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After HB 2, what local governments CAN and CANNOT do to support living wages in North Carolina

Despite state legislation in 2017 and earlier limiting local government authority, municipal and county governments can still take positive action to promote and enforce quality job standards in certain settings. **This fact sheet outlines what can and cannot be done by local governments to support living wages, paid sick days, and other quality jobs within their jurisdictions.**

Background

The scope of local government authority varies from state to state. North Carolina has long been seen as a modified “Dillon Rule” state, in which local governments only have as much power as they are given by the General Assembly. Local governments may act either via enabling legislation passed by the General Assembly authorizing them to do so, or through their statutory powers to take action to prevent harm to the health and safety of their citizens (so-called “police powers”). However, **legislative developments in recent years and judicial interpretation have dramatically scaled back local governments’ authority to act to protect their citizens, making it imperative for local officials to know what can and can’t be done to promote living wage policies.**¹

What local governments CANNOT do to promote quality jobs:

1. **Local governments cannot require private employers to pay a living wage or provide paid leave, as a condition of receiving a contract.**

Prior to passage of HB 74 in 2013 and HB 2 in 2016, a number of local governments, including Durham and Asheville, required certain private employers to pay their employees a living wage. Specifically, these local governments required businesses that contract with the public sector to pay living wages, as a condition of the contract. After the passage of HB 74 and HB 2, however, local governments were prohibited from imposing any “regulations or controls on the contractor’s employment practices.” In effect, the law blocks localities from requiring any contractors to provide living wages or paid sick days to their employees. **When HB 2 was partially repealed by HB 142 in 2017, the ban on contractor living wage policies was kept in place, at least until 2020—so local governments still lack the authority to use public contracts as a tool for raising wages.**

2. **Local governments cannot require *any* private business to pay a living wage, paid leave, or regulate other conditions of employment.**

Under North Carolina law, local governments are prohibited from passing ordinances that give employees a right to sue their employers (i.e., a private right of action) if they don’t pay their employees a living wage or provide paid sick days. In the 2003 case of *Williams v. Blue Cross Blue Shield*, the North Carolina Supreme Court found that an Orange County employment discrimination ordinance was unconstitutional.² Because the state constitution prohibits the General Assembly from passing legislation that allows local governments to enact local resolutions “regulating labor, trade, mining or manufacturing,”³ the Court reasoned that allowing local nondiscrimination ordinances could lead to a “patchwork of employment discrimination standards varying from county to county.”⁴ Although local governments do have the statutory “police powers” authority to pass ordinances protecting the health, safety, and welfare of its citizens, the Court in *Blue Cross Blue Shield* said that counties *don’t* have the ability under their police powers to create a new way for citizens to sue their employers.⁵

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What local governments CAN do to promote quality jobs:

1. Local governments are free to pass living wage and paid sick leave ordinances that apply to their own employees.

While HB 74 and HB 142 block local governments from requiring living wages from private employers, municipal and county governments can still ensure payment of a living wage, paid leave, and other benefits for their own *public* employees by passing local policies and ordinances. Over the last 20 years, eight localities in North Carolina —Durham County, the City of Durham, Chapel Hill, Carrboro, Orange County, Buncombe County, the City of Asheville, Greenville, Greensboro, and Raleigh—have adopted living wage policies for public employees.

2. Local governments are free to require that employers pay a living wage for any jobs created as a result of local economic development incentives given to those employers.

Under current state law, the Department of Commerce requires any employer that receives incentives from the state-level OneNC Fund or the Job Development and Investment Grant (JDIG) program to pay a wage that is no less than the average wage in the county in which the incentive project is located. While state law does not bind *local* governments to this wage standard, it provides a “best practice” that local governments can easily emulate with their own incentive projects. Every incentive deal involves a written contract between the unit of local government and the recipient specifying what the company must do in order to earn the incentive—e.g., the number of jobs to be created and their wages. The contracts used for the state’s incentive programs allow the government to withhold payment or even take back any portion of the incentive already granted—if the firm fails to live up to its promises. A local government could write this contract to require any company that receives incentives pay a living wage for those jobs created as a result of the incentive.

3. Local communities can create voluntary living wage certification programs.

Just Economics in Asheville has developed a nationally recognized model for voluntary living wage certification programs, in which local employers are recognized for pledging to voluntarily pay their employees a living wage. Durham’s Living Wage Project, the Orange County Living Wage Project, and the Living Wage Coalition of Transylvania County have followed the Asheville model and created living wage certification programs. Other local communities could significantly impact the wages paid by private employers by developing their own certification programs.

¹ States are often classified as “Dillon Rule” or “Home Rule” states to determine the structure and extent of local authority. States classified as Dillon Rule states generally limit local government authority to specific grants of power from states legislation. Local governments in Home Rule states, in contrast, may take local action unless preempted by the state. In North Carolina, authority is created by statutory delegation and although, in the past, North Carolina has been classified as a Dillon Rule state, statutory developments and judicial interpretation have muddled the distinction. See Bluestein, Frayda S., 2006. “Do North Carolina Local Governments Need Home Rule?,” *Popular Government*.

² *Williams v. Blue Cross Blue Shield of NC*, 357 N.C. 170 (2003).

³ Article II, Section 24(1)(j).

⁴ *Williams v. Blue Cross Blue Shield of NC*, 357 N.C. 170 (2003).

⁵ NCGS 160A-174 (cities) and 153A-121(a) (counties).