broader economy.

Given the size of the franchise industry in the U.S., the economic effects of the *Browning-Ferris* ruling have been substantial. Shortly after the *Browning-Ferris* decision, an analysis by FRANdata, a consulting group that focuses exclusively on franchise businesses, estimated that franchisees would face higher labor and operating costs on the order of five to 15 percent of gross revenue, often exceeding businesses' operating margins.

This conclusion was based on information drawn from industry white papers, government data, and telephone surveys of more than 300 franchisors and 15,000 franchised businesses. The study noted that franchise owners would have limited options in the short-term to absorb rising costs due to the joint-employer ruling. The options included increasing prices and passing costs on to consumers, reducing product and service offerings, and eliminating jobs or reducing hours. As a result, "40,000 franchise businesses, affecting more than 75,000 locations, [were] at risk of failure."[116]

According to the same study, business closures, downsizing, and a decline in the rate of new franchise business formation threatened the existence or creation of more than 600,000 jobs. This figure assumed that the rate of new job creation among franchises (which had added 500,000 jobs from 2013 through 2014) would be reduced by half, resulting in 250,000 fewer jobs over a two-year period. Further, the study assumed that 75,000 franchise locations --

[115] The Economic Impact of an Expanded Joint Employer Standard," International Franchise Association (IFA), January 28, 2019.
[116] Anthony Crews, Kate Zhang, and Claire Liuzza, "Key Findings and Survey Results: 2015 National Labor Relations Board Joint-Employer Ruling," *FRANdata*, 2016, https://www.frandata.com/wp-content/uploads/2016/03/FRANdata_Joint_Employer_Impact_Study.pdf.

supporting 825,000 jobs -- would close, and that half of the newly unemployed workers would be unable in the short-term to find jobs elsewhere.[117]

In 2017, research by the American Action Forum (AAF) argued that the NLRB's actions would incentivize franchisors to abandon the model in favor of building a network of company-owned establishments. Such a transformation could have profound consequences for the labor market, since the rate of job growth in the franchise sector (3.4 percent annually) significantly outstrips job growth in the rest of the economy (2 percent annually). AAF estimated that if job growth in the franchise industry dropped to the level of job growth among non-franchise businesses, 1.7 million fewer jobs would have been created in the private sector by 2027, including 500,000 fewer jobs in the leisure and hospitality industry.[118]

A recent study by the International Franchise Association and the Chamber of Commerce found that the new joint employer definition cost the typical franchise business $142,000 a year in legal fees, reduced output, other expenses. Ninety-two percent of surveyed franchise brands and franchise business owners say the expanded joint employer standard has led to less support from their brands.[119] For small franchise businesses with annual average revenue of only $2.9 million, these costs are significant. Franchisees have fewer resources to expand their operations, hire new workers, or improve service quality.

The *Browning-Ferris* decision has resulted in 142,000 to 376,000 lost job opportunities as franchisors have backed away from earlier business arrangements and interactions with franchisees, suppliers and support contractors in order to reduce their legal exposure. The annual cost to the U.S. economy is estimated to be between $17.2 billion and $33.3 billion. The study stresses that these effects are only part of the total adverse consequences of the *Browning-Ferris* decision; many others cannot be reliably quantified.[120]

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[117] Ibid.
[118] Ben Gitis, "The NLRB's New Joint Employer Standard, Unions, and the Franchise Business Model," *American Action Forum*, April 26, 2017, https://www.americanactionforum.org/wp-content/uploads/2017/04/Joint-Employer-and-Franchises.pdf.
[119] "The Economic Impact of an Expanded Joint Employer Standard," International Franchise Association (IFA), January 28, 2019.
[120] Ibid.

While there is some disagreement, as discussed above, about the severity of the *Browning-Ferris* decision's impact, even the most optimistic estimates indicate that hundreds of thousands of jobs, representing tens of thousands of business establishments, are in jeopardy under the new joint employer standard.

The NLRB should return to its longstanding, pre-Browning-Ferris joint employment standard. The current standard's vagueness and lack of clarity have created legal uncertainty over what workplace policies may trigger joint-employer liability, causing massive disruptions in the franchising industry and beyond. In order to invest in new operations, create jobs, and deliver high-quality customer service, businesses -- especially small ones -- must have certainty regarding their regulatory obligations.

Empirics

To estimate the economic effects of joint employer laws, we specifically focus on Tennessee law S.B. 475 and use the Synthetic Control Method (SCM), the same methodology used to estimate the effects of scheduling mandates.

The purpose of this analysis is to examine the economic effects of Tennessee's joint employer law, implemented in 2015, by creating a synthetic control version of Tennessee. The employed models consist of a cross-sectional time series of 51 states (including the District of Columbia) from 1997 through 2018. The data was gathered from the U.S. Bureau of Economic Analysis.

To determine the economic effects of the joint employer law in Tennessee, we focused on two outcome variables: total Gross State Product (in millions of current dollars) and employment.[121] Next, we collected the following predictors (covariates) to construct the

[121] Total Nonfarm Employment is used as a proxy for employment, which is a measure of the number of U.S. workers in the economy that excludes proprietors, private household employees, unpaid volunteers, farm

synthetic cases from the donor pool (states that did not pass joint employer laws): total taxes on production and imports in all industries (thousands of dollars), total personal consumption expenditures (millions of current dollars) as a proxy for inflation, and personal income per capita. The predictors have a stable relationship with the outcome variable. The predictors' ability to explain variation over the pretreatment years, on the other hand, is less important because only their time averages over pretreatment years are used when creating the synthetic state.

We also include the lagged outcome variable. Including a lagged outcome variable for some pretreatment years is common, as it avoids the problem of omitting important predictors' effects because it includes the effects of any predictor variables whether or not they are gathered for the analysis.

Next, we identify the potential donor states that synthesize the control state. Because the control state is a contrast to the treated state after treatment, similar laws should not be enacted in any donor pool state in any year during the study.[122]

Local Impacts

The modeled output is a pre-treatment and post-treatment path for the synthetic control state's outcome variable that can be compared with the treated state's outcome variable path. Ideally, the two paths follow each other closely before the treatment, so that divergence after that point can represent the treatment's effect. The goodness of fit of the modeled estimation can be assessed by calculating the root mean squared prediction error (RMSPE) between the actual and synthetic region during the pretreatment period.

employees, and the unincorporated self-employed. This measure provides useful insights into the current economic situation because it can represent the number of jobs added or lost in an economy.

[122] As such, in the case of joint employer model, we dropped fourteen states that introduced similar joint employer laws (Louisiana, Texas, Michigan, Wisconsin, Utah, Indiana, Oklahoma, Georgia, Kentucky, South Dakota, North Dakota, Wyoming, Arizona, and Arkansas).

Charts 3 and Figure 4 plot the Gross State Product and employment trends in Tennessee, in which the synthetic Tennessee was created by minimizing the MSPE between the actual and synthetic Tennessee over the pretreatment years (1997–2015). To be noted from these figures is that the covariates used yield high-quality synthetic cases to use as counterfactual comparisons. This is shown by the relatively small values for the RMSPEs (2173 for the model in Chart 3 and 6754 for the model in Chart 4).

Chart 3: Synthetic Model Results: Tennessee Gross State Product

Before and After Joint Employer Regulations (SB 475) Went into Effect

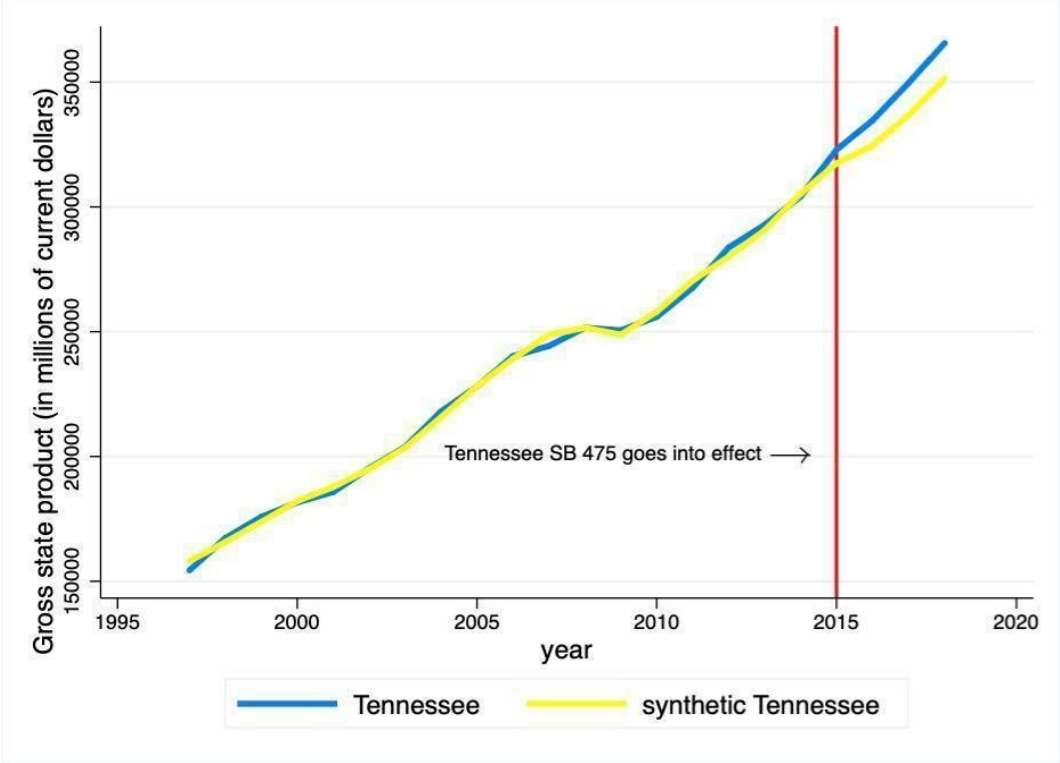
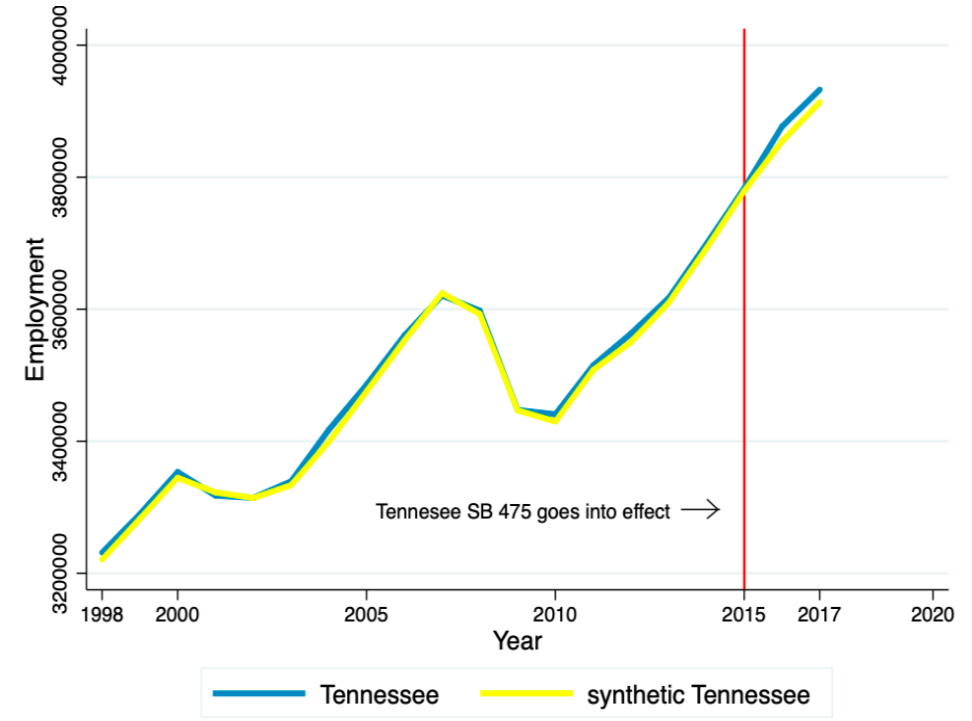


Chart 4: Synthetic Model Results: Tennessee Employment

Before and After Joint Employer Regulations (SB 475) Went into Effect



The synthetic control model results provide a clear indication of the directional change – namely, that implementing joint-employer regulations will cost jobs and reduce economic output. Relying on the synthetic control model, Table 6 (below) provides estimates of the job losses that would be expected from implementation of joint-employer regulations in the 50 states and the District of Columbia – losses that total 800,000 jobs across the country. Separately, we took joint-employer costs estimated by Dr. Ronald Bird, expanded these costs based on the distribution of franchise sales, and used franchise-weighted multipliers from a PwC study.[123] Bird's indicators are low and only include "distancing costs" that reflect the cost of avoiding employer liability. The results (in Table 7 below), show that, if joint-employer regulations are imposed, economic output would fall $74 billion and lead to 990,000 fewer jobs, an estimate somewhat higher than the synthetic model estimate of 800,000 fewer jobs.

[123] Ronal Bird, "Statement Regarding the Economic Impact of the Prospective NLRB Public Policy Decision Regarding the Definition of Joint Employer, published in a regulatory filing "The Economic Impact of an Expanded Joint Employer Standard," International Franchise Association, January 28, 2019; and "The Economic Impact of Franchised Businesses: Volume IV, 2016," PwC, September 15, 2016.

Table 6: Employment Impact of Joint Employer Laws (SCM Estimates)

State	Jobs
Alabama	12,690
Alaska	2,207
Arizona	18,006
Arkansas	7,732
California	113,754
Colorado	18,015
Connecticut	11,224
Delaware	2,826
District of Columbia	4,381
Florida	57,656
Georgia	29,364
Hawaii	4,433
Idaho	4,677
Illinois	37,965
Indiana	18,663
Iowa	9,658
Kansas	9,060
Kentucky	11,870
Louisiana	12,988
Maine	4,016
Maryland	17,927
Massachusetts	23,222
Michigan	27,194
Minnesota	17,898
Mississippi	7,554
Missouri	17,745
Montana	3,142
Nebraska	6,157
Nevada	8,622
New Hampshire	4,276
New Jersey	26,562
New Mexico	5,210
New York	60,331
North Carolina	28,525
North Dakota	2,664
Ohio	33,669
Oklahoma	10,840
Oregon	11,882
Pennsylvania	37,053
Rhode Island	3,106
South Carolina	13,247
South Dakota	2,782
Tennessee	19,160
Texas	81,354
Utah	9,579
Vermont	2,081
Virginia	25,099
Washington	21,030
West Virginia	4,231
Wisconsin	17,574
Wyoming	1,869
U.S. Total	**797,273**

Figure 7: The Cost of Joint Employer Regulations*

State	Costs ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$452	$907.6	$548.1	14,856
Alaska	$72	$182.3	$97.3	1,877
Arizona	$720	$1,488.4	$885.4	20,635
Arkansas	$276	$574.9	$335.8	9,410
California	$3,688	$8,738.3	$5,212.1	102,345
Colorado	$636	$1,423.7	$879.1	19,380
Connecticut	$491	$1,080.8	$683.4	11,588
Delaware	$124	$272.8	$154.3	3,046
District of Columbia	$96	$207.1	$134.8	1,655
Florida	$2,300	$4,792.9	$2,894.2	70,085
Georgia	$1,051	$2,373.1	$1,433.8	34,728
Hawaii	$187	$336.8	$192.9	3,933
Idaho	$139	$281.4	$175.2	5,268
Illinois	$1,558	$3,498.6	$2,110.1	42,821
Indiana	$675	$1,443.1	$852.8	22,728
Iowa	$329	$697.2	$415.6	11,170
Kansas	$321	$653.3	$402.5	10,308
Kentucky	$488	$961.8	$587.6	16,309
Louisiana	$498	$1,052.3	$571.9	14,032
Maine	$118	$247.2	$151.6	3,840
Maryland	$697	$1,417.0	$868.2	17,927
Massachusetts	$617	$1,499.5	$959.9	17,090
Michigan	$1,011	$2,126.1	$1,263.0	31,879
Minnesota	$612	$1,428.1	$885.4	19,927
Mississippi	$276	$511.1	$310.7	8,844
Missouri	$675	$1,473.7	$920.0	22,506
Montana	$99	$201.0	$126.2	3,649
Nebraska	$224	$473.8	$291.3	7,391
Nevada	$367	$715.1	$423.2	9,342
New Hampshire	$140	$307.1	$199.6	4,129
New Jersey	$991	$2,209.7	$1,325.0	23,989
New Mexico	$202	$385.3	$226.1	6,216
New York	$1,784	$4,297.8	$2,567.3	42,803
North Carolina	$1,097	$2,467.6	$1,510.5	36,562
North Dakota	$150	$272.2	$155.0	3,483
Ohio	$1,155	$2,688.2	$1,643.3	39,984
Oklahoma	$364	$769.5	$479.8	11,761
Oregon	$342	$795.9	$499.5	11,564
Pennsylvania	$1,198	$2,801.4	$1,772.1	37,713
Rhode Island	$93	$204.5	$122.6	2,554
South Carolina	$464	$912.5	$552.7	15,170
South Dakota	$96	$190.7	$110.9	3,163
Tennessee	$805	$1,642.6	$1,044.8	24,525
Texas	$2,760	$6,426.2	$3,834.9	82,935

Table 7 Continued:

	Costs ($M)	Output ($M)	Earnings ($M)	Jobs
Utah	$245	$579.9	$352.2	8,770
Vermont	$54	$113.4	$68.7	1,674
Virginia	$1,031	$2,144.3	$1,321.5	28,814
Washington	$769	$1,636.3	$930.9	18,795
West Virginia	$158	$299.8	$181.5	5,040
Wisconsin	$534	$1,232.5	$767.2	19,306
Wyoming	$69	$143.9	$75.3	1,932
U.S. Total	**$33,300**	**$73,580.5**	**$44,507.8**	**989,455**

Sources: Dr. Ronald Bird's estimate for the direct output lost from joint-employment regulations; state estimates based on ACI calculations using franchise data and multipliers from PricewaterhouseCoopers' study.

All in all, Tables 6 and 7 provide a very conservative range of potential job losses – between 800,000 and 990,000, depending on the methodology used – that would result from the implementation of expanded joint-employer standards in the U.S. While these distancing costs reflect what businesses will spend to avoid joint employer liability, they do not include compliance, legal and other costs. Therefore, these numbers should be regarded as very conservative.

Based on evidence provided in this report, joint-employer regulations represent bad public policy, as they would devastate small business franchises, including many family-owned and minority-owned businesses, leading to a significant drop in output, employment earnings and jobs. With many small businesses struggling with razor thin margins, the introduction of these unanticipated expenses will certainly shutter many of these small businesses. When business shut down or are forced to cut labor costs in order to continue to be financially viable, it is the employees who ultimately suffer.

Conclusions and Recommendations

The Nobel-Prize-winning economist Milton Friedman famously observed, "One of the great mistakes is to judge policies and programs by their intentions rather than their results." The overwhelming empirical evidence presented in this study, and summarized by state in the Appendix to follow, shows that these regulations – often intended to help workers – will lead to fewer jobs. Specifically, our report finds that just these four labor regulations – imposing higher minimum wages, predictive scheduling, paid parental family leave, and joint-employer mandates – would result in 4 million fewer jobs in the U.S. and cost the U.S. economy more than one-third of a trillion dollars.[124] Policymakers will also face a shrinking tax base.

To be clear, we share a common goal with most of the supporters of these regulations analyzed in this report: we want to see American workers thrive. But, as our findings demonstrate, progressive labor market policies look better on paper than they do in the real world. Piling mandates on employers makes it difficult for them to grow their businesses and for them to employ workers. In the end, reducing the output of our economy only leads to depriving workers of opportunities.

Instead of imposing burdensome mandates, governments should seek to nurture a competitive and open labor market where firms voluntarily expand employee benefits in order to attract the best talent. Over the last few decades, for example, the availability of voluntary paid family leave has greatly expanded in American workplaces – not because of government coercion, but because of worker demands and competitive forces.

States and cities around the U.S. should heed the experiences of New York City, San Francisco, Seattle, and other jurisdictions that have embraced misguided, job-killing policies that ignore the economic realities of running a small business. Based on the empirical evidence presented in this study, it is clear that increasing labor costs does not encourage employers to hire more employees.

[124] This figure includes the total impact of all four policies.

APPENDIX:

Study Summary
State Impacts from Labor Regulation

	Output	Earnings	Jobs
Alabama	$4,822	$1,745	65,161
Alaska	$580	$221	6,157
Arizona	$6,521	$2,469	77,398
Arkansas	$2,631	$963	34,984
California	$38,922	$14,577	393,568
Colorado	$5,717	$2,216	63,285
Connecticut	$3,777	$1,485	36,967
Delaware	$1,023	$358	10,625
District of Columbia	$676	$253	6,430
Florida	$21,233	$8,125	260,427
Georgia	$12,051	$4,396	145,320
Hawaii	$1,331	$508	14,657
Idaho	$1,819	$653	25,155
Illinois	$15,810	$5,805	158,631
Indiana	$8,734	$3,037	107,286
Iowa	$3,776	$1,334	48,989
Kansas	$3,447	$1,196	39,876
Kentucky	$5,058	$1,769	60,850
Louisiana	$5,356	$1,924	66,215
Maine	$1,194	$454	15,319
Maryland	$5,624	$2,072	58,112
Massachusetts	$6,840	$2,555	67,760
Michigan	$10,667	$3,940	132,802
Minnesota	$6,183	$2,327	70,576
Mississippi	$2,907	$1,024	39,372
Missouri	$7,078	$2,526	85,046
Montana	$919	$354	13,300
Nebraska	$2,119	$795	27,262
Nevada	$3,353	$1,246	38,709
New Hampshire	$1,669	$603	17,937
New Jersey	$8,331	$3,087	80,868
New Mexico	$2,003	$729	26,760
New York	$17,048	$6,258	161,499
North Carolina	$12,754	$4,674	150,073
North Dakota	$940	$348	11,144
Ohio	$13,923	$5,037	166,210
Oklahoma	$4,144	$1,525	51,258
Oregon	$3,647	$1,365	41,167

Study Summary (Continued)

	Output	Earnings	Jobs
Pennsylvania	$16,749	$5,904	186,938
Rhode Island	$1,012	$353	10,933
South Carolina	$5,627	$1,991	71,614
South Dakota	$886	$323	11,911
Tennessee	$8,988	$3,237	98,948
Texas	$37,441	$13,349	389,744
Utah	$3,677	$1,304	45,477
Vermont	$568	$207	7,150
Virginia	$9,745	$3,581	110,185
Washington	$6,837	$2,523	70,671
West Virginia	$1,431	$509	19,136
Wisconsin	$7,740	$2,772	96,947
Wyoming	$591	$213	7,907
U.S. Total	**$355,915**	**$130,220**	**4,004,720**

Note: These data represent the combined impacts resulting from $15 minimum wage, predictive scheduling, mandatory paid leave and Joint-employer standard labor regulations, as identified in this study. The figures are the sum of the data from Tables 3, 4, 5 and 7.