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KEEPING MASSACHUSETTS WORKING FOR WORKERS: Policy Gains in 2018 and Possibilities Beyond

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In a well-functioning economy, people who work full-time should be able to earn enough to support themselves and their families. Moreover, no one should have to choose between earning a living and tending to their own health or that of a loved one.

Thanks in part to a number of grassroots campaigns, 2018 has seen Massachusetts move a few steps closer to this vision. By passing a **\$15 minimum wage**, creating a **paid family and medical leave** program, and **increasing the state's Earned Income Tax Credit** to 30 percent of the federal credit, Massachusetts made major improvements in the lives and working conditions of people across the state.

The first section of this brief summarizes these advances. The second section looks at a handful of other options – by no means an exhaustive list – for making further improvements to the lives of workers and their families across the commonwealth.

What Did Massachusetts Workers Gain?

\$15 Minimum Wage

First, Massachusetts, which currently has an \$11 minimum hourly wage, became just the third state to pass a **\$15 minimum hourly wage**. About 840,000 low-wage workers – one-quarter of the state's workforce – can expect to see a raise by 2023, which is when the minimum wage will reach \$15. More than one in five Massachusetts children – about 313,000 children in all – have at least one working parent that will get a raise. Among teen workers (those under 20), 84 percent would get a raise. In [Teens, Employment, and the Minimum Wage](#), MassBudget found that the wages of teen workers account for over 7 percent of their family's income, on average. Among low-income families, teen wages account for 18 percent of family income.

In total, the increase from \$11 to \$15 by 2023 will boost low-wage workers' pay by \$2.75 billion (not adjusting for inflation). For more information on the impact of the increase to \$15, please see MassBudget's [FAQ: The Massachusetts \\$15 Minimum Wage Proposal](#).¹

Paid Family and Medical Leave

Second, Massachusetts became the seventh state to create a **paid family and medical leave (PFML) program**. PFML can allow parents to start making healthy decisions before a child is born, such as expanding access to prenatal or other types of medical care. Paid leave also improves maternal physical and mental health by allowing mothers enough time to recover from child birth, lowering the rates of

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re-hospitalization. The elderly have better disease and physical health outcomes when loved ones participate in their care.²

This new PFML benefit will be funded via a combination of employer and employee payroll deductions, and will furnish paid leave for: workers' own serious health conditions; bonding with a new child; or taking care of a family member with a serious health condition. The maximum length of the paid leave varies depending upon the reason: 26 weeks for taking care of a family member whose serious health condition is related to military service; 20 weeks for one's own health condition; and 12 weeks for bonding with a new child or taking care of an ailing family member. The total weekly benefit is capped at \$850, and will be adjusted each year to be 64 percent of the state's average weekly wage.

Crucially, workers who take leave will have their jobs protected for up to 26 weeks (even if that exceeds the maximum *paid* leave period). Employers will not be allowed to require workers to use other paid time off (sick, vacation, personal) before accessing the PFML benefit.³

For more on the health benefits of PFML policies, see the following MassBudget reports:

- [Time to Care: The Health Effects of Paid Family & Medical Leave](#)
- [How Paid Family and Medical Leave Impacts Working Mothers](#)
- [Paid Family and Medical Leave: Lessons from Other States](#)

Increase in the State Earned Income Tax Credit

Finally, as part of the Fiscal Year (FY) 2019 budget, the state **increased its Earned Income Tax Credit (EITC) rate from 23 percent of the federal EITC to 30 percent.** Over 400,000 Massachusetts tax filers claim the EITC each year.

Over the past few decades, incomes for many working people have [stagnated](#), in large part due to economic policies that have de-emphasized the importance of wage growth.⁴ This has made it hard for many working families to keep a roof overhead, put food on the table, or pay for basic necessities.

A strong state EITC coupled with a strong minimum wage work together to expand economic opportunity for many working families. The EITC gives a meaningful boost to the after-tax earnings of thousands of these low-income working families. This income boost leads to a number of long term outcomes: children grow up healthier and do better in school, and parents enjoy greater economic security throughout their working years and into retirement.⁵

For more on these benefits of a robust state EITC, please see the following MassBudget reports:

- [The Massachusetts State Earned Income Tax Credit](#)
- [A Credit to Health: The Health Effects of the Earned Income Tax Credit](#)

What Other Policies Could Help Massachusetts Workers?

The minimum wage increase and paid family and medical leave program will improve the wages and working conditions of hundreds of thousands of working people in Massachusetts. The Earned Income Tax Credit increase further shows the state's commitment to supporting the well-being of low-wage workers and their families.

How else can Massachusetts remain a national leader in ensuring workers are paid decent wages, have the freedom to take care of themselves and their families, and can live with dignity and fairness on and off the job? The list is long, and this brief cannot offer an exhaustive inventory of options. Instead, it presents a selection of some policy measures that could have the widest impact on Massachusetts workers.

Preventing Wage Theft

In Massachusetts each year, hundreds of thousands of workers suffer hundreds of millions of dollars in wage theft.⁶ This can take many forms. In some cases, businesses misclassify workers as independent contractors rather than employees, and then use this misclassification to deny paying benefits to the worker.⁷ Similarly, businesses can try to avoid payroll taxes that help fund Social Security and Medicare, or government insurance payments that fund unemployment benefits and workers' compensation.⁸ Sometimes businesses fail to pay overtime, or they confiscate tips.⁹ In the most extreme cases affecting the most vulnerable workers, businesses might pay undocumented immigrants nothing after they've done the work, figuring the worker will likely be too afraid to seek legal remedy.¹⁰

But even for citizens or immigrants authorized to work in the United States, holding companies that commit wage theft accountable is quite difficult. For one thing, what is sometimes called the "fissured workplace" – an arrangement in which a company that puts its name on a product or service does not employ the people responsible for making that product or providing that service – has emerged in recent decades. This can make it hard for workers to know whom to hold accountable if they feel like they've been victims of wage theft. Even if a so-called "ultimate employer" (sometimes called a "lead" business) can be identified, however, attorneys general often do not have sufficient enforcement powers or financial resources to pursue full legal recourse.

A [bill](#) that passed the Senate, but did not pass the House this past legislative session, would have:

- **Held "lead" businesses accountable** for acts of wage theft committed by their contractors and subcontractors.
- **Increased the Attorney General's enforcement power** against employers who commit wage theft.

Ensuring a Fair Workweek

Employers in many low-wage industries – especially retail and fast food – are increasingly adopting practices that prevent their hourly frontline workers from enjoying stable, secure schedules.¹¹ These workers often have shifts assigned to them less than one week in advance, and their schedules can fluctuate wildly from one period to another.¹² This can make it challenging for workers to arrange child care, take themselves or their family members to the doctor, attend classes, or work a second job. Workers with erratic schedules face large swings not just in when they work, but in how much they work, leading to significant income volatility.¹³

As evidence of these problems has grown, so has research showing that fair workweek practices can also be better for businesses, as they have been found to boost employee morale and increase sales and labor productivity.¹⁴

In recent years, a number of states and localities have enacted “**fair workweek**” laws.¹⁵ While the specifics of these policies differ from place to place, collectively they address four broad areas of concern:

- **Predictable scheduling.** Employers are required to notify workers of their schedules well in advance – typically two weeks – of their shifts. If employers make changes or cancellations to that schedule after it’s been set, they have to compensate the employees.
- **Access to additional hours.** If a part-time employee has been succeeding on the job and is available to work more hours, the employer is required to offer that employee the opportunity to pick up more hours before bringing on new workers.
- **Time to rest between shifts.** Workers are protected from having to work a closing shift one evening and an opening shift the next morning – often referred to as “clopening.” Workers are ensured at least 10 hours of rest between shifts. (These laws do not prevent the common practice of, say, a restaurant worker taking a break of less than 10 hours between lunch and dinner shifts on the same day.)
- **Shared flexibility.** When workers ask for changes in their schedules, so-called “right to request” laws protect them from retaliation – like fewer hours, assignments where they are likely to earn less in tips, or even outright termination.¹⁶

Empowering Workers to Sue in Court and Take Collective Legal Action When Their Rights Are Violated

Laws that improve workers’ lives, of the sort discussed above, as well as laws intended to protect workers from discrimination and sexual harassment, are only as good as their enforceability against employers who violate them. A U.S. Supreme Court ruling in May 2018 allows employers to include language in employment contracts that requires employees to arbitrate workplace disputes individually, and to waive their rights to pursue class or collective action in the courts.¹⁷ Research has shown that mandatory arbitration is significantly more favorable to employers than the courts, both in terms of how often workers win, and in terms of damages awarded.¹⁸

Even before the ruling, employers’ use of contracts that impose mandatory arbitration and class action waivers was already high: 56.2 percent of nonunion private-sector employees – 60.1 million workers nationwide – are bound by mandatory arbitration requirements in their employment contracts. Of these workers, 41.1 percent – a total of 24.7 million – are also subject to class action waivers.¹⁹ Mandatory arbitration is most common in the lowest-wage workplaces.²⁰

Massachusetts could consider creative approaches that open up access to the courts, even for workers who have mandatory arbitration or collective action waivers in their contracts. One example is a “**private attorney general act**” (PAGA), which effectively deputizes private individuals to bring legal action on behalf of the state against employers for workplace violations. (Because the suit is brought on behalf of the state, the employer cannot block it by invoking the mandatory arbitration clause.) Intended to bolster rather than replace the work of the Attorney General and other enforcement agencies, PAGA has been in place in California since 2004.²¹ Other states, including New York and Vermont, are considering adopting versions of PAGA.²²

In fact, Massachusetts already has a PAGA, which allows three people to pursue claims against an employer for violations of the workers' compensation law – including by independent contractor misclassification.²³ The state could expand this model to support enforcement of other workers' rights.

Making More Workers Eligible for Overtime Pay

While almost all hourly workers are eligible to be paid time-and-a-half when they work more than 40 hours per week, salaried workers automatically qualify for overtime only if they earn below \$23,660 per year, under current federal standards. Above that threshold, employers can claim that workers are exempt from overtime pay if their job duties are considered executive, administrative, or professional, as defined by the Fair Labor Standards Act.²⁴ In 2015, just seven percent of salaried workers in Massachusetts thus qualified for overtime.²⁵ In 2016 the U.S. Department of Labor increased the overtime threshold from \$23,660 to \$47,476, but the change was held up in federal court and it has not gone through. If the increase had been adopted, an additional 262,000 salaried Massachusetts workers would have benefited. This would have brought the share of the state's salaried workforce eligible for overtime to 25 percent.²⁶

Additionally, the same law that increases the minimum wage and creates the paid family and medical leave programs also phases out a requirement that stores with eight or more employees pay time-and-a-half for working on Sundays.²⁷ As with the federal overtime rule, workers considered executive, administrative, or professional are currently exempt from this Sunday time-and-a-half pay requirement.²⁸ By the time this requirement is fully phased out in 2023, a retail employee who qualifies for Sunday time-and-a-half and works a standard number of hours five days a week, with one of those shifts being on Sunday, will earn 10 percent less per week than if the requirement had not been eliminated.

The exact number of Massachusetts retail workers who will receive a pay cut is not known, but most Massachusetts retail workers do not work Sundays at all. Close to half (46.9 percent) of the state's retail workers will see an increase in pay thanks to the minimum wage increase.²⁹ Of the remainder, many do not work Sundays at all, or they work on Sundays in stores with fewer than eight employees, or they are exempt due to executive, administrative, or professional duties. But for workers who will be harmed by this change, Massachusetts could explore ways to boost their pay.

Additional Policies That Could Help Massachusetts Work Better For Workers

As noted, the above policies are just a sample of what Massachusetts could do to help workers and their families. Others the state could consider are:

- **Reinforcing Programs That Support Workers as Their Wages Increase.** In order to ensure that working parents receive the maximum possible benefit from the coming minimum wage increases, Massachusetts could explore reforming work support programs to ensure that workers don't lose benefits like housing assistance, MassHealth (Medicaid), subsidized child care, and the Earned Income Tax Credit before they are earning enough to make ends meet without those supports – a problem known as the “cliff effect.” One estimate found that, between 2008 and 2013, nearly one-quarter of Massachusetts families with earnings were unable to afford basic needs even after accounting for the value of public benefits like the ones these programs deliver.³⁰

- Supporting Good Jobs for Government Workers and the Services They Provide.** In June 2018 the U.S. Supreme Court voted to prohibit public sector unions from charging so-called agency fees to workers who benefit from the union’s bargaining and representation on their behalves but choose not to become full dues-paying members.³¹ The decision could end up limiting the important role public sector workers now play in speaking up for the communities that rely on the services they provide.³² Moreover, state and local government workers make up more than half of unionized workers in Massachusetts.³³ If the unions that make up a majority of the state’s labor movement have a harder time keeping wages and job standards high, private sector employers may feel like they can begin to ratchet down these standards, too. Massachusetts could consider measures similar to a [bill](#) that passed the Senate, but not the House, this past legislative session.

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[http://massbudget.org/report_window.php?loc=FAQ-The-Massachusetts-\\$15-Minimum-Wage-Proposal.html](http://massbudget.org/report_window.php?loc=FAQ-The-Massachusetts-$15-Minimum-Wage-Proposal.html)

² Nicole Rodriguez, MassBudget, “Time to Care: The Health Effects of Paid Family & Medical Leave,” April 19, 2018.

http://massbudget.org/report_window.php?loc=Time_to_Care-The_Health_Effects_of_PFML.html

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⁵ Nancy Wagman, MassBudget, “The Massachusetts State Earned Income Tax Credit,” March 8, 2018.

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⁶ Community Labor United, “Wage Theft in the Commonwealth,” fn.1. http://stopmasswagetheft.org/wp-content/uploads/2017/06/CLU_WageTheft_FactSheet_3.pdf

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¹² Susan J. Lambert, Peter J. Fugiel, and Julia R. Henly, “Precarious Work Schedules Among Early-Career Employees in the US: A National Snapshot,” August 27, 2014, p. 13. https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/5/1068/files/2018/05/lambert.fugiel.henly_precarious_work_schedules.august2014_0-298fz5i.pdf

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¹⁵ Julia Wolfe, Janelle Jones, and David Cooper, Economic Policy Institute, “‘Fair workweek’ laws help more than 1.8 million workers.” <https://www.epi.org/files/pdf/145586.pdf>

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¹⁶ Julia Wolfe, Janelle Jones, and David Cooper, Economic Policy Institute, “‘Fair workweek’ laws help more than 1.8 million workers,” pp. 2-3. <https://www.epi.org/files/pdf/145586.pdf>; Center for Popular Democracy.

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<http://www.fairworkweek.org/policy-innovations/>

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- ²¹ Center for Popular Democracy, “A Practical Guide to Combatting Wage Theft,” November 2017, p. 55. https://populardemocracy.org/sites/default/files/WTHandbook-web_output%20%281%29.pdf
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- ³³ Julia Wolfe and John Schmitt, Economic Policy Institute, “A profile of union workers in state and local government,” p. 11. <https://www.epi.org/files/pdf/148535.pdf>. This study finds that 59 percent of state and local government workers in Massachusetts, and 6.7 of private sector workers are unionized. According to the U.S. Bureau of Labor Statistics’ Quarterly Census of Employment and Wages, there were 381,988 state and local government workers in Massachusetts in 2017, and 3,113,277 private sector workers. Applying the unionization rates by sector to the employment counts, there are 225,373 public sector union members in Massachusetts, and 208,590 private sector union members.