

# Penalizing Employers Whose Workers Participate in Economic Security Programs May Have Serious Unintended Consequences

Some states are considering levying penalties on employers whose workers participate in Medicaid, SNAP (food stamps), or other economic security programs. For example, one state lawmaker has proposed that for-profit firms with 300 or more employees pay a fine of 10 percent of the total wages of their non-disabled employees who receive Medicaid, capped at \$1,500 per worker.

Though quite well intentioned, these proposals likely would not achieve their goal and instead would discourage employers from hiring workers who benefit from these programs now or would likely do so in the future, thus spurring discriminatory hiring practices.<sup>1</sup> If the goal is to address the longstanding issues of stagnant wages and growing income inequality, more effective alternatives exist, which would directly: (1) raise wages, employer-provided benefits, and bargaining power; (2) further raise worker living standards through stronger economic security and opportunity programs; and (3) require large, profitable corporations and their executives to pay their fair share of taxes to help fund state priorities.

## Would Discourage Firms From Employing Low-Income or Disabled Workers and Put Single Parents and Women of Color at Particular Risk

The penalty proposals would create strong incentives for employers to significantly cut back on the number of employees they hire who qualify for covered programs — that is, workers in low-income families, especially families with several children — since these workers would become much more expensive to employ than other workers who would earn the same wage but don't qualify for these benefits. Similarly, during a recession, firms likely would lay off workers receiving benefits *before* other workers.

- Employers would favor hiring single individuals not raising children over parents with children, and favor married individuals over single parents. That's because: 1) the affected programs' eligibility limits and benefit levels depend on a household's size and total income, *not* just a worker's wages; and 2) married couples can have two earners in the family and thus higher family incomes. For example, under federal rules, a single worker loses SNAP eligibility once her income exceeds roughly \$15,700 — about what a \$7.85 hourly wage provides — as compared to \$31,980 for a family of four, about what a \$16 hourly wage provides. Medicaid eligibility varies by state, but in Washington State, for example, a single individual qualifies for Medicaid if her income is below about \$16,800, but a parent in a family of three qualifies until her earnings reach \$28,700, and her children qualify if their family's income is below about \$44,700, which translates into a wage of about \$22 an hour. Thus, a single worker earning \$25,000 qualifies for few if any benefits, but a single mother with two children earning \$25,000 can qualify for SNAP, Medicaid, and school meals.
- Such penalties would also discourage firms from employing workers with significant health issues or disabilities, since they are likelier to qualify for certain benefits and have higher health care costs.
- Employers might also reduce the number of low-wage workers they employ by contracting out (or otherwise outsourcing) functions where a large share of the employees receive low wages. Limiting such maneuvers would prove difficult. Workers who would have been hired as a regular employee but work instead for a contracting firm often are often paid less for the same work than if they worked for the lead firm.<sup>2</sup> Proposals such as these could also increase employers' incentives to "misclassify" workers who should be considered employees as independent contractors, a widespread practice that the relevant federal agencies lack the resources to combat effectively.

Sponsors of these measures may say their proposals would bar employers from asking job applicants about their benefit receipt. That, however, would be of limited effectiveness and would not resolve the problem. It isn't difficult for employers to learn from job interviews and other material whether an applicant has children, whether the applicant is married, whether the applicant lives in a poor area — and, of course, the applicant's race and gender. This would enable employers to make informed judgments about the relative likelihood that various job applicants or their families receive the covered benefits and thus would cost the employer more to hire. Many firms are likely to steer away from hiring individuals they

believe to be more likely to receive benefits, by discriminating based on characteristics such as race, gender, and neighborhood. Single parents and women of color would likely be at particular risk.

## Cannot Be Fixed by Simply Outlawing Discrimination

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As noted above, it's almost inevitable that under such legislation, some employers will try to avoid hiring individuals receiving benefits and that this will generate discrimination on the basis of characteristics such as race. Trying to simply outlaw such discrimination wouldn't solve the problem.

- Even if employers are prohibited from directly asking about a job applicant's marital status, children, health conditions, etc., information about a worker's family and health frequently emerges in interviews, and even more so after workers are employed. (Employers generally need information about workers' dependents to administer various employer-provided benefits or to withhold the proper amount of taxes from paychecks.)
- As also noted, prospective employers that couldn't secure such information directly could look for other indicators of whether an individual's household income is likely low, whether the household includes children and thus has a larger family size, and the individual's race, gender, and neighborhood of residence. Numerous employers are likely to seek to avoid categories of workers they think are likelier to have children and low household income, such as people of color and women — and especially women of color.
- Even if these bills explicitly barred employers from discriminating on the basis of characteristics that may be indicative of benefit receipt, this wouldn't meaningfully address the problem. Current law already prohibits discrimination on the basis of gender, race, and other characteristics, but enforcement is uneven, violations are routine, and numerous studies show that racial and gender discrimination in hiring and workplace treatment remains prevalent.<sup>3</sup> A meta-analysis of every available field experiment of recent decades that tested job discrimination in hiring found no change in discrimination against Black job applicants between 1989 and today.<sup>4</sup> One study found that job candidates with “white-sounding” names were 50 percent more likely to reach the interview stage than comparable candidates with “Black-sounding” names.<sup>5</sup>

Without robust systematic change to combat employment discrimination, creating a new incentive for employers to discriminate would run a high risk of making matters worse.

## Would Increase Stigma, Discourage Some Workers From Claiming Benefits

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Penalizing employers based on their workers' receipt of public benefits would also create an incentive for employers to subtly discourage employees from claiming these supports. Some employees likely would drop out of benefit programs (or not apply) out of fear that continuing to receive benefits would increase their chances of being laid off.

Advocates for better health and well-being have endeavored for two decades to increase enrollment in SNAP and Medicaid by eligible working families, which have long had lower participation rates in these programs than other households. (SNAP's participation rate is 85 percent overall, but only roughly 75 percent among eligible workers, for example.) These proposals would almost certainly push participation lower.

## Unlikely to Raise Wages or Living Standards Substantially

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The penalties likely wouldn't lead many employers to raise wages substantially, and would have limited effectiveness in raising workers' living standards. As a practical matter, affected employers would have to raise wages for *all* workers, including those *not* receiving these benefits. That would make wage increases more expensive for employers, and hence make it less likely that large numbers of employers would follow this course — especially since raising wages wouldn't free firms entirely from the penalties, as many families with children could still qualify for benefits. Firms that responded by raising wages would often have to pay both the wage increase and tax penalties. For many employers, *other* responses — such as hiring or retaining fewer workers who receive these benefits, and contracting out — would likely be more attractive.

## Likely to Prompt Corporate Lobbying Efforts to Cut Key Programs

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Because higher benefit levels in economic-security programs would mean higher tax bills for firms with workers who receive these benefits, some corporations would likely mount lobbying efforts to *shrink* these programs. This lobbying

could take place at both federal and state levels. If successful, it would harm large numbers of low-income working families that rely on these supports to help make ends meet.

These lobbying effects also could hinder efforts to persuade more states to expand Medicaid (or maintain their Medicaid expansions) – since for many firms, their tax bills would be made significantly larger if the state expanded. In addition, some firms could be less likely to locate in expansion states.

## Much Better Alternatives Exist

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Better policy solutions exist for the longstanding issues that these proposals seek to address – namely, raising stagnant wages for millions of low- or modest-income workers, improving living standards for those workers, and ensuring that large employers pay their fair share toward the costs of government. A more effective approach would include:

- **Raising wages, employer benefits, and bargaining power** – for example, raising the minimum wage substantially and mandating paid leave, eliminating non-compete clauses that hurt workers seeking better pay at other firms, providing more protections for workers seeking to unionize, and improving protections that assure workers are fully paid their promised wages.
- **Raising worker living standards through stronger economic security and opportunity programs** – such as expanding Medicaid in states that have yet to do so, adopting and expanding refundable state earned income tax credits, expanding child care and transportation assistance, and removing barriers to economic security and opportunity by reducing incarceration and taking an inclusive approach to undocumented immigrants.
- **Requiring large corporations and highly compensated executives to pay their fair share of state taxes** – through reforms such as adopting mandatory combined reporting, repealing ineffective economic development subsidies, conforming state corporate tax codes to the base-broadening measures in the federal Tax Cuts and Jobs Act, and adding high-end tax brackets (“millionaires’ taxes”) to state personal income taxes.<sup>6</sup>

A combination of these direct alternatives would better address the root issues and avoid creating a chilling effect on employees’ use of benefits or incentivizing corporate lobbying against programs like Medicaid and SNAP.

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<sup>1</sup> Robert Greenstein, Sharon Parrott, and Chye-Ching Huang, “Sanders-Khanna Bill Risks Unintended Side Effects That Could Hurt Lower-Income Workers and Spur Discriminatory Hiring Practices,” CBPP, September 5, 2018, <https://www.cbpp.org/poverty-and-inequality/sanders-khanna-bill-risks-unintended-side-effects-that-could-hurt-lower>.

<sup>2</sup> Brendan Duke, “Pass-Through Deduction in 2017 Tax Law Could Weaken Wages and Workplace Standards,” CBPP, December 19, 2018, <https://www.cbpp.org/research/federal-tax/pass-through-deduction-in-2017-tax-law-could-weaken-wages-and-workplace>.

<sup>3</sup> Michael Leachman et al., “Advancing Racial Equity With State Tax Policy,” CBPP, November 15, 2018, <https://www.cbpp.org/research/state-budget-and-tax/advancing-racial-equity-with-state-tax-policy>.

<sup>4</sup> Lincoln Quillian et al., “Meta-analysis of field experiments shows no change in racial discrimination in hiring over time,” *Proceedings of the National Academy of Sciences*, September 12, 2017, <http://www.pnas.org/content/early/2017/09/11/1706255114?sid=5ac32c31-b27d-4db5-b50f-0fe04298c38b>.

<sup>5</sup> Marianne Bertrand and Sendhil Mullainathan, “Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,” NBER Working Paper No. 9873, July 2003, <http://www.nber.org/papers/w9873>.

<sup>6</sup> See, for example, Michael Mazerov, “New Jersey Can Strike Blow Against Tax Havens,” CBPP, May 4, 2016, <https://www.cbpp.org/blog/new-jersey-can-strike-blow-against-tax-havens>; Michael Leachman and Michael Mazerov, “How Should States Respond to Recent Federal Tax Changes?” CBPP, January 23, 2018, <https://www.cbpp.org/research/state-budget-and-tax/how-should-states-respond-to-recent-federal-tax-changes>; and Wesley Tharpe, “Raising State Income Tax Rates at the Top a Sensible Way to Fund Key Investments,” CBPP, February 7, 2019, <https://www.cbpp.org/research/state-budget-and-tax/raising-state-income-tax-rates-at-the-top-a-sensible-way-to-fund-key>.