



CENTER FOR FAMILY POLICY AND PRACTICE

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Increases to the EITC and Minimum Wage Should be Reinforced With Subsidized Jobs, Anti-Discrimination Enforcement, and Relief from State-Owed Child Support Collections to Enable Parents to Achieve Economic Security for Their Families

Significant increases to federal and state Earned Income Tax Credit (EITC) and minimum wage policies are needed in order for working families to achieve a

decent standard of living, according to a recent report from the Political Economy Research Institute (PERI) at the University of Massachusetts, Amherst. “Making Work Pay: Combining the Benefits of the Earned Income Tax Credit and Minimum Wage,” by Jeannette Wicks-Lim and Robert Pollin, examines how differences in state policies from 1997 to 2007 affected single mothers who have up to a high school degree, and finds that the combination of a 14% state EITC rate and a 10% minimum-wage hike increased earnings by 11% to 15%. Even with this earnings boost, however, the report notes that a representative mother’s three-person family income of \$23,200 would still be far below the recommended basic budget of \$41,400 needed to “support a decent, yet modest, standard of living.” Moreover, the PERI report states:

“If these policies [EITC and minimum wage] are to achieve the goal of ‘making work pay,’ **both of their rates must be raised considerably higher** than what states have implemented so far—something on the order of **double the current rates.**” [Emphasis added.]

Low-income noncustodial parents paying child support—especially black, Latino and other men of color—face additional obstacles to achieving a decent standard of living, and beyond that, economic security. In order for significant increases in both EITC and minimum wage policies to also benefit noncustodial fathers of color, and their children and families, the Center for Family Policy and Practice (CFFPP) recommends that additional policies are needed to reduce the incidence of hiring discrimination in employment, promote occupational integration by race and ethnicity, and alleviate strict collection of child support arrears owed to state government. Such policies would include:

- Tax credits for employers to subsidize the hiring of long-term unemployed workers, who are more likely to be people of color;
- Increase enforcement of anti-discrimination labor laws;
- Expand and increase EITC benefits to all low-income households, regardless of whether a child is claimed as a dependent for tax purposes; and
- Reduce or eliminate the percentage of EITC benefits that can be garnished to pay child support arrears owed to state government.

Earned Income Tax Credits are offered both by the federal government as well as 23 states plus the District of Columbia as of 2010, according to the PERI report. The value of the federal EITC ranges from

up to about \$3,200 to \$5,900 per year for households with dependent children, based on family size, and up to \$475 for households without dependent children, such as the typical noncustodial parent. “In 2009, 27.4 million families in the U.S. received a total of \$55.1 billion in cash assistance through the federal EITC program, making it the single largest anti-poverty program within the federal government.”

From the perspective of low-income workers of color, EITC and minimum wage policies can be seen not just as anti-poverty programs, but as mechanisms for providing basic-income assurance while struggling in a job market where people of color are discriminated against and their labor is under-valued. If EITC and minimum wage policies were to significantly increase, they could serve as potential pathways to achieving economic security. Strong policies that can provide a basic-income assurance are necessary to address the failure of the labor market to provide family-sustaining wages, and to affirmatively value the labor of people of color, women, those with less training or education, and/or people with criminal histories, in the face of hiring discrimination and segregation into occupations paying poverty wages.

How high can EITC and minimum wage policies be increased without having adverse effects on employment? Regarding increases to the minimum wage, the PERI report states that “we know from extensive research on this question that relatively modest increases in the minimum wage—in the range of 20-30 percent at a time—does not cause any significant job losses.” A previous PERI paper from 2010 concluded that the federal minimum wage could be increased by 70%—from \$7.25 to \$12.30 per hour—without employers “turning to workforce reduction in any significant way.” This paper, “Combining Minimum Wage and Earned Income Tax Credit Policies to Guarantee a Decent Living Standard to All U.S. Workers,” also recommended “a federal EITC expansion that nearly doubles the maximum EITC benefit—from about \$5,000 to \$9,000, and expands eligibility to reach up to three times the official poverty line.” PERI estimates that “policy expansions of this scale would guarantee that 60 percent of all low-income families would achieve a decent living standard through full-time employment.” The other 40% of low-income families include single-parent households, and those living in areas with a high cost of living. For these families, additional income supports would be needed such as subsidies for full childcare and/or affordable housing.

Significant increases to the minimum wage should accompany any increase or expansion of the EITC because higher EITC benefits tend to push down wages through several mechanisms: (1) more people enter the workforce and compete with each other for low-wage jobs; (2) workers are more willing to accept lower wages because the EITC will supplement their income; and (3) employers are able to offer lower wages given the increased supply of low-wage workers. As PERI’s “Making Work Pay” report states: “Minimum wages can put a backstop on wages and limit any tendency for large EITC benefits to push wages down.”

Low-income noncustodial parents paying child support—who typically do not claim dependent children and therefore currently qualify for only a minimal EITC benefit—will require additional policies to safeguard against the EITC’s downward pressure on wages. This is especially true for noncustodial parents with less education, and fathers of color, in an economy where employers under-value their labor and discriminate against black and Latino workers. PERI’s earlier report from 2010 notes that “the wages of workers with a high school degree or less have been observed to be adversely affected by past expansions in the EITC.” Other researchers have found that “a 10 percent increase in the generosity of the EITC is associated with a 5 percent fall in the wages of high school dropouts and a 2 percent fall in the wages of those with only a high school diploma” (Leigh 2010); and that EITC and minimum wage hikes

hold down the earnings of less-educated workers without dependent children, but especially for black and Latino workers, and even more so for men of color (Neumark and Wascher 2009).

In order for low-income noncustodial parents, and especially fathers of color, to have their labor valued with an income that makes a decent standard of living possible, employers should be offered strong incentives to hire disadvantaged workers, and should also face more certain and swift enforcement of anti-discrimination labor laws. The Economic Policy Institute's Algernon Austin proposed a bold policy of tax incentives for employers to hire long-term unemployed workers in a paper titled "A Jobs-Centered Approach to African American Community Development: The Crisis of African American Unemployment Requires Federal Intervention." For CFFPP's summary and analysis of Austin's proposal, please see our February 2012 policy briefing. Such incentives should be backed up with stronger enforcement of anti-discrimination laws, such as the Civil Rights Act of 1964 which prohibits employment discrimination based on race, color or national origin, among other categories. Please see the next article in this policy briefing for a summary of recent U.S. Equal Employment Opportunity Commission (EEOC) policy about employers' use of criminal records in making employment decisions.

For low-income noncustodial parents, as well as their children and families, to increase their economic security from an expansion of the EITC will also require that EITC refunds are largely or completely protected from collection for child support owed to state governments. Currently, if a person owes child support arrears, any tax refund can be intercepted by the IRS to pay this debt, including refundable EITC benefits. Advocates for low-income individuals and families have proposed shielding EITC refunds from such collections. For example, the National Taxpayer Advocate (2009) recommended that 85% of a person's EITC refund should be shielded from collection for government-owed debts, based on a similar policy that protects Social Security payments. CFFPP recommends that low-income noncustodial parents' EITC refunds should be completely protected from IRS interception for state-owed child support arrears. Both noncustodial and custodial parents should be given the opportunity to use EITC refunds to meet their own and their children's basic needs first, and any subsequent child support collections for state-owed arrears should be based on the noncustodial parents' actual ability to pay.

Please visit the Political Economy Research Institute (PERI) to read the "Making Work Pay" report:

<http://www.peri.umass.edu/236/hash/ff295a55347a259646621ba3c57cee03/publication/507/>

Additional references:

- Leigh, Andrew. 2010. "Who Benefits from the Earned Income Tax Credit? Incidence Among Recipients, Coworkers and Firms." Discussion paper series // Forschungsinstitut zur Zukunft der Arbeit, No. 4960. <http://www.econstor.eu/dspace/bitstream/10419/36899/1/626947820.pdf>
- National Taxpayer Advocate. 2009. "2009 Annual Report to Congress." http://www.irs.gov/pub/irs-utl/09_tas_arc_exec_summary.pdf
- Neumark, David and William Wascher. 2009. "Does a Higher Minimum Wage Enhance the Effectiveness of the Earned Income Tax Credit?" <http://www.sole-jole.org/9038.pdf>

EEOC Provides Updated Guidance on Use of Criminal Records in Employment Decisions, Cites Disparate Impact of Criminal Justice System

The U.S. Equal Opportunities Employment Commission, which enforces federal laws that prohibit employment discrimination, on April 25 issued a new Enforcement Guidance about how employers may use “Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.” The new Enforcement Guidance demonstrates that the criminal justice system’s disproportionate contact with black and Latino people—especially men of color—contributes to disparate impact discrimination in employment decisions. This new guidance builds on previous EEOC policy statements from 1987 and 1990, and takes into account judicial decisions and federal court precedent following the passage of the Civil Rights Act of 1991.

The Enforcement Guidance includes useful information for anyone concerned about employer hiring discrimination, and will be especially valuable to low-income workers of color seeking to achieve economic security for their families and communities, and the policymakers and practitioners who are advocating on their behalf. The document includes a summary of research about the disproportionate impact the criminal justice system has on people of color, especially black and Latino men, and how this overlaps with and has contributed to illegal employer hiring discrimination. Also included are detailed legal analyses of the basis for the Enforcement Guidance, and examples of employer’s use of criminal records that are both legal and illegal.

The EEOC states that “While Title VII does not prohibit an employer from requiring applicants or employees to provide information about arrests, convictions or incarceration, it is unlawful to discriminate in employment based on race, color, national origin, religion, or sex.” Violations of Title VII occur in two categories: disparate *treatment* discrimination, and disparate *impact* discrimination.

- **Disparate treatment discrimination** “may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin.” Disparate treatment may be the result of an employer’s explicit bias against people of certain races or ethnicities, but can also be driven by “decisions infected by stereotypical thinking ... Thus, an employer’s decision to reject a job applicant based on racial or ethnic stereotypes about criminality – rather than qualifications and suitability for the position – is unlawful disparate treatment that violates Title VII.” Evidence of disparate treatment may include an employer’s biased statements, inconsistent treatment of criminal history correlated to race or ethnicity, and statistical analysis of an employer’s human resources records.
- **Disparate impact discrimination** may occur if “an employer’s neutral policy... may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity.” The U.S. Supreme Court said in its 1971 *Griggs* decision, Title VII bans “practices that are fair in form, but discriminatory in operation.”

Because people of color are significantly more likely to come into contact with the criminal justice system than white people, the EEOC finds that any employer policy that screens for criminal records may potentially be illegal unless the employer puts certain safeguards into practice. These safeguards include: employers keeping records showing that employment policies did not adversely impact job applicants and employees; and employers developing “a targeted screen considering at least the nature of the crime, the

time elapsed, and the nature of the job” and then providing “an individualized assessment for those people identified by the screen...”

In spite of Title VII’s protections, people of color, especially black and Latino men, continue to be denied job opportunities due to employers’ hiring discrimination. The EEOC guidance summarizes what is known about employment discrimination, including: Devah Pager’s landmark 2003 study that “demonstrated that White applicants with the same qualifications and criminal records as Black applicants were **three times** more likely to be invited for interviews than the Black applicants” [emphasis added]; and Pager and Bruce Western’s 2006 study showing that white job applicants *with* a felony conviction were about as likely to be called back as Hispanic job applicants *without* a criminal record, and that both were significantly more likely to be called back than black job applicants *without* a criminal record.

Arrest records are highly unreliable and may bear no relation to whether a person actually committed criminal behavior or was later convicted of a crime. The EEOC bluntly states that:

- “An arrest record standing alone may not be used to deny an employment opportunity...”
- “Arrests are not proof of criminal conduct.”

According to the EEOC guidance, “at least 13 states have statutes explicitly prohibiting arrest record inquiries ... subject to certain exceptions” and “that in the 75 largest counties in the country, nearly one-third of felony arrests did not result in a conviction because the charges against the defendants were dismissed.” Employers’ use of arrest records is troubling because research has shown that “approximately 1 out of 3 of all American youth will experience at least 1 arrest for a nontraffic offense by the age of 23.”

Some states and localities have passed so-called “ban the box” laws which prohibit employers from requiring people to disclose criminal history on their initial job application (a typical job application often has a check “box” next to a question about arrests and/or convictions). These laws typically require that a conditional offer of employment be made before a criminal background check is done. The EEOC supports these types of policies, recommending “as a best practice, and consistent with applicable laws, ... that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.”

The EEOC emphasizes the importance of employers making individualized assessments for those workers whose criminal records might cause an adverse employment decision, noting that not doing so “is more likely to violate Title VII.” The recommended elements of an individualized assessment include:

- Giving notice that a person may be screened out because of a criminal record.
- Providing the person an opportunity to “demonstrate that the exclusion does not properly apply.”
- Considering whether the person has shown that the criminal record “is not job related and consistent with business necessity.”

Information that a person might include to challenge a criminal-record screening include: that the record is inaccurate; additional facts regarding the criminal conduct in question; the amount of time that has passed; evidence of rehabilitation, such as education and/or training; relevant employment history both before and after the incident.

The Enforcement Guidance notes that a person's risk of criminal recidivism fades over time until that person is as likely as any other to stay crime free. Because of this, the EEOC stresses that employers consider the amount of time that has elapsed since a person committed a crime. The document cites research that "after seven years, the risk of a new offense approximates that of a person without a criminal record" and that "six or seven years after an arrest, an individual's risk of re-arrest approximates that of an individual who has never been arrested."

The EEOC's Enforcement Guidance concludes with a summary of best practices for employers to use when considering criminal records. These best practices recommendations include:

- "Eliminate policies or practices that exclude people from employment based on **any** criminal record." [Emphasis added.] In other words, criminal record consideration should be strictly limited to those specific crimes which are "job related and consistent with business necessity."
- "Develop a narrowly tailored written policy..." which should "Identify essential job requirements..." and "Determine the specific offenses that may demonstrate unfitness for performing such jobs."
- "Determine the duration of exclusion" taking into account "all available evidence," which includes research on the declining risk for criminal recidivism with the passage of time.
- "Include an individualized assessment."
- "Train managers, hiring officials, and decisionmakers" about both "Title VII and its prohibition on employment discrimination," and "how to implement the [above] policy and procedure consistent with Title VII."

For more information, please see the EEOC press release, which includes links to both the complete text of the Enforcement Guidance and a Questions and Answers (Q&A) document:

<http://www.eeoc.gov/eeoc/newsroom/release/4-25-12.cfm>

Mission Statement

The mission of the **CENTER FOR FAMILY POLICY AND PRACTICE (CFFPP)** is to strengthen society through the expansion of opportunities for low-income parents – mothers and fathers – to protect and support their children. CFFPP operates as a policy think tank to remove the unique barriers and negative public perceptions that affect low-income men of color. Through technical assistance, policy research and analysis, and public education and outreach, CFFPP works to support low-income families and develop public awareness of their needs.

Contact Us: If you would like to share comments, questions, ideas for future briefing topics, or to sign up for our email list, please contact Nino Rodriguez, Program and Policy Specialist, at nrodriguez@cffpp.org, or visit the CFFPP website at: <http://www.cffpp.org/emailupdates.php>

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