Executive actions to reduce inequality and improve job quality for U.S. workers

Executive Action AGENDA

March 2023 Equitable Growth

Relevant federal agencies:

- Federal Trade Commission
- Equal Employment Opportunity Commission
- Office of Personnel Management

Relevant laws:

- Federal Trade Commission's Trade Regulation Rule on Commercial Surveillance and Data Security, Commercial Surveillance ANPR, R111004
- Seattle, Washington, Municipal Code § 14.22.055 - .150
- 5 USC § 4703; 5 CFR Part 470

Overview

Even during periods of sustained economic and employment growth, millions of workers across the United States still face economic uncertainty and precarious working conditions. Working conditions such as low pay, unstable schedules, little access to benefits, workplace surveillance, and discrimination and sexual harassment at work impact a considerable portion of the U.S. labor force and decrease job quality for workers.

There are many ways to tackle these problems. Some examples include raising the federal minimum wage, providing workers' benefits that employers fail to provide, and instituting robust protections for workers. Addressing these problems would not only improve job quality and individual worker well-being, but it would also benefit the broader workforce, employers, and the U.S. economy as a whole.

One municipal-level example is the stable scheduling law passed in Seattle and enacted in 2017, which led to a 10 percentage point decrease in workers' material hardship. Increasing the minimum wage at the local, state, and federal level increases worker tenure and, in turn, decreases employer costs due to more frequent worker turnover. The flip side of this is also true: Hostile workplaces where sexual harassment and racial discrimination are present increase employee turnover rates.

While topline statistics, such as employment growth and pay rates, are important, federal policymakers must also take steps to enact policies that improve job quality and worker well-being. There is interest in proposals to implement some of these improvements, both in the U.S. Congress, with bills such as the Schedules That Work Act and the Stop Spying Bosses Act, and through efforts from various federal administrative agencies.

Yet administrative agencies have only taken some concrete steps to address these problems, while Congress struggles to pass legislation. Though some progress is being made on these issues, there's still more the Biden administration can do. This factsheet details several executive actions the administration could enact.

Reinstate the expanded EEO-1 form to include detailed pay information by gender, race, and ethnicity

Data collection is a key function of any administrative agency, especially when it comes to the Equal Employment Opportunity Commission. One of the most important tools the agency uses for data-gathering is the so-called EEO-1 form, which requires all private-sector employers with 100 or more employees, as well as federal contractors with 50 or more employees who meet certain criteria, to submit demographic workforce data along the lines of race and ethnicity, sex, and type of job. Thanks to these data, the EEO-1 form provides an understanding of the mechanisms behind economic inequalities and where those inequalities exist at certain firms.

The Obama administration expanded the EEO-1 form to include more detailed data, but the Trump administration stopped the collection of pay data altogether. Subsequent legal challenges during the Trump administration prevented the EEO-1 form from being properly implemented as initially designed.

Even though the agency is facing internal issues with implementing the EEO-1 form, some data continue to be collected. Collecting additional data, such as pay information broken down by employee demographics, would provide a more detailed picture of where and how economic inequality along demographic lines is perpetuated.

As such, the Equal Employment Opportunity Commission should fully reinstate the EEO-1 form to help provide these important baseline data points. Doing so would not only help stakeholders better understand the inequitable divides in the U.S. labor market, but also help guide federal, state, and local governments to more effectively target programs and policies to meet the needs of historically marginalized workers.

Require government contractors to provide employees a fair workweek

Despite existing workplace protections, many employers—especially those in the retail and service industry—utilize unstable and unpredictable scheduling practices. Unstable scheduling practices, also known as “just-in-time” scheduling, make it harder for families to find child care, increase the likelihood of workers going hungry, and fail to offer more scheduling flexibility for workers.

Policymakers have experimented at different levels of government with fair workweek laws as a way to address just-in-time scheduling. Some common provisions of these laws include:

- Ensuring workers have advance notice of their schedules (often 2 weeks’ notice)
- Providing compensation to workers for last-minute schedule changes
- Guaranteeing 10 hours of rest between working a closing and opening shift
- Receiving an offer for additional hours before new employees are hired

Implementing such stable scheduling practices would provide important benefits to both employers and employees. Research by Columbia University’s Elizabeth Ananat, Anna Gassman-Pines at Duke University, Daniel Schneider at Harvard Kennedy School, and the University of California, San Francisco’s Kristen Harknett demonstrates that stable scheduling practices reduce scheduling unpredictability without negatively impacting hours worked, lower turnover rates in low-wage, service-sector industries, and increase workers’ productivity and employer profits in the U.S. retail industry.

The Biden administration should require government contractors to provide their employees with a fair workweek. Such a requirement could be implemented alongside commensurate efforts to ensure that contractors comply with the requirement, meaning that adequate reporting and enforcement measures should be considered.

This would improve work quality and worker well-being and provide economic benefits to the employers as well, reducing the high rates of employee turnover that often lead to significant costs for the employer. Furthermore, such a mandate from the Biden administration could serve as a guide for state and local policymakers.

Prevent employers from deploying harmful electronic surveillance on their workers and ensure that monitoring does not result in discrimination

Workers across the country are increasingly vulnerable to invasive monitoring and surveillance practices by their employers. Everything from electronic surveillance tracking workers' movements and computer use, to facial recognition software, to algorithmic management systems that are used to discipline and/or terminate workers are becoming increasingly prevalent in the United States. Low-wage and hourly workers are especially vulnerable to these practices.

Research by Lisa Kresge at the University of California, Berkeley Labor Center and Aiha Nguyen at Data & Society shows that continuous monitoring—and accompanying punitive actions from employers based on that monitoring—exposes workers to a range of harms, such as increased injuries, reduced wages, and a suppression of the right to organize.

Several federal agencies and regulatory bodies are examining issues related to workplace surveillance, including the Federal Trade Commission. A number of researchers, worker advocates, and civil society groups, as well as Equitable Growth, recently responded to the Federal Trade Commission's Advanced Notice of Proposing Rulemaking on Commercial Surveillance and Data Security, outlining these harms and priority areas for action.

Other researchers and advocates studying this topic highlight key next steps the agency should take in its rulemaking. These include:

- Ensuring that whatever monitoring data employers are allowed to collect is minimal and for narrow purposes that don't harm workers, and with a goal of maximizing workers' privacy, including by restricting businesses from deploying specific, harmful forms of electronic monitoring and sensitive data collection, such as facial recognition software, algorithmic surveillance, and biometric surveillance.
- Facilitating researchers' and regulators' access to the surveillance data that firms collect to understand firms' actions and potential harms to workers, for oversight, and for accountability. There also should be full notice and transparency of monitoring practices, coupled with other privacy and labor protections, so that workers and unions know what information is being collected and therefore can potentially bargain over these issues.
- Making sure that any use of electronic monitoring, surveillance, algorithmic decision-making and/or data-driven worker management software tools are not used to discriminate against historically marginalized groups, including disparate impacts on protected classes.

Going forward, continuing and increased coordination between relevant agencies and regulatory bodies will also be necessary to address the many intertwined issues around workplace surveillance and worker power.

Launch a demonstration project to test the efficacy of paying workers more frequently

Like most workers in the United States, federal employees are paid every 2 weeks. But this practice—an artifact of New Deal era legislation and status quo bias—is not necessarily in workers' best interest. Despite major advances in financial technology in recent decades, workers are still forced to wait many weeks between completing work and being paid, effectively providing their employer with an interest-free loan in the interim.

There is mixed evidence on the benefits of more frequent pay. Some workers who live paycheck-to-paycheck would surely benefit from having enough cash on hand to meet daily expenses and avoiding the high fees and interest payments associated with short-term loans, credit card debt, and other, sometimes predatory, financial products. Other workers might prefer the forced savings associated with being paid larger amounts less frequently, allowing wage earners to build up large enough sums to purchase durable goods and perhaps helping them combat self-control problems. Indeed, recent research shows that more frequent pay can lead to higher consumption due to the feeling among earners that they are richer than they actually are, while other studies find the opposite.

It is also not clear how altering traditional pay periods might affect employers. Running payroll more often will likely increase their administrative costs, but reducing workers' financial stress could redound to firms in the form of higher employee productivity and reduced turnover. Indeed, one paper from 2022 found that more frequent pay led workers to be more productive while also increasing their homeownership rates. But much of the research touting more frequent pay has been done by private companies with a vested interest in the use of their advance pay products, some of which come with high fees.

Given these promising but inconclusive findings, there is a major opportunity for the federal government to lead the way in experimenting with long-overdue payday innovations. Using its statutory authority to conduct demonstration projects, the Office of Personnel Management could collaborate with federal agencies to test the efficacy of more frequent or varied paydays for a subset of federal workers. The agency could also investigate the option of allowing employees to pick their own payday to better time their incomes to expected monthly expenses.

The Office of Personnel Management is well-positioned to analyze the effects of these changes on both employee well-being and employer performance, using existing tools such as the Federal Employee Viewpoint Survey to gauge worker satisfaction. Findings from the trial could help inform not just federal workforce policies, but also state pay frequency laws, requirements for federal contractors, potential federal legislation, including minimum wage and overtime regulation, wider labor market practices, and even ways to relieve macroeconomic congestion.

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