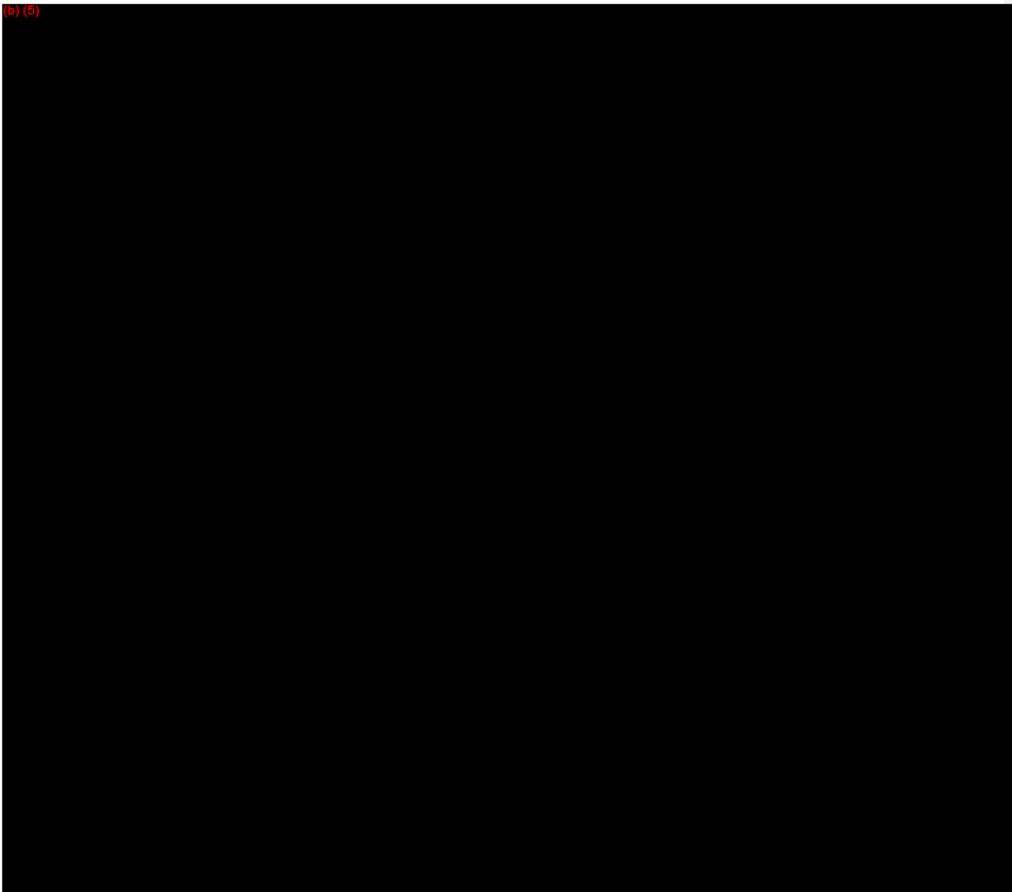


Academic Research Collaborative (ARC) at NYU **Wagner**

Draft - Proposed Changes to ARC's Call for Research of USDOL/OSHA: "Federal Agency Research Priorities"

Current:

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American  
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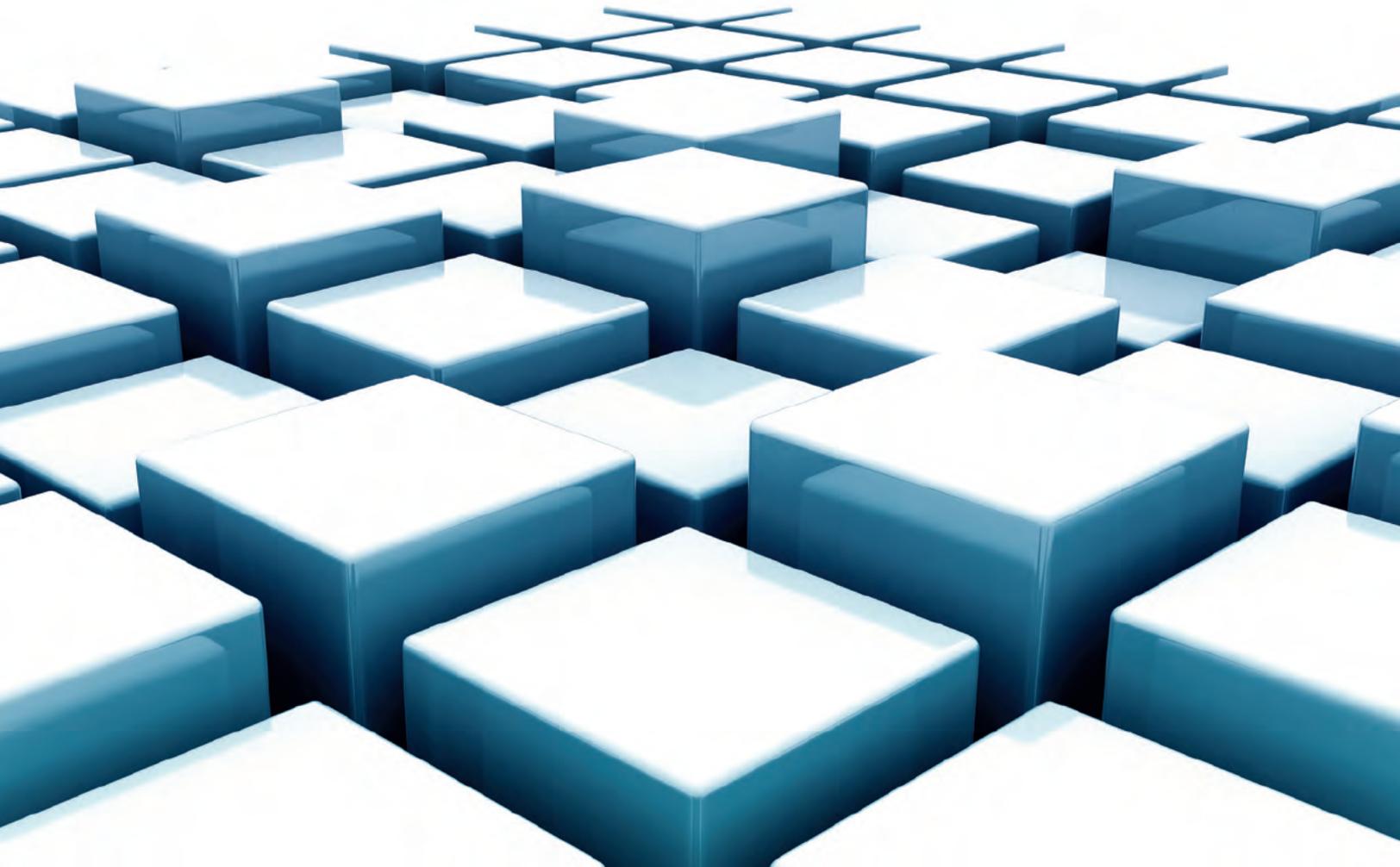
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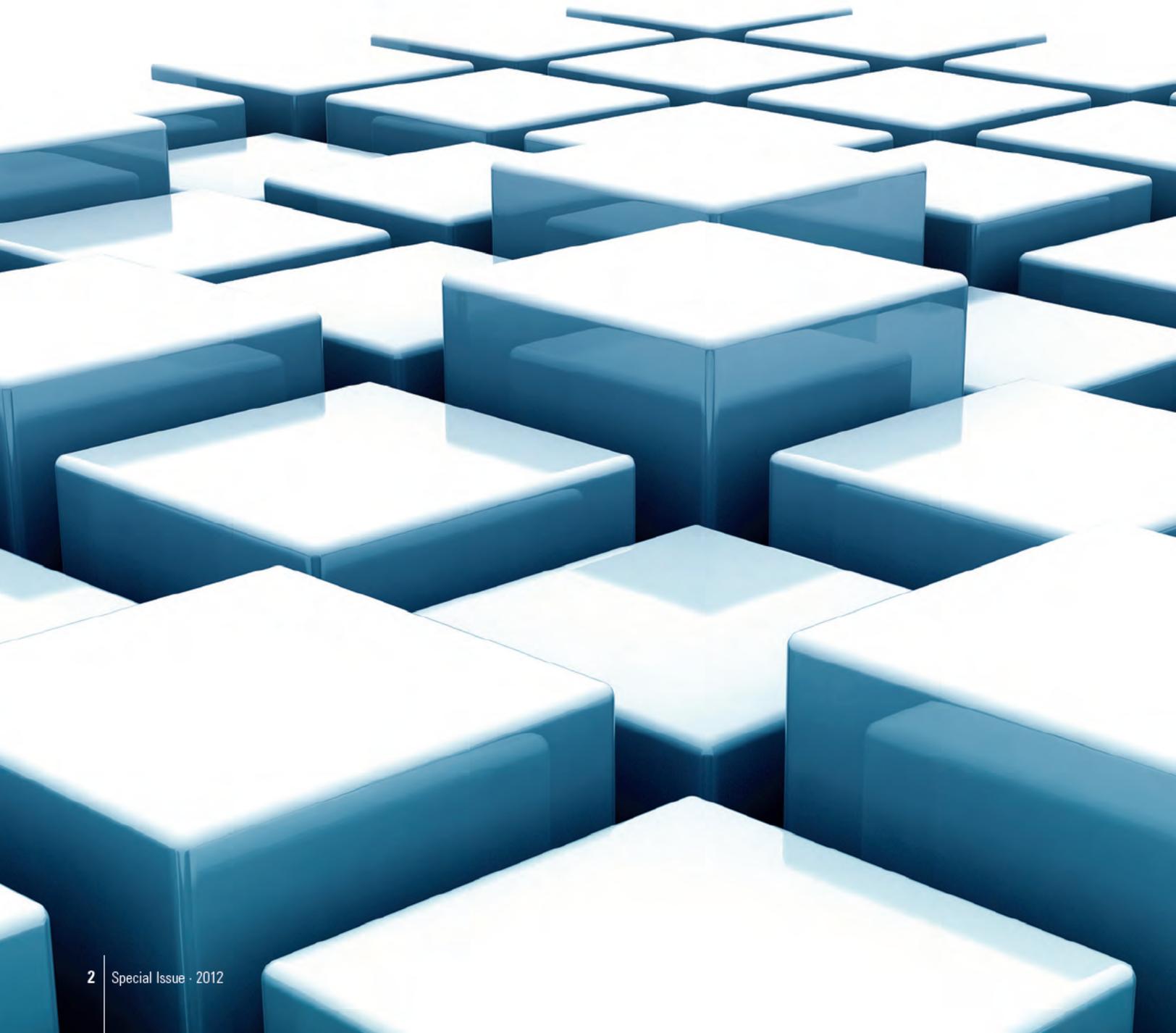
# Structural Shift?

Annual economic analysis delves deeply into the data and explains industry trends—plus, valuable “cliff” notes

**Page 10**



# Structural



# Shift?

Annual Economic Analysis Explores Data and Trends in Flexible Work Force Management

By Steven P. Berchem, CSP

In the three years since the end of the Great Recession,<sup>1</sup> the U.S. staffing and recruiting industry has created more jobs than any other single industry in America. From June 2009 to July 2012, America's staffing companies added more than 786,000 jobs to their payrolls, according to the U.S. Bureau of Labor Statistics. Yet staffing companies account for less than 2% of U.S. jobs.<sup>2</sup> ►

*Editor's note: This analysis, prepared August 2012, provides an overview of the size, scope, and dynamics of the staffing industry. It is intended as a general reference for staffing firms, staffing clients, industry analysts, journalists, and policy makers. The analysis is also available on the ASA Web site at [americanstaffing.net](http://americanstaffing.net) (click on Staffing Statistics) as well as on ASA Digital at [americanstaffing.net/digital](http://americanstaffing.net/digital), which offers interactive, page-turning replicas of select ASA publications.*

By comparison, BLS has estimated that the entire health care industry, which includes hospitals, doctors' offices, nursing homes, outpatient clinics, and home health care—and comprises nearly 11% of the U.S. nonfarm work force—added 829,000 jobs during the same period.

U.S. staffing industry growth has been more robust in the current economic recovery than it was in the three years following the previous two recessions, which ended in 2001 and 1991 (see Figure 1). The most recent BLS figures indicate that employment in the temporary help services industry increased by 45% since the 2007 recession ended in 2009, exceeding even the dramatic run-up of the early 1990s.<sup>3</sup>

Still, despite robust growth over the past three years, employment in the American staffing industry has yet to fully recover from the job losses suffered during the recession. The American

Staffing Association's quarterly employment and sales survey shows that U.S. staffing firms lost nearly 1.2 million jobs—36% of their temporary and contract work force—over the course of the 18-month recession.<sup>4</sup>

Now, according to the ASA survey, U.S. staffing firms put approximately three million temporary and contract employees to work on an average business day. But that is still nearly a quarter million people shy of the industry's pre-recession work force.

While the U.S. staffing industry has yet to fully recover in terms of employment, the momentum of its jobs recovery—its robustness of growth in this recovery compared with previous ones—suggests a structural shift may be occurring in American labor markets.

### Structural and Cyclical Factors

Economists point to both structural

and cyclical factors in explaining the relatively weak economic and employment recovery.<sup>5</sup>

Structural changes in the economy are generally permanent. For example, America's transition from an agrarian society through the Industrial Revolution, and, more recently, into the Information Age involved massive structural changes. Demand for buggy whips and typewriters disappeared, as did employment among their manufacturers.

Cyclical factors tend to be temporary, lasting perhaps a few years. These are economic booms and busts, expansions and contractions, recoveries and recessions. Typically, cyclical disturbances result in declines in overall output (gross domestic product or GDP) and employment.

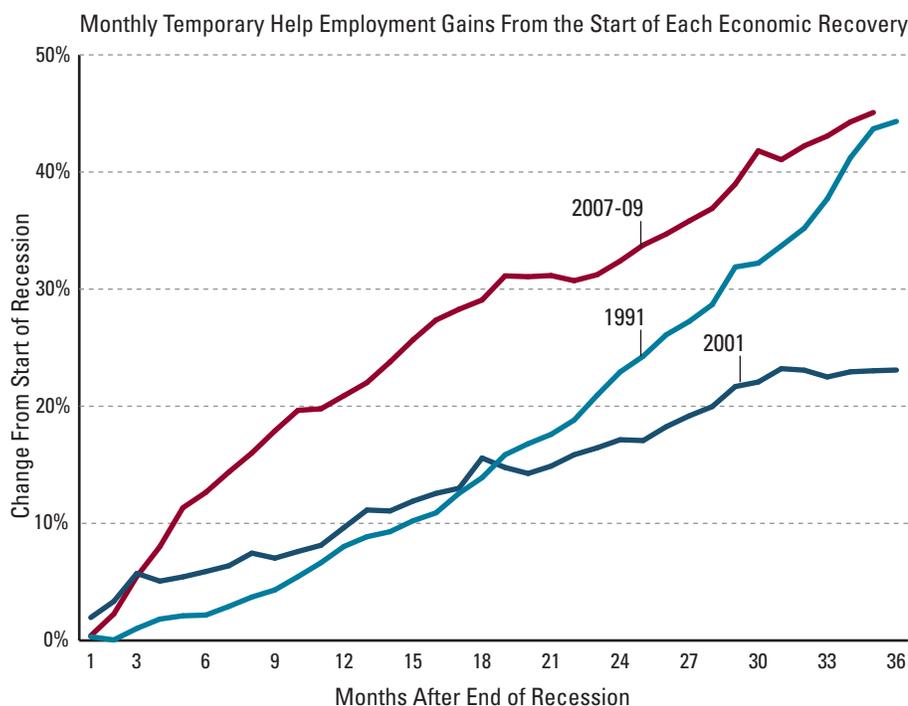
The staffing and recruiting industry is "hypercyclical," meaning its business cycle tends to be exaggerated during economic expansions and contractions (see Figure 2).

Temporary and contract employment also tends to be seasonally cyclical, usually lowest at the beginning of the calendar year and highest in the fourth quarter (see Figure 3). An atypical pattern emerged in 2008. And that pattern prefaced how dramatically staffing jobs are affected by cyclical disturbances in the economy.

In the first half of 2008, temporary and contract employment failed to show its usual rise. The ASA Staffing Index, which measures weekly changes in temporary and contract employment, was uncharacteristically flat. It changed little from early January through the end of June. Then the usual Independence Day holiday dip was deeper than normal, and staffing employment stalled—until mid-September, when Lehman Brothers collapsed. Temporary and contract employment likewise collapsed.

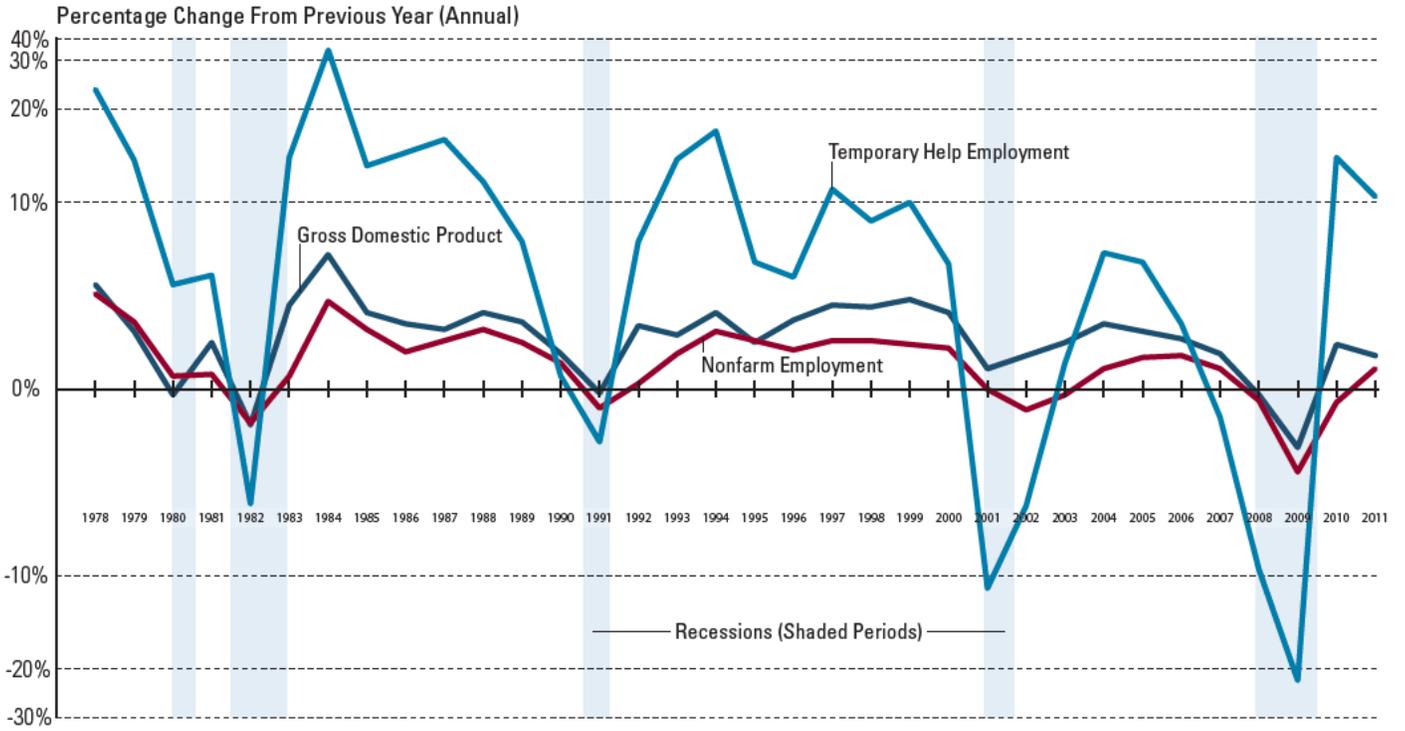
When business is going badly, staffing clients quickly respond by first shedding temporary and contract workers.

**Figure 1: Staffing Employment Growth Has Been More Robust in the Recovery From the 2007-09 Recession Than the Recoveries From the Previous Two Recessions.**



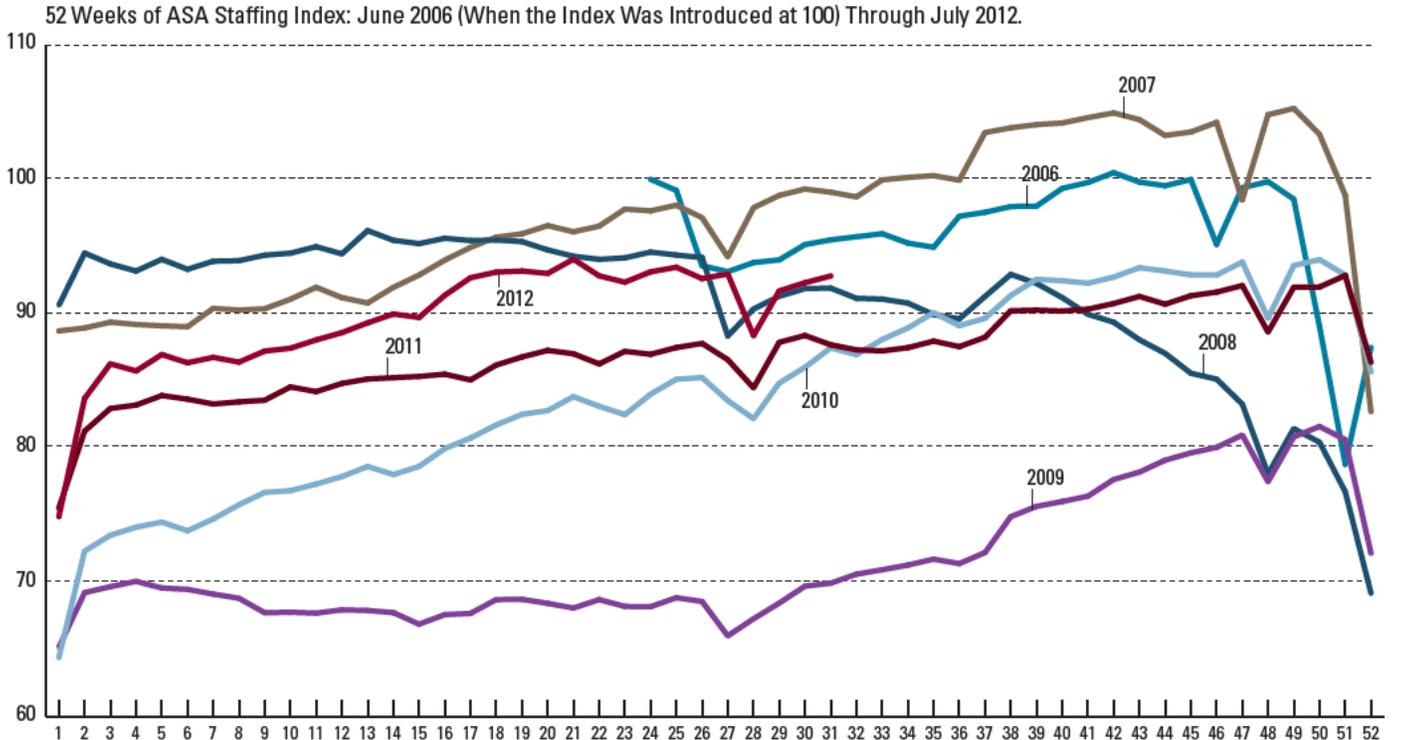
Source: American Staffing Association analysis of U.S. Bureau of Labor Statistics data

**Figure 2: Staffing Employment Is a Coincident Economic Indicator and a Leading Nonfarm Employment Indicator, Particularly When the Economy Is Emerging From a Recession.**



Sources: National Bureau of Economic Research, U.S. Bureau of Economic Analysis, and U.S. Bureau of Labor Statistics

**Figure 3: Staffing Employment Is Usually Cyclical, Lowest at the Beginning of the Year and Highest Toward the End, As Shown in the More Typical Years of 2007 and 2010.**



Source: American Staffing Association

By the fourth quarter of 2008, the U.S. economy was in free fall. Instead of climbing to its usual seasonal peak, staffing employment contracted by a quarter of a million workers—the most severe decline in the recorded history of the industry. In January 2009, the White House estimated that payroll employment in temporary help services accounted for one in five job losses in 2008.<sup>6</sup>

In contrast, in the early stages of an economic recovery, businesses turn first to temporary and contract workers to help the companies meet growing demand. Hence the rapid uptick in staffing employment since the Great Recession ended.

This cycle has been observed in decades of government data. It reveals that staffing employment is a *coincident economic* indicator and a *leading employment* indicator, particularly when the economy is emerging from a recession.

### Staffing as Economic Indicator

Staffing jobs are especially sensitive to the ebbs and flows of the economy. As the economy contracts, the number of staffing jobs dramatically declines. As the economy expands, the number of staffing jobs quickly rises. This is especially true when the economy pulls out of a recession, according to research results published by the American Staffing Association in June 2009, just as the Great Recession was ending, which stated this prediction: “A sustained upturn in temporary and contract staffing employment would signal the end of the current recession.”<sup>7</sup>

ASA examination of employment and economic data from 1972 through 2008 confirmed that temporary help employment is a coincident economic indicator. But analysis showed that that relationship had weakened over time; it was stronger in the 1970s and '80s than in the past two decades. Further analysis, looking at the phases of economic cycles rather than merely the passage of

time, uncovered an important nuance: Temporary help employment is a particularly strong coincident economic indicator when the economy is emerging from a recession.

Just a week after those results were published, the ASA Staffing Index troughed. The index showed that staffing employment reached its lowest point the week of June 29 through July 5, 2009. Thereafter, sustained growth in staffing employment ensued. The recession had ended (as confirmed 15 months later by the business cycle dating committee of the National Bureau of Economic Research, the non-governmental body that decides when recessions begin and end).

The ASA Staffing Index provides a near real-time gauge of staffing industry employment and overall economic activity. It tracks weekly changes in temporary and contract employment, with results reported nine days after the close of a work week (see sidebar “Methodology of ASA Economic Surveys” on page 24).

The weekly percentage change in employment is applied to an index that was set at 100 when publicly launched June 12, 2006, after several years of development. The baseline of 100 helps observers easily estimate how much staffing employment has changed over time. For example, when the index troughed at 66 in midsummer 2009, staffing employment had fallen about 34% from its level in mid-June 2006. The index peaked at 105 in mid-October 2007, virtually coinciding with the peak of the last economic expansion.

### Staffing as Employment Indicator

While ASA analysis of government data shows that temporary help employment is a strong coincident economic indicator when the economy is emerging from a recession, staffing jobs are also a *leading* indicator of nonfarm employment. Changes in staffing job numbers usually precede overall

nonfarm employment (excluding temporary help) by one to two quarters. Based on the 1972 through 2008 data, the relationship was strongest with staffing jobs leading nonfarm employment by two quarters during periods of normal economic growth. When the economy was emerging from a recession, staffing jobs were a modest one-quarter leading indicator of overall job growth. All things considered, staffing employment has historically been a solid leading indicator of nonfarm employment by three to six months.

BLS recently reported a similar pattern in its data since 1990, when it began its current series on temporary help employment (see Figure 4): “Peaks and troughs in temporary help services generally have led those of total nonfarm employment. Temporary help services employment reached a local high in March 1990, three months before nonfarm employment peaked; both series reached a trough in May 1991. Payroll employment in temporary help services peaked in April 2000, 10 months before total nonfarm; bottomed out in April 2003, four months before total nonfarm; peaked in August 2006, 17 months prior to total nonfarm; and again reached a trough in August 2009, six months before total nonfarm.”<sup>8</sup>

What’s happened since the end of the Great Recession?

BLS seasonally adjusted data (which had been used in the ASA analysis) shows staffing job growth first detected in September 2009,<sup>9</sup> six months before nonfarm employment began an upward trend in March 2010.<sup>10</sup>

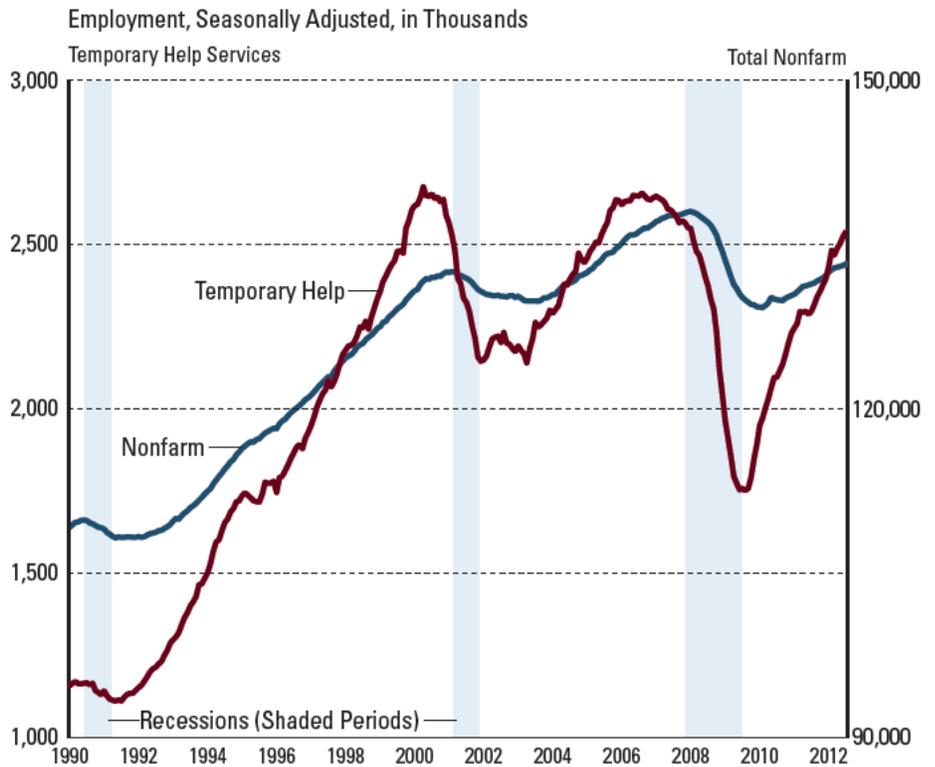
The ASA Staffing Index is not seasonally adjusted. Sustained staffing job growth started the week of July 6, 2009. Nonseasonally adjusted BLS data show sustained staffing job growth began in August,<sup>11</sup> just a few weeks later, followed by nonfarm employment beginning an upward trajectory in February 2010, six months later.<sup>12</sup>

The BLS difference between staffing job growth starting in August or September and nonfarm job growth starting in February or March is a matter of seasonal adjustment. The ASA Staffing Index more closely matches the cycle tracked by NBER.

Staffing and total nonfarm employment both have improved in the three years since the Great Recession ended, but why has staffing job growth been so much stronger than overall gains in employment? And for so long?

Explanations are myriad, interconnected, and complicated. Largely it's a lack of what economists call aggregate demand—exacerbated by uncertainty due to the European sovereign debt crisis; slowing global economic growth; pending implementation of the Patient Protection and Affordable Care Act; and, more recently, the so-called fiscal cliff. And, hypothetically, it's perhaps a structural shift in work force management.

**Figure 4: Peaks and Troughs in Temporary Help Services Employment Generally Have Led Those in Total Nonfarm Employment.**



Source: U.S. Bureau of Labor Statistics



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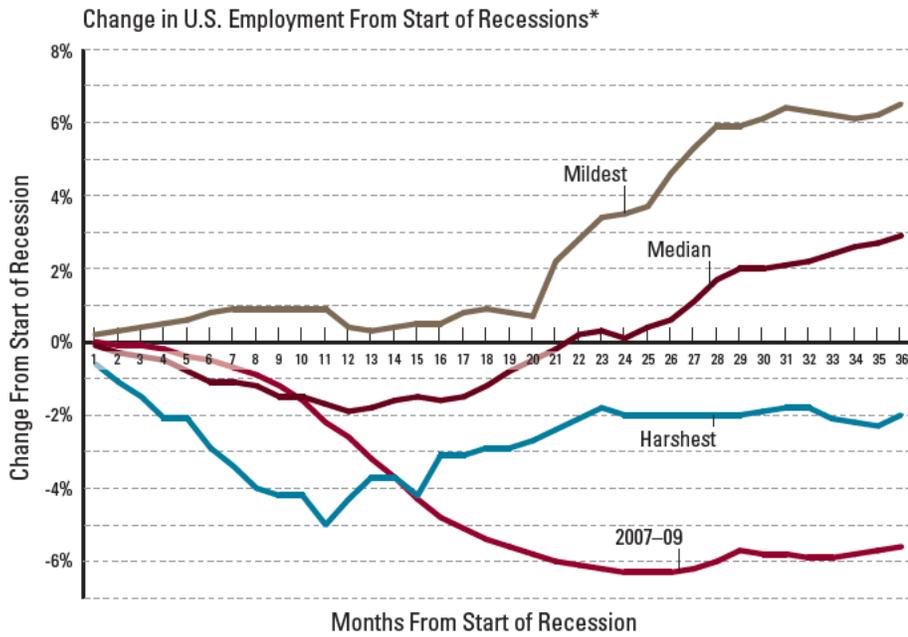
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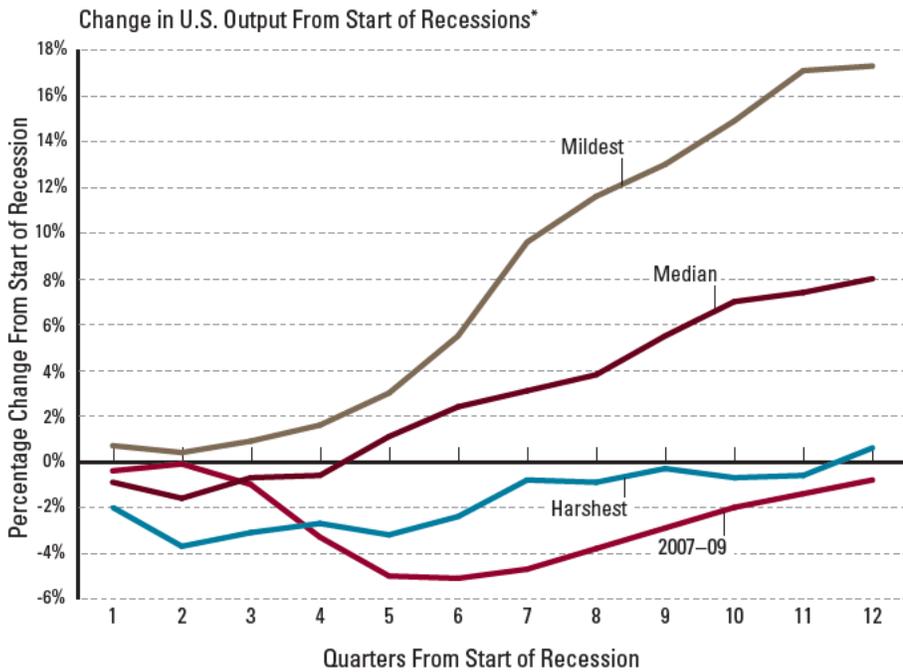
**Figure 5: The 2007-09 Great Recession Was Deeper Than the Previous 10 Recessions Since World War II—At Its Lowest Point, Employment Fell by 6.1%.**



Source: Federal Reserve Bank of Minneapolis; updated Aug. 3, 2012

\*\*"Employment" is nonfarm payroll employment calculated by the U.S. Bureau of Labor Statistics. Mildest, median, and harshesht lines reflect the previous smallest, median, and largest declines as of each month; they do not reflect specific individual recessions.

**Figure 6: In 2007-09 Great Recession, U.S. Output Fell by 5.1%, Deeper Than Any of the Previous 10 Postwar Recessions—And Recovery Has Taken Longer, Too.**



Source: Federal Reserve Bank of Minneapolis; updated July 27, 2012

\*\*"Output" is gross domestic product adjusted for inflation as calculated by the U.S. Bureau of Economic Analysis. Mildest, median, and harshesht lines reflect the previous smallest, median, and largest declines as of each quarter; they do not reflect specific individual recessions.

## The Economy and Jobs

Many economists have said the Great Recession was the worst recession since the Great Depression (see Figures 5 and 6)—or, at least, certainly the worst of the previous 10 recessions post World War II.

"Great Recession" is a misnomer in the view of Harvard University economists Kenneth Rogoff and Carmen Reinhart, authors of the best-selling academic book *This Time Is Different: Eight Centuries of Financial Folly*. They argue<sup>13</sup> that "the right name for this downturn is the 'Second Great Contraction,' building on the title of Milton Friedman's and Anna Schwartz's famous book about the Great Depression."<sup>14</sup>

Rogoff has noted that after the kind of deep financial crisis that tipped the U.S. into recession, it takes an average of four and a half years to return to pre-crisis per capita GDP and employment. "We haven't gotten back to the same per capita GDP," he said last year. "Our perspective is that we have never left the recession; we're still very much in it. I hope in another two or three years we'll feel more normal."

Beginning with the first quarter of 2008, real GDP declined in five of the following six quarters to mid-2009 (see Figure 7). At that point, the cumulative damage was a stunning negative 4.7%, far exceeding the depth of the prior worst recession in the postwar era: negative 3.7% in 1957. Unlike the 2007-09 recession, the 1957 recession lasted less than a year, and the U.S. economy fully recovered in two quarters.<sup>15</sup>

U.S. real GDP did not return to its prerecession level until the fourth quarter of 2011—fully four years after the Great Recession started, and two and a half years after the recovery began. By the end of 2011, real GDP cumulatively exceeded the 2007 level by only 0.9%.

And growth has remained weak. The most recent estimate from the

U.S. Bureau of Economic Analysis set second quarter 2012 GDP growth at 1.7%<sup>16</sup>—well below the 2.6% average of the 2002–07 expansion. Cumulatively, as of mid-2012, the U.S. economy is only 1.7% bigger than it was in 2007.

Meanwhile, the U.S. population has increased by 3.7% in the four-year span from 2007 through 2011 (to an estimated 313 million).<sup>17</sup>

With the population growing faster than the economy, per capita GDP has shrunk (see Figure 8). Its peak in 2007 was \$43,774 (in 2005 dollars).<sup>18</sup> In 2011, it was \$42,620—a decline of \$1,154 or 2.6% per person.

Employment has shrunk too.

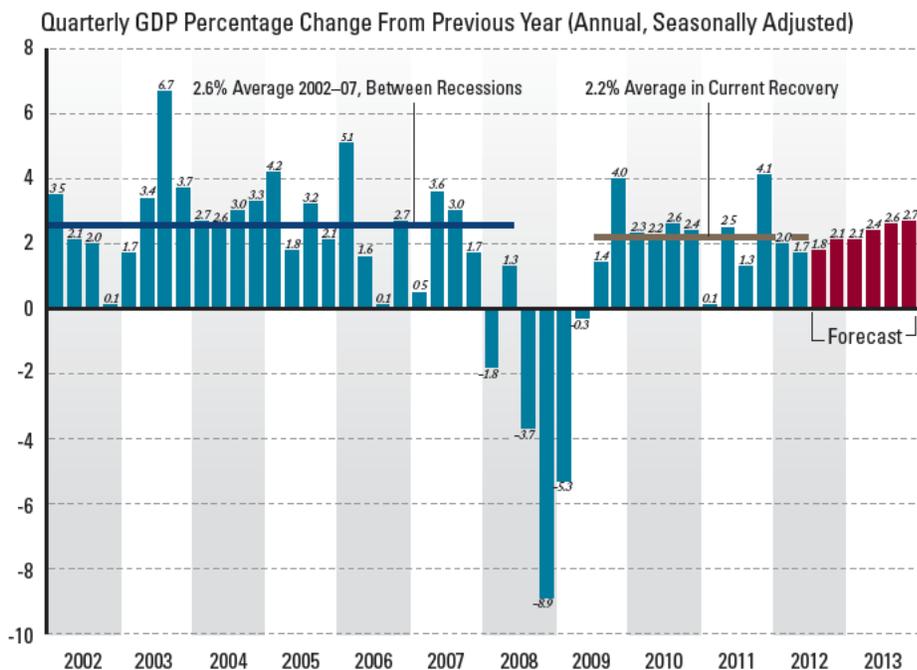
More jobs were lost in the 18 months of the 2007–09 recession than had been created during the entire 73 months of the 2002–07 expansion. Nonfarm employment peaked in January 2008 at 138 million jobs. It didn't bottom out until more than two years later with 129 million nonfarm employees in February 2010. More than 8.7 million Americans lost their jobs, compared with 8.2 million jobs created during the prior expansion.<sup>19</sup>

While nearly 3.1 million jobs have been created since total nonfarm employment began to grow in early 2010, somehow businesses have managed to return to 2007 levels of output without bringing back the 5.6 million workers they used to need.

So unemployment remains high. As of mid-2012, 12.8 million Americans are unemployed, according to BLS, 40.7% of whom have been jobless for 27 weeks or longer.<sup>20</sup>

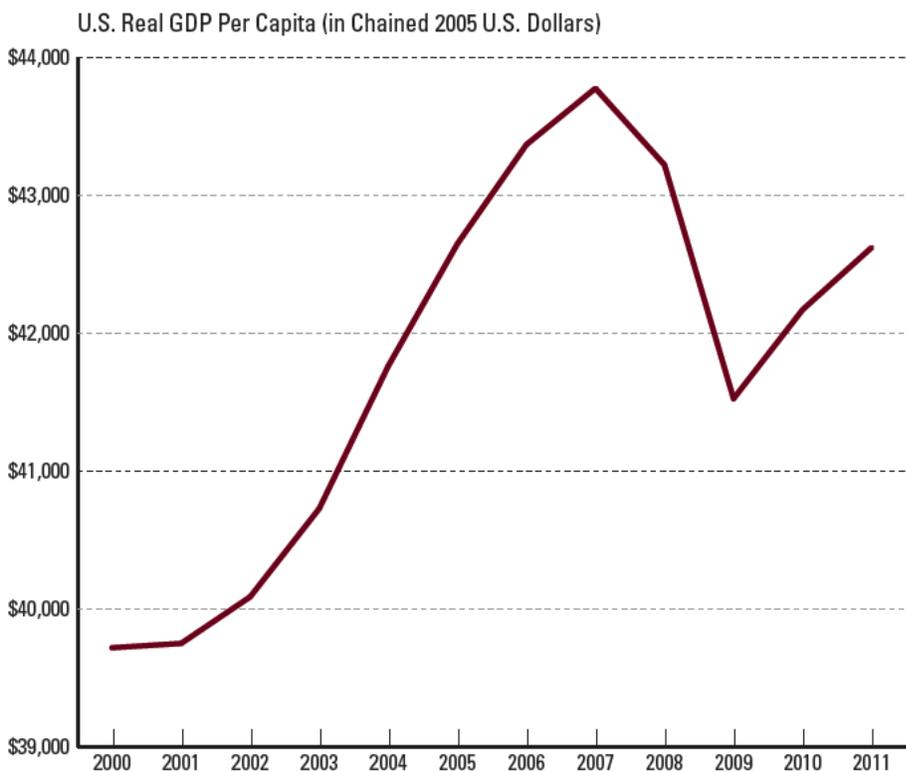
The unemployment rate reached a high of 10.0% in October 2009, an increase of 5.6 percentage points from its most recent low of 4.4% in 2007—effectively, a 127% increase in joblessness. While the all-time highest unemployment rate was 10.8% during the 1981–82 recession, that rate started from a much higher trough of 7.2%, so the increase

**Figure 7: GDP Resumed Growth in the Third Quarter of 2009, But Has Been Subpar, and Is Forecast to Remain Modest.**



Source: U.S. Bureau of Economic Analysis, 1Q02–2Q12 (preliminary), Aug. 29, 2012; and forecast of 47 economists surveyed by the Wall Street Journal 3Q12–4Q13, August 2012

**Figure 8: With the U.S. Population Growing Faster Than the Economy, Per Capita GDP Has Declined and Remains Below Its Pre-recession Peak in 2007.**



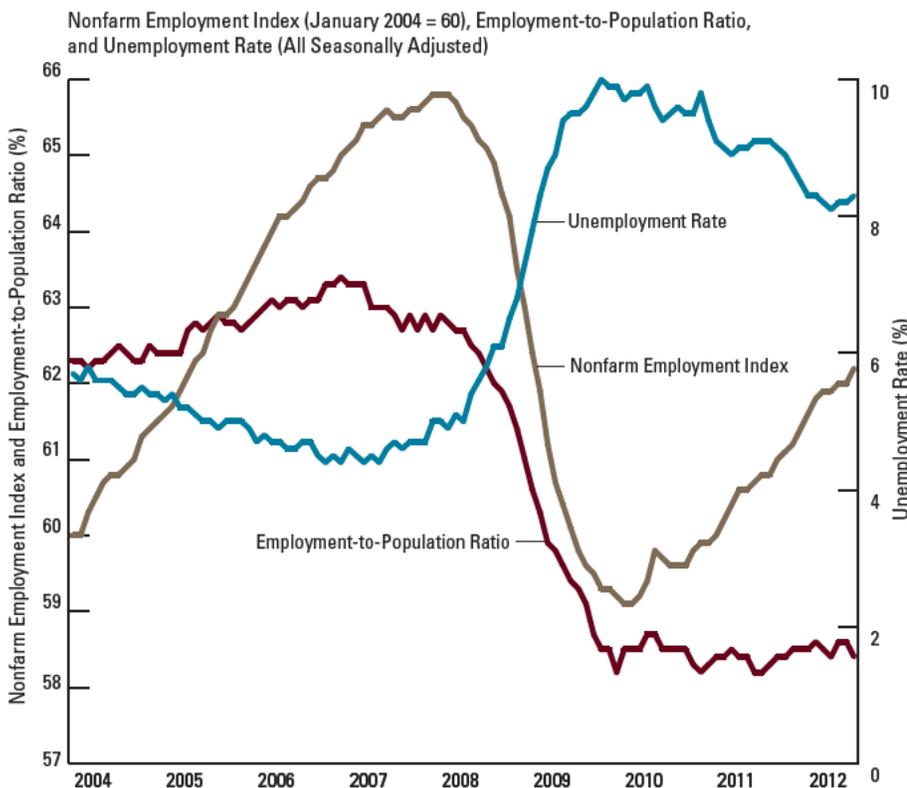
Source: U.S. Bureau of Economic Analysis



**“The job market remains quite weak relative to historical terms... After nearly two years of job gains, private payroll employment remains more than five million jobs below its previous peak; the jobs shortfall is even larger, of course, when increases in the size of the labor force are taken into account. And the unemployment rate... [is] still roughly three percentage points above its average over the 20 years preceding the recession.”**

—Federal Reserve Chairman Ben S. Bernanke, “Recent Developments in the Labor Market,” remarks delivered to the National Association for Business Economics, Washington, DC, March 26, 2012

**Figure 9: The Employment-to-Population Ratio Dropped From 62.9% in January 2008 to 58.2% in December 2009, Its Lowest Since 1982. The Decline Is Almost Entirely Attributable to Falling Labor Force Participation Among the Nonemployed.**



Source: U.S. Bureau of Labor Statistics

was 3.6 points. The two point difference between the 1981–82 rate and the 2007–09 rate shows that the Great Recession was more than one and a half times as bad, in terms of job losses, than what previously was the worst recession. By the end of 1984, the unemployment rate returned to its prerecession level of three and a half years prior.<sup>21</sup>

Now in 2012, five years after the unemployment trough of 4.4% that preceded the Great Recession, the U.S. still struggles with an unemployment rate that exceeds 8%.

BLS defines “unemployed” as “all persons who are without jobs and are actively seeking and available to work.”<sup>22</sup>

Add the underemployed and the scope is breathtaking. BLS estimates that the number of unemployed and underemployed—those marginally attached to the work force or working part time because they cannot find full-time jobs—now totals more than 23 million Americans.

Plus, close to a million discouraged workers have stopped looking for work.

Altogether, BLS says more than 24 million Americans want work they can’t find. That’s 15.7% of the U.S. work force. That’s nearly one out of six American workers.

As eye-popping as those numbers might be, more troubling is Americans’ withdrawal from the work force.

“While the unemployment rate has fallen from its peak of 10.0% in October 2009 to 8.3% in February 2012,” notes Jesse Rothstein, a labor economist with the University of California, Berkeley, and NBER, “this decline is almost entirely attributable to falling labor force participation among the nonemployed.”<sup>23</sup>

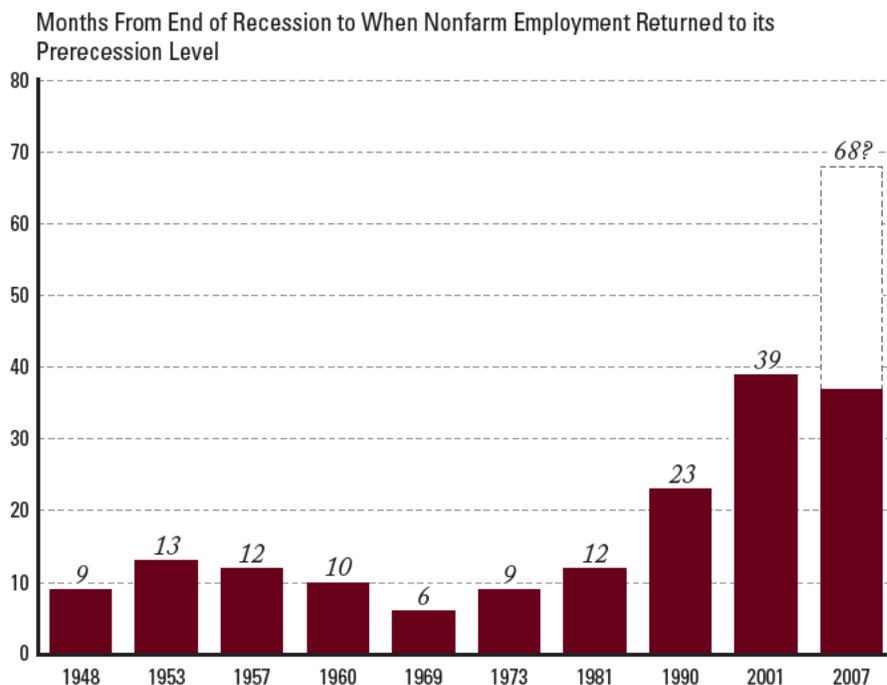
The employment-to-population ratio dropped from 62.9% in January 2008 to 58.2% in December 2009, its lowest since 1982, and it’s hovered around 58.5% since (see Figure 9).<sup>24</sup> The decline of more than 4.7 percentage points over just two years means that 11 million people rapidly exited the work force.<sup>25</sup>

Only 3.6 million jobs have been created since nonfarm employment began growing again in March 2010.<sup>26</sup> At the rate of job creation in the first half of 2012, it would take at least another two and a half years for nonfarm employment to reach its prerecession level (see Figure 10).

Given population—and, therefore, work force—growth, it will take even longer to bring the unemployment rate down to its prerecession level of 4.4%—if ever. BLS considers the economy at full employment when the unemployment rate is 5.1%.<sup>27</sup> The *Wall Street Journal* has calculated that at the recent rates of job creation and work force expansion, the U.S. unemployment rate would not decline to 5% until December 2024.<sup>28</sup>

Economists surveyed by the *Journal* in July 2012 projected that the unemployment rate would slowly ease from 8.0% in December 2012 to 7.0% in December

**Figure 10: The Lag Time Between When Recessions End and When Nonfarm Employment Returns to Its Prerecession Level Has Been Increasing Sharply in Recent Recessions. If the 2012 Pace of Job Growth Were to Continue, Nonfarm Payroll Employment Would Return to its 2007 Peak in 2015.**



Source: National Bureau of Economic Research, U.S. Bureau of Labor Statistics

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2014. On average, they estimated that the economy would add 142,000 jobs per month over the coming year, for a total of 1.7 million through June 2013.<sup>29</sup>

Ninety-one percent said there were greater downside risks to their 2012 forecasts, with some blaming their pessimism on U.S. government dysfunction.

### Uncertainty

Washington sclerosis threatens to trip America back into recession.

Federal Reserve chairman Ben S. Bernanke warned Congress on Leap Day (Feb. 29, 2012) in testimony before the House Financial Services Committee when he coined the phrase “fiscal cliff.”

“Under current law,” he said, “on Jan. 1, 2013, there’s going to be a massive fiscal cliff of large spending cuts and tax increases. I hope that Congress will look at that and figure out ways to achieve the same long-run fiscal improvement without having it all happen on one date.

All those things are hitting on the same day, basically. It’s quite a big event.”<sup>30</sup>

How big?

GDP would *contract* at an annual rate of 1.3% during the first half of 2013, the Congressional Budget Office estimated, adding, “If history is a guide, such a contraction in the economy in the first half of 2013 would probably be deemed a recession.”<sup>31</sup>

Estimates vary (see sidebar “Cliff Notes” on page 13), but CBO says that if Congress were to cancel the scheduled \$607 billion in tax increases and spending cuts (3.7% of GDP), the economy would grow 4.4% and employers would add two million jobs in 2013.

But businesses are becoming more and more weary and wary. While the Eurozone’s debt and bank crises are worrisome, Loews Corp. president and chief executive officer James Tisch said the U.S. “fiscal cliff is the summer of ’11 on steroids.”<sup>32</sup>

He’s referring, of course, to the brinkmanship between President Obama and the House Republicans over raising the nation’s debt ceiling in August 2011. Rather than broker a real deal, they argued to the very last minute and ultimately kicked the can down the road—to Jan. 1, 2013.

“Simply kicking the can down the road without any other indication of what might be done, what kinds of policies might be enacted, could be a negative for sentiment because it might induce people to worry more about the seriousness of Congress in addressing our fiscal issues,” Bernanke said at a June 21, 2012, news conference.<sup>33</sup>

Uncertainty hurts growth. Economists at Stanford University and the University of Chicago have estimated that an increase in policy uncertainty between 2006 and 2011 (which includes the Lehman bankruptcy, bailouts of the banks, debates over fiscal stimulus, and



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# Cliff Notes

“Fiscal cliff” refers to massive tax increases and spending cuts slated to take effect Jan. 1, 2013.

Here’s the problem: Tax increases take money from the private sector that might otherwise be spent or invested in the economy and transfers that to the public sector (i.e., U.S. government coffers, allegedly to reduce the public’s debt). That’s money taken away from economic growth. Meanwhile, when the government cuts back spending, that’s also taking money away from economic growth. It’s a double whammy. Private and public sector spending shrinkage.

Most significant are expiration of Bush-era tax cuts, which Congress extended in 2011 through 2012. In 2011, Congress also extended a temporary two percentage point cut in payroll taxes through 2012, after which taxes would return to normal levels—at the same time as the income tax increases. And, also in 2011, as part of a deal to increase the nation’s debt ceiling, Congress and the White House brokered a so-called sequestration whereby if a new budget was not approved by the end of 2012, automatic spending cuts would take effect Jan. 1, 2013—about half of which would be in defense and half in discretionary social programs. Furthermore, the debt ceiling will likely need to be lifted again before the end of 2012. And this is an election year.

The bipartisan nonprofit Committee for a Responsible Federal Budget has detailed the tax increases and spending cuts, shown in the table (top right), and has conservatively estimated that they would take around \$500 billion out of the economy in fiscal year 2013. Congressional Budget Office estimates are similar in summary (\$502 billion), but add \$105 billion in “other changes in revenues and spending (not linked to specific policies; mostly reflecting changes in revenues),” for a grand total of \$607 billion. Other experts place the figure at \$720 billion or higher.

## Details of the Fiscal Cliff (FY 2013 Costs in U.S. \$ Billion)

### Tax Increases

Expiration of 2001/2003/2010 Tax Cuts	
Income tax rates raise from 25 28 33 35 to 28 31 36 39.6.....	40
10% tax bracket eliminated.....	30
Capital gains and dividends taxes increase.....	15
Child Tax Credit reduces from \$1,000 to \$500 per.....	7
Phase out of itemized deductions and personal exemptions.....	6
Marriage penalty reductions expire.....	5
Estate tax increases.....	5
American Opportunity Tax Credit expires.....	3
Education and other tax benefits expire.....	1
Alternative Minimum Tax	
Patch relative to current law.....	90
Interaction with 2001/2003/2010 tax cuts.....	35
2% Social Security payroll tax holiday expires.....	90
New Health Care Reform Taxes	
Medicare increase for high earners and investment earners.....	20
Flexible spending account limits, medical device tax, and other measures.....	5
Tax “Extenders” (ed., special-interest bonanzas)	
Alcohol fuel credit.....	10
Subpart F exemption for active financing income.....	5
Research and experimentation credit.....	5
Other.....	10
<b>Subtotal of Tax Increases.....</b>	<b>382</b>

### Spending Cuts

Extended unemployment insurance benefits expire.....	25
10% reduction in defense spending.....	30
8% reduction in nondefense discretionary spending.....	25
2% reduction to Medicare providers.....	5
30% reduction in Medicare payments to physicians.....	10
Other mandatory reductions.....	5
<b>Subtotal of Spending Cuts.....</b>	<b>100</b>

## 2013 Impact Could Be Bigger

Various experts estimate various effects. Some use the U.S. government’s fiscal year (Oct. 1, 2012, through Sept. 30, 2013), while others use calendar year 2013. Fiscal-year estimates look more favorable largely because the tax increases and spending cuts don’t hit the federal government’s treasury until the second quarter of its fiscal year. When looking at the numbers below, keep in mind that they are to be subtracted from economic growth that would otherwise occur, which might be only 2% or a little more in 2013. Even CBO says that if the fiscal cliff goes into effect, a recession is likely in the first half of 2013. Double dip?

### Fiscal Cliff Estimates

	Effect on GDP
Center for a Responsible Federal Budget (FY13).....	-2.2%
Congressional Budget Office (FY13).....	-3.7%
Bank of America.....	-4.6%
UBS.....	-4.7%
Morgan Stanley.....	-5%
Citigroup.....	-5%

## Hope?

UBS sees less than a 5% chance that Washington will allow America to fall off the fiscal cliff. And Citigroup says that only 20% of institutional investors expect the Bush tax cuts to expire.

Sources: “Between a Mountain of Debt and a Fiscal Cliff,” Committee for a Responsible Federal Budget, July 16, 2012; “Economic Effects of Reducing the Fiscal Restraint That Is Scheduled to Occur in 2013,” Congressional Budget Office, May 2012; “The Ultimate, Worst-Case, Fiscal Cliff Nightmare Scenario,” Business Insider, July 16, 2012.

the debt ceiling dispute) reduced GDP by 3.2% and cost 2.3 million jobs.<sup>34</sup>

The impending fiscal cliff is already taking a toll. John T. Chambers, chairman and CEO of Cisco Systems Inc., the large manufacturer of Internet equipment, said that customers' orders are getting smaller, they are taking longer to make decisions, and they require more in-house approvals. Mike Lawrie, president and CEO of Computer Sciences Corp., a big federal government contractor of technology services, told investors, "I just don't know what's going to happen... None of us knows."<sup>35</sup>

"Employers face heaping amounts of uncertainty," said ManpowerGroup chairman and CEO Jeffrey A. Joerres, urging businesses and government to focus on driving job creation.<sup>36</sup>

Uncertainty over the fiscal cliff "is driving American businesses to delay hiring and in some cases to actually trim their payrolls," wrote McClatchy Newspapers reporter Kevin G. Hall in the *Kansas City Star*.<sup>37</sup>

"A rising number of manufacturers are cancelling new investments and putting

off new hires because they fear paralysis in Washington will force hundreds of billions in tax increases and budget cuts in January, undermining economic growth in the coming months," led an article on the front page of the *New York Times* on Aug. 5, 2012, when Congress started its summer recess.<sup>38</sup>

Business leaders are urging both Democrats and Republicans to compromise on a plan that includes both tax increases and spending cuts, the *Wall Street Journal* has reported. Some are supporting an 800-page bill drafted by the Center for a Responsible Federal Budget and modeled after a 2010 package put together by a deficit-reduction commission headed by Republican Alan Simpson and Democrat Erskine Bowles.<sup>39</sup>

Former U.S. Treasury Secretary Robert Rubin foresees a "grand bargain" in the offing immediately after the November elections—a time furthest from the next federal elections, "the lowest-pressure time in our political system."<sup>40</sup>

Other Washington insiders are skeptical. "[The] return to the budget barricades... has made one reality abundantly

clear: The mother of all lame ducks will not come on the scene in November," wrote David Hawkings, editor of the *CQ Roll Call Daily Briefing*. He expects another kick of the can down the road. "Look for the debt ceiling to be increased by only a few hundred billion dollars, for the across-the-board sequester cuts to be put on hold for a few months, and for the Bush tax cuts to be left alone for an equivalent amount of time." After reviewing the congressional calendar, he expects resolution just before Memorial Day 2013.<sup>41</sup>

### Structural Shift?

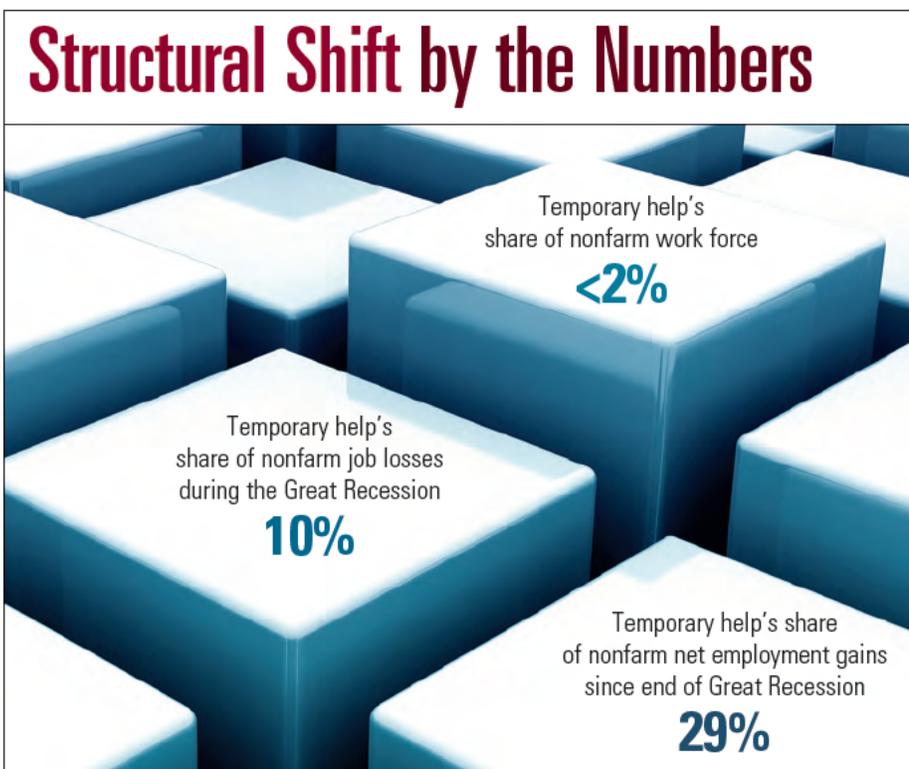
Uncertainty can be good for the staffing industry. "Increased uncertainty about the sustainability of the expansion" is driving growth in temporary and contract employment, according to Chris Varvares, senior managing director and co-founder of Macroeconomic Advisers.<sup>42</sup>

Kforce Inc. chief corporate development officer Michael Blackman said, "Extraordinary uncertainty among employers is leading them to utilize temporary resources."<sup>43</sup>

These cyclical factors are certainly important. Still, trends suggest that the increasing use of staffing services is due to more than uncertainty. Data—and anecdotes—point to a structural shift.

Businesses are using staffing services differently in this recovery than in past ones. And that changed use presages a fundamental shift in the role of staffing services in the economy.

For example, as illustrated in Figure 1, temporary help employment has grown more robustly in the three years since the recession ended than it had in the same amount of time after the previous two so-called jobless recessions. While temporary help employment had signaled a rise in overall employment after the recession ended, overall job growth has been anemic in this recovery because economic growth has been anemic in this recovery.



While temporary help services accounted for one in 10 job losses during the recession, they have been responsible for more than one-fourth of net employment gains since the recession ended.<sup>44</sup> Those are outsized effects for an industry that employs only 2% of the work force.

Changes in the penetration rate—the percentage of the nonfarm work force employed by temporary help firms—also suggest a structural shift. Temporary help as a proportion of nonfarm employment is rapidly approaching a new record.

In July 2012, BLS reported the highest temporary help penetration rate in five years: 1.91%. Its previous high had been 1.95% in December 2005. Its all-time high had been 2.03% in April 2000, just before the 2001 recession, during which the penetration rate dropped to 1.64%. During the Great Recession, it fell to 1.34%<sup>45</sup> (see Figure 11).

Its climb from its most recent low to its current near-record rate took only 37 months. Its climb from its 2001 recession low to its 2005 high took 47 months and was about half as steep (only a 0.32 percentage point increase versus the 0.56 percentage point increase since the end of the Great Recession). A similar previous gain to its all-time peak in 2000 took 57 months. So the pace has accelerated (see Figure 12).

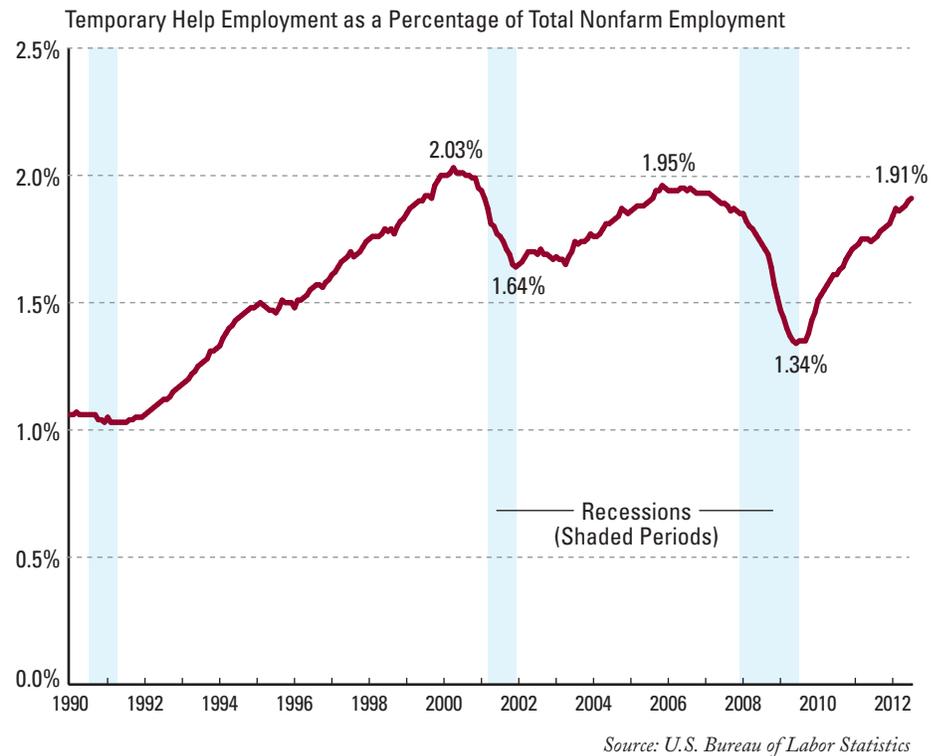
“I would predict that number to cross 2% and break a record, maybe by the end of the year,” said Joanie Ruge, chief employment analyst with the U.S. operations of Randstad Holding NV.<sup>46</sup>

When the penetration rate breaks its record by a significant margin, that would be compelling evidence that a structural shift has occurred.

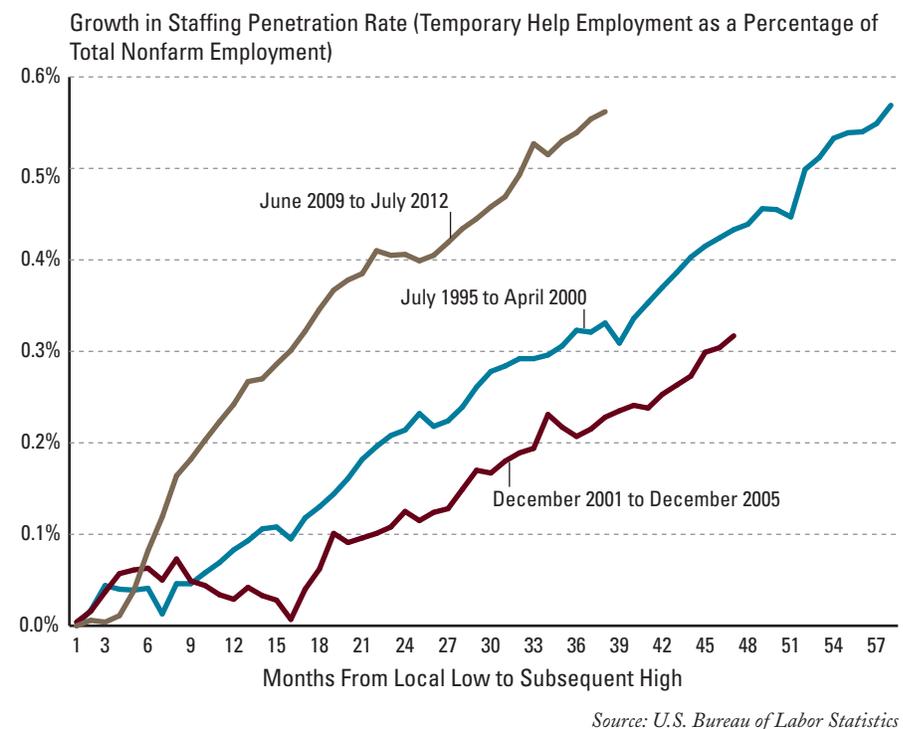
Caused by what?

“There’s a shift in the way companies hire,” Ruge said. “They want to use talent on an on-demand basis, when they need them for projects.”

**Figure 11: Since 1990, the Staffing Penetration Rate—the Percentage of the Nonfarm Work Force Employed by Staffing Firms—Has Mostly Ranged From 1% to 2%.**



**Figure 12: While Still Short of Its Pre-recession Peak, the Staffing Penetration Rate Has Been Recovering From the Great Recession More Rapidly Than From Previous Recessions.**



Caterpillar Inc., like many U.S. companies, relies on staffing firms to stay nimble and competitive. At the end of 2011, the machinery manufacturer had 27,888 staffing employees, 18% of its total work force. Talent ranges from an engineer who has a specialized skill for a short-term project to administrative help for a specific project. Said spokeswoman Bridget Young, “[We] manage our work force based on demand for our products.”<sup>47</sup>

And, of course, the “not-easily-forgotten recession” has made executives cautious about adding permanent employees, said Tobey Sommer, director of equity research at SunTrust Robinson Humphrey Inc. Businesses are seeking more flexible staffing arrangements.<sup>48</sup>

To the extent a structural shift may be driving increased use of flexible staffing arrangements, such a shift also increases the legal and public policy challenges of ensuring that workers employed in such arrangements, whether by choice or necessity, have access to health care and retirement benefits on par with those enjoyed by workers in traditional employment arrangements. To meet these challenges, policy makers must allow flexible mechanisms for the delivery of such benefits in ways that match the growing demand for work force flexibility.

## Staffing and Recruiting

### Temporary and Contract Jobs

The ASA Staffing Index shows mostly steady growth in U.S. temporary and contract employment since the end of the Great Recession<sup>49</sup> (see Figure 3 and sidebar “Methodology of ASA Economic Surveys” on page 24).

Introduced at 100 in June 2006, the index peaked at 105, where it stayed for several weeks, in the fourth quarter of 2007. Then the index took its usual seasonal fall around Christmas and New Year’s Days, rebounding in January 2008 to 95, about where it

remained for the first half of the year, not showing the usual rise as the year proceeded. (Staffing employment is typically lowest at the beginning of the year, grows during the year, and peaks late in the year—the industry’s normal cycle when the economy is growing. See 2007 and 2010 in Figure 3 and quarterly trends in Figure 13.) In retrospect, the flatness of the index in the first half of 2008 was indicative of a weakening economy.

The index shows that staffing employment began to decline in the third quarter of 2008. After Lehman Brothers Holdings filed for bankruptcy in September, the index dropped rapidly.

The week of Dec. 15 was telling: In what would normally have been one of the busiest weeks of the year for the staffing industry, temporary and contract employment dropped 4.6%, knocking three points off the index. By the end of the year, the index had plunged to 69, at the time its lowest value ever and 26 points lower than in June—equating to a 27% loss of jobs in just six months, most of which occurred in the last six weeks of the year.

The index shows that staffing employment remained virtually unchanged for the first half of 2009. But then, after bottoming out at 66 the week of Independence Day, it began to tick up. And it continued up, week after week, reaching 82 by mid-December.

Then, after the usual pause due to Christmas and New Year’s days, growth resumed again in 2010, with the index rising to 94 in November and December.

After another holiday pause, growth continued in the first half of 2011, but the pace tapered slower. By August—when Washington was in the heat of battle over raising the nation’s debt limit—the index had slipped to being on par with 2010, peaking in December at 93.

Staffing employment growth picked up vigorously in early in 2012, reach-

ing 94 already in May. At the rate it’s growing, the index could reach 100 by the end of 2012—which would mean that staffing employment returned to its June 2006 level.

But the index would have to reach 105 to match its all-time high in 2007, before the Great Recession.

Average daily employment of temporary and contract workers declined from 3.12 million in 2007 to 2.18 million in 2009, a loss of nearly a million jobs, or 30% of the industry’s work force, according to the ASA quarterly employment and sales survey<sup>50</sup> (see Figure 13 and sidebar “Methodology of ASA Economic Surveys” on page 24).

In 2010, the industry regained 401,000 jobs, bringing average daily employment to 2.58 million—a year-to-year increase of 18.4%. In terms of job gains, 2010 ranked second to the historical record of 428,000 set in 1994. The 2010 rate of growth ranked third to 1993 and 1994 (just over 25% each) in the 20-year history of the ASA survey. (BLS reported a 32% growth rate in 1984<sup>51</sup>; see Figure 2.)

Temporary and contract employment growth continued in 2011, though at a more moderate pace. The industry added 212,000 jobs for an annual increase of 8.2%.

From the end of the Great Recession through 2010, U.S. staffing firms added more than 928,000 jobs—from a low of 2.05 million in the second quarter of 2009 to 2.98 million in the fourth quarter of 2011.

“Average daily employment” is really a count of the number of individuals working on assignments on a typical business day. For most industries, the daily average roughly equals annual employment. Given the generally short-term nature of most temporary and contract work, however, there are millions more people employed in the staffing industry over the course of a

year than are accounted for in the daily average.

To determine annual employment in the staffing industry, ASA collects data on the number of Form W-2s issued annually to temporary and contract employees by the staffing firms that participate in the association's quarterly employment and sales survey. From that data, ASA estimates the number of temporary employees who have worked in the staffing industry during the calendar year.

In 2011, U.S. staffing firms hired 12.9 million temporary and contract employees over the course of the year, a remarkable 33% increase from 9.7 million in 2010 (see Figure 14).

ASA research shows that when the economy is growing normally, 53% of staffing employees who remain in the work force bridge to permanent employment.<sup>52</sup> If 2011 had been a normal year, more than 5.1 million former temporary and contract employees would have bridged to permanent jobs, 43% of whom went on to become employees of the staffing client.

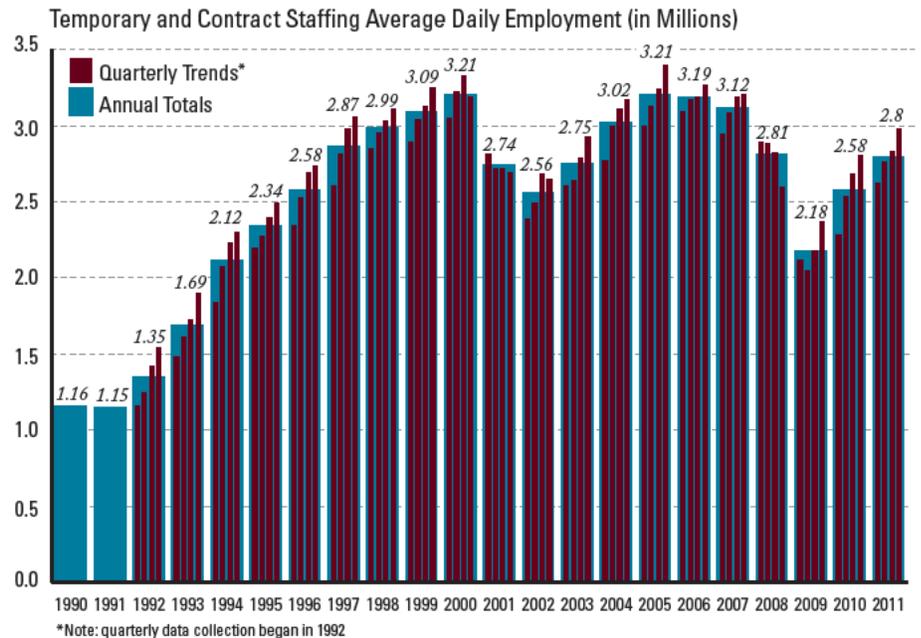
Although the staffing industry employs only two of every 100 nonfarm workers on any given day, it has provided income for millions of American families—the equivalent of one out of every 10 nonfarm workers held a job with a staffing company at some point in 2011.

### Turnover and Tenure

Staffing employee turnover increased sharply and tenure fell markedly in 2011 (see Figure 15).

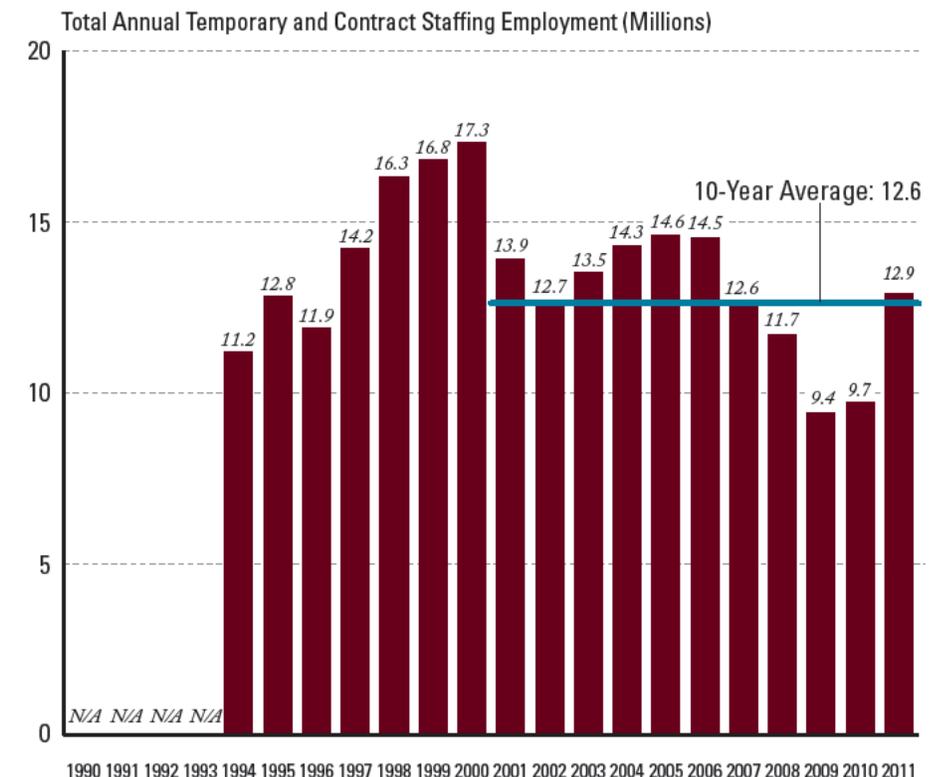
Turnover is the rate at which incoming employees replace outgoing employees over the course of a year. It's calculated using average daily employment and the number of annually issued Form W-2s. Turnover is considerably higher in the staffing industry because most staffing employees work for their staffing firms for relatively short periods.

**Figure 13: From the End of the Great Recession Through 2011, U.S. Staffing Firms Added More Than 930,000 Jobs—From a Low of 2.05 Million in 2Q09 to 2.98 Million in 4Q11.**



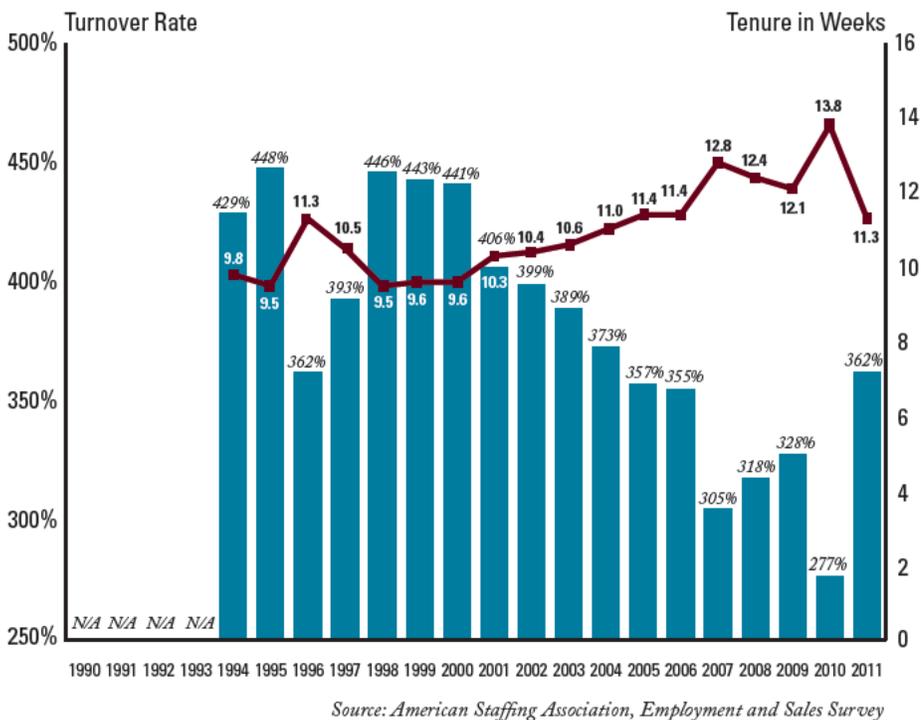
Source: American Staffing Association, Employment and Sales Survey

**Figure 14: America's Staffing Companies Hired 12.9 Million Temporary and Contract Employees Over the Course of 2011—33% More Than in the Prior Year.**



Source: American Staffing Association, Employment and Sales Survey

**Figure 15: The Average Staffing Employee Works Less Than Three Months. Employment Turnover Increased Dramatically to 362%, Reducing Tenure to 11.3 Weeks.**



**Figure 16: Search and Placement Employment Increased by 11.4% to 267,900 in 2011.**



Turnover increased from 277% in 2010 to 362% in 2011.

Tenure—the duration of employment with the staffing firm—is based on turnover. It had gradually increased slowly in the previous 10 years, generally adding a day or two per year, but overall averaging about 11 weeks, or less than three months. In 2011, as turnover increased, tenure dropped significantly from 13.8 weeks in 2010 to 11.3 weeks in 2011.

### Search and Placement Jobs

In addition to measuring employment in temporary help services, BLS also counts jobs in establishments that provide principally search and placement services. Jobs among “executive search services” and “employment placement agencies” together declined by 28.3% from 310,400 when the recession started to 222,700 when it ended. Search and placement employment has since gained 64,000 jobs—a 28.6% increase—through July 2012 (BLS does not seasonally adjust this industry sector). Annual average employment grew 11.4% from 240,400 in 2010 to 267,900 in 2011 (see Figure 16).<sup>53</sup>

### Staffing and Recruiting Sales

After peaking at \$98.3 billion, temporary and contract staffing sales slid 3.8% in 2008 and plummeted 24.1% in 2009 to \$72.0 billion—a cumulative decline of \$26.3 billion or 26.8% (see Figure 17).<sup>54</sup> The staffing industry’s sales losses in 2009 were the biggest ever, even though temporary and contract employment in some sectors began to grow again in the middle of that year.

In 2010, sales increased 21.3% to \$87.4 billion. In 2011, sales increased another 12.4%, coming in at \$98.3 billion, which, because of rounding, appears to match the 2008 peak but misses by tens of millions of dollars.

With the exception of countercyclical outplacement, all sectors experienced

healthy growth in 2011, according to Staffing Industry Analysts Inc.<sup>55</sup> The legal, industrial, and information technology sectors outpaced the norm.

Search and placement sales peaked at \$18.0 billion in 2007, according to the U.S. Economic Census conducted by the U.S. Department of Commerce. Sales declined 12% in 2008 and were then especially devastated by a 51% falloff in 2009, SIA estimated. Sales turned upward by 22.8% in 2010 and 17.5% in 2011, SIA reported. Applying SIA growth estimates to the census benchmark shows that search and placement sales totaled \$11.2 billion in 2011 (see Figure 18).

Combining temporary and contract services with search and placement services, U.S. staffing industry sales totaled \$109.5 billion in 2011, 12.8% more than in the previous year. Search and placement sales accounted for 10.3% of total staffing and recruiting industry sales, down significantly from 15.5% in the peak year of 2007 (see Figure 19).

### The Flexibility Factor

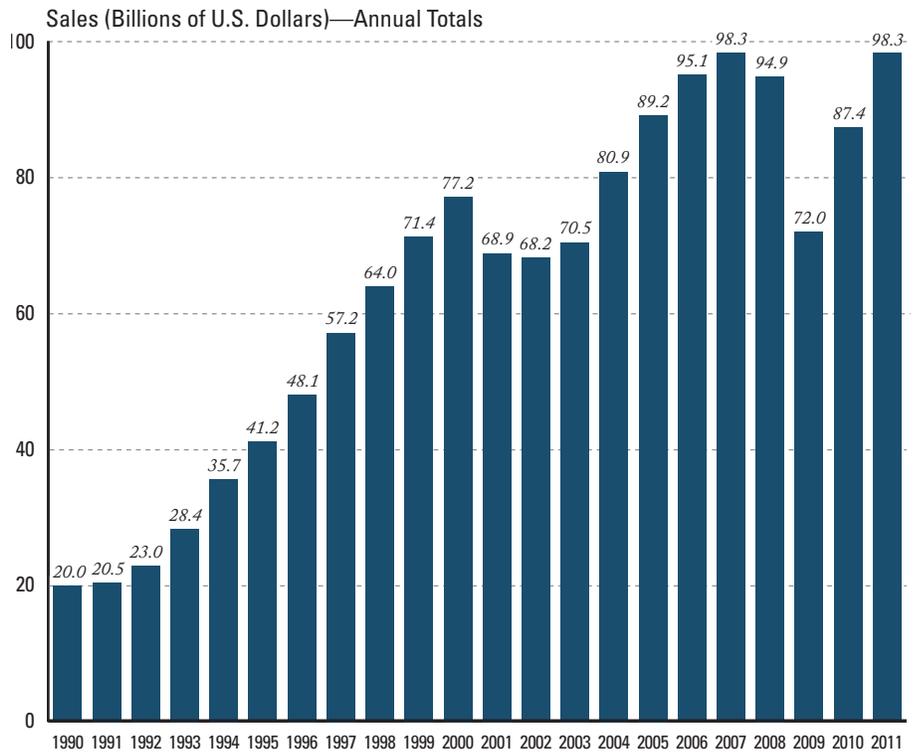
Historically the U.S. staffing industry has been growing faster than the economy. Over the past 20 years, real GDP has averaged 2.5% growth annually.<sup>56</sup> In contrast, temporary and contract staffing employment has averaged 4.8% growth per year, and sales have averaged 8.1% annual increases.<sup>57</sup>

Why? It's because of the flexibility factor: Employees want it, businesses need it, and it's good for the economy.

### Employees Want Flexibility

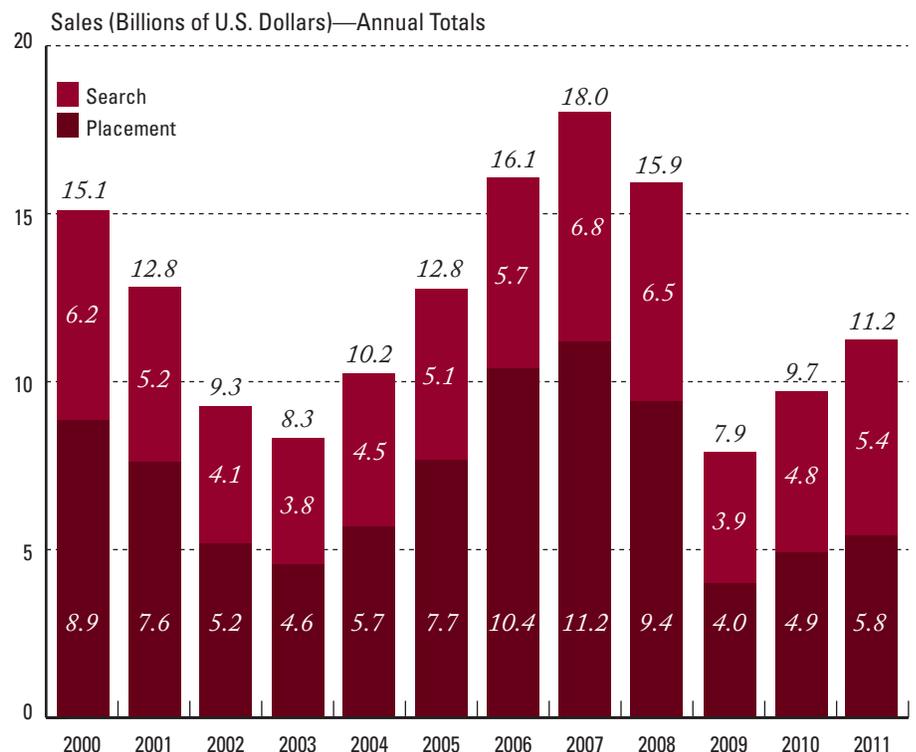
America's work force has been changing. Workers are increasingly looking for flexibility in their employment arrangements. In a landmark ASA survey of staffing employees,<sup>58</sup> two-thirds said flexible work time was an important factor in their decision to become a temporary or contract

**Figure 17: Temporary and Contract Staffing Sales Increased by 12.4% in 2011, Missing the 2007 Peak of \$98.3 Billion by About \$50 Million.**



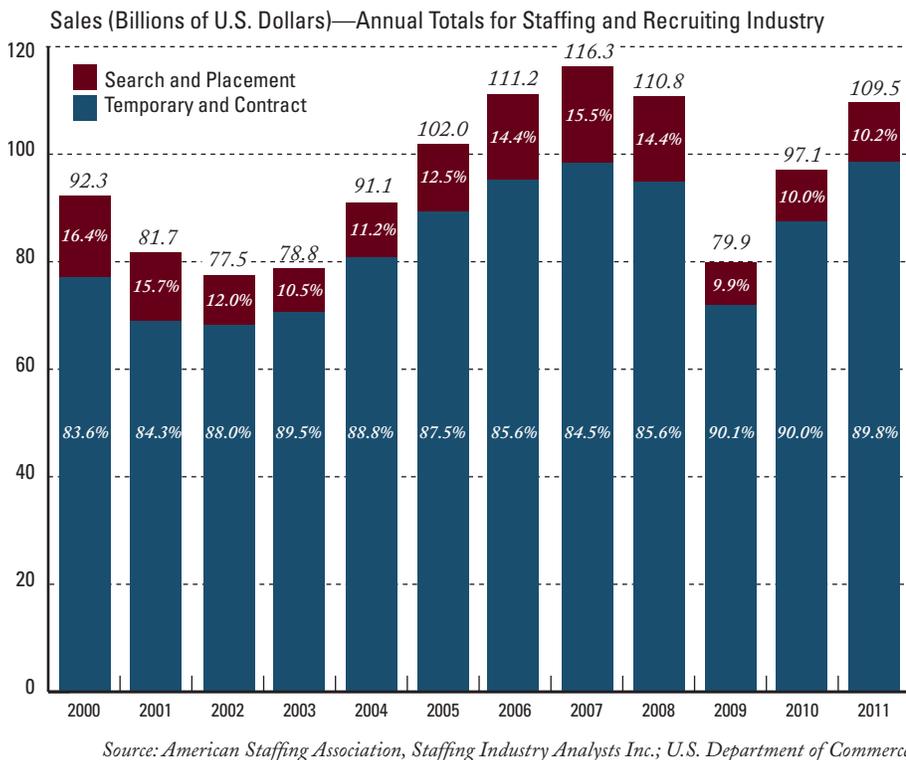
Source: American Staffing Association, Employment and Sales Survey

**Figure 18: Search and Placement Sales Increased by 15.8% to \$11.2 Billion in 2011.**

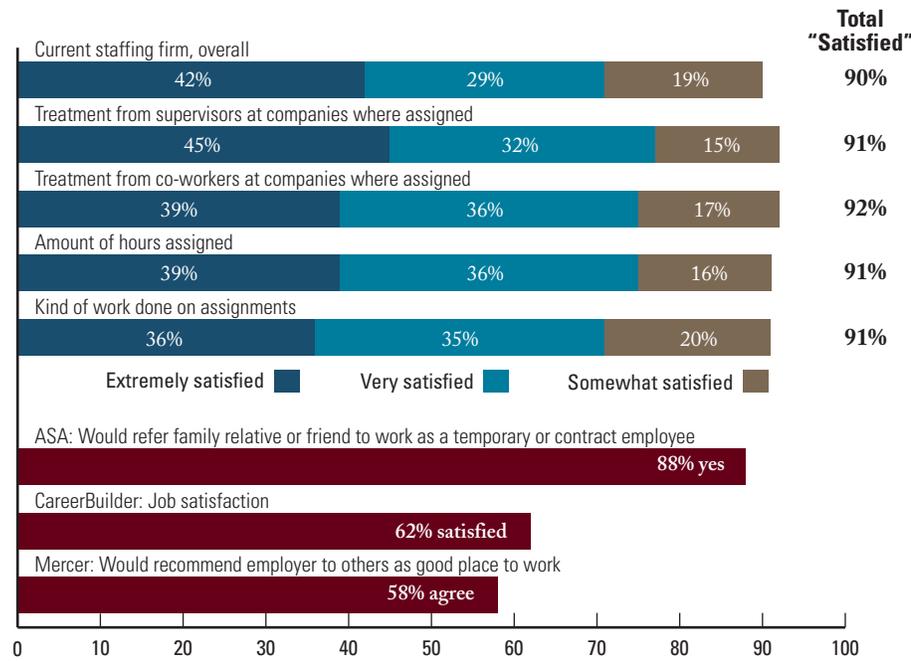


Sources: U.S. Department of Commerce and Staffing Industry Analysts Inc.

**Figure 19: Total Staffing and Recruiting Industry Sales—including Temporary and Contract, and Search and Placement—Increased by 12.8% to \$109.5 Billion in 2011.**



**Figure 20: Nine Out of 10 Staffing Employees Would Refer a Friend or Relative to Work as a Temporary or Contract Employee, and They Are Far More Satisfied With Their Job and Their Employer Than Employees in the Overall U.S. Work Force.**



Source: American Staffing Association, Staffing Employee Survey (see note 52)

employee; nearly one-quarter of survey participants said it was an extremely important factor. More than half said needing time for family was important; one in five said that time for family was extremely important.

One in four had little or no interest in a permanent job. They worked with staffing firms for lifestyle reasons.

Surveys conducted by Kelly Services Inc. show an increase in the “free agent” work force—individuals who consult; perform temporary, freelance, or contract work; or have their own business—from 26% in 2008 to 44% in 2011.<sup>59</sup> Kelly president and CEO Carl Camden acknowledged that some of the increase is due to a weak hiring environment, but said, “Today’s workers desire more flexibility and freedom in the way in which they work.”<sup>60</sup>

A 2011 survey by staffing firm Mom Corps found that 42% of working adults would be willing to give up some part of their salary to gain greater flexibility.<sup>61</sup>

The flexibility offered by staffing firms helps explain, in part, why staffing employees are much more satisfied with their work arrangements than employees in traditional arrangements—at least during periods of economic growth. In the ASA survey, 90% of respondents said they were satisfied with their staffing firm and various specific aspects of their jobs, and 88% said they would refer a friend or relative to work as a temporary or contract employee (see Figure 20).

In contrast, work force surveys conducted around the same time as the ASA survey showed that less than two-thirds of employees were satisfied. In a CareerBuilder survey of 2,050 workers, 62% said they were satisfied with their jobs.<sup>62</sup> In a survey of 2,600 U.S. working adults conducted by Mercer Human Resource Consulting, only 58% said they would recommend their employer to others as a good place to work.<sup>63</sup>

In another Mercer survey of 1,040 workers, 17% expressed dissatisfac-

tion with their employer’s organization overall.<sup>64</sup> In contrast, the ASA survey showed that only 10% of respondents said they were dissatisfied with their staffing firm employer.

While flexibility is important to staffing employees, they are as likely to work full time (which BLS defines as working 35 or more hours per week) as regular employees.<sup>65</sup> In the ASA survey, eight in 10 respondents worked full time, practically the same proportion as workers in traditional employment arrangements (see Figure 21).

With the experience of matching millions of people to millions of jobs every day, staffing companies are expert at finding work assignments in virtually all occupations, from day laborer to CEO (see Figure 22). Assignments have been shifting toward occupations that require higher levels of skills and education.<sup>66</sup>

### Businesses Need Flexibility

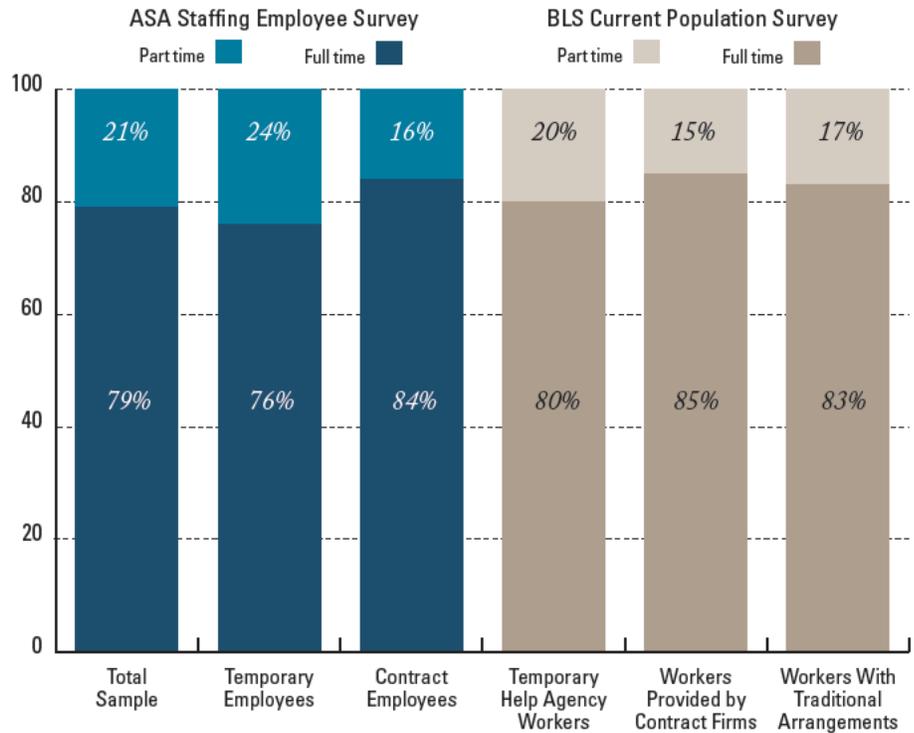
Flexibility and access to talent drive business demand for staffing services.

In an American Management Association survey of human resource managers at 1,248 firms, 91% said “flexibility in staffing issues” was important, and 95% said that flexibility was being achieved through the engagement of temporary and contract employees from staffing companies. “Finding specialized talent” was also important. Saving on payroll and benefits costs was a low priority.<sup>67</sup>

In an ASA poll of 500 businesses that use staffing services, nine out of 10 said it was important to them that “staffing companies offer flexibility to businesses so that they can keep fully staffed during busy times.” When survey participants were asked specifically why they use staffing firms to obtain temporary and contract employees, they cited three main reasons (see Figure 23)<sup>68</sup>:

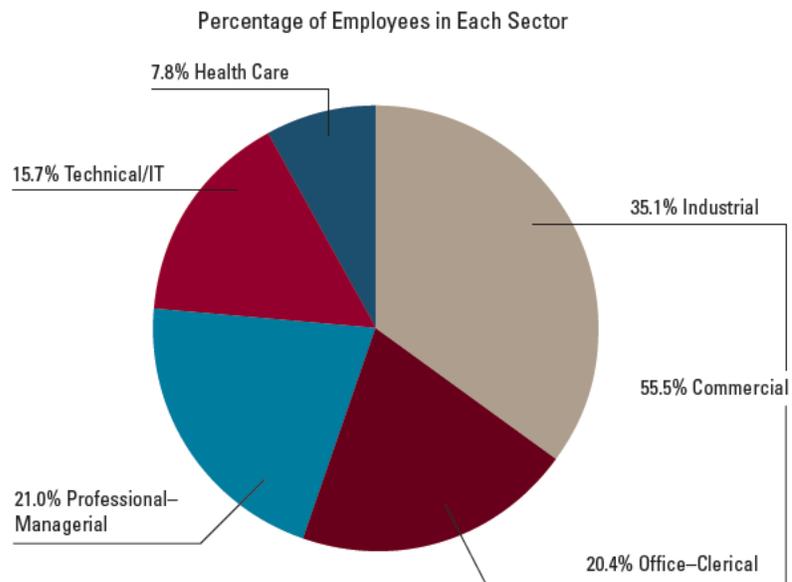
- To fill in for absent employees or to fill a vacancy temporarily

**Figure 21: Eight Out of 10 Temporary and Contract Employees Work Full Time, About the Same Proportion as in the Overall U.S. Work Force.**



Sources: American Staffing Association (see note 52) and U.S. Bureau of Labor Statistics

**Figure 22: Temporary and Contract Employees Work in All Occupations.**



Source: American Staffing Association analysis of unpublished data from the U.S. Bureau of Labor Statistics (see note 65)

- To provide extra support during busy times or seasons
- To staff special short-term projects

The Society for Human Resource Management got similar results in a

2011 poll of its members. The No. 1 reason cited for using temporary or contract workers was to complete specific projects (27%); second was to help during busy times or seasons (25%).<sup>69</sup>

The ASA poll shows that businesses

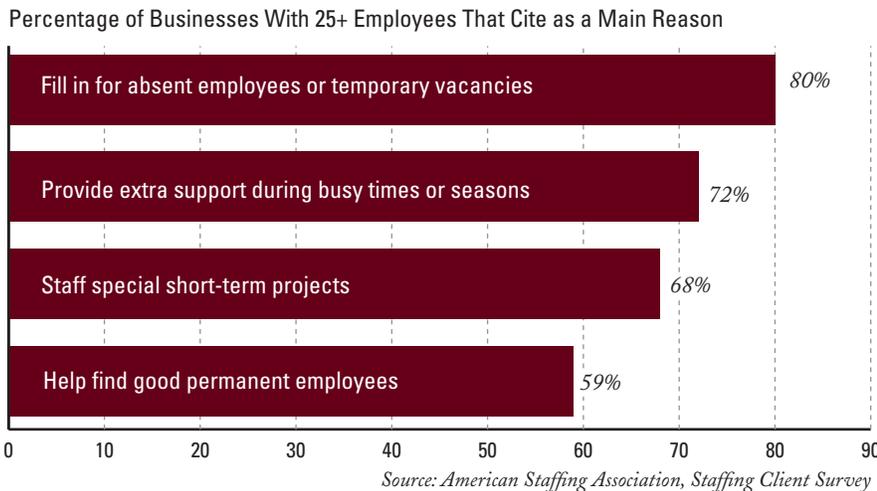
also look to staffing firms as a good source of talent for permanent employees. Regardless of whether they need the talent on a temporary, contract, or permanent basis, businesses tap staffing companies for quality talent in virtually all occupational sectors (see Figure 24).

“Use of temporary or contract employees to smooth out labor needs has grown substantially,” said Erica L. Groshen and Simon Potter, economists with the Federal Reserve Bank of New York. “Uncertainty and financial headwinds likely constrain new job creation.” After outlining the considerable obstacles employers must overcome to create new jobs, they argued that structural changes may be occurring in the economy because of management innovations that result in leaner staffing. “Firms increasingly hire temporary help when they are busiest and then cut back when demand falls.”<sup>70</sup>

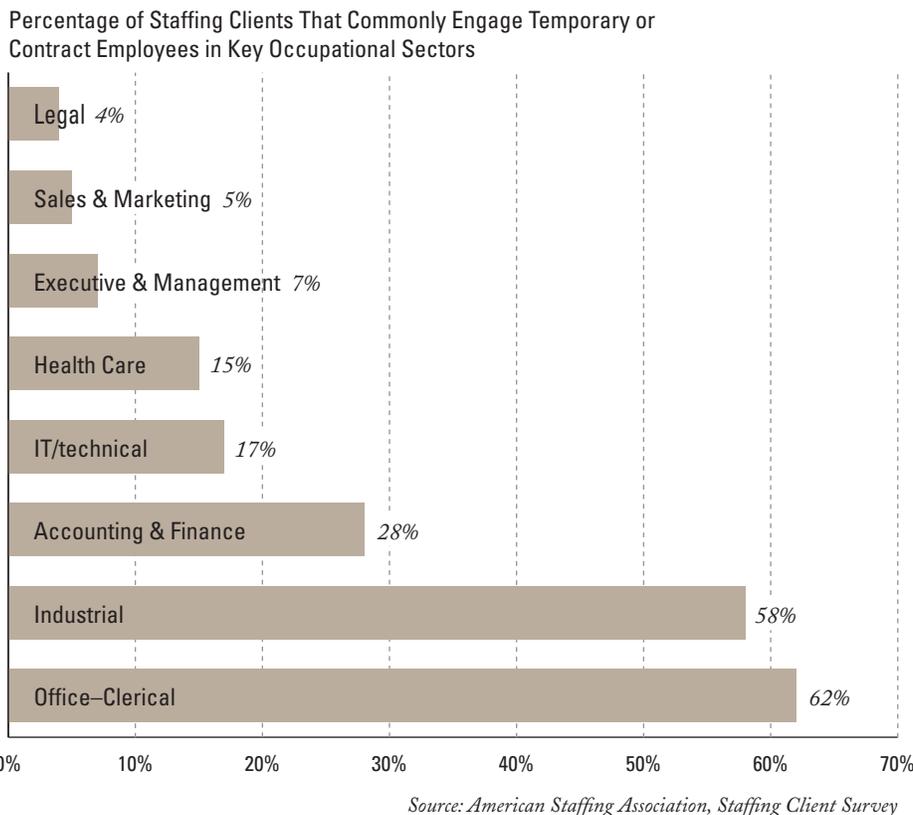
Companies that embrace work force flexibility and engage staffing firm talent do better economically. “Increased reliance on contingent (i.e., temporary and part-time) labor...is associated with superior subsequent performance... [and] no increase in systematic risk,” concluded a study published in the journal *Decision Sciences*. Economists Nandkumar Nayar of Lehigh University and G. Lee Willinger of the University of Oklahoma compared firms in a carefully constructed sample and found that earnings (before interest, taxes, depreciation, and amortization), gross margins, and stock returns improved after the increased use of this labor practice.<sup>71</sup>

The larger the company, the more likely it is to use staffing services, according to various surveys. In the ASA poll of staffing clients, 12% of companies with 25 to 99 employees said they used staffing services, compared with 24% of companies with 100 or more employees (see Figure 25). A survey of Conference Board members—mostly global companies—found that 90% use staffing services.<sup>72</sup> And a survey of large employers

**Figure 23: U.S. Businesses Turn to Staffing Firms to Fill Work Force Gaps, Augment Their Own Staff, and Find New Employees.**



**Figure 24: Businesses Tap a Full Range of Talent From Staffing Companies.**



in San Diego found that 95% use staffing services.<sup>73</sup>

Business use of staffing services is likely to rise. In a 2011 McKinsey Global Institute U.S. Jobs Survey of 2,000 employers of all sizes and in all sectors, 34% said they expect their companies will use more temporary and contract workers over the next five years (see Figure 26). The authors noted that “many employers say they will...employ contingent workers for flexibility and to better use their permanent work forces.”<sup>74</sup>

### Flexibility Is Good for the Economy

Besides workers wanting flexibility and businesses needing it, it’s also good for the economy.

When Alan Greenspan was chairman of the Federal Reserve Board, he spoke frequently about the importance of labor market flexibility to the U.S. economy, even emphasizing it in his last Monetary Policy Report to Congress in July 2005: “That flexibility is, in large measure, a testament to the industry and resourcefulness of our workers and businesses.”<sup>75</sup>

Even Greenspan detractors cite the value of flexibility. In a *Wall Street Journal* op-ed critical of the Greenspan Fed, Andy Laperriere, managing director of the Washington office of Wall Street firm ISI Group, wrote, “A flexible labor force is one of the great strengths of the U.S. economy.”<sup>76</sup>

Labor market flexibility helps create jobs. A study published by the Employment Policies Institute determined that “the temporary help industry helped to increase employment in manufacturing by allowing firms to expand their labor forces in the face of uncertain demand conditions.” While BLS reported an increase of 570,000 manufacturing jobs from 1992 to 1997, EPI estimated that manufacturing employment actually increased by 1,075,000. Temporary help workers accounted for the difference—

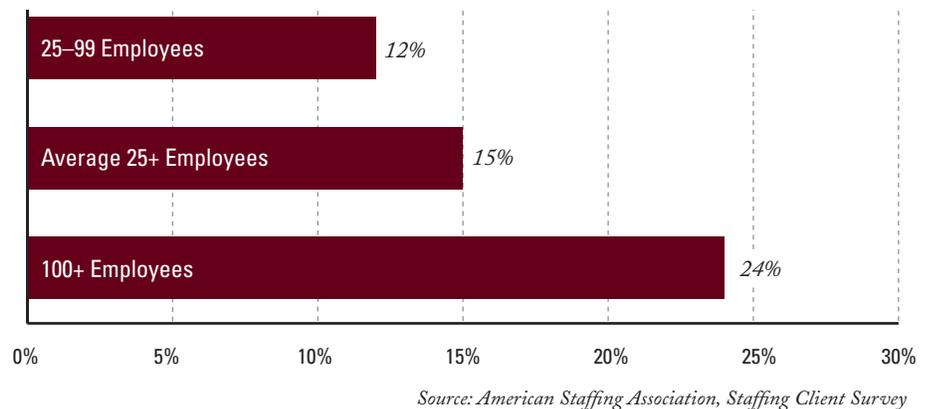
about half a million jobs. In the absence of a flexible staffing alternative, the study concluded, manufacturers would not have hired aggressively in response to rapid increases in demand.<sup>77</sup>

The administrations of Presidents Bill

Clinton<sup>78</sup> and George W. Bush<sup>79</sup> both cited the staffing industry as an important contributing factor in creating jobs and reducing unemployment in the past two decades.

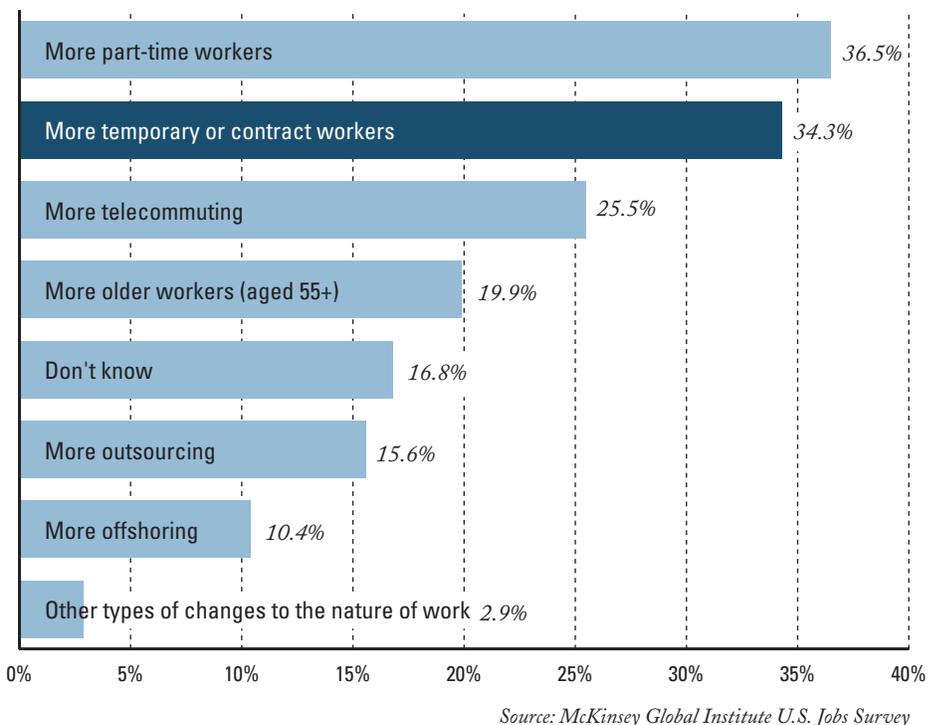
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**Figure 25: Room to Grow: On Average, Only 15% of U.S. Businesses Use Staffing Services in a Given Year. The Bigger the Business, the More Likely It’s a Staffing Client.**



**Figure 26: In a 2011 Survey of 2,000 Employers, Most Foresee a More Flexible Labor Force, and One-Third Will Use More Temporary or Contract Workers.**

In What Ways Will Your Company’s Work Force Change Over the Next Five Years? (Select All That Apply)—Percentage Selected



# Methodology of ASA Economic Surveys

## ASA Staffing Employment and Sales Survey

The American Staffing Association provides the only survey-based quarterly estimate of U.S. temporary and contract staffing sales. The quarterly ASA Staffing Employment and Sales Survey—which covers approximately 10,000 establishments (about a third of the industry)—also tracks employment and payroll, with results that parallel the establishment surveys of the U.S. Bureau of Labor Statistics.

The survey is used to estimate total industry employment, sales, and payroll, based on a model developed for ASA by Standard & Poor's DRI / McGraw-Hill in 1992. DRI conducted a census of ASA members and a survey of selected nonmember firms. Using this and related government data, DRI prepared annual estimates for 1990 and 1991 and a stratified-panel, survey-based estimation model to be used quarterly from 1992 forward.

To preserve the confidentiality of individual company responses, a market research firm collects and tabulates the data and reports only aggregate results to ASA. Survey participants include more than 100 small, medium, and large staffing companies that together provide services in virtually all sectors of the industry and together account for nearly half of total U.S. staffing industry sales. The participants provide employment, sales, and payroll data on the most recent quarter and, as part of the panel design to ensure validity and continuity, the previous quarter. Responses are stratified by company size and used to derive growth rates for each stratum. Strata for each metric are weighted based on the proportionate market share of similarly sized companies to derive overall growth rates for the industry as a whole. These growth rates are applied quarter by quarter to aggregate benchmark estimates for temporary and contract staffing employment, sales, and payroll.

## ASA Staffing Index

The ASA Staffing Index tracks weekly changes in temporary and contract employment. The index survey methodology mirrors that of the quarterly ASA Staffing Employment and Sales Survey.

Survey results are typically posted nine days after the close of a given work week, providing a near real-time gauge of staffing industry employment and overall economic activity.

Participants include a stratified panel of small, medium, and large staffing companies that together provide services in virtually all sectors of the industry and account for more than one-third of U.S. staffing industry establishments and sales. Like the quarterly ASA Staffing Employment and Sales Survey, percentage changes in employment are derived by weighting responses according to company size categories.

Two numbers are reported weekly. The first is the weekly percentage change in staffing employment. The second is the index itself, which shows staffing employment trends over time. Both numbers are posted on the home page of the ASA Web site, *americanstaffing.net*.

The index is calculated by applying the weekly percentage change in employment to a reference value set at 100 for the week of June 12, 2006. The index reflects the percentage change in employment since that reference week—so when the index reaches 200, staffing employment would have doubled since June 2006. The index does not estimate total industry employment; the quarterly ASA Staffing Employment and Sales Survey provides that data.

ASA developed the index with the expertise of the Lewin Group, an economic research firm.

## Benchmarks

Both the quarterly ASA Staffing Employment and Sales Survey and the ASA Staffing Index weekly survey rely on periodic bench-

marks from the U.S. Census Bureau. In 2011, given newly released benchmark data from the 2007 Economic Census, ASA revised historical figures for staffing employment, sales, and payroll back to 1990 and ASA Staffing Index values to the index's inception in 2006.

The 2007 census data were used as benchmarks for the quarterly survey results from 2007 to present. The 2007 census data were also used as benchmarks for the index back to 2006; 2006 and 2007 were peak—and similar—years for the staffing industry, and the index covered only the last six and a half months of 2006, which were much more like 2007 than 2002, the previous census year (and hence the next available benchmark).

Data from the 2002 census were used as benchmarks for the quarterly survey results from 2002 through 2006. Data from the 1997 census, the first to use the North American Industry Classification System, more clearly delineated “temporary help services” than the Standard Industrial Classification it replaced.

In developing the quarterly survey methodology in 1992, DRI used the 1987 census of service industries as well as several other sources in estimating industry size and market share weights—long before the introduction of NAICS. Using the 1997 NAICS-based census provides better comparability and continuity of data for the 1990 to 2002 period than the original DRI estimates, particularly given that the principal interest in the results of the quarterly survey has been changes over time rather than absolute levels of employment, sales, and payroll.

## Comparison With BLS

ASA and BLS have similar—but different—survey methodologies. The ASA quarterly and weekly employment surveys generally track BLS monthly trends. However, because ASA bench-

marks to the U.S. Economic Census and BLS uses its own benchmarks, each organization draws different conclusions on total staffing employment. Moreover, BLS seasonally adjusts its data—and makes numerous revisions—while ASA does not seasonally adjust, and makes revisions only every five years when benchmark census data become available. Further complicating comparison, BLS counts corporate employees of staffing firms as well as temporary and contract employees, while ASA counts only temporary and contract employees. The most recent point of comparison would be the first quarter of 2012: BLS shows nonseasonally adjusted employment averaging 2.46 million; ASA has the count at 2.78 million—a difference of 11% to 13%, depending on which figure is used in the denominator, not taking into account the corporate employees in the BLS number.

### Research Partner

The quarterly ASA Staffing Employment and Sales Survey and the ASA Staffing Index weekly survey have been conducted by ASA research partner Inavero since 2007. Inavero also conducts the annual ASA sector benchmarking survey, annual membership survey, and annual Staffing World® satisfaction survey. ASA and Inavero are also working together to plan future staffing industry research projects.



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Continued from page 23

Economists Lawrence Katz of Harvard University and Alan Krueger of Princeton University (now chairman of President Obama's Council of Economic Advisers) studied the dramatic drop in the unemployment rate in the 1990s. They concluded that the growth of the staffing industry was responsible for up to 40% of the reduction in the unemployment rate. They argued that staffing firms, as labor market intermediaries, improve the efficiency of matching workers to jobs.<sup>80</sup>

On a smaller scale, staffing firms provide immediate employment—and real income—for workers and, for those seeking permanent jobs, a bridge to that end. In the ASA staffing employee survey, six in 10 respondents said they took a temporary or contract job as a way to get a permanent job. And a majority said temporary or contract work made them more employable because they could develop new or improve existing work skills, gain on-the-job experience, and strengthen their résumés.<sup>81</sup>

The expanded use of temporary

and contract workers may also have enhanced U.S. productivity, according to Macroeconomic Advisers' Chris Varvares, by making it easier for businesses to adjust their work forces as the economy changes. U.S. productivity trends have changed dramatically in the past decade. A productivity boom in the late 1990s has proven to be unexpectedly enduring. In the 1970s and 1980s, it contracted for long periods around recessions.<sup>82</sup>

Jobs, flexibility, bridge to permanent employment, choice of alternative

## Adapting to Change

Labor markets around the world are facing unprecedented challenges, according to "Adapting to Change," a report recently issued by the Boston Consulting Group on behalf of the International Confederation of Private Employment Agencies (Ciett, of which ASA is a member). The unpredictability of the global economy has left governments, businesses, and individuals struggling to tackle issues arising from high levels of unemployment, talent mismatches, and low levels of labor market participation—particularly among young adults.

The report (available at [www.ciett.org](http://www.ciett.org)—www is required in this case) examines the contributions the staffing industry can make to the recovering global economy. It shows that staffing firms better enable governments, businesses, and workers to adapt to change in today's rapidly evolving international economy by creating jobs, increasing work force participation, and delivering valuable employment to millions of people each day.

Following release of the report, Ciett launched a world-wide campaign to underscore the staffing industry's commitment to enhance the global economy. The campaign, dubbed "The Way to Work: A Job for Every Person, a Person for Every Job," pledges over the next five years to

- Support 280 million people in their job life
- Help 75 million young people enter the job market
- Upskill 65 million people, giving them more work choices
- Create 18 million more jobs
- Serve 13 million companies with the right talents to succeed

Ciett explains its Way to Work vision as follows:

- Directing the way to work—staffing is a job market entry point that also encourages transitions and enhances people's skills

- Offering a new way to work—staffing provides opportunities that meet employees' demands for flexibility and choice in assignments
- Giving people a great way to work—delivering good jobs
- Helping people to organize the way to work—matching skills and jobs better and faster

Ciett notes that the *values* of the staffing industry are centered on people, because work is an essential part of people's lives and identities. Ciett and its members are committed to helping people advance—through work.

- **Quality:** The staffing industry works to raise self-regulation and quality standards and is committed to fighting rogue and untrustworthy providers to get rid of abuses and illegal practices.
- **Inclusiveness:** The staffing industry is open to constructive dialogue with all relevant stakeholders—government, unions, advocacy groups, academics, and others—to ensure that every voice is heard. The staffing industry aims to increase work force participation and diversity.
- **Serving:** The staffing industry provides professional services. It is driven by client satisfaction—both businesses and the talent they seek. Staffing firms seek to support their various clients in meeting their diverse needs and expectations, and helping them adapt to the changing global economy and realize all of their ambitions.
- **Freedom:** The staffing industry provides more work opportunities for more people, thereby increasing freedom of choice in the job market. Staffing firms give people the freedom to choose when, where, and how they work.

Sources: "Adapting to Change," Boston Consulting Group and International Confederation of Private Employment Agencies (Ciett), October 2011; and "The Way to Work: An Ambitious New Global Commitment for the Private Employment Services Industry," Ciett press statement, May 24, 2012.

employment arrangements, and training—these are the benefits staffing firms offer to today's workers. Flexibility and access to talent—these are the benefits staffing firms bring to business clients. And jobs, labor market flexibility, efficient bridging to permanent jobs, training, lower unemployment rates, and enhanced productivity—these are the benefits staffing firms bring to the economy.

### Outlook

The U.S. staffing industry is expected to grow faster and add more new jobs over the next decade than just about any other industry, even taking into account the Great Recession. But how much will depend on the economy.

While staffing employment is a coincident economic indicator, economic growth is required for the industry to grow. About 2% annual growth in real GDP virtually ensures growth in temporary and contract staffing. Since ASA began its quarterly employment and sales survey in 1992, both staffing employment and sales grew in 100% of the quarters in which GDP grew at an annual pace of 2% or better.

### Economy

Economists surveyed by the *Wall Street Journal* in July 2012 predicted 2.0% growth in real GDP in 2012, 2.5% in 2013, and 2.9% in 2014<sup>83</sup>—from 2002 through 2007, the period between the two most recent recessions, annual GDP growth averaged 2.6%.<sup>84</sup>

The Federal Reserve Board's open market committee, which sets U.S. monetary policy, projected at its June 19–20, 2012, meeting that GDP growth would range from 1.9% to 2.4% in 2012, 2.2% to 2.8% in 2013, and 3.0% to 3.5% in 2014.<sup>85</sup>

BLS projects in its biannual employment outlook that the economy will grow at an annual rate of 2.9% for the period 2010–20.<sup>86</sup>

So the consensus is continued slow improvement—and, assuming a U.S. fiscal cliff and European recession are avoided, sufficient economic growth to spur further hiring, including expansion of the staffing industry.

### Jobs

“BLS projects that total employment in the U.S. will rise 20.5 million between 2010 and 2020,” according to the agency's most recent employment outlook.<sup>87</sup> That's an increase of 14.3% over the decade, reflecting an average annual increase of 1.3%. “The health care and social assistance sector and the professional and business services sectors [*editor's note: one of which is staffing*] will add more than a third of all new jobs and will account for almost a fourth of total employment by 2020.

“The goods-producing sectors will rebound from the dramatic employment loss experienced during the previous decade, some of which was caused by the recession. [An] increase in the number of construction jobs will lead the growth in employment in the goods-producing domain of the economy and will mitigate some of the job losses in other goods-producing sectors. The loss of manufacturing jobs also will slow, compared with the previous decade's loss of jobs in the same sector.”

BLS expects the largest employment declines will be in the federal government and agriculture.

### Staffing and Recruiting

The employment services industry—which is primarily staffing—will grow two-thirds faster than overall employment, according to BLS. Employment services will add 631,300 jobs by 2020, a 23.2% increase over 2010, making it the 12th largest job-growth industry (see Figure 27). The annual rate of growth over the decade will average 2.1%.<sup>88</sup>

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### Figure 27: Employment Services—Mostly Staffing—Expected to Be Among Top Job-Growth Industries.

Number of New Jobs in the Top 20 Industries With the Largest Wage and Salary Employment Growth, 2010–20 (Thousands)



Source: U.S. Bureau of Labor Statistics

ated that staffing and recruiting sales will increase 10.3% in 2012 and 7.1% in 2013.<sup>88</sup>

Presumably these BLS and SIA estimates treat the staffing industry’s growth as principally a cyclical effect. But if, in fact, a structural shift is occurring and temporary and contract staffing are becoming a more important part of America’s work force, then even more-robust growth could be on the horizon.

As Randstad CEO Ben Noteboom has observed, “There is no sign that the rise in penetration will stop.”<sup>89</sup> ■

*Steven P. Berchem, CSP, is chief operating officer of the American Staffing Association. Alexandra Karaer, ASA director of research, assisted in the preparation of this analysis. To comment on this article, e-mail [success@americanstaffing.net](mailto:success@americanstaffing.net).*

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**From:** [Berkowitz, Deborah - OSHA](#)  
**To:** [Michaels, David - OSHA](#)  
**Subject:** Ben's paper  
**Date:** Thursday, May 30, 2013 1:21:29 PM  
**Attachments:** [Employment Services Workers May 2013.docx](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)

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Deborah Berkowitz  
Chief of Staff  
Occupational Safety and Health Administration  
202-693-2000



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**From:** Seigel, Ben - OSEC  
**Sent:** Thursday, May 30, 2013 1:10 PM  
**To:** Berkowitz, Deborah - OSHA  
**Subject:** RE: can you call..

Here's the paper draft. It's still in the review process but you could share it with David as it has the stats. I could also pull out some bullets from here and we can share both the bullets and the paper...

---

**From:** Berkowitz, Deborah - OSHA  
**Sent:** Thursday, May 30, 2013 12:56 PM  
**To:** Seigel, Ben - OSEC  
**Subject:** can you call..

Hi Ben, David may do an interview tomorrow about our initiatives to protect temporary workers—and I wanted to touch base with you to get him a few bullets for the interview on the scope of temporary workers etc...

---

Deborah Berkowitz  
Chief of Staff  
Occupational Safety and Health Administration  
202-693-2000



**Comparison of BLS Definitions of Contingent and Alternative Work Arrangements**

**with**

**Definition in GAO Report “Contingent Workforce, Size, Characteristics, Earnings and Benefits (GAO-15-168R)**

I. Definitions

- In 1989 BLS developed a definition of “Contingent Work” due to the lack of a consensus as to what constituted a contingent worker. The defining characteristic underlying BLS’s definition of contingent work is a relationship that is not structured to last. The job is inherently insecure.

*BLS’s Conceptual Definition*

*Contingent work is any job in which an individual does not have an explicit or implicit contract for long-term employment.*

- GAO defines contingency more broadly based on what they describe as the employer-employee relationship that encompasses other measures of job instability beyond job security such as unpredictable hours and lack of access to employer provided benefits. GAO adopted this approach due to what they believe is a lack of consensus of what constitutes contingent work and an interest in other aspects of employment relationships.

II. Measurement

- BLS developed the Contingent Worker and Alternative Work Arrangement Supplement to the CPS that was administered in 1995, 1997, 1999, 2001 and 2005. This supplement was constructed to obtain a measure of contingent workers and workers in 4 alternative work arrangements

- Using data from the supplement BLS constructed 3 estimates of contingent workers, with the first estimate being the narrowest and the third estimate being the broadest.

**Estimate 1 Wage and salary workers who expect that their jobs will last for an additional year or less and who had worked at their jobs for 1 year or less.** Self-employed workers and independent contractors are excluded. For temporary help and contract company workers contingency is defined based on past and expected job tenure with the temporary help or contact firm not with a specific client to whom they are assigned.

Estimate 2 **Workers including the self-employed and independent contractors who expect their employment to last for an additional year or less and who had worked at their jobs (or been self-employed) for 1 year or less.** For temporary help and contract workers, contingency is determined on the basis of the expected duration and tenure with the client.

Estimate 3 **Workers who do not expect their jobs to last.** Wage and salary workers are included even if they already have held the job for more than 1 year and expect to hold the job for at least an additional year. The self-employed and independent contractors are included if they expect their employment to last for an additional year or less and they had been self-employed or independent contractors for 1 year or less.

- In 2005, BLS estimated that under the first estimate 1.8% of the employed were contingent, under the second estimate 2.3% of the employed were contingent, and under the third estimate 4.1% of the employed were contingent.

- Using data from the supplement, BLS also constructed estimates of 4 alternative work arrangements. Temporary Help Agency Workers; Contract Company Workers; Independent Contractors, Independent Consultants and Freelancers; and On-Call Workers and Day Laborers.

- \* The defining characteristic of Temporary Help Agency and Contract Company Workers is that their employment is arranged through an intermediary. The defining characteristic of On-Call Workers and Independent Contractors is that the place, time and quantity of their work is potentially unpredictable. The later characteristic could also apply to Temporary Help Agency Workers.

- \* Contract Company Workers are defined as workers who are employed by a company that provides them or their services to others under contract and who are usually assigned to only one customer and usually work at the customer's worksite. The measurement of contract company workers is narrower than a measurement of subcontracting or outsourcing.

- GAO constructed a broader measure of contingent using data from the Contingent Worker and Alternative Work Arrangement supplements. Using this data GAO classified workers into 8 mutually exclusive groups: Temporary Help Agency Workers; Direct Hire Temporaries; On-Call Workers and Day Laborers; Contract Company Workers; Independent Contractors; Regular Self Employed Workers (who are not identified as Independent Contractors, Consultants or Freelancers); Regular Part-time Workers (who are not in another group), and Regular Full-time Workers.

- GAO defines Temporary Help Agency Workers, Direct Hire Temporaries, On-Call Workers and Day Laborers, and Contract Company Workers, as "Core Contingent". GAO also has an expanded estimate that includes Independent Contractors, Regular Self Employed Workers (who are not identified as Independent Contractors, Consultants or Freelancers), and Regular Part-time Workers. In essence, under its expanded measure, GAO classifies any worker who is not a full-time wage and salary worker as a contingent worker.

- Evidence indicates that many workers in GAO’s measure are not in short term jobs.
  - In 2005, only 9.1% of part-time workers were contingent under the broadest BLS definition.
  - The average job tenure of part time workers in 2014 was 4.8 years, while the median tenure was 2.2 years (compared to the average of 8.2 years and the median of 5.3 years for full-time workers).
  - In 2005, only 19.5% of contract company workers were contingent under the broadest BLS definition.
  - In 2005, only 3.4% of independent contractors, consultants, and freelancers were contingent under the broadest BLS definition.
  
- Although it may be true for some of the arrangements that GAO identifies, there is no evidence that the hours of workers in these arrangements vary unpredictably. There also is no evidence that workers in these arrangements have difficulty obtaining a minimum number of hours of work per week.
  
- Although workers in the arrangements that GAO identifies as being contingent have less access to health insurance and retirement plans, a substantial proportion of those that they identify as non-contingent also do not have access to health insurance or retirement plans.
  - The National Compensation Survey estimates that in March 2014 14% of full-time private industry workers did not have access to employer provided medical care plans, while 26% did not have access to employer provided retirement plans.
  
- Many workers in the arrangements GAO identifies would prefer to be in these arrangements.
  - In 2014, 78% of those who usually worked part time did so voluntarily (individuals either said that they did not want to work full time or provided a personal reason for working part time).
  - In 2005, 82.3% of independent contractors, 46.1% of on-call workers and 32.1% of temporary help agency workers, said “no” they would not want to be in a different type of work arrangement than the one they are currently in.

- GAO obtains quite a large estimate of the proportion workers who are contingent using their broader definition - almost 31% in 2005
  - Part time workers constitute the largest proportion of workers that GAO classifies as contingent.
  
- GAO used data from the General Social Survey (GSS) administered in 2010 to obtain estimates of 6 of the groups they identified as contingent - Temporary Help Agency Workers, On-Call Workers and Day Laborers, Contract Company Workers, Independent Contractors, and Regular Self Employed Workers (who are not identified as Independent Contractors, Consultants or Freelancers).
  - The GSS does not collect information on the temporary nature of individuals' employment. Therefore, it is not possible to construct the BLS measures of contingent workers using GSS data. In addition, it is not possible for GAO to construct a measure of direct hire temporaries using GSS data. In 2005, direct hire temporaries constitutes approximately 37.5 percent of GAO's "core contingent" estimate.
  
  - As the GAO report notes, the GSS is a small household survey, so it is difficult to measure smaller subsets of the labor force with precision. The GAO report also noted that the GSS is not designed to obtain population totals.
  
- GAO also analyzes data from the SIPP. Unlike CWAWS and GSS, SIPP does not ask about specific work arrangements (e.g., on-call or company contract workers). Rather, SIPP asks if respondents work for an employer, are self-employed, both, or are in some other arrangement—defined as including odd jobs, on-call work, day labor, one-time jobs, and informal arrangements, such as babysitting, lawn mowing, or leaf raking for neighbors. Using this question, GAO estimated that in 2008 1.3% of the workforce was contingent. The SIPP measure is narrower than BLS's measure because it only counts those who are "in some other arrangement". Individuals who work for an employer, even if it were for a short duration, would be excluded using the SIPP question.

### III. Discussion

- With concerns about the rise of a “disposable” or “just-in-time” workforce, BLS believes it is important to maintain a focus on the insecurity of work when discussing and defining contingent workers. The focus on job insecurity will allow a focus on the lack of benefits a worker may achieve from a long-term employment relationship.
- We acknowledge that it is important and of interest to examine other types of work arrangements. However, in defining and examining these arrangements, we believe it is important to articulate the underlying characteristic of the arrangement and why it is of interest. In addition, we believe that while important indicators of the quality of jobs- wages, employer provided health insurance, paid leave, variable hours, and access to retirement plans do not define a work arrangement.
- We believe that analyzing individuals in different types of work arrangements as a single group can mask important differences. For example, the hours of work, and rate of pay independent contractors are likely to be quite different than those of temporary help agency workers.

**(b)(5)**

**(b)(5)**

**(b)(5)**



# U.S. DEPARTMENT OF LABOR



## Establishment Record Matching

VERSION 1.0

FEBRUARY 2014

DRAFT

























**Fatality Assessment and Control Evaluation (FACE) Program Cases and Documents  
Indicating a Dual Employment Arrangement**

(Prepared by (b) (6) )

**Total documents represented on the spreadsheet:** 19 FACE Investigations plus two Safety Alerts. One Alert was issued by Michigan FACE and one by Massachusetts FACE. Both summarize surveillance data and include recommendations from FACE investigations, <http://www.oem.msu.edu/userfiles/file/MiFACE/TemporaryWorkerHA17.pdf> and <http://www.mass.gov/eohhs/docs/dph/occupational-health/temp-workers.pdf>

**Report Recommendations:**

1. More in-depth job-specific training should be provided by the temporary staffing agency and the employer.
2. Training requirements of the employer and the temporary staffing agency should be more clearly defined.
3. Temporary employment service agencies should work with secondary employers to establish specific job descriptions and training criteria.
4. Job hazard analyses should be conducted for every job assigned to temporary employees.
5. Extremely hazardous jobs should not be assigned to temporary workers.
6. Employer and temporary agency should have an established comprehensive worker safety program that includes training in hazard recognition and avoidance.
7. Mandatory policies for health and safety practices should be required in franchise agreements.
8. Employers should be knowledgeable of the safety and health training requirements for each job assigned to a temporary worker.

**Brief description of hazards that contributed to the temporary worker fatalities:**

- Lack of manlift safety procedure knowledge.
- Worker did not have the physical capabilities to perform required tasks.
- Language barriers.
- No fall protection.
- Worker was not familiar with propane hazards in enclosed areas.
- No machine guarding.
- No awareness of hazards associated with in-running nip points or pinch points of machinery.
- Pre-assignment job hazard analyses were not conducted.
- Workers did not have adequate knowledge of specific hazards for operating or working around powered industrial trucks.
- Workers did not have adequate training or knowledge of lockout-tagout procedures and requirements.
- Workers performing duties of roadway flaggers did not have adequate training.
- Electrical work was being performed by workers who did not possess proper electrician certifications, training, or knowledge.

**Employment and worker characteristics**

1. Decedent occupation/duties at the time of the fatality:
  - Unskilled labor – 12 (general laborers, helpers, assistants, janitor)
  - Semi-skilled labor – 6 (flagger, painter, conveyor operators)
  - Skilled labor – 1 (electrician)

2. The average age of the decedent was 35 years old. The oldest being 56 and the youngest 18.

3. The time the decedent had been working at the worksite prior to the fatality:

- Less than one week – 1
- Less than one month – 4
- One to six months – 7
- Seven months to one year – 3
- More than one year – 4

4. Not all of the FACE reports contained information on the number of temporary workers and/or the number of permanent workers. Where these numbers were reported, the average percentage of temporary workers at the work site was 46% of the total number of employees. Percentages ranged from a low of 4%, to the entire workforce being supplied by a temporary employment agency.

**From:** [Pannocchia, Orlando - SOL](#)  
**To:** [Barab, Jordan - OSHA](#)  
**Cc:** [Rosenthal, Ann - SOL](#); [Phillips, Heather - SOL](#); [James, Charles - SOL](#); [Moar, Ian - SOL](#); [Kapust, Patrick - OSHA](#)  
**Subject:** FW: McDonalds.docx  
**Date:** Tuesday, March 17, 2015 3:16:56 PM

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**(b)(5) -- attorney client**



*Orlando J. Pannocchia*  
Counsel for Regional Litigation and Legal Advice  
Office of the Solicitor, OSH Division

U.S. Department of Labor  
(202) 693-5463

*This message may contain information that is privileged and exempt from disclosure under applicable law. Do not share or copy without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify me immediately.*

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**From:** Barab, Jordan - OSHA  
**Sent:** Tuesday, March 17, 2015 11:25 AM  
**To:** Rosenthal, Ann - SOL; Moar, Ian - SOL  
**Cc:** Galassi, Thomas - OSHA; Kapust, Patrick - OSHA  
**Subject:** WSJ McDonalds.docx

This article discusses OSHA inspections of McDonalds in relation to the NLRB "joint employer" decision.

E5 Attorney-client  
[Redacted text block]

Thanks.

**From:** [Cantrell, Margaret - OCIA](#)  
**To:** [Garza-Ahlgren, Kathryn J - OCIA](#); [Linares, Elva E - OCIA](#); [Michaels, David - OSHA](#); [Barab, Jordan - OSHA](#); [Sander, Kirk - OSHA](#); [Jayaratne, Adri - OCIA](#); [McGinnis, Laura K - OPA](#)  
**Subject:** FW: Alert: Senators Ask OSHA to Explain Joint Employer Policy  
**Date:** Thursday, October 29, 2015 9:18:45 AM

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FYI in case you missed it.

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**From:** Bloomberg Government [mailto:alerts@bgov.com]  
**Sent:** Wednesday, October 28, 2015 7:26 PM  
**To:** Cantrell, Margaret - OCIA  
**Subject:** Alert: Senators Ask OSHA to Explain Joint Employer Policy



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## Senators Ask OSHA to Explain Joint Employer Policy

October 28, 2015 07:26PM ET | Bloomberg BNA

**Key Takeaway:** Three Republican Senate leaders have demanded that the Labor Department explain why OSHA is apparently planning to hold franchisors jointly liable for the safety violations of a franchisee.

**Potential Impact:** The alleged change in policy could result in higher fines, business representatives fear.

**What's Next:** Alexander, Lankford and Johnson have requested a response by Nov. 10.

Oct. 28 (BNA) -- Following the lead of their House counterparts, a trio of Republican Senate leaders demanded to know why the Occupational Safety and Health Administration is, in their view, planning to hold franchisors jointly liable for the safety violations of a franchisee.

The Oct. 27 written request stems from a leaked internal memo directing OSHA investigators to ask employers for information about a long list of items, including franchisor fees and the approval of signage.

Since that memo went public, Republicans have repeatedly suggested that it proves OSHA's desire to link unrelated companies and thereby drive higher fines.

The new letter "raises questions about whether DOL and the National Labor Relations Board have a coordinated effort underway to change joint employer laws," an allusion to the board's Aug. 27 decision that a company can be the joint employer of workers provided by another company, as long as both firms share or co-determine matters governing the essential terms and conditions of employment (Browning-Ferris Indus. of Calif., Inc., N.L.R.B., 362 NLRB No. 186, 8/27/15; 45 OSHR 908, 9/10/15).

### Contradiction of Testimony?

Although Labor Secretary Thomas Perez told a Senate Appropriations subcommittee in March that he was unaware of any OSHA action to hold franchisors jointly liable for safety violations, the memo "shows OSHA has been working on such a policy," wrote Sens. Lamar Alexander (R-Tenn.), James Lankford (R-Okla.) and Ron Johnson (R-Wis.) (45 OSHR 338, 4/2/15).

House Republicans made a nearly identical request Oct. 14 (45 OSHR 1042, 10/15/15).

Randy Rabinowitz, executive director of the Occupational Safety and Health Law Project, told Bloomberg BNA earlier this month that OSHA's memo merely reaffirms existing law (45 OSHR 1009, 10/8/15).

Rabinowitz said the NLRB ruling should have no bearing on OSHA's multi-employer worksite policy, which

specifically states that the employer who has actual control of the worksite, or who has the ability to exercise control by contract, may be a controlling employer.

"Regardless of what has happened at the board, OSHA has always asserted the right to cite the controlling employer for hazards," Rabinowitz said.

The senators have demanded that the Labor Department provide all documentation relating to the memo, as well as to joint employer issues between the department and the NLRB.

They also want Perez to explain what changed between the time he appeared before the spending subcommittee in March and the unearthing of the memo in August.

Alexander, Lankford and Johnson have requested a response by Nov. 10.

#### House Committee Passes Bill

A House committee approved a bill Oct. 28 that reverses a recent National Labor Relations Board decision on joint employer liability.

The Protecting Local Business Opportunity Act (H.R. 3459) passed by a 21-15 vote.

The bill would affirm that an employer must have "actual, direct and immediate" control over an employee to be considered a joint employer.

"The National Labor Relations Board has played a leading role in advancing the president's flawed, top-down approach to the economy, and its effort to redefine what it means to be an employer is just the latest example," said Rep. John Kline (R-Minn.), the panel's chairman, in a statement.

The bill "will stop a handful of government bureaucrats from upending countless small businesses and help working families and job creators succeed," Kline said.

#### Democrats Push Back

Democrats on the panel repudiated the legislation, arguing that the traditional joint-employer test that the NLRB adopted in the Browning-Ferris decision is "a longstanding and traditional test that was in place prior to 1984."

The board's decision "does not upend the business model for subcontractors and franchising businesses," according to a statement issued by House Democrats. "If an employer or franchisor wants to be relieved of joint employer liability, all it needs to do is relinquish control over employment practices related to its subcontractors or franchisees."

To contact the reporter on this story: Stephen Lee in Washington at [stephenlee@bna.com](mailto:stephenlee@bna.com)

To contact the editor responsible for this story: Larry Pearl at [lpearl@bna.com](mailto:lpearl@bna.com)

For More Information

The Democrats' is available at <http://tinyurl.com/pfnmtad>.

#### News Alert

**osha**

Relevance: HIGH

Keywords: "occupational safety and health administration" (Exact Match)

Legacy Topics Dropdown: Congress, U.S.

Which sources do you want?: All

Published At:

**From:** [Ackerman, Robin - SOL](#)  
**To:** [Michaels, David - OSHA](#)  
**Subject:** FW: Canonical Name meeting  
**Date:** Tuesday, March 04, 2014 12:48:00 PM  
**Attachments:** [Establishment Matching Summary.docx](#)  
[Establishment Matching.docx](#)

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**E5 Attorney-client**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**From:** Michaels, David - OSHA  
**To:** "[Wagner, Gregory R. \(CDC/NIOSH/OD\)](#)"  
**Subject:** FW: Comments on US paper on Changing Structure of Work for US/EU conference  
**Date:** Friday, July 10, 2015 10:42:00 AM  
**Attachments:** [US EU Draft Topic Paper on the Structure of Work Frumin 070915.docx](#)  
[Comparison of BLS and GAO Definitions of Contingent and Alternative Work Arrangements 061015.docx](#)

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FYI

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**From:** Eric Frumin [mailto:[Eric.Frumin@changetowin.org](mailto:Eric.Frumin@changetowin.org)]  
**Sent:** Thursday, July 09, 2015 11:50 PM  
**To:** Gill, Eleanor - OSHA; Michaels, David - OSHA; Main, Joseph - MSHA; Howard, John - NIOSH; 'Pseminar@aficio.org'; 'mwright@usw.org'; Weil, David - WHD; aponce@etui.org  
**Cc:** Dougherty, Dorothy - OSHA; Kerr, Cheryl J. - OSHA; Berkowitz, Deborah - OSHA; Barab, Jordan - OSHA; Galassi, Thomas - OSHA; Ross, Benjamin - OSHA; Kole, Jennifer A. - OSHA; Sander, Kirk - OSHA; Frumin, Eric  
**Subject:** Comments on US paper on Changing Structure of Work for US/EU conference

Eleanor/Jennifer and others at OSHA/MSHA/NIOSH:

Attached is my suggested revision for the paper on the Changing Structure of Work. I am providing it to selected agency staff (including Tom and Ben, given their role in the Workgroup). I am also including Aida Ponce from ETUI, the EU Co-Chair, as well as Peg and Mike.

I am not providing it at this time to all the other US participants. I'll leave that to you.

These comments basically add references to two additional important sources: the recent GAO report on the contingent workforce, and a new report on the issue of franchising as an important contributor of the overall burden of contingent work – including the negative impacts on workplace safety, health and psychosocial factors.

If I understand the history correctly, the franchising model's impact on the work environment has not apparently been a subject of prior US/EU discussions on contingent workers (which has focused on contractor arrangements). I hope you have the ability to include references to this important and growing portion of the contingent workforce problem. This discussion draws heavily on recent trade union research in both the US and the EU on the fast food sector – one of the largest and fastest-growing parts of the franchising version of the "fissured workplace."

Also attached is the BLS commentary on the GAO report which I have referenced in Fn. 1.

Please let me know if you have any questions.

Thanks for the opportunity to comment, however brief the time available to do so.

Eric Frumin  
Health and Safety Director  
Change to Win  
Direct: 212-341-7065  
Mobile: 917-209-3002  
FAX: 212-341-7078  
90 Broad St., Room 710  
New York, NY 10004  
[eric.frumin@changetowin.org](mailto:eric.frumin@changetowin.org)  
[www.changetowin.org](http://www.changetowin.org)

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**From:** Gill, Eleanor - OSHA [<mailto:Gill.Eleanor@dol.gov>]

**Sent:** Tuesday, June 30, 2015 4:36 PM

**To:** Michaels, David - OSHA; Main, Joseph - MSHA; Howard, John - NIOSH; 'Pseminar@aflcio.org'; 'mwright@usw.org'; Eric Frumin; [Debbie.Hersman@nsc.org](mailto:Debbie.Hersman@nsc.org); 'Joe Trauger'; Weil, David - WHD

**Cc:** Dougherty, Dorothy - OSHA; Kerr, Cheryl J. - OSHA; Berkowitz, Deborah - OSHA; Barab, Jordan - OSHA; 'lcn9@cdc.gov'; Johnson, Jim - NSC; 'Anna Wolak'; 'Scott.madar@orchse.com'; 'Amanda Wood'; McLeod, Lydia - WHD; Brooks, Eric - OSHA; Harbin, Eric - OSHA; Edens, Mandy - OSHA; Jordan, Todd - OSHA; Galassi, Thomas - OSHA; Ross, Benjamin - OSHA; Haycraft, Hazel L - MSHA; Payne, Henry - OSHA; Barnes, James - OSHA; Oliver, Cathy - OSHA; Kole, Jennifer A. - OSHA; Lemay, Heather - OSHA; Garner, Christie - OSHA; Sparding, Kristin L - ILAB; Kalinowski, Doug - OSHA; Jones, Tina - OSHA; Clark, Theresa - OSHA; Sander, Kirk - OSHA; Hermanson, John - OSHA; London, Lisa D; 'pas4@cdc.gov'; Geraci, Charles L. (Chuck) (CDC/NIOSH/EID; Hill, Ryan D. (CDC/NIOSH/OD; [gwagner@cdc.gov](mailto:gwagner@cdc.gov)

**Subject:** Update- 2015 US-EU Conference

Greetings all,

We are moving forward with the 2015 US/EU conference. As an update, we will be sending out the formal invite letters to you to solicit to your members or designee shortly.

Attached are the draft US papers, *“Preventing Hazards in Energy Production”* and *“Health and Safety and the Changing Structure of Work”* and the draft EU paper on *“Nanotechnology at the Workplace”*. We have not received the draft EU paper on the joint topic. Please review and provide your sector’s comments on the draft papers by COB, Tuesday, July 9<sup>th</sup>.

FYI: The draft US papers have been shared with the EC and the EU Co-chairs. Also, we have exchanged contact information (Chairs and Co-chairs) to facilitate the teleconferences. In response, on June 16<sup>th</sup>, the EC informed our side that our papers were transmitted to their Chair / Co-chairs and they are working on the papers and hope to provide them by the end of the week (two weeks ago) or early last week. As of to date, we have not received them. However, their EU Co-chair on the US Energy topic will not be available for the next three weeks. This could be the delay in the EC response. Nevertheless, I will keep you abreast.

Finally, below are the names and contact information for the US Chair and EU Co-chair for topic #1 *“Preventing Hazards in Energy”* and the EU Chair and US Co-chair for topic #2 *Nanotechnology at the Workplace* and the US and EU Co-chairs for the US/EU joint topic #3, *“Health and Safety and the Changing Structure of Work”*. See below.

### **(1) US Topic: Preventing Hazards in Energy Production**

#### **Mr. Michael J. Wright (Labor) - (US Chair)**

Director, Health and Safety and Environment Department  
United Steelworkers (USW)

*The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,  
Allied Industrial and Service Workers International Union*

Tel: 412-562-2580

[mwright@usw.org](mailto:mwright@usw.org)

**Mr Vaidotas LEVICKIS (Industry)- (EU Co-Chair)**

Lithuanian Business Employers Confederation

Algirdo 31

LT-03219 Vilnius

LITHUANIA

e-mail: [vaidas@lvdk.w3.lt](mailto:vaidas@lvdk.w3.lt)

Please note that Mr. Levickis will not be available over the next three weeks. EU contact point will be during this period:

**Mr Kevin MYERS (Government)**

Deputy Chief Executive, Health and Safety Executive

Redgrave Court

Merton Road

Bootle

MERSEYSIDE L20 7HS United Kingdom

e-mail: [Kevin.myers@hse.gsi.gov.uk](mailto:Kevin.myers@hse.gsi.gov.uk)

**(2) EU Topic: Nanotechnology at the Workplace**

**MD Professor Kai SAVOLAINEN (Government) - (EU Chair)**

Director Nanosafety Research Centre, Finnish Institute of Occupational Health Nanosafety Research Centre

Topeliuksenkatu 41 aA

Helsinki, Finland 00250

e-mail: [kai.savolainen@ttl.fi](mailto:kai.savolainen@ttl.fi)

**Chuck Geraci, Ph.D., CIH (Government)- (US Co-Chair)**

Associate Director for Nanotechnology.

National Institute for Occupational Safety and Health

1150 Tusculum Ave

Cincinnati OH 45226

513.533.8339

[ciu9@cdc.gov](mailto:ciu9@cdc.gov)

**(3) US/EU Joint Topic: Health and Safety and the Changing Structure of Work**

**Mr. Thomas Galassi (Government)- (US Co-Chair)**

Director, Directorate of Enforcement Programs

Occupational Safety and Health Administration (OSHA)

Tel. 202-693-2100

[Galassi.Thomas@dol.gov](mailto:Galassi.Thomas@dol.gov)

**Ms Aida PONCE (Labor)- (EU Co-Chair)**

European Trade Union Institute - ETUI

Boulevard du Roi Albert II, bte 5  
BE-1210 Brussels Belgium  
e-mail: [aponce@etui.org](mailto:aponce@etui.org)

-

Thanks and please enjoy the rest of your day!

Many, many thanks!

Eleanor Gill  
International Program Analyst  
202-693-1937 (O)  
202-693-1641 (F)  
[gill.eleanor@dol.gov](mailto:gill.eleanor@dol.gov)

**From:** [Michaels, David - OSHA](#)  
**To:** [Berkowitz, Deborah - OSHA](#); [Shor, Glenn - OSHA](#)  
**Subject:** FW: ideas on data sources and research questions for enforcement evaluation  
**Date:** Wednesday, January 25, 2012 5:49:01 PM  
**Attachments:** [key data for DOL evaluation of OSHA enforcement.doc](#)

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[Eric's notes](#)

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**From:** Eric Frumin [mailto:[eric.frumin@WorkersUnitedUnion.org](mailto:eric.frumin@WorkersUnitedUnion.org)]  
**Sent:** Monday, January 25, 2010 12:16 PM  
**To:** Michaels, David - OSHA  
**Cc:** Barab, Jordan - OSHA; Fairfax, Richard - OSHA; [pseminar@aficio.org](mailto:pseminar@aficio.org)  
**Subject:** ideas on data sources and research questions for enforcement evaluation

David:

Attached is a set of ideas which you might find helpful in your planning for the forthcoming enforcement evaluation, as well as for the meeting this week on data issues generally. Please feel free to share them with others.

**Eric Frumin**

Safety and Health Coordinator

Change to Win

Direct: (646) 448-6415

Cell Phone: (917) 209-3002

Email: [eric.frumin@workersunitedunion.org](mailto:eric.frumin@workersunitedunion.org)

31 West 15th Street, 3rd floor

New York, NY 10011

[www.changetowin.org](http://www.changetowin.org)

**From:** Barab, Jordan - OSHA  
**To:** [Cantrell, Margaret - OCIA](#)  
**Subject:** FW: Joint employer/OSHA story: POLITICO-- SOL--please see below  
**Date:** Wednesday, August 26, 2015 10:05:00 AM  
**Attachments:** [OSHA.pdf](#)

---

**From:** Berkowitz, Deborah - OSHA  
**Sent:** Tuesday, August 25, 2015 1:01 PM  
**To:** Rosenthal, Ann - SOL; Pannocchia, Orlando - SOL; Galassi, Thomas - OSHA; Barab, Jordan - OSHA  
**Cc:** Dougherty, Dorothy - OSHA  
**Subject:** FW: Joint employer/OSHA story: POLITICO-- SOL--please see below

Ann and Orlando— Politico has a copy of an SOL memo. I have not see this before—so sending to you. I will also call.

Debbie

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**From:** McGinnis, Laura K - OPA  
**Sent:** Tuesday, August 25, 2015 12:43 PM  
**To:** Berkowitz, Deborah - OSHA  
**Subject:** FW: Joint employer/OSHA story: POLITICO

Debbie,

Politico is writing on this memo today. I haven't yet called him to see what his questions are. I wanted to check in with you first and see if you could provide a little more context about the document.

*Laura K, McGinnis*  
*Office of Public Affairs, U.S. Department of Labor*  
*202.693.4653 (phone) | 202.251.7929 (Blackberry)*  
<https://twitter.com/USDOL>

---

**From:** Versen, Joseph H - OPA  
**Sent:** Tuesday, August 25, 2015 11:55 AM  
**To:** McGinnis, Laura K - OPA  
**Subject:** FW: Joint employer/OSHA story: POLITICO

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**From:** Brian Mahoney [<mailto:bmahoney@politico.com>]  
**Sent:** Tuesday, August 25, 2015 11:54 AM  
**To:** Versen, Joseph H - OPA  
**Subject:** Joint employer/OSHA story: POLITICO

Hi Joseph: I'm reporting today on an OSHA memo I obtained regarding joint employer liability and franchisors. Can you connect me with someone at OSHA to discuss the document? It is attached here. Thank you,

Brian

Brian Mahoney

Labor Reporter, POLITICO Pro

[bmahoney@politico.com](mailto:bmahoney@politico.com)

O: 703-341-4677

C: 862-236-0461

**From:** [Barab, Jordan - OSHA](#)  
**To:** [Henry, Dori B - OPA](#); [Berkowitz, Deborah - OSHA](#); [McGinnis, Laura K - OPA](#); [Rosenthal, Ann - SOL](#)  
**Cc:** [Galassi, Thomas - OSHA](#); [Dougherty, Dorothy - OSHA](#)  
**Subject:** Fw: Joint employer/OSHA story: POLITICO  
**Date:** Tuesday, August 25, 2015 2:40:19 PM

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E5 Attorney-client [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**From:** McGinnis, Laura K - OPA  
**Sent:** Tuesday, August 25, 2015 1:46 PM  
**To:** Berkowitz, Deborah - OSHA  
**Cc:** Lawder, Jesse - OPA; Henry, Dori B - OPA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

Thanks! I'll await your feedback.

*Laura K, McGinnis*  
*Office of Public Affairs, U.S. Department of Labor*  
*202.693.4653 (phone) | 202.251.7929 (BlackBerry)*  
<https://twitter.com/USDOL>

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**From:** Berkowitz, Deborah - OSHA  
**Sent:** Tuesday, August 25, 2015 1:45 PM

**To:** McGinnis, Laura K - OPA  
**Cc:** Lawder, Jesse - OPA; Henry, Dori B - OPA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

Laura—we will have edits. Not quite right here.

---

**From:** McGinnis, Laura K - OPA  
**Sent:** Tuesday, August 25, 2015 1:42 PM  
**To:** Berkowitz, Deborah - OSHA  
**Cc:** Lawder, Jesse - OPA; Henry, Dori B - OPA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

Hey, Debbie! Here's my proposed response. Let me know what you think:

The joint employer responsibility is well established in case law under the OSHA Act. The information in this document is meant to help OSHA inspectors determine whether or not a joint employer responsibility exists.

*Laura K, McGinnis*  
*Office of Public Affairs, U.S. Department of Labor*  
*202.693.4653 (phone) | 202.251.7929 (BlackBerry)*  
<https://twitter.com/USDOL>

---

**From:** Berkowitz, Deborah - OSHA  
**Sent:** Tuesday, August 25, 2015 1:03 PM  
**To:** McGinnis, Laura K - OPA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

Just tried calling you..will call again.. I've reached out to SOL

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**From:** McGinnis, Laura K - OPA  
**Sent:** Tuesday, August 25, 2015 12:43 PM  
**To:** Berkowitz, Deborah - OSHA  
**Subject:** FW: Joint employer/OSHA story: POLITICO

Debbie,

Politico is writing on this memo today. I haven't yet called him to see what his questions are. I wanted to check in with you first and see if you could provide a little more context about the document.

*Laura K, McGinnis*  
*Office of Public Affairs, U.S. Department of Labor*  
*202.693.4653 (phone) | 202.251.7929 (BlackBerry)*  
<https://twitter.com/USDOL>

---

**From:** Versen, Joseph H - OPA  
**Sent:** Tuesday, August 25, 2015 11:55 AM  
**To:** McGinnis, Laura K - OPA  
**Subject:** FW: Joint employer/OSHA story: POLITICO

---

**From:** Brian Mahoney [<mailto:bmahoney@politico.com>]

**Sent:** Tuesday, August 25, 2015 11:54 AM

**To:** Versen, Joseph H - OPA

**Subject:** Joint employer/OSHA story: POLITICO

Hi Joseph: I'm reporting today on an OSHA memo I obtained regarding joint employer liability and franchisors. Can you connect me with someone at OSHA to discuss the document? It is attached here. Thank you,

Brian

Brian Mahoney

Labor Reporter, POLITICO Pro

[bmahoney@politico.com](mailto:bmahoney@politico.com)

O: 703-341-4677

C: 862-236-0461

**From:** [Maxwell, Mary Beth - OSEC](#)  
**To:** [Michaels, David - OSHA](#); [Ortiz, M. Lucero - OSHA](#)  
**Subject:** FW: Rough draft agenda for NELP outsourcing/ subcontracting conference  
**Date:** Monday, March 31, 2014 9:58:46 AM  
**Attachments:** [Subcontracted Work Conference Agenda DRAFT 3 24.docx](#)

---

We have WHD figured out

Can we confirm today if David can join this panel w NELP next month?

Thanks!

MB

---

**From:** Maxwell, Mary Beth - OSEC  
**Sent:** Thursday, March 27, 2014 7:51 PM  
**To:** [michaels.david@dol.gov](mailto:michaels.david@dol.gov); Laura Fortman ([Fortman.Laura@dol.gov](mailto:Fortman.Laura@dol.gov))  
**Cc:** Martinez, Tony - WHD ([Martinez.Tony@dol.gov](mailto:Martinez.Tony@dol.gov)); Ortiz, M. Lucero - OSHA  
**Subject:** FW: Rough draft agenda for NELP outsourcing/ subcontracting conference

David, Laura, Tony and Lucero

We would like to see if both David and Laura could join a panel at the conference NELP is sponsoring on May 13 on Subcontracted Work

Can you check to see if you can make that commitment? Patricia Smith will be a keynote at the conference

David – I am thinking also that this might be an opportunity for us at DOL to convene an informal discussion with some of these researchers about future research and collaboration on contingent work (your pizza idea you pitched to me ☺ - let me know what you think

If I could get answers by Monday at the latest on whether you both can speak that would be great – thanks!

MB

---

**From:** Catherine Ruckelshaus  
**Sent:** Friday, March 21, 2014 9:39 AM  
**To:** Maxwell, Mary Beth - OSEC  
**Subject:** RE: Rough draft agenda for NELP outsourcing/ subcontracting conference

one other thing -- For the government panel on the second day (where we'd like David Michaels or someone from OSHA to talk about their temporary and staffing industry focus), we really would like a Wage & Hour Division person to talk about hot goods and enforcing joint employer law. We know that Tricia can hit these topics more broadly, but on the gov't panel, we would like to really dig into lessons learned and strategic enforcement initiatives, including the independent contractor activities.

I'd think that Mike Hancock (or Libby Hendrix, if she weren't retiring!) could easily and well cover this.

We just learned that the NLRB does not have any plans to address these issues proactively

(they will decide cases on a case-by-case basis) so we have OSHA, EEOC and would like a WHD person.

Could I ask Mike or WHD or would you like to?

Thanks MB -- this should be it and I won't pester you again!

Cathy

Catherine K. Ruckelshaus  
General Counsel and Program Director  
National Employment Law Project  
75 Maiden Lane, Suite 601  
New York, NY 10038  
(212) 285-3025 x 306  
[cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org)

---

**From:** Maxwell, Mary Beth - OSEC <[Maxwell.Mary.Beth@dol.gov](mailto:Maxwell.Mary.Beth@dol.gov)>  
**Sent:** Thursday, March 20, 2014 8:39 PM  
**To:** Catherine Ruckelshaus  
**Subject:** RE: Rough draft agenda for NELP outsourcing/ subcontracting conference

Fyi Patricia Smith is currently Acting Deputy Secretary and Solicitor of Labor

Can you send me Annetta B's email address?

Will check on David M

thx

---

**From:** Catherine Ruckelshaus [<mailto:cruckelshaus@nelp.org>]  
**Sent:** Thursday, March 20, 2014 5:34 PM  
**To:** Maxwell, Mary Beth - OSEC  
**Subject:** Rough draft agenda for NELP outsourcing/ subcontracting conference

We would love it if David Michaels could participate on the government plenary panel on Tuesday, May 13th.

Thanks,

Cathy

Catherine K. Ruckelshaus  
General Counsel and Program Director  
National Employment Law Project  
75 Maiden Lane, Suite 601  
New York, NY 10038  
(212) 285-3025 x 306  
[cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org)

**From:** [Michaels, David - OSHA](#)  
**To:** [Ortiz, M. Lucero - OSHA](#)  
**Subject:** FW: Set up time to plan NELP Outsourcing conference plenary panel?  
**Date:** Wednesday, April 09, 2014 10:49:00 AM  
**Attachments:** [Subcontracted Work Conference Agenda DRAFT 4 8.docx](#)

---

Can you cover this?

Thanks

---

**From:** Catherine Ruckelshaus [mailto:[cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org)]  
**Sent:** Wednesday, April 09, 2014 8:38 AM  
**To:** Martinez, Tony - WHD; Ortiz, M. Lucero - OSHA; Hancock, Michael D - WHD; Rowe, Heather (DLS); Michaels, David - OSHA; [sarah.crawford@eeoc.gov](mailto:sarah.crawford@eeoc.gov)  
**Subject:** Set up time to plan NELP Outsourcing conference plenary panel?

Hello, speakers for the plenary panel on government action on contracting and related structures – the “government panel,” for lack of a better title for now --- for NELP’s Outsourced Work: Insourcing Responsibility conference.

Your panel is on **May 13<sup>th</sup> at 9:00 am** (draft agenda is attached).

I would like to get you on the phone for a brief planning call and to fill you in on logistics, and answer any questions you might have.

Could you let me know if you are free:

Monday 4/14 anytime 9-5 ET  
Tuesday 4/15 anytime 11-3 pm ET  
Weds. 4/16 anytime 9-5 ET

Thanks, and we are really looking forward to this conference and to your participation,

Cathy

Catherine K. Ruckelshaus  
General Counsel & Program Director  
National Employment Law Project  
75 Maiden Lane, Suite 601  
New York, NY 10038  
(212) 285-3025 x 306  
[cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org)

**From:** [Vockrodt, Jeff - ASP](#)  
**To:** [Sander, Kirk - OSHA](#)  
**Cc:** [Michaels, David - OSHA](#)  
**Subject:** FW: Structure of Work: Working Draft of Literature Review  
**Date:** Tuesday, September 16, 2014 9:30:10 AM  
**Attachments:** [draft lit review.docx](#)  
[A. Bernhardt RA Annotated Literature Review.docx](#)  
[Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries - NELP 2012.pdf](#)

---

Kirk,

It would be great to sit down with David for a few minutes later this week to discuss this draft literature review and ideas for the Structure of Work policy working group. Does he have any time on Friday?

Thanks,  
Jeff

---

**From:** Vockrodt, Jeff - ASP  
**Sent:** Tuesday, September 16, 2014 9:25 AM  
**To:** Nightingale, Demetra - ASP; Groshen, Erica - BLS; Blue, Leah K - WHD; Livingston, Karen A - WHD; Recer, Jennifer - WHD; Allen, Justin - ASP; Swirsky, Stephanie - EXECSEC; Garza, Jose P - ASP; Jenkins, Yvonne - BLS; Michaels, David - OSHA; Berkowitz, Deborah - OSHA; Allard, Dorinda - BLS; Polivka, Anne - BLS; Monaco, Kristen - BLS; Simonetta, Jonathan A - ASP; Weil, David - WHD  
**Subject:** Structure of Work: Working Draft of Literature Review

I am attaching my working draft of a structure-of-work literature review, along with a couple of the documents referenced in it. This is an initial look at the topic, and I would appreciate your thoughts on the draft between now and next Monday's meeting of the policy working group.

Between now and Monday I will also circulate an agenda for the meeting and a short document aggregating responses to the inventory conducted last month of agency priorities.

Thanks,  
Jeff

Jeff Vockrodt  
Senior Policy Advisor  
Office of the Assistant Secretary for Policy  
U.S. Department of Labor  
202-693-5901  
[vockrodt.jeffrey.r@dol.gov](mailto:vockrodt.jeffrey.r@dol.gov)

**From:** [Michaels, David - OSHA](#)  
**To:** [Lynn, Mary - OSHA](#)  
**Cc:** [Galassi, Thomas - OSHA](#); [Kapust, Patrick - OSHA](#)  
**Subject:** FW: Temporary Workers - National Safety Congress Talk in San Diego  
**Date:** Thursday, September 18, 2014 2:27:00 PM  
**Attachments:** [image005.jpg](#)  
[FACEreview\\_DualEmployer \(4\) 091313dnc.docx](#)  
[FACE REPORTS TEMPORARY WORKERS REPORT 091313.xlsx](#)  
[AmericanStaffingAnnualAnalysis\\_2012.pdf](#)  
[Temporary employees- statistics.docx](#)

---

You might find some of these useful or interesting

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**From:** Ripple, Susan (SD) [mailto:SDRipple@dow.com]  
**Sent:** Thursday, September 18, 2014 11:43 AM  
**To:** Michaels, David - OSHA  
**Subject:** FW: Temporary Workers - National Safety Congress Talk in San Diego

I believe that I may have quoted some metrics from these documents and then also from the ASA 2012 Report (from Frank Hearl per my request below). There was also a trend analysis done in a BLS Quarterly Report Mar 2014 on Temporary Workers but I apologize that I have searched all morning and can't quite locate it. I'll continue to work and find it, but I'm leaving now for the airport to go home!

Susan Ripple

---

**From:** Hearl, Frank J. (CDC/NIOSH/OD) [mailto:fjh1@cdc.gov]  
**Sent:** Monday, August 25, 2014 8:55 AM  
**To:** Ripple, Susan (SD)  
**Cc:** Howard, John (CDC/NIOSH/OD); Michaels, David - OSHA; [Perry.Bill@dol.gov](mailto:Perry.Bill@dol.gov) (CDC dol.gov); Castillo, Dawn N. (CDC/NIOSH/DSR); Spring, Christina M. (CDC/NIOSH/OD); Schnorr, Teresa M. (CDC/NIOSH/DSHEFS)  
**Subject:** RE: Temporary Workers - National Safety Congress Talk in San Diego

Dear Susan,

Here is some information Dawn Castillo's team put together last year from the FACE program on *temporary workers*. If you use any of this perhaps you could credit the *NIOSH Fatality Assessment and Control Evaluation Program Team* in your presentation.

p.s. more to follow in a separate message.

<Frank>  
Frank J. Hearl, PE  
e-mail: [fhearl@cdc.gov](mailto:fhearl@cdc.gov)  
phone: 202-245-0652  
cell: 202-487-4760

**From:** Ripple, Susan (SD) [mailto:SDRipple@dow.com]  
**Sent:** Saturday, August 23, 2014 8:34 PM  
**To:** Ripple, Susan (SD); [michaels.david@dol.gov](mailto:michaels.david@dol.gov); Howard, John (CDC/NIOSH/OD)

**Cc:** [Perry.Bill@dol.gov](mailto:Perry.Bill@dol.gov) (CDC dol.gov); Hearl, Frank J. (CDC/NIOSH/OD); Ripple, Susan (SD)  
**Subject:** RE: Temporary Workers - National Safety Congress Talk in San Diego

Dear David and John,  
Cc: Bill Perry and Frank Hearl

Frank Hearl caught that my dates in the previous email stated August 15<sup>th</sup>, and obviously the NSC is Sept 15-19<sup>th</sup>. I am in Las Vegas with my Mom and totally messed up the dates. In fact, you are speaking on Tuesday September 16<sup>th</sup> and the Dow team presentation is on Wednesday, September 17<sup>th</sup>, after yours. I hope to use some metrics to support the effort to protect Temporary Workers and give real world examples and tangibles for the audience.

I'm sorry for my confusion and the confusion this may have brought to this discussion. Thank you in advance for any metrics you can share, particularly any that state how many citations or the types of citations given for lack of protecting the Temporary Workers.

Kind regards,

*Susan Ripple*

---

**SUSAN RIPPLE, MS, CIH**  
Sr. Industrial Hygiene Manager  
Phone: (989) 636-5572



Susan Ripple

**From:** Ripple, Susan (SD)  
**Sent:** Saturday, August 23, 2014 2:56 PM  
**To:** 'michaels.david@dol.gov'; John Howard ([zkz1@cdc.gov](mailto:zkz1@cdc.gov))  
**Cc:** Ripple, Susan (SD); Perry, Bill - OSHA  
**Subject:** Temporary Workers - National Safety Congress Talk in San Diego  
**Importance:** High

Dear David and John,  
Cc: Bill Perry

I am giving a talk at the NSC in San Diego on Temporary Workers with two of my colleagues from Dow Chemical. We've been successful with our contractor safety and health programs at Dow, reducing the injury illness rate for Temporary Workers by over 30% with our focused program on this important group of workers that are often falling through the cracks at most host companies.

Our talk is Monday, August 15<sup>th</sup> at 10:30 titled "You Too Can Deliver 30% Reduction in Contractor EHS Metrics!" the day before the OSHA/NIOSH keynote you will be giving there titled "Temporary and Contract Workers – Best Practices in Protecting Their Health and Safety". I don't want to steal any thunder, but would you have any metrics that you can share with me to build the burning platform to have employers get engaged in protecting contractors?

We are going to share our rules and tools and best practices, but we'd like to have a list of citations and examples of where either host employers haven't been adequately mindful and protective, or where the contractor employer has not been protective or 'in the know' of what needed to be done for their workers. That would help us lead off the topic on Monday, and then point to the talk and emphasis that OSHA is doing with the COSHOs and the new columns in the database.

Somehow I can't get to any metrics that help me make the burning platform from the Temporary Workers OSHA page (although I love the page and all the news releases!). Can you guys help me please?

See you there, either way!

Kindest regards,

*Susan Ripple*

---

**SUSAN RIPPLE, MS, CIH**

Sr. Industrial Hygiene Manager

Phone: (989) 636-5572





**From:** [Eric Frumin](#)  
**To:** [Michaels, David - OSHA](#)  
**Subject:** FW: US EU conference -- topic on the Changing Structure of Work  
**Date:** Wednesday, June 03, 2015 9:53:04 PM  
**Attachments:** [GAO Contingent workers 042015.pdf](#)  
[mcjobs\\_report\\_052815.pdf](#)  
[US EU Topic Structure of Work frumin.docx](#)

---

Forgot the attachment – the actual revised version I edited!  
Here is the full package: my revised version, and the two documents I relied on for my edits.  
Eric

---

**From:** Eric Frumin  
**Sent:** Wednesday, June 03, 2015 6:48 PM  
**To:** Michaels, David - OSHA  
**Cc:** Eric Frumin  
**Subject:** RE: US EU conference -- topic on the Changing Structure of Work

Hi.  
Hope you are having a good trip.  
Been to any Hyundai plants?

Here is my edit of the US EU topic paper.  
My main additions are to include:

- P. 1: The new GAO review of the BLS and other relevant data on “contingent and alternative work arrangements” in the US economy – up to roughly 40% in 2010, up from 35% in 2006. Granted that much of this is related to regular part-time work, and notwithstanding the various problems with the source data and the interpretation, these are still high numbers. The “core contingent” rate jumped from 7.1% to 7.9% in that same time frame.
- P. 2: A new trade union review of working conditions in the fast food industry, with considerable documentation of the conditions in the EU. The source for the description of the abusive conditions in the first para of my addition is from p. 12 and [reference 43](#) in the attached report. This addition focuses on the point I discussed on the conference call – the underlying management system in the franchise industry which drive the powerless franchise owner to submit to corporate requirements to adopt the lowest conceivable working standards and conditions. However, as I say as well, there are examples in the EU where the franchisor accepts responsibility for the conditions at franchisees which then allows the payment of living wages with full social benefits and reasonable scheduling. Such conditions would greatly enhance the physical and psychosocial health of the industry’s workplace, and alleviate the poverty afflicting fast food workers in the routine franchising model.

I understand that the language I have used is somewhat atypical for such documents. However, I believe it accurately and dispassionately reflects the facts which the EU unions have identified in their analysis, and which the EU OSHA folks should be able to accept.

Have a safe trip.

Eric

---

**From:** Michaels, David - OSHA [<mailto:Michaels.David@dol.gov>]  
**Sent:** Saturday, May 23, 2015 9:15 PM  
**To:** Eric Frumin  
**Subject:** Re: US EU conference -- topic on the Changing Structure of Work

Eric -

Here is a very rough first draft of the what you might call the discussion outline. We'll be sending something to the Europeans, to start the discussion.

If you have any suggestions/edits, I'd be grateful for them. We need to send it over to the EU sometime later in the week.

Thanks for the advice on Inchon.

D.

---

**From:** Eric Frumin <[Eric.Frumin@changetowin.org](mailto:Eric.Frumin@changetowin.org)>  
**Sent:** Friday, May 22, 2015 4:58 PM  
**To:** Michaels, David - OSHA  
**Subject:** FW: US EU conference -- topic on the Changing Structure of Work

Hi.

Hope you have a good trip to Korea. If you are killing time in Inchon Airport, check out the museum about Korean culture on the mezzanine near the Business Class lounges. And enjoy the food!!

Jennifer Kole told me today (per my inquiry) that you are writing the first draft yourself of the Topic 3 paper, and that I would have a chance to contribute after you have internally produced a draft for circulation. Sounds good.

I asked Kole if WHD (Weil, someone else?) was actively involved in the drafting. She said she didn't know, but affirmed that Weil and others there were obviously experts on the issues and would be involved at some point.

I agreed about the importance of their involvement.

I also suggested to her that SOL could be a useful contributor to this discussion. They have a critical role in overcoming the obstacles posed by the "multi-employer" or "joint employer" doctrines in enforcement proceedings at large corporate employers whose business models superficially limit their compliance obligations.

For that matter, the NLRB's role in the joint employer enforcement area is also relevant to the issue

of corporate control of working conditions. While outside DOL, it is obviously an essential part of the US enforcement regime for determining which employer entity actually controls the conditions of work – one which even the EU folks could understand given their familiarity with the variation in labor relations legislation across the EU.

And the Board's recent willingness to address these issues more affirmatively could be a useful perspective as well for this Topic.

Finally – for what it's worth, I wrote to Debbie Hersman yesterday asking to talk to her about this issue. See my email below.

I've never met her, but I think she is probably willing and able to play a constructive role on this issue. I certainly hope so!

You might find my comments to her useful.

Eric

---

**From:** Eric Frumin

**Sent:** Thursday, May 21, 2015 2:16 PM

**To:** 'Debbie.Hersman@nsc.org'

**Subject:** US EU conference -- topic on the Changing Structure of Work

Hi.

We haven't met yet, but I look forward to meeting you at the conference in Sept.

I'd like to talk to you soon about the Topic 3 on the Changing Structure of Work. It is an issue of vital importance to Change to Win and to our affiliates, as the workers in the industries of interest face increasingly abusive conditions, and the employers keep searching for business models that skirt their responsibility for legal compliance.

The more virulent current manifestations of these are the problems from employee misclassification, abuse of employers' relationships with staffing agencies, and the difficulties in effective compliance enforcement arising from the franchise business model. These problems are quite different from the relatively simple issue of the widespread but legitimate use of contractors in many companies and worksites.

I'm curious how the Council sees these issues,, and what sorts of perspectives you think we should bring to the discussion with the EU in September.

Would you have any time to discuss this in the near future?

By way of background, CtW is the federation to which the Teamsters, SEIU, and the UFCW are all affiliated, as well as the United Farm Workers. We are currently organizing workers in several key industries severely affected by these issues, including port trucking, fast food and airport/aircraft servicing.

I am also in touch with Joe Grabinsky from the Teamsters from the Labor Division about a variety of issues, but haven't discussed this one with him in any depth. I don't know whether the Labor Division generally has an interest in this problem.

Thanks in advance.

Eric Frumin

Health and Safety Director  
Change to Win

Direct: 212-341-7065

Mobile: 917-209-3002

FAX: 212-341-7078

90 Broad St., Room 710

New York, NY 10004

[eric.frumin@changetowin.org](mailto:eric.frumin@changetowin.org)

[www.changetowin.org](http://www.changetowin.org)

**From:** [Michaels, David - OSHA](#)  
**To:** [Michaels1, David - OSHA](#)  
**Subject:** Fwd: Temporary Workers - National Safety Congress Talk in San Diego  
**Date:** Saturday, September 20, 2014 11:56:11 AM  
**Attachments:** [image005.jpg](#)  
[FACEreview\\_DualEmployer\\_\(4\)\\_091313dnc.docx](#)  
[FACE REPORTS TEMPORARY WORKERS REPORT 091313.xlsx](#)  
[AmericanStaffingAnnualAnalysis\\_2012.pdf](#)  
[Temporary employees- statistics.docx](#)

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Sent using [CloudMagic](#)

-----Forwarded message-----

**From:** Ripple, Susan (SD) <SDRipple@dow.com>  
**Date:** Thu, Sep 18, 2014 at 11:45 AM  
**Subject:** Fwd: Temporary Workers - National Safety Congress Talk in San Diego  
**To:** Michaels, David - OSHA <Michaels.David@dol.gov>

I believe that I may have quoted some metrics from these documents and then also from the ASA 2012 Report (from Frank Hearl per my request below). There was also a trend analysis done in a BLS Quarterly Report Mar 2014 on Temporary Workers but I apologize that I have searched all morning and can't quite locate it. I'll continue to work and find it, but I'm leaving now for the airport to go home!

Susan Ripple

---

**From:** Hearl, Frank J. (CDC/NIOSH/OD) [mailto:fjh1@cdc.gov]  
**Sent:** Monday, August 25, 2014 8:55 AM  
**To:** Ripple, Susan (SD)  
**Cc:** Howard, John (CDC/NIOSH/OD); Michaels, David - OSHA; Perry.Bill@dol.gov (CDC dol.gov); Castillo, Dawn N. (CDC/NIOSH/DSR); Spring, Christina M. (CDC/NIOSH/OD); Schnorr, Teresa M. (CDC/NIOSH/DSHEFS)  
**Subject:** RE: Temporary Workers - National Safety Congress Talk in San Diego

Dear Susan,

Here is some information Dawn Castillo's team put together last year from the FACE program on *temporary workers*. If you use any of this perhaps you could credit the *NIOSH Fatality Assessment and Control Evaluation Program Team* in your presentation.

p.s. more to follow in a separate message.

<Frank>

Frank J. Hearl, PE

e-mail: [fhearl@cdc.gov](mailto:fhearl@cdc.gov)

phone: 202-245-0652

cell: 202-487-4760

**From:** Ripple, Susan (SD) [<mailto:SDRipple@dow.com>]

**Sent:** Saturday, August 23, 2014 8:34 PM

**To:** Ripple, Susan (SD); [michaels.david@dol.gov](mailto:michaels.david@dol.gov); Howard, John (CDC/NIOSH/OD)

**Cc:** [Perry.Bill@dol.gov](mailto:Perry.Bill@dol.gov) (CDC dol.gov); Hearl, Frank J. (CDC/NIOSH/OD); Ripple, Susan (SD)

**Subject:** RE: Temporary Workers - National Safety Congress Talk in San Diego

Dear David and John,

Cc: Bill Perry and Frank Hearl

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Kind regards,

Susan Ripple

---

**SUSAN RIPPLE, MS, CIH**  
Sr. Industrial Hygiene Manager  
Phone: (989) 636-5572



Susan Ripple

**From:** Ripple, Susan (SD)  
**Sent:** Saturday, August 23, 2014 2:56 PM  
**To:** 'michaels.david@dol.gov'; John Howard ([zkz1@cdc.gov](mailto:zkz1@cdc.gov))  
**Cc:** Ripple, Susan (SD); Perry, Bill - OSHA  
**Subject:** Temporary Workers - National Safety Congress Talk in San Diego  
**Importance:** High

Dear David and John,

Cc: Bill Perry

I am giving a talk at the NSC in San Diego on Temporary Workers with two of my colleagues from Dow Chemical. We've been successful with our contractor safety and health programs at Dow, reducing the injury illness rate for Temporary Workers by over 30% with our focused program on this important group of workers that are often falling through the cracks at most host companies.

Our talk is Monday, August 15<sup>th</sup> at 10:30 titled "You Too Can Deliver 30% Reduction in Contractor EHS Metrics!" the day before the OSHA/NIOSH keynote you will be giving there titled "Temporary and Contract Workers – Best Practices in Protecting Their Health and Safety". I don't want to steal any thunder, but would you have any metrics that you can share with me to build the burning platform to have employers get engaged in protecting contractors?

We are going to share our rules and tools and best practices, but we'd like to have a list of citations and examples of where either host employers haven't been adequately mindful and protective, or where the contractor employer has not been protective or 'in the know' of what needed to be done for their workers. That would help us lead off the topic on Monday, and then point to the talk and emphasis that OSHA is doing with the COSHOs and the new columns in the database.

Somehow I can't get to any metrics that help me make the burning platform from the Temporary Workers OSHA page (although I love the page and all the news releases!). Can you guys help me please?

See you there, either way!

Kindest regards,

Susan Ripple

---

**SUSAN RIPPLE, MS, CIH**  
Sr. Industrial Hygiene Manager  
Phone: (989) 636-5572



## **Commitment to promote occupational safety and health (OSH)**

### **1. Monitoring progress: tracking policy developments**

Prepare a brief (2-3 pages) report on 2-3 key occupational safety and health policy commitments selected by each country. In line with the G20 Statement on Safer and Healthier Workplaces: Measures for Progress Review, (Annex C, G20 Labour and Employment Ministerial Declaration, Melbourne, 10-11 September 2014), the information on policies to address occupational safety and health could cover measures in the following four broad policy priority areas:

#### **A. National action that strengthens national policies, systems, programmes and strategies to improve occupational safety and health. (Commitments 1, 2, 3)**

The U.S. Department of Labor's overall strategy is reflected in its enforcement initiative known as "Plan, Prevent and Protect." OSHA supports this strategy by focusing on fair and effective enforcement as one of OSHA's primary objectives.

**Severe Violator Enforcement Program (SVEP).** SVEP focuses enforcement efforts on significant hazards and violations by concentrating inspection resources on employers who have demonstrated recalcitrance or indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations involving high-emphasis hazards, such as falls, amputations, combustible dust, crystalline silica, lead, trenching/excavation, and shipbreaking.

**OSHA's new rule, "Severe Injury and Illness Reporting Requirements, 29 CFR 1904.39"** covers all employers under OSHA's jurisdiction. Employers must now report to OSHA all work-related fatalities, hospitalizations, amputations and losses of an eye. This rule expands the list of severe work-related injuries that all covered employers must report. Even those employers who are exempt from maintaining injury and illness records are required to comply with OSHA's new severe injury and illness reporting requirements. Crucial reports of fatalities and severe work-related injuries and illnesses will significantly enhance the agency's ability to collect new data. This way, the agency will more efficiently target its resources by identifying the workplaces where workers are at the greatest risk and allocating compliance assistance and enforcement resources accordingly; in meeting the agency's mission, as well as the Department of Labor's Strategic Plan to reduce workplace injuries and illnesses."

**Chemical Exposure Limits:** OSHA is working on a multi-component initiative to reduce workplace exposures to hazardous chemicals. OSHA recognizes that many of its permissible exposure limits (PELs) are outdated and may be inadequate for ensuring protection of worker health. The agency plans has begun several initiatives and is developing new tools that will encourage employers to reduce chemical exposures in private sector and federal workplaces.

- In 2014, OSHA updated its Respiratory Protection Directive to OSHA's field staff, emphasizing three interrelated enforcement tools currently available to OSHA to protect employees from exposures to serious chemical hazards with no OSHA PELs: the Hazard Communication standard, the Respiratory Protection standard, and the general duty clause of the OSH Act.
- In 2015, OSHA updated its Hazard Communication Directive to OSHA's field staff, which included enforcement guidance for chemicals with no OSHA PEL.

Specifically, field staff is directed, when conducting inspections, to refer to the employer's safety data sheets to investigate whether serious chemical exposure hazards exist and whether the employer has discharged its duty under the general duty clause, if there is no PEL for the chemical.

- Also, the U.S. Department of Labor, at OSHA's request, submitted a recommendation for the President to release an Executive Order requiring federal agencies to use the most feasible and effective occupational exposure limits for their employees, which may be approved and issued in 2016.

**Healthcare:** OSHA is working to address the elevated incidence of work-related injuries and illnesses among healthcare workers (HCWs). Safety and health hazards faced by HCW include bloodborne pathogens and biological hazards, potential chemical and drug exposures, waste anesthetic gas exposures, respiratory hazards, ergonomic hazards from patient lifting and repetitive tasks, laser hazards, workplace violence, hazards associated with laboratories, and radioactive material and x-ray hazards.

- In 2015, OSHA issued enforcement guidance to field offices directed to HCW in Inpatient Healthcare Settings. Because inpatient healthcare settings (hospitals, nursing and residential care facilities) continue to have some of the highest injury and illness rates. Enforcement is being focused on employers' efforts to eliminate or reduce ergonomic (safe patient handling) hazards, workplace violence, tuberculosis, bloodborne pathogens, and slips, trips and falls.
- In 2015, OSHA updated its Tuberculosis Directive to field staff, which directs compliance officers to determine if employers are in compliance with most recent Center for Disease Control recommendations.

**Ergonomics:** OSHA continues to address musculoskeletal disorders (MSDs), which are among the most frequently reported causes of workplace injury and illness – about one third. But since the U.S Congress rescinded OSHA's ergonomics rule in 2001, OSHA is limited to enforcement using the general duty clause of the OSH Act to cite employers for ergonomic hazards.

- In 2015, OSHA completed a 3-year National Emphasis Program targeting Nursing and Residential Care Facilities that focused on safe patient handling programs that encouraged minimal lift procedures. This NEP benefited the protection of vulnerable low-wage workers, such as certified nursing assistants, who have been experiencing a major portion of the reported musculoskeletal disorders (MSDs) because of their resident lifting and repositioning duties.
- In 2015, OSHA issued new enforcement guidance to field offices directed to HCW in Inpatient Healthcare Settings, because inpatient healthcare settings (hospitals, nursing and residential care facilities) continue to have some of the highest injury and illness rates from MSDs. Enforcement is being focused on employers' efforts to eliminate or reduce ergonomic hazards through safe patient handling by implementing proven engineering controls, such as patient lift devices, implementing hazard assessment programs, and providing adequate training.

**B. National action that supports international collaboration and development, sharing and application of knowledge on OSH. (Commitments 6, 7, 8)**

TO BE COMPLETED BY ILAB- AS PER THEIR INSTRUCTION

**C. National action that targets measures to improve OSH conditions for priority safety and health hazards, high risk sectors, SMEs, supply chains and vulnerable workers. (Commitments 4, 5, 10)**

OSHA's enforcement is addressing high-priority safety and health issues, particularly focusing on high risk industry sectors and vulnerable workers.

**Highly Hazardous Chemicals.** One such high risk industry is the processing of highly hazardous chemicals, which includes facilities such as the West, Texas ammonium nitrate storage facility. For these industries, OSHA has clarified enforcement policy related to its Process Safety Management standard so that more effective enforcement efforts can be deployed while also providing necessary public notice of these policies. Specifically, OSHA issued notices to the fertilizer storage industry on the regulatory requirements of ammonium nitrate storage and issued a memorandum to its field agents on the enforcement of those requirements. Additionally, OSHA has clarified enforcement policy regarding coverage of establishments involved in the retail of highly hazardous chemicals, as well as facilities that produce and handle mixtures of highly hazardous chemicals. OSHA also has updated its enforcement policy to provide guidance to enforcement personnel on accepted and best engineering practices in the chemical processing industries.

**Poultry Initiative:** Workers employed in the poultry industry face many serious hazards that lead to serious injury, illness and death, including dangerous equipment, musculoskeletal disorders, high noise levels, and hazardous chemicals such as ammonia, chlorine, and antimicrobial agents. The incidence rate of occupational illness cases reported in the poultry industry is more than six times the average for all U.S. industries. Characteristics of the industry as a whole revealed that the poultry processing industry has experienced rapidly expanding production and employment over the past few years. Additionally, the workforce of approximately 240,000 had been characterized as low-wage increasingly immigrant with high turnover rates. OSHA, along with Department of Agriculture, issued a letter to all poultry plants in early June 2015, and developed a poster on worker rights under OSHA, encouraging reports of injury and illness, which is required to be posted in every poultry plant. OSHA is continuing to work with FSIS on attestation and other requirements. OSHA continues to conduct outreach activities to raise awareness of the hazards associated with the poultry industry, including already established compliance assistance workshops, tools and resources, as well as other mediums, such as news releases, information packets and seminars. In order to maximize and expand the scope, reach and effectiveness of outreach efforts, each of OSHA's area offices have fostered relationships with local organizations, interested parties, stakeholders, and community groups.

**Vulnerable Workers:** OSHA has focused on protecting day laborers and other vulnerable workers in America who work in high-risk industries. Because of language barriers, literacy, lack of training and other challenges, these workers are often hard to reach, and are also at the greatest risk for injury, illness and death on the job.

OSHA has partnered with consultants, community and faith-based groups, unions, employers, and other government agencies to reach out to vulnerable workers with information about their rights and to enhance their ability to use these rights. We have translated hundreds of publications into multiple languages and created a Spanish language home page on OSHA's Web site. Following the groundbreaking National Action Summit for Latino Worker Health and Safety in Houston in April 2010, OSHA staff in regional offices implemented an outreach strategy to create partnerships and alliances with neighborhood, faith-based and other local non-profit organizations.

In addition, through the Susan Harwood Training Grants Program, OSHA awards grants to nonprofit organizations, community colleges and business associations to provide training and education to vulnerable, hard-to-reach workers. These training grants focus on the recognition and control of safety and health hazards in workplaces.

OSHA reminds employers to comply with requirements that they must present information about workers' rights, safety and health training materials, information and instructions in a language and level that their workers can understand. Assistant Secretary David Michaels has issued a directive to OSHA inspectors to check for this during site visits to be sure that employers are complying.

**OSHA's Temporary Worker initiative:** The temporary worker industry grew by 125% since 1990, and nearly 10 million people work in temporary jobs per year. Many labor experts believe that the increased use of temporary workers is part of a structural, lasting shift in the job market. A number of temporary workers have been found in hazardous and less desirable industries performing some of the most hazardous tasks, such as tank cleaning, asbestos removal. Studies show you are at a greater risk for injury when you are new to a job. As temporary workers are new to jobs many times throughout the year, OSHA has seen severe and fatal injuries to temporary workers, some on the first day of the job.

OSHA began the Temporary Worker initiative in April 2013, to begin collecting and sorting inspection information directly involving temporary workers. In 2014, OSHA better defined the joint employer relationship regarding temporary workers. Both host employer and staffing agency are employers of temporary workers, sharing control over, and responsibility for, temporary workers. Both employers should address those hazards it is best positioned to deal with, in a way that fully complies with OSHA standards. OSHA clarified policy, reached out to stakeholders and issued informational guidance. The Agency also is working with the leading staffing agencies and the American Staffing Association, groups that can lead by example and explain to other staffing agencies how to best protect their workers.

**Falls Campaign:** Falls are the leading cause of death in the U.S. construction sector. OSHA and its partners have organized a National Fall Prevention Campaign for the last four years, collaborating with National Institute on Safety and Health (NIOSH), labor unions and industry representatives to raise awareness of the issue with outreach, publications and media.

In the last two years of the campaign, OSHA has held a National Safety Stand-Down for Fall Prevention, which encourages employers to pause work and discuss fall prevention with their employees. Millions of U.S. workers and employers participated as well as workers and employers from various countries including several international locations.

OSHA has maintained a strong enforcement posture at the same time, citing fall hazards more than any other workplace issue. Fall related citations in 2014 accounted for over 14,000 of OSHA's nearly 40,000 Federal citations.

**Small and Medium Enterprises (SMEs):** The Office of Small Business Assistance (OSBA) administers OSHA's On-Site Consultation Program, conducts small business safety and health outreach, and serves as liaison and a point of contact within the agency for small businesses. OSHA's On-site Consultation Program offers free and confidential safety and occupational health advice to small and medium-sized businesses in all states and several U.S territories, with priority given to high-hazard worksites. On-site Consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities, under grants from OSHA, work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing injury and illness prevention programs. In fiscal year 2014, the On-site Consultation Program conducted more than 26,700 free on-site visits to small and medium-sized business worksites covering more than 1.3 million workers nationwide.

OSBA coordinates the Agency's obligation to the Small Business Administration (SBA) Office of the National Ombudsman (ONO), Small Business Regulatory Enforcement Fairness Act (SBREFA) as they relate to comments/complaints regarding enforcement actions originating within OSHA's Regions and National Office. The Region or National Office is required to review any comments/complaints regarding enforcement actions originating within their jurisdiction and provide a response addressing specific questions asked by the ONO. These controlled correspondences are time sensitive. By statute, SBA's ONO is required to rate all Federal agencies on timeliness and quality of response to comments.

In addition, OSBA coordinates OSHA's attendance and participation in the SBA Regulatory Fairness Forums for Small Business. These forums were designed to create a more cooperative regulatory environment among federal agencies and small businesses throughout the country. OSBA attends the SBA Small Business Labor Safety (OSHA/MSHA) Roundtable meetings. The SBA Office of Advocacy hosts roundtables every six weeks to receive input on what issues are of greatest importance to the small business community. The roundtables review regulatory actions by OSHA and MSHA, and discuss which issues are of key importance to small business. OSBA records the activities and comments from the roundtables and reports to the Office of the Assistant Secretary.

The On-site Consultation Program also administers the Safety and Health Achievement Recognition Program (SHARP), which recognizes small business employers who operate an exemplary injury and illness prevention program. Acceptance of a worksite into SHARP is an achievement of status that singles out the worksite as a model for safety and health. Upon receiving SHARP recognition, OSHA exempts the worksite from OSHA programmed inspections during the period that the SHARP certification is valid.

**D. National action that fosters a culture of consultation, collaboration and collective action with social partners to improve occupational safety and health. (Commitment 9)**

**Cooperative Programs:** OSHA offers the several cooperative programs under which businesses, labor groups, and other organizations can work cooperatively with OSHA to help prevent injuries, illnesses and fatalities in the workplace. These compliance assistance programs continue to provide a positive impact to OSHA's enforcement programs in improving the safety and health at America's workplace. OSHA's Voluntary Protection Programs (VPP), OSHA Strategic Partnerships (OSP), OSHA's Safety and Health Achievement Recognition

Program (SHARP), OSHA Challenge and OSHA Alliance programs each work with differing groups. These include large and small employers with existing safety and health management systems (SHMS) who want to promote continuous improvement, missing or immature SHMS to help develop or enhance, industry sectors with common SHMS concerns, or Associations, trade groups or training entities wanting to positively impact the American workforce.

**Voluntary Protection Programs (VPP):** OSHA's VPP recognizes employers and workers in the private industry and federal agencies who have implemented effective safety and health management systems (SHMS) and maintain injury and illness rates below national Bureau of Labor Statistics averages for their respective industries. In VPP, management, labor, and OSHA work cooperatively and proactively to prevent fatalities, injuries, and illnesses through a system focused on: hazard prevention and control; worksite analysis; training; and management commitment and worker involvement and strive for continuous improvement in their SHMS programs. OSHA's Strategic Partnership Program (OSPP) provides opportunities for OSHA to partner with employers, workers, professional or trade associations, labor organizations, and other interested stakeholders to eliminate serious hazards and enhance workplace safety and health practices. Each OSPP establish specific goals, strategies, and performance measures to improve worker safety and health.

**OSHA's Alliance Program:** This program allows the agency to establish formal, voluntary, cooperative relationships between OSHA and key stakeholders to improve occupational safety and health across a variety of sectors, including construction, oil and gas, and healthcare. Alliance participants include employers and trade associations; labor unions and other labor groups; professional associations; educational institutions; community- and faith-based organizations; consulates; local, state, and federal government agencies; and other organizations or institutions. Through the Program, OSHA and alliance participants collaborate in developing and promoting compliance assistance tools and resources, sharing information with workers and employers, and educating workers and employers about their rights and responsibilities. The Program is also instrumental in helping the agency to reach worker and employer constituencies most in need of OSHA's assistance, such as low-wage, limited basic education, and other vulnerable worker populations. OSHA has 30 alliances at the national level and more than 200 through its field offices, including several with consulate generals across the United States.

**Consular Partnership Program:** The Consular Partnership Program (CPP) is a collaboration among ILAB, OSHA, the Department of Labor's Wage and Hour Division (WHD) and foreign embassies and their consulates. Recently, the Equal Employment Opportunity Committee and the National Labor Relations Board joined the program. The program was developed to educate workers and their employers about U.S. labor laws governing safety and health and wages and working hours to foreign workers in the United States and its territories.

Embassies and consulates offer safe, trusted places for workers to turn. With their cooperation, OSHA is better able to educate workers and employers about workplace safety and health, provide confidential advice, participate in outreach events and trainings and coordinate with OSHA's regional alliance coordinators. OSHA's collaboration with embassies and consulates is part of a larger effort to increase critical partnerships to expand OSHA's reach to some of the country's most vulnerable workers, often in the industries with the highest hazards, and who often experience discrimination due to language barriers.

National level partnership agreements have been signed with DOL and the embassies of Belize, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Peru and the Philippines. As of April 2015, more than fifty local letters of agreement have been signed with various consulates and several of OSHA's regional/area offices.

## 2. Key indicators of OSH outcomes

Countries are requested to fill in this table every two years. The ILO will assist in completing the table to the extent the information required has been shared with the ILO.

**Table 7. Monitoring Progress: Tracking Policy Developments**  
Safer and healthier workplaces

Key indicators	2013 (base)	2015	2017	2019	2021
<b>General indicators</b>					
Occupational injury and disease rates (frequency rate or incident rate)					
• Occupational fatal injuries	3.3 per 100,000 full-time workers				
• Occupational non-fatal injuries	3.3 per 100 full-time workers				
• Occupational disease	18.8 per 100,000 full-time workers				
<b>Policy indicators</b>					
Workers covered by OSH legal protections (% of workers)	94%				
Workers covered by employment injury insurance or program (% of workers)	89% (2012 estimate)				
Inspectorate responsible for OSH enforcement (number of "full time equivalent" OSH inspectors)	2,226 (FY2013)				
Enterprises with health and safety committees, established consistent with national law (% of enterprises)					
Enterprises implementing occupational health and safety management systems (% of enterprises)					
Workers covered by basic occupational health services (% of workers)					
OSH training integrated in to job training and skills development programmes (% of training programmes)					

**Comment [GR-01]:** Source: <http://www.bls.gov/iif/oshwc/efoi/cfch0012.pdf> Figure 2

**Comment [GR-02]:** Source: [http://www.bls.gov/news.release/archives/osh\\_12\\_014.htm](http://www.bls.gov/news.release/archives/osh_12_014.htm) Table 5

**Comment [GR-03]:** Source: [http://www.bls.gov/news.release/archives/osh\\_12\\_014.htm](http://www.bls.gov/news.release/archives/osh_12_014.htm) Table 6a

**Comment [GR-04]:** <http://www.aflcio.org/content/download/154671/3868441/DOTJ2015Finalno.pdf>

Page 105; numerator is 8 million state/local employees with no employee coverage and denominator is total average employment 2013

**Comment [GR-05]:** Source: <http://www.ssa.gov/policy/docs/statcomps/supplement/2014/9b.html>

Total employment estimated at 143 million in December 2012 (BLS)

**Comment [GR-06]:** Source: <http://www.aflcio.org/content/download/154671/38441/DOTJ2015Finalnbug.pdf>

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April 20, 2015

The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Kirsten Gillibrand  
United States Senate

### **Contingent Workforce: Size, Characteristics, Earnings, and Benefits**

Millions of workers do not have standard work arrangements—permanent jobs with a traditional employer-employee relationship. Rather, they are in temporary, contract, or other forms of non-standard employment arrangements in which they may not receive employer-provided retirement and health benefits, or have safeguards such as job-protected leave under the Family Medical Leave Act, even if they have a traditional employer-employee relationship. These non-standard arrangements are sometimes referred to as “contingent” work. To collect information about contingent workers, the Department of Labor’s Bureau of Labor Statistics (BLS) has previously supplemented its monthly Current Population Survey (CPS) with a survey on contingent work, known as the Contingent Work Supplement (CWS).<sup>1</sup> While the CWS is a comprehensive source of information on contingent workers, BLS has not conducted this supplement since 2005.

In the aftermath of the recent recession,<sup>2</sup> more workers may have become contingent workers with potentially limited access to work-provided health insurance and retirement benefits, as well as coverage under key workforce protection laws. In light of these developments we were asked to examine issues related to the contingent workforce. This report examines what is known about (1) the size of the contingent workforce, (2) the characteristics and employment experiences of contingent versus standard workers, and (3) any differences in earnings, benefits, and measures of poverty between contingent and standard workers.

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<sup>1</sup> In recent communications, Department of Labor officials have referred to this supplement as the “Contingent Worker and Alternative Work Arrangement Supplement.” To be consistent with the survey’s technical documentation, recent agency budget justifications, and prior work, we refer to the supplement as the Contingent Work Supplement (CWS) throughout this report.

<sup>2</sup> The National Bureau of Economic Research Business Cycle Dating Committee identifies the period of this recession to be December 2007 through June 2009.

To assess the size of the contingent workforce, we analyzed population counts of contingent workers identified in various national survey data sources, such as the CWS, CPS, the General Social Survey (GSS), and the Survey of Income and Program Participation (SIPP).<sup>3</sup> These data sources were available for varying timeframes over the last two decades and identified types of contingent workers or workers in alternative work arrangements, based on various definitions. While the CWS has been a comprehensive source of information about contingent workers, it has not been administered in 10 years (since 2005). Other surveys offer additional insight about this workforce, but may be less statistically robust or collect less detailed information about the many alternative employment arrangements researchers have suggested could be part of the contingent workforce. For example, some surveys have smaller samples or ask less detailed questions about why workers hold contingent jobs.

Using these national data sources, we analyzed the data to compare population counts both over time and based on various definitions, as applicable. We also analyzed and compared distributions of various self-reported worker and job characteristics, such as demographics and family income, and job security, benefits, and safety. We conducted regression analysis using CPS data, controlling for various external factors, to determine how various measures of earnings and retirement plan participation compared between contingent and other workers. We also compared the distributions of health insurance coverage and measures of poverty (e.g., family income levels) between contingent and other workers.<sup>4</sup>

We assessed the reliability of the data we analyzed by interviewing the appropriate officials, reviewing documentation, and conducting selected data checks. We determined that the data were reliable for our purposes.

To gain an understanding of and provide context for relevant contingent worker data we analyzed, we interviewed agency officials from the Department of Labor and the Census Bureau (Census). We also interviewed officials from organizations representing workers and employers, and subject matter experts, and reviewed studies that address aspects of contingent work. To identify workforce protections provided to contingent workers, we reviewed our prior reports on this topic and relevant federal laws, including the Patient Protection and Affordable Care Act (PPACA).

Enclosure I to this letter provides a detailed presentation of our work and findings. See enclosure II for a detailed description of our scope and methodology.

We conducted this performance audit from February 2014 to April 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>3</sup> The GSS is administered by NORC at the University of Chicago and SIPP is administered by the Census Bureau. The extent to which our analyses are representative of the U.S. contingent worker population varies. For more information about the data sources used and the generalizability of our analyses, see enclosure II.

<sup>4</sup> Throughout this report, when we present estimates from survey data, we also present the applicable margins of error (i.e., the maximum half-width of the 95 percent confidence interval around the estimate). In some cases, the confidence intervals around our estimates are asymmetrical; however, we present the maximum half-width for simplicity and for a consistent and conservative representation of the sampling error associated with our estimates.

## Results in Brief

The size of the contingent workforce can range from less than 5 percent to more than a third of the total employed labor force, depending on widely-varying definitions of contingent work. Based on GSS data, we estimated that a core group of contingent workers, such as agency temps and on-call workers, comprised about 7.9 percent of the employed labor force in 2010.<sup>5</sup> We found that compared to standard full-time workers, core contingent workers are more likely to be younger, Hispanic, have no high school degree, and have low family income. These contingent workers are also more likely than standard workers to experience job instability, and to be less satisfied with their benefits and employment arrangements than standard full-time workers. Because contingent work can be unstable, or may afford fewer worker protections depending on a worker's particular employment arrangement, it tends to lead to lower earnings, fewer benefits, and a greater reliance on public assistance than standard work.

## Background

Comprehensive, nationally representative data on contingent workers were first collected in 1995 when BLS introduced the CWS to the CPS, a monthly survey of about 60,000 households that, in part, collects data on the U.S. labor force. The CWS asked a series of additional questions about workers' employment, including whether their jobs were contingent. The supplement has been administered five times: in 1995, 1997, 1999, 2001, and 2005. According to agency officials, BLS receives many requests for data on contingent workers. BLS has requested funding each year from 2012 forward to conduct the CWS but has not received funding to administer the supplement in recent years. In its fiscal year 2016 budget request, BLS asked for funding to conduct the CWS every 2 years. In addition, in our prior work, we reported that key worker protection laws generally apply to employees and therefore do not apply to independent contractors, self-employed workers, and contingent workers who are not classified as employees.<sup>6</sup> How these laws apply guide how they are regulated and enforced.

## Size of the Contingent Workforce Varies by Definition and Data Source

The size of the contingent workforce can range from less than 5 percent to more than a third of the total employed labor force, depending on the definition of contingent work and the data source. In general, contingent work is a term associated with those individuals who have temporary employment. In its broadest definitions, however, contingent work also refers to all individuals who maintain work arrangements without traditional employers or regular, full-time schedules—regardless of how long their jobs may last. Because the various definitions include different types of workers, a profile of the contingent workforce can vary according to the way contingency is defined and the range and detail of a survey instrument.

- BLS counts those who have temporary employment as contingent workers, irrespective of their work arrangement. BLS has developed three successively broader estimates of the contingent workforce by applying its definition in different ways, such as by first

<sup>5</sup> Percentage estimate has a 95 percent confidence interval of +/- 1.7 percentage points.

<sup>6</sup> GAO, *Contingent Workers: Incomes and Benefits Lag Behind Those of Rest of Workforce*, [GAO/HEHS-00-76](#) (Washington, D.C.: June 30, 2000), and GAO, *Employer Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, GAO-06-656 (Washington, D.C.: July 11, 2006).

excluding and then including self-employed workers. Using the 2005 CWS, these estimates, therefore, ranged from 1.8 to 4.1 percent of the total employed labor force (2.5 to 5.7 million workers).<sup>7</sup>

- In contrast, other definitions of contingent work focus on whether individuals are employed in alternative work arrangements of various types—regardless of how long their jobs may last. These much broader definitions include agency temps and day laborers, although most are standard part-time workers or independent contractors. Applying a broad definition to analysis of 2005 CWS data, our prior work estimated that 30.6 percent of the employed workforce could be considered contingent.<sup>8</sup> Applying this broad definition to our analysis of data from the General Social Survey (GSS), we estimate that such contingent workers comprised 35.3 percent of employed workers in 2006 and 40.4 percent in 2010.<sup>9</sup>

However, no clear consensus exists among labor experts as to whether contingent workers should include independent contractors, self-employed workers, and standard part-time workers, since many of these workers may have long-term employment stability. There is more agreement that workers who lack job security and those with work schedules that are variable, unpredictable, or both—such as agency temps, direct-hire temps, on-call workers, and day laborers—should be included. We refer to this group as the “core contingent” workforce.

- We estimate that this core contingent workforce comprised about 7.9 percent of employed workers in the 2010 GSS and also made up similar proportions of employed respondents in the roughly comparable 2005 CWS and 2006 GSS—5.6 percent and 7.1 percent, respectively.<sup>10</sup>

Other sources of information about contingent workers provide different levels of detail or cover different segments of this workforce. For example, Census’ Survey of Income and Program Participation (SIPP) includes counts of contingent workers over time, but does not identify individual work arrangements within its contingent population. Meanwhile, some labor experts focus on forms of employment instability that do not fully align with traditional definitions of contingent work and available data sources. Some of these other concepts may stem from a focus on enforcing worker protection regulations, such as the Department of Labor’s efforts related to business practices that obscure or eliminate the link between workers and their employers.

### **Characteristics and Employment Experiences of Contingent Workers Differ from Those of Standard Workers**

We found both demographic differences and differences in employment experiences between standard and core contingent workers. While some of these differences may be generally consistent with what would be expected given definitions of contingent work, our findings quantify and show their magnitude.

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<sup>7</sup> Percentage estimates have 95 percent confidence intervals of +/- 1.1 and +/- 1.0 percentage points; population estimates have 95 percent confidence intervals of +/- 0.2 and +/- 0.3 million.

<sup>8</sup> [GAO-06-656](#); percentage estimate has a 95 percent confidence interval of +/- 0.9 percentage points.

<sup>9</sup> Percentage estimates have 95 percent confidence intervals of +/- 2.6 and +/- 3.8 percentage points.

<sup>10</sup> Percentage estimates have 95 percent confidence intervals of +/- 1.7 and +/- 1.0 and +/- 1.6 percentage points.

- In both the CWS and GSS, we found that compared to standard full-time workers, core contingent workers appeared to be younger and more often Hispanic, and were more likely to have no high school degree and have low family income.
- Contingent workers are more likely than standard workers to experience job instability. Based on data from a Census working paper, we estimated that in 2004 about 11.7 to 16.2 percent of workers categorized as contingent in a given month either left the labor force or became unemployed in the following month.<sup>11</sup> This represents a monthly job separation rate several times higher than the rate Census found in the overall employed labor force. In addition, we estimated with 2010 GSS data that core contingent workers were more than three times as likely as standard full-time workers to report being laid off in the previous year. While it is expected that contingent workers would report higher rates of job separation, our analysis of the SIPP and GSS data illustrated relatively large differences between contingent and standard workers.
- We also found in the 2010 GSS data that core contingent workers were less satisfied with their fringe benefits and with their jobs overall than standard full-time workers.
- Evaluating workplace safety for contingent workers is challenging due to a lack of worker injury data that track injuries by job type. However, other research has found that some contingent workers, particularly agency temps, may be at increased risk of injury (see enclosure I). According to officials from the Department of Labor's Occupational Safety and Health Administration, this increased risk occurs for a variety of reasons, including because agency temps often are not provided adequate safety training or equipment by either the staffing agency or the host employer.

### **Contingent Workers Earn Less and Are Less Likely to Have Work-Provided Benefits than Standard Workers**

We analyzed earnings and benefits from contingent work, as defined by BLS, by using 2012 CPS data that identify a similar population of contingent workers as that in the CWS. Our regressions accounted for other important factors that have an impact on earnings, such as demographics, education, unionization, industry, occupation, and geography. Because contingent work can be unstable or afford fewer worker protections, depending on a worker's particular employment arrangement, it tends to lead to lower earnings, fewer benefits, and a greater reliance on public assistance than standard work. Given that contingent workers are less likely than standard workers to have long-term, full-time jobs, such results are not surprising. However, our analysis demonstrates the magnitude of the differences in earnings between contingent and standard workers, which are affected by factors such as differences in the number of hours worked and in hourly pay.

- Accounting for other factors that affect earnings, contingent workers earn less than standard workers on an hourly, weekly, and annual basis.
- We found that contingent workers earn about 10.6 percent less per hour than standard workers.

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<sup>11</sup> Percentage estimates have 95 percent confidence intervals of +/- 2.0 and +/- 2.3 percentage points.

- In addition, contingent workers have lower weekly and annual earnings than standard workers. When not controlling for hours worked, contingent workers, on average, earn 27.5 percent less per week and 47.9 percent less per year than standard workers. Because these differences do not control for hours worked, they represent the cumulative difference between groups in both pay rate and hours worked over a week and over a year. The greater differences in weekly and annual earnings are largely the result of contingent workers being more likely to work part-time and to experience gaps in employment. Controlling for the earnings effects of working part-time or only part of a year reduces the differences—then, on average, contingent workers earn 16.7 percent less per week and 12.9 percent less per year than standard workers.
- Differences in earnings vary by industry and occupation. Within some industries and occupations, contingent workers earned significantly less than standard workers regardless of the earnings measure (annual, weekly, or hourly), while other industries and occupations had fewer significant differences between contingent and standard workers. For example, contingent workers in the education industry and the transportation and material moving occupation earned significantly less annually, weekly, and hourly than similar standard workers. In contrast, in the construction industry and the construction and extraction occupation, only the difference in annual earnings was significant.
- In addition to lower earnings, contingent workers are also less likely to have work-provided benefits, such as retirement plans and health insurance. For example, contingent workers are about two-thirds less likely than standard workers to have a work-provided retirement plan.
- While measures of poverty depend on a worker's earnings as well as the earnings of other members of his or her family, contingent workers are more likely to report living in poverty and receiving public assistance than standard workers.

## Concluding Observations

The current discourse on contingent employment is shaped to some extent by both a scarcity of some types of data and an overabundance of other types of data. The Contingent Work Supplement was last conducted a decade ago in 2005. Since that time, researchers and analysts have mined a number of alternative datasets that ask different survey questions. While these efforts may provide important insights about segments of the contingent workforce, they also have limitations that could make identifying emerging trends difficult. Understanding the limitations of the current data may stimulate interest among stakeholders in weighing the advantages versus the potential cost of collecting better information about contingent workers.

Our understanding of the contingent workforce is also shaped by the multiple definitions used to measure its size and characteristics. Current definitions of contingent employment typically highlight instability in scheduling and employment duration, and features of the employer-employee relationship to varying degrees, focusing on alternative employment arrangements such as those characterizing independent contractors, employees of temporary help agencies, and other groups. Each definition has its strengths but can lead to different conclusions about the scope of regulation and the degree of enforcement.

Nevertheless, despite the data constraints and multiple definitions, contingent employment remains an important concept for understanding the dynamics of the labor market. Even the narrower estimates generated by BLS suggest that millions of contingent workers are in the labor force. Our own work suggests that many of these contingent workers receive lower wages and benefits than workers in standard employment arrangements. Many questions remain as to whether contingent employment and alternative work arrangements are growing or evolving, about the impact of the recent recession and recovery on this segment of the labor force, and about the longer term implications of contingent employment arrangements for workers, employers, income equality, and economic growth. Information about contingent employment helps to determine whether the existing framework of labor market protections, predicated on traditional employer-employee relationships, will continue to be appropriate and adequate in the future.

### **Agency Comments**

We provided copies of this draft report to the Department of Labor (DOL) and the Department of Commerce for review and comment. We also provided a copy of this draft to academic experts for additional external review. DOL, Commerce, and our external reviewers provided technical comments, which we incorporated in the report, as appropriate. DOL also provided formal written comments, which are reproduced in enclosure V. DOL generally agreed with our findings, stating that our report covered an essential component of the labor force and that understanding evolving trends in the structure of work is crucial. DOL noted that inconsistent definitions of contingent work make nuanced analysis difficult and that some data sources are less suited to tracking nonstandard work arrangements.

We agree that differing definitions of contingent work make analyzing the contingent workforce a challenge. These various definitions of, and approaches toward examining this segment of the labor force have different purposes. For example, as DOL noted, defining contingent work as short-term grows out of a concern about the rise of “disposable” or unstable jobs. Classifying jobs by the type of employer-employee relationship stems from a broader view of contingent work as incorporating other dimensions of employment instability beyond short duration, such as unpredictable shifts or hours and lack of access to employer-provided benefits. For these reasons, we analyzed a spectrum of data sources to depict the size and characteristics of the contingent workforce—as defined in the respective data sources—and also discussed some aspects of nonstandard work that do not cleanly fit into current definitions. While we agree that these other data sources are not designed to identify contingent workers in the same way as the CWS, they can add to an understanding of this segment of the workforce. For example, the General Social Survey identifies workers by various nonstandard work arrangements and includes information about employment experiences that were not covered in the last CWS.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to of this report to the appropriate congressional committees, the Secretary of the Department of Commerce, the Secretary of the Department of Labor, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-7215 or [jeszeckc@gao.gov](mailto:jeszeckc@gao.gov). Contact points for our Offices of Congressional Relations and

Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in enclosure VI.

A handwritten signature in black ink, reading "Charles Jeszeck". The signature is written in a cursive style with a large initial "C" and "J".

Charles A. Jeszeck  
Director, Education, Workforce, and Income Security Issues

Enclosures – 6



### Data Sources Analyzed

We analyzed data from the following national sources:

- CPS basic household survey, various months and years
- CPS Contingent Work Supplement, 1995, 1999, 2005
- CPS Disability Supplement, 2012
- CPS Annual Social and Economic Supplement, 2012
- Current Employment Statistics (CES), various years
- Occupational Employment Statistics (OES), various years
- General Social Survey (GSS) by NORC at the University of Chicago, 2006 and 2010
- Survey of Income and Program Participation (SIPP), 2004 and 2008

We did not use other sources of data on contingent workers, such as those developed by private researchers or industry groups, and state-level data. Our analyses focused on relatively recent, nationally-representative data.<sup>12</sup>

### Use of Contingent Workers

Employers may hire contingent workers to accommodate workload fluctuations, meet employees' requests for part-time hours, screen workers for permanent positions, and save on wage and benefit costs, among other reasons. Workers take contingent jobs for a variety of reasons, both by choice and out of necessity.

## Contingent Workforce

### Background

#### Background

Comprehensive, nationally representative data on contingent workers have not been collected since 2005. Such data were first collected in 1995 when the Bureau of Labor Statistics (BLS) introduced the Contingent Work Supplement (CWS) to the Current Population Survey (CPS), which is a monthly survey of about 60,000 households that, in part, collects data on the U.S. labor force. The CWS asked a series of additional questions about workers' employment, including whether their jobs were contingent. The supplement has been administered five times: in 1995, 1997, 1999, 2001, and 2005. According to agency officials, BLS receives many requests for data on contingent workers. BLS has requested funding each year from 2012 forward to conduct the CWS but has not received funding to administer the supplement in recent years. In its fiscal year 2016 budget request, BLS asked for funding to conduct the CWS every 2 years.

In our prior work, we reported that key worker protection laws generally apply to employees and therefore do not apply to independent contractors, self-employed workers, and contingent workers who are not classified as employees.<sup>13</sup> Even for contingent workers who are employees, other factors, such as length of employment and hours worked per year, may affect whether or to what extent they are covered under some of these laws. For brief descriptions of key worker protection laws, see enclosure III. In addition, while employers may voluntarily offer benefits such as retirement plans, they may choose to not offer them to employees whose link to them is tenuous (e.g., workers hired on a temporary basis).<sup>14</sup>

When benefits and protections for such workers are not available, some government officials and labor analysts are concerned that contingent employment relationships may have long-term adverse consequences for workers and government programs. If contingent workers do not receive work-provided health or retirement benefits, or do not qualify for workers' compensation or unemployment, they may turn to needs-based programs such as Medicaid or the Supplemental Nutritional Assistance Program (formerly known as the federal Food Stamp Program). To the extent that this occurs, costs formerly borne by employers and employees may be shifted to federal and state public assistance programs.

This briefing discusses the size, characteristics, and earnings of contingent workers through our analysis of different data sources.

<sup>12</sup> We also reviewed published findings from the National Day Labor Survey for their context on that segment of the contingent workforce. However, we did not use this as a data source because it was a one-time survey conducted in summer 2004, prior to the most recent CWS. Abel Valenzuela, et. al., "On the Corner: Day Labor in the United States" (January 2006).

<sup>13</sup> GAO, *Contingent Workers: Incomes and Benefits Lag Behind Those of Rest of Workforce*, GAO/HEHS-00-76 (Washington, D.C.: June 30, 2000), and GAO, *Employer Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, GAO-06-656 (Washington, D.C.: July 11, 2006).

<sup>14</sup> Laws, such as the Patient Protection and Affordable Care Act (PPACA), may also affect decisions about offering and participating in benefits such as health insurance.

Size
Characteristics
Earnings and benefits

### Identifying Contingent Workers in the CWS

If workers respond “yes” to the first temporary work screening question in the CWS or “no” to the second, they may be included in BLS’s definition of a contingent worker.

- Some people are in temporary jobs that last only for a limited time or until the completion of a project. Is your job temporary?
- Provided the economy does not change and your job performance is adequate, can you continue to work for your current employer as long as you wish?

BLS excludes some of these workers from its varying contingent workforce estimates due to the length of their employment or for other reasons, such as their anticipated departure from a job for personal reasons in which they otherwise could have stayed (see enclosure II for more information about workers who are excluded). BLS also identifies additional workers with other CWS questions, for instance, those who do not view their jobs as temporary but who have been and expect to be at their jobs for 1 year or less.

BLS’s three estimates of the contingent workforce successively include more workers by adding the self-employed and independent contractors and by relaxing time requirements for a job’s duration and tenure with an employer (see enclosure II for full descriptions of who is included in each estimate).

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

## Size Varies by Definition and Data Source

### BLS Definition Focuses on Temporary Nature of Work

Estimates of the size of the contingent workforce depend on the definition of contingent work and the data source. As noted in our prior work, labor experts generally agree that contingent workers may share certain characteristics, such as a lack of job security.<sup>15</sup> However, there is a lack of consensus on how to define contingent work, in part because researchers focus on different aspects of the labor market. Some definitions focus on job tenure or the precariousness of work, while some focus on employer-employee relationships. Available data thus produce varying estimates of the size of this workforce, depending on definition. Available data also do not fully enable analysis of trends in the size of the contingent workforce or the effects of economic cycles, such as the recent recession.

### BLS-Defined Contingent Workers in the CWS

BLS defines contingent workers as those without “an explicit or implicit contract for long-term employment” and applies this definition in the CWS, in part, by identifying those who view their jobs as temporary. BLS developed three successively broader contingent workforce estimates by applying its definition in different ways (see sidebar and table 1).

Table 1: BLS-Defined Contingent Workers in the Contingent Work Supplement

BLS-defined contingent workers (percent of employed labor force)	1995	1999	2005
Estimate 1	2.2 (+/- 1.0)	1.9 (+/- 1.1)	1.8 (+/- 1.1)
Estimate 2	2.8 (+/- 1.0)	2.3 (+/- 1.1)	2.3 (+/- 1.1)
Estimate 3	4.9 (+/- 1.0)	4.3 (+/- 1.1)	4.1 (+/- 1.0)

Source: GAO analysis of data from the 1995, 1999, and 2005 Contingent Work Supplements to the Current Population Survey. | GAO-15-168R

The CPS Disability Supplement (released only once in May 2012) asked all employed respondents an essentially identical temporary work question as in the CWS. These data offer a more recent comparison, albeit only of workers who view their jobs as temporary (see table 2). BLS excludes some of these workers from its contingent workforce estimates.

Table 2: Workers Describing Their Work as Temporary in 2005 and 2012 Surveys

	Temporary job	Employed labor force
2005 Contingent Work Supplement [self-employed not included – not asked if job was temporary]	5.15 million (+/- 0.28)	138.95 million (+/- 0.78)
2012 Disability Supplement	6.31 million (+/- 0.29)	143.14 million (+/- 0.25)
Self-employed excluded (comparable to 2005)	5.40 million (+/- 0.27)	

Source: GAO analysis of data from the 2005 Contingent Work and 2012 Disability Supplements to the Current Population Survey. | GAO-15-168R

Note: The self-employed were not asked the temp work question in the CWS, but were in 2012; data are limited to workers age 16+.

<sup>15</sup> GAO/HEHS-00-76.

Size

Characteristics

Earnings and benefits

### Alternative Arrangements

- **Agency temps:** Work for agencies who assign them to work for other companies
- **Contract company workers:** Work for companies providing services to firms under contract
- **Day laborers:** Picked up by employers to work for the day
- **Direct-hire temps:** Hired directly by companies to work for a specified period of time
- **Independent contractors:** Obtain customers on their own to provide a product or service
- **On-call workers:** Called to work on an as-needed basis
- **Self-employed workers:** Non-wage and salary workers who are not self-identified as independent contractors (e.g., restaurant and shop owners)
- **Standard part-time workers:** Regularly work fewer than 35 hours a week and not already included in an above group

### Core Contingent Workers

Labor experts have not reached consensus on which arrangements represent contingent work. Many agree that workers who lack job security and those with variable or unpredictable work schedules should be included in the core definition of contingent. We use the term “core contingent” workforce to refer to such arrangements (e.g., agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers).<sup>16</sup>

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

Definitions that Focus on Alternative Work Arrangements Include Many More Workers than BLS’s Definition

### GAO-Identified Alternative Work Arrangements in the CWS

While BLS defines and identifies contingent workers based on the temporary nature of their employment, other approaches focus more broadly on the structure of employer-employee relationships. According to the Department of Labor’s Wage and Hour Division, an important dimension of contingent work concerns the nature of business relationships, such as independent contracting and agency temp work. Our prior work used the CWS to identify eight types of alternative work that could be considered contingent under such definitions (see sidebar).<sup>17</sup>

Estimates of the contingent workforce that include all alternative work arrangements, such as those presented in our prior work, have many more workers than those identified by BLS’s definition. For example, in prior work, we identified 42.6 million (+/- 0.7) workers in alternative work arrangements in the 2005 CWS, while the broadest BLS definition estimated 5.7 million (+/- 0.3) contingent workers. In addition, these groups of workers remained relatively constant in proportion to the total employed labor force between 1995 and 2005 (see table 3).

**Table 3: Contingent Share of Employed Labor Force by Alternative Work Arrangements Identified by GAO and BLS Estimates, 1995-2005**

	1995	1999	2005
<b>Employed labor force (in thousands)</b>	<b>123,208</b> (+/- 571)	<b>131,494</b> (+/- 645)	<b>138,952</b> (+/- 775)
<b>Workers in alternative arrangements (percent)</b>	<b>32.2</b>	<b>29.9</b>	<b>30.6</b> (+/- 0.9)
Agency temps	1.0	0.9	0.9 (+/- 1.1)
Direct-hire temps	2.8	2.5	2.1 (+/- 1.1)
On-call workers and day laborers	1.6	1.7	2.0 (+/- 1.1)
Contract company workers	0.5	0.6	0.6 (+/- 1.1)
<b>Core contingent sub-total</b>	<b>5.9</b>	<b>5.7</b>	<b>5.6</b> (+/- 1.0)
Independent contractors	6.7	6.3	7.4 (+/- 1.0)
Self-employed workers	5.9	4.8	4.4 (+/- 1.0)
Standard part-time workers <sup>a</sup>	13.6	13.2	13.2 (+/- 1.0)
<b>BLS-defined contingent workers (estimate 1)</b>	<b>2.2</b> (+/- 1.0)	<b>1.9</b> (+/- 1.1)	<b>1.8</b> (+/- 1.1)
<b>BLS-defined contingent workers (estimate 2)</b>	<b>2.8</b> (+/- 1.0)	<b>2.3</b> (+/- 1.1)	<b>2.3</b> (+/- 1.1)
<b>BLS-defined contingent workers (estimate 3)</b>	<b>4.9</b> (+/- 1.0)	<b>4.3</b> (+/- 1.1)	<b>4.1</b> (+/- 1.0)

Source: GAO analysis of data from the 1995, 1999, and 2005 Contingent Work Supplements to the Current Population Survey; 1995 and 1999 alternative arrangements from GAO-06-656. | GAO-15-168R

Note: Alternative arrangement proportions may not add up to total due to rounding. Data for alternative arrangements from 1995 and 1999 are from a prior GAO report (GAO-06-656), which did not report confidence intervals for individual percentage estimates. Percentage estimates were reported as within +/- 1 percentage point, core contingent for those years are sums of included categories.

<sup>a</sup> Part-time workers who are not already included in one of the other alternative work arrangements.

<sup>16</sup> There is less agreement about independent contractors, the self-employed, and standard part-time workers, many of whom choose those arrangements and may have long-term employment stability.

<sup>17</sup> GAO/HEHS-00-76; GAO-06-656. BLS has used the CWS to identify and analyze workers in certain alternative work arrangements; our prior work included these and others identified in the CWS.

Size
Characteristics
Earnings and benefits

**About the GSS**

Administered by NORC at the University of Chicago, the GSS categorizes respondents by work arrangement in its Quality of Working Life survey module. Provided funding continues, NORC plans to continue the module. The 2014 GSS data, including the Quality of Working Life module, were released in March 2015, after our analysis was complete.

**Categorizing Work Arrangements in the GSS**

We identified work arrangements in the GSS (see table 4) primarily from responses to the question, “How would you describe your work arrangement in your main job?” Responses include:

- “I work as an independent contractor, independent consultant, or freelance worker.”
- “I am on-call, and work only when called to work.”
- “I am paid by a temporary agency.”
- “I work for a contractor who provides workers and services to others under contract.”
- “I am a regular permanent employee (standard work arrangement).”

Among those asked the question, but not classified as alternative (i.e., standard, or non-response), we used other GSS questions to identify self-employed and part-time workers (see enclosure II).

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

Some Data Show Alternative Workers at 40 Percent of the Labor Force, with Core Contingent Workers at 8 Percent

**Alternative Work Arrangements in the General Social Survey**

The General Social Survey (GSS) collects information about alternative work arrangements similar to those identifiable in the CWS.<sup>18</sup>

Based on our analysis of the 2010 GSS, the most recent data available, we estimated that 40.4 percent of the employed labor force was in alternative work arrangements; 7.9 percent was in core contingent arrangements—as contract company workers, on-call workers, and agency temps (see table 4).

**Table 4: Alternative Work Arrangements in the General Social Survey (Estimated Percent of Total Employed Labor Force), 2006 and 2010**

Alternative work arrangements (percent of employed labor force)	2006	2010
Agency temps	0.9 (+/- 0.6)	1.3 (+/- 1.0)
On-call workers	2.5 (+/- 1.0)	3.5 (+/- 1.4)
Contract company workers	3.6 (+/- 1.3)	3.0 (+/- 1.1)
<b>Core contingent subtotal</b>	<b>7.1 (+/- 1.6)</b>	<b>7.9 (+/- 1.7)</b>
Independent contractors	13.5 (+/- 2.0)	12.9 (+/- 2.5)
Self-employed workers	2.8 (+/- 1.4)	3.3 (+/- 1.2)
Standard part-time workers	11.9 (+/- 2.0)	16.2 (+/- 2.9)
<b>Alternative work arrangement total</b>	<b>35.3 (+/- 2.6)</b>	<b>40.4 (+/- 3.8)</b>

Source: GAO analysis of data from the 2006 and 2010 General Social Surveys. | GAO-15-168R

Note: Alternative arrangement proportions may not add up to total due to rounding.

While the estimated proportion of the employed labor force in alternative work arrangements grew from 35.3 percent to 40.4 percent between 2006 and 2010 based on GSS data, most of this growth was estimated in standard part-time jobs (see table 4). We do not know from the GSS data who among standard part-time workers are “involuntary”—those who work part-time due to economic reasons, such as an inability to obtain full-time employment. However, this overall growth in part-time workers may be a result of the 2007-2009 recession. Using other data, we examine the rise in part-time work in our section in this report on worker characteristics. In addition, the proportion of workers employed in core contingent arrangements remained relatively constant.

<sup>18</sup> The GSS question about work arrangements does not specify self-employed and part-time workers as separate from regular permanent workers. We identified those two work arrangements from other questions in the GSS to mirror the arrangements identified in the CWS (see enclosure II).

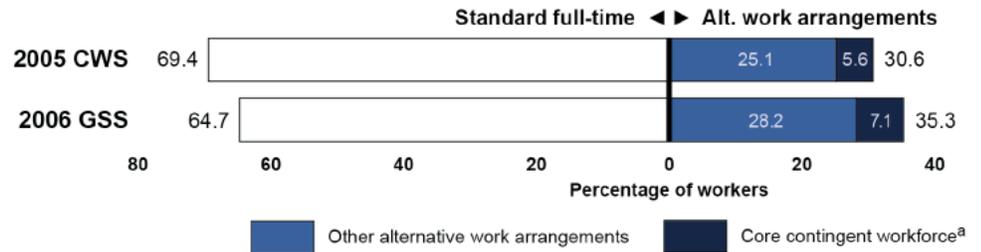
# Contingent Workforce

Two Prior Surveys Suggest Similar Proportions of Workers Were in Alternative and Core Contingent Arrangements

## Summary Comparison of Alternative Work in the CWS and GSS

As roughly comparable surveys (see sidebar), the 2005 CWS and 2006 GSS each categorized about one third of employed respondents in alternative arrangements—30.6 percent and 35.3 percent, respectively (see fig. 1). The types of work that we label core contingent also represented similar proportions—5.6 percent of employed respondents in the 2005 CWS and 7.1 percent of those in the 2006 GSS (see fig. 1).

**Figure 1: Alternative Work Arrangements in the 2005 Contingent Work Supplement (CWS) and 2006 General Social Survey (GSS)**



Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey and from the 2006 General Social Survey. | GAO-15-168R

Note: Proportions may not add up to 100 percent due to rounding. Each estimate has a 95 percent confidence interval of within +/- 3.0 percentage points.

<sup>a</sup> Core contingent includes agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers.

In both datasets, most workers in alternative arrangements are standard part-time or independent contractors. In addition, the proportions comprised of agency temps and on-call workers—with day laborers combined in the CWS—also appear similar in both.

Although the types of work that we label core contingent represented similar proportions in both the 2006 GSS and the 2005 CWS, and thus either source could be used to similarly track the size of this workforce segment over time, the GSS has smaller samples and asks less detailed questions about employment. For example, the GSS does not collect information that would be needed to determine the size of the contingent workforce according to other definitions, such as the three BLS estimates based on the temporary nature of employment. In addition, having comparable GSS data for only 2 recent years (2006 and 2010) and its collection at such long intervals limits its ability to illustrate current trends in the size of this workforce.



### CWS and GSS Survey Structure Comparison

The CWS and GSS both sample populations representative of the national employed labor force and thus their distributions of work arrangements are comparable in the aggregate. However, the structure of their surveys and their results differ.

- The CWS surveys a larger sample than the GSS.
- The CWS is designed to measure specific labor force characteristics and to generate estimates of proportions and population totals, among other things. While the GSS includes questions related to employment and work experiences and can estimate proportions of certain labor force characteristics, it is not specifically designed to measure population totals.
- Both surveys rely on respondents' interpretations of their employment type, but work arrangements do not entirely align because the questions asked are different. For example, the GSS does not ask detailed questions that could identify direct-hire temps as distinct from workers in other alternative arrangements.

### Limitation of Comparisons

Due to the above differences, it is not possible to compare the exact sizes of individual groups of workers between the CWS and GSS.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

Size

Characteristics

Earnings and benefits

### About SIPP

The Census Bureau (Census) administers SIPP as a nationally-representative longitudinal survey—the 2008 panel is the most recent completed survey. Census redesigned SIPP for the 2014 survey panel. According to officials, the 2014 data will flag jobs as contingent, as opposed to workers. However, researchers will be able to use survey responses (to the same work questions used in prior panels) to categorize workers according to their own criteria. Census officials stated that the redesign will also allow researchers to better identify individuals who move between contingent work, regular work, and non-work and also identify those who hold multiple jobs where the secondary job may be irregular or temporary.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

### Enclosure I

## Contingent Workforce

### Other Data Define Contingent Workers Differently: SIPP Counts Those in Temporary, Alternative Arrangements

### Other Measures of the Contingent Workforce

While the CWS and GSS both include a range of work arrangements, other sources identify contingent or alternative work differently and, in some cases, offer more detailed information over time about certain types of workers.

### Other Measures: SIPP

Currently available data from Census' Survey of Income and Program Participation (SIPP) identify workers as contingent if they are in alternative work arrangements without a definite agreement to work on an ongoing basis (see sidebar).<sup>19</sup> Unlike CWS and GSS, SIPP does not ask about specific work arrangements (e.g., on-call or company contract workers). Rather, SIPP asks if respondents work for an employer, are self-employed, both, or are in some other arrangement—defined as including odd jobs, on-call work, day labor, one-time jobs, and informal arrangements, such as babysitting, lawn mowing, or leaf raking for neighbors.

Using this classification, we estimated that the contingent workforce in SIPP represented 1.1 percent (+/- 0.1) of the total employed labor force at the beginning of the 2004 survey panel and 1.3 percent (+/- 0.1) at the beginning of the 2008 survey panel, the most recent available. Differences between survey structures (e.g., question wording) explain why estimates from SIPP are lower than BLS's estimates in the CWS. For example, to be categorized as working in an alternative work arrangement in SIPP, respondents would have to answer that they did not work for an employer. However, in the CWS, workers categorized as contingent under BLS's definitions would potentially self-identify in SIPP as working for an employer (e.g., contingent workers employed by a temp agency).

<sup>19</sup> SIPP identifies contingent workers with variables that track whether respondents work for an employer, are self-employed, both, or are in some other arrangement, and if they have a definite arrangement with an employer to work on an ongoing basis (see enclosure II).

Size
Characteristics
Earnings and benefits

**About CES and OES**

The CES and OES surveys collect data from employers, including job counts by and within industries, respectively. The CES includes monthly data on employment and the OES publishes data annually from employer surveys conducted over a 3-year cycle.

Because of its more frequent data collection, the CES more fully captures how populations of workers respond to economic trends, such as recession cycles. For example, contingent workers could be more vulnerable to downsizing than standard workers because they lack long-term arrangements. In contrast, periodic surveys such as the CWS and GSS provide detailed snapshots of workforce size and composition at a single point in time only.

**Industry Collected Data**

Some industry groups, such as the American Staffing Association (ASA) and the Society for Human Resource Management, conduct surveys of member organizations about issues related to contingent workers. For example, one ASA survey on temporary help employment reports job numbers that are somewhat similar to those reported in CES data. However, the opt-in nature of the survey sample (i.e., non-random selection of respondents) means the data may not accurately represent the target population of workers. Other ASA surveys on temporary help workers raise similar methodological concerns.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

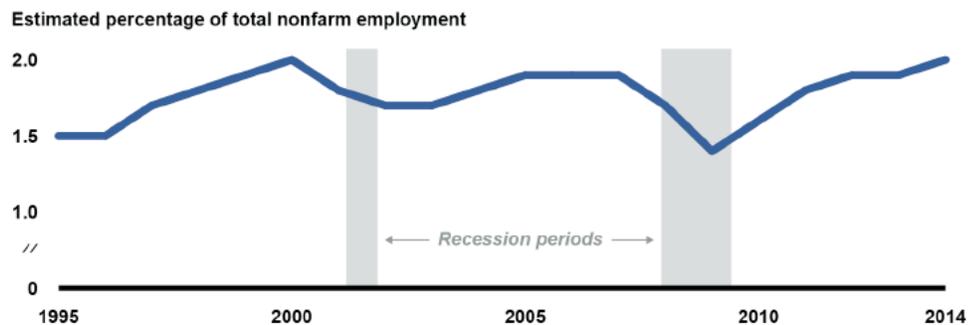
**Other Data Identify Segments of Contingent Workforce: BLS Employment Data Count Temporary Staffing Jobs**

**Other Measures: CES and OES**

Employment statistics data provide different information about the size of one segment of the contingent workforce. BLS's Current Employment Statistics (CES) and Occupational Employment Statistics (OES) surveys measure the number of jobs and distribution of occupations within industries, respectively. While these datasets are not structured according to definitions of contingent work, temporary help services (i.e., agency temps)—a segment of the contingent workforce—is one of the industries covered. According to CES data, the temporary help industry represented 2.77 million (+/- 0.15) jobs in 2014. Temporary help employment in the CES cannot be compared directly to the CWS because, in part, the CES counts the number of jobs whereas the CWS counts workers. Thus, a worker holding multiple jobs would be counted multiple times in the CES, but only once in the CWS.<sup>20</sup> For example, in 2005, the temporary help industry represented 2.55 million (+/- 0.08) jobs in the CES, while the CWS identified 1.22 million (+/- 0.14) temp agency workers.

Despite minimal coverage of alternative work arrangements and lack of comparability with the CWS, the monthly CES data enable analysis of trends over time and show how temporary help employment fluctuates with conditions in the overall economy (see sidebar). While the number of temporary help jobs has varied over the past two decades, the industry has remained a relatively consistent proportion of the employed labor force (nonfarm)—roughly 1.5 to 2.0 percent of jobs (see fig. 2).

**Figure 2: Temporary Help Services Industry as a Percentage of Total Nonfarm Employment**



Source: GAO analysis of data from the Current Employment Statistics. | GAO-15-168R  
 Note: Each estimate has a 95 percent confidence interval of within +/- 0.2 percentage points. This confidence interval is based on the largest standard error reported from 2003-2014 because comparable pre-2003 standard errors were not available.

CES data also show that employment swings in temporary help are cyclical; job numbers decrease during recessions at a higher rate than overall employment, and grow faster in recoveries (see enclosure II).

<sup>20</sup> For more information about survey differences, see Mary Bowler and Teresa L. Morisi, "Understanding the Employment Measures from the CPS and CES Survey," Monthly Labor Review (February 2006): 23-38.

Size
Characteristics
Earnings and benefits

**NELP on Outsourcing**

A 2014 report by NELP profiled industries in which domestic outsourcing is prevalent, such as retail, hospitality, janitorial services, home health care, and the public sector.<sup>21</sup> While NELP observed that some companies outsource to increase their efficiency or for other business purposes, jobs in industries with high levels of outsourcing are characterized by lower pay, greater uncertainty in hours and schedules, and according to the report, higher rates of violations of workplace laws. NELP stated that this leads to economic distress for families and communities.

**Fissuring**

According to WHD, the increasingly common practice of fissuring (also referred to as distancing) is characterized by business models that obscure, or eliminate entirely, the link between the worker and the employer. The agency's 2015 budget justification states that such models which attempt to shield employers from responsibility for working conditions have increased the number of vulnerable workers with reduced protections.

WHD describes fissuring as a key enforcement challenge, as these business practices are associated with a high incidence of wage and hour violations. The agency's enforcement strategy focuses on compliance and on priority industries including construction, hospitality, and janitorial services.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Traditional Definitions of Contingent Work Do Not Capture All Forms of Employment Instability**

**Other Concepts of Contingent Work without Data Measures**

Some labor experts and federal agencies focus on forms of employment instability that do not fully align with traditional definitions of contingent work. For example, recent reports by the National Employment Law Project (NELP) have explored domestic outsourcing, including business practices such as franchising,<sup>22</sup> contracting, using agency temps, and the misclassification of employees as independent contractors (see sidebar). Domestic outsourcing can change an employee's formal status or create a tenuous status within standard employment. While some of these workers may be identified as contingent in data sources, others may be counted as standard full-time workers even though they face increased employment instability in some form. Other experts have recently explored scheduling issues, such as variability in work hours and unpredictable shifts, as well as emerging venues for temporary work, such as online clearinghouses for obtaining ad hoc jobs. The Department of Labor's Wage and Hour Division (WHD) is currently focused on the concept of fissuring, in which employment models like those above attempt to obscure or eliminate the link between the worker and the business (see sidebar). According to WHD, companies are increasingly relying on various contingent workforce solutions, which can lead to violations of worker protection laws.

Traditional definitions of contingent work may include workers in these situations, but some may also be considered standard full-time workers. For example, according to one labor expert, hourly jobs identified as full-time do not always provide full-time hours, and turnover rates in some permanent jobs are so high they are essentially temporary. Current data are not configured to identify or count workers by their job characteristics, such as schedule variability or layers of subcontracting. According to WHD officials, work relationships they consider fissured that are not currently captured in data may illustrate additional dimensions of contingent work. Alternative arrangements are dynamic and capturing emerging issues in survey data is a challenge. One expert we talked to said she and her colleagues had worked with BLS to add questions on scheduling practices to the National Longitudinal Survey of Youth, but noted this was the first time such questions had been asked nationally. In 1989, BLS recommended unpredictable variability in minimum work hours as a defining trait of contingent work.<sup>23</sup> BLS staff stated this concept was not used in the CWS because it was not viewed as the foremost characteristic of contingent work and it is difficult to design questions that capture it.

<sup>21</sup> Catherine Ruckelshaus, Rebecca Smith, Sarah Leberstein, and Eunice Cho, "Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work," NELP (May 2014).

<sup>22</sup> Franchising can be seen as a form of outsourcing in that an employer (the franchisor) inserts an intermediary (the franchise holder, or franchisee) between itself and the workers and designates the franchisee as the workers' sole "employer" (e.g., companies that franchise their businesses to another, such as in the fast-food industry). The franchisor may impose controls that make it difficult for the franchisee to pay workers fairly or provide stable work schedules.

<sup>23</sup> Anne E. Polivka and Thomas Nardone, "The Quality of Jobs: On the Definition of 'Contingent' Work," Monthly Labor Review (December 1989): 11.



**Focus on Core Contingent**

GSS data provide more recent information on worker characteristics than CWS data and offer unique information about employment experiences, such as job stability and satisfaction. However, while the 2010 GSS sample size was large enough to produce reliable estimates of alternative worker populations, it was too small to reliably analyze worker characteristics and experiences for each alternative work arrangement. Thus, we generally focused these analyses on core contingent workers rather than each individual alternative work arrangement, such as agency temps.<sup>24</sup> We were also unable to analyze the GSS data at the occupation and industry levels.

Core contingent workers, as we defined previously, include agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers. The GSS does not identify direct-hire temps or day laborers as separate work arrangements.

**Other Demographics**

- In the 2010 GSS, an estimated:
- 16.3 percent (+/- 10.5) of core contingent workers had at least some college education compared to 44.6 percent (+/- 4.8) of standard full-time workers.
  - 61.5 percent (+/- 12.6) of core contingent workers and 47.7 percent (+/- 4.4) of standard full-time workers were men.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Characteristics and Employment Experiences Differ**  
**Core Contingent Workers Are Younger and Less Educated**

In our analysis of GSS and CWS data, we found differences between standard and contingent workers in terms of their characteristics and employment experiences. Particularly, we observed key differences in demographics, job stability, and job satisfaction. While differences in areas such as job stability are generally consistent with what would be expected given definitions of contingent work, our findings quantify and show the magnitude of these differences.

**Demographics: Core Contingent and Standard Full-time**

We examined demographics in the 2010 GSS data and found that compared to standard full-time workers, core contingent workers appeared to be younger, more often Hispanic, and less educated. For example, the proportion of core contingent workers that reported they had not completed high school was four times that of standard full-time workers (see table 5). See enclosure IV for a full listing of the demographic characteristics of contingent workers in the 2010 GSS.

Using 2005 CWS data to examine the demographic characteristics of workers in alternative work arrangements, our prior work reported that contingent workers are diverse.<sup>25</sup> We further examined core contingent workers and found differences between them and standard full-time workers similar to those found in the 2010 GSS. Core contingent workers in the 2005 CWS were more likely to be Hispanic and the proportion that reported they had not completed high school was almost double that of standard full-time workers (see table 5). See enclosure IV for a full listing of contingent worker demographics in the 2005 CWS.

**Table 5: Selected Demographic Differences for Core Contingent and Standard Full-Time Workers, 2010 General Social Survey and 2005 Contingent Work Supplement**

	Mean age (years)	Hispanic (% of pop.)	No high school degree (% of pop.)
<b>2010 General Social Survey</b>			
Core contingent	40.7 (+/- 3.6)	29.2 (+/- 13.5)	30.8 (+/- 13.0)
Standard full-time	41.9 (+/- 1.0)	13.0 (+/- 5.4)	7.7 (+/- 3.4)
<b>2005 Contingent Work Supplement</b>			
Core contingent	37.4 (+/- 0.7)	18.6 (+/- 4.3)	17.4 (+/- 4.1)
Standard full-time	40.8 (+/- 0.2)	13.8 (+/- 1.3)	9.2 (+/- 1.2)

Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey and from the 2010 General Social Survey. | GAO-15-168R  
 Note: Core contingent includes agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers.

<sup>24</sup> Because of the GSS sample size, our analyses focused on five groups of workers: (1) standard full-time, (2) standard part-time, (3) self-employed, (4) independent contractors, and (5) core contingent, which was a combined group consisting of on-call, temporary agency, and company contract workers.

<sup>25</sup> GAO/HEHS-00-76; GAO-06-656.



**Factors Affecting Income**

Family income is defined in the CWS as the combined income of all family members age 15 years or older from jobs; net income from businesses, farms, and rent; pensions; dividends; interest; Social Security payments; and any other income.

Family income in the GSS is defined simply as total family income, from all sources, before taxes.

Family members may include standard full-time workers. The characteristics of employment of all family members may affect income levels.

As reported in our prior work, the relatively high incidence of low family income among some groups of contingent workers may reflect, among other things, lower levels of educational attainment, lower number of hours worked, or employment in low-wage sectors of the economy.<sup>26</sup>

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Core Contingent Workers Are More Likely to Report Low Family Income**

**Low Family Income Across Worker Groups**

While family income may be affected by many factors (see sidebar), core contingent workers are generally more likely to report low family incomes than standard full-time workers. As we observed in prior work, the percentage of workers reporting low family income in the 2005 CWS varied considerably by work arrangement.<sup>27</sup> The incidence of low family income ranged from 7.6 percent for self-employed workers to 28.4 percent among agency temps (see table 6). Despite this variation, core contingent workers were more likely to report low family income than standard full-time workers—19.8 percent compared to 8.3 percent (see table 6).

While family income estimates from the GSS vary somewhat from those in the 2005 CWS for specific work arrangements, they similarly show that core contingent workers are more likely to report low family incomes than standard full-time workers. Both the 2006 and 2010 GSS estimated that the proportion of core contingent workers who reported low family income was about three times greater than the proportion of standard full-time workers—23.2 percent versus 7.7 percent, and 33.1 percent versus 10.8 percent, in 2006 and 2010, respectively (see table 6).

**Table 6: Estimated Percentage of Workers with Family Incomes Below \$20,000 in the 2005 Contingent Work Supplement and the 2006 and 2010 General Social Surveys**

Family income below \$20,000 <sup>a</sup>			
Work arrangement	2005 CWS	2006 GSS	2010 GSS
<b>Total workforce</b>	10.5 (+/- 1.1)	10.7 (+/- 2.1)	15.3 (+/- 3.4)
Standard full-time workers	8.3 (+/- 1.3)	7.7 (+/- 2.1)	10.8 (+/- 3.2)
<b>Core contingent subtotal<sup>b</sup></b>	<b>19.8*</b> (+/- 4.3)	<b>23.2*</b> (+/- 12.5)	<b>33.1*</b> (+/- 11.3)
Agency temps	28.4* (+/- 10.0)	---	---
Direct-hire temps	18.0* (+/- 7.1)	---	---
On-call workers and day laborers	20.8* (+/- 7.2)	---	---
Contract company workers	10.8 (+/- 13.3)	---	---
Independent contractors	10.8 (+/- 4.0)	8.5 (+/- 5.0)	18.8* (+/- 7.7)
Self-employed workers	7.6 (+/- 5.4)	5.7 (+/- 12.2)	---
Standard part-time workers	18.7* (+/- 2.8)	24.0* (+/- 7.4)	19.5* (+/- 7.7)

Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey and from the 2006 and 2010 General Social Surveys. | GAO-15-168R

Note: Dashes indicate that the sample size was too small to compute reportable estimates.

\* Statistically different from standard full-time at 95 percent confidence level.

<sup>a</sup> We used a threshold of \$20,000 (not in constant dollars) for all 3 years. Inflating \$20,000 in 2005 constant dollars resulted in 2006 and 2010 nominal dollar values of \$20,615 and \$22,009, respectively. Because the GSS income variable we used allowed us to draw a cut-off at \$20,000 or \$25,000, we rounded down to \$20,000 for our comparisons. The CWS and GSS percentages in this table are based on valid responses only; not all workers reported their family incomes.

<sup>b</sup> Core contingent includes agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers.

<sup>26</sup> GAO-06-656.

<sup>27</sup> GAO-06-656.

Size

Characteristics

Earnings and benefits

### Occupations in the CWS

Previously reported estimates from the CWS show changes in the distribution of occupations among groups of contingent workers. For example, a larger proportion of agency temps worked in transportation and material moving in 2005 than in 1999 (an estimated 13 percent versus 2 percent, respectively).<sup>28</sup>

### Blue Collar Occupations

The study defined blue collar occupations as production; transportation and material moving; helpers, laborers, and hand material movers; installation, maintenance, and repair; construction; extraction; and supervisors of production, construction, and maintenance workers.

### Occupations in the Temporary Help Industry

Starting in 1999, data were available for workers in the temporary help services industry (a subpopulation of staffing services) and the study found similar patterns as for staffing services (e.g., more workers in blue collar occupations than office and administrative in 2001 with the proportion of workers in both groups declining slightly thereafter).

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

### Proportion of Staffing Services Workers in Blue Collar Occupations Increased Substantially in the 1990s

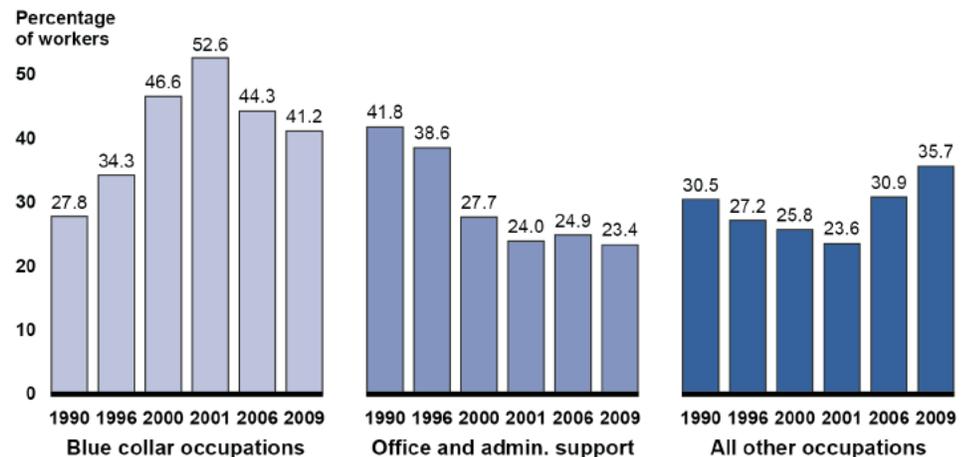
### Occupations of Contingent Workers

Information on the distribution of contingent workers by occupation is limited without the CWS, which afforded analysis of changes in the occupational makeup of this workforce through 2005 (see sidebar).

Meanwhile, OES data show shifts in the occupational distribution of workers in staffing services.<sup>29</sup> According to one study, the distribution of blue collar (see sidebar) and office and administrative occupations within this industry reversed completely between 1990 and 2001. In 1990, office and administrative support workers constituted 41.8 percent of those in staffing services, and blue collar workers made up 27.8 percent. By 2001, blue collar workers peaked at 52.6 percent and office and administrative support was at 24.0 percent (see fig. 3).<sup>30</sup>

To put these shifts in context, CES data on employment by industry show that over this period the number of staffing services workers generally grew through 2000, then fluctuated in later years. For example, CES data estimated 1.5 million staffing services workers in 1990, 3.8 million in 2000, 3.5 million in 2001, and 2.5 million in 2009.<sup>31</sup>

Figure 3: Estimated Percentage of Staffing Services Workers, by Occupation Type



Source: GAO analysis of data in "Manufacturers' Outsourcing to Staffing Services" by Dey, Houseman, and Polivka. | GAO-15-168R

Note: The totals for each year—across occupation groups—may not add up to 100 percent due to rounding. Each estimate has a 95 percent confidence interval of within +/- 1.0 percentage points. This confidence interval is based on the largest standard error reported from 1996 onward because standard errors for 1990 were not available (see enclosure II).

<sup>28</sup> GAO/HEHS-00-76; GAO-06-656. GAO-06-656 did not report confidence intervals for individual percentage estimates. Percentage estimates were reported as within +/- 1 percentage point.

<sup>29</sup> According to current industry classifications, the staffing services (i.e., employment services) industry consists of: (1) temporary help services; (2) professional employer organizations; and (3) employment agencies and executive search services. Temporary help is by far the largest, with 81 percent of industry employment in the 2014 CES data.

<sup>30</sup> Matthew Dey, Susan N. Houseman, and Anne E. Polivka, "Manufacturers' Outsourcing to Staffing Services," *ILRRReview* (July 2012). Remaining workers were in other occupations, such as healthcare.

<sup>31</sup> Each estimate has a 95 percent confidence interval of within +/- 7.5 percentage points. This confidence interval is based on the largest standard error reported from 2003-2014 because comparable pre-2003 standard errors were not available (see enclosure II).

Size

Characteristics

Earnings and benefits

### SIPP Analysis Population

The 2009 Census working paper attempted to identify a population of contingent workers in the SIPP data similar to the BLS-defined population in the CWS by adjusting the contingent workforce identified in SIPP based on other factors, such as job tenure and the reason for job separation. Although the paper observes that the adjusted SIPP data yield a smaller population of contingent workers than the BLS estimates in the CWS, it concludes that the workers analyzed in the SIPP data would meet the BLS definition of contingent.

The working paper illustrates the month-to-month volatility and overall uncertainty that many contingent workers face in the labor market. However, because SIPP does not identify specific work arrangements within its contingent population, these findings do not differentiate between groups of workers, such as contract company and on-call workers.

### Contingent Worker Tenure

Based on results in the Census working paper, we also estimated that about 72.0 percent (+/- 7.8) of contingent workers in 2004 remained in contingent employment four months or less. The report did not specify how many of those workers obtained standard employment and how many lacked employment for the other eight months of the year.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

## Contingent Workers Are More Likely to Experience Job Separation

### Employment Experiences: Security, Satisfaction, and Safety

In addition to differing from standard full-time workers on demographics and family income, contingent workers also have different employment experiences with job security, job satisfaction, and workplace safety.

### Job Security: Transitions and Loss of Employment in the SIPP

SIPP data can be used to illustrate the instability of contingent work because it tracks respondents' employment each month over a multi-year period. A 2009 Census working paper examined the employment transitions of contingent workers, as defined by BLS (see sidebar), using 2004 SIPP data.<sup>32</sup> Using the author's results, we estimated that in 2004 about 11.7 to 16.2 percent of workers categorized as contingent in a given month either left the labor force or became unemployed in the following month, which could include workers who were laid off or quit voluntarily.<sup>33</sup> About 66.3 to 79.5 percent remained in contingent work, and 8.8 to 19.4 percent moved into other work—in other words, standard employment (see table 7). In contrast, a 2004 Census report on labor force dynamics found relative stability in the employed labor force overall. Based on Census data from this report, we estimated that from 1996 through 1999 about 1.9 percent (+/- 0.2) of the employed labor force experienced job separation between any given two months.<sup>34</sup> Despite the different timeframes, these results suggest contingent workers experience monthly job separation rates several times higher than those experienced by the overall employed labor force.

Table 7: Estimated Percentage of Contingent Workers by Employment Status in Following Month (Example Months, End of Calendar Quarters), 2004

In month after contingent work:	Feb-Mar	May-Jun	Aug-Sep	Nov-Dec
Still employed in contingent work	79.5 (+/- 2.5)	66.3 (+/- 2.9)	66.4 (+/- 3.1)	72.1 (+/- 3.1)
Employed instead in standard work <sup>a</sup>	8.8 (+/- 1.7)	19.4 (+/- 2.4)	17.9 (+/- 2.5)	12.6 (+/- 2.3)
Unemployed or not in labor force	11.7 (+/- 2.0)	14.3 (+/- 2.2)	15.7 (+/- 2.5)	15.3 (+/- 2.6)

Source: GAO analysis of data from Thomas Palumbo, "Using the Survey of Income and Program Participation (SIPP) to Measure Workers in Contingent and Alternative Employment Arrangements." | GAO-15-168R

Note: Proportions may not add up to 100 percent due to rounding. The author calculated estimates at the 90 percent level of confidence, which we converted to the 95 percent level of confidence.

<sup>a</sup> We use the term "standard work" to indicate employment in a non-contingent job.

<sup>32</sup> Thomas Palumbo, "Using the Survey of Income and Program Participation (SIPP) to Measure Workers in Contingent and Alternative Employment Arrangements" (paper presented at the 2009 Annual Conference of the Eastern Economic Association, 2009). As a working paper, this research underwent a more limited review than would official Census publications. The author calculated estimates at the 90 percent level of confidence.

<sup>33</sup> The highest unemployment figure noted in the text (16.2 percent) was from the 2-month period June-July; the 95 percent confidence interval was +/- 2.3 percentage points.

<sup>34</sup> Alfred O. Gottschalck, U.S. Census Bureau, "Dynamics of Economic Well-Being: Labor Force Turnover, 1996-1999," Current Population Reports, p. 70-96, Table 1 (Washington, D.C.: July 2004). The paper defines job separation as a turnover event in which a person goes from being employed in the first month to being not employed in the second month.

Size

Characteristics

Earnings and benefits

### Subjective Measures of Employment Conditions

Survey questions that focus on respondents' perceptions of their work environment, such as those in the GSS, represent subjective measures of employment conditions. For example, responses to a question such as "how likely are you to lose your job in the coming year" may not accurately depict how many workers will, in fact, lose their jobs. However, such responses illustrate worker perceptions of job security and may be based on past experiences and knowledge of employment conditions.

### GSS Job Security Questions

We analyzed responses to two GSS survey questions related to job security:

- Were you laid off your main job at any time in the last year?
- Thinking about the next 12 months, how likely do you think it is that you will lose your job or be laid off—very likely, fairly likely, not too likely, or not at all likely?

### Job Loss Experience Effect on Expectations in the GSS

Workers in the 2010 GSS who said they were laid off in the last year were more than four times as likely as others to respond that they were very or fairly likely to lose their job in the coming year (an estimated 54.7 percent, +/- 15.3, versus 12.3 percent, +/- 3.2).

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

## Core Contingent Workers Are Less Likely to Have Job Security

### Job Security: Loss of Employment in the GSS

Similar to the findings from analyzing employment transitions in SIPP data, GSS data show that core contingent workers (i.e., contract company, on-call, agency temp) experience more job instability than standard workers. While data showing this instability may not be surprising as these workers are defined by their non-standard employment, the magnitude of differences between core contingent and standard workers was significant. Estimates from the 2010 GSS show that core contingent workers were more than three times as likely as standard full-time workers to report being laid off in the previous year, and almost five times as likely as standard part-time workers (see table 8).

Table 8: Estimated Percentage of Workers Who Reported That They Were Laid Off in the Previous Year, 2010

	Core contingent	Standard full-time	Standard part-time	Independent contractors
Laid off in previous year	28.5* (+/- 12.7)	8.2 (+/- 2.0)	5.9 (+/- 6.1)	18.4* (+/- 10.1)

Source: GAO analysis of data from the 2010 General Social Survey. | GAO-15-168R

Note: We also examined self-employed workers, but the sample size was too small to compute reportable estimates.

\* Statistically different from standard full-time at 95 percent confidence level.

Similar to workers' reported experiences of being laid off, a greater proportion of core contingent workers perceived their current jobs as unstable. The estimated proportion of core contingent workers indicating that they were very or fairly likely to lose their jobs within the coming year was more than four times greater than that of standard full-time workers (see table 9). Although the differences were smaller, a higher proportion of standard part-time workers and independent contractors also said they were very or fairly likely to lose their jobs compared to standard full-time workers.

Table 9: Estimated Percentage of Workers Reporting the Likelihood That They Would Lose Their Job in the Coming Year, 2010

	Core contingent	Standard full-time	Standard part-time	Independent contractors
Not at all likely	27.1* (+/- 16.2)	55.9 (+/- 5.5)	51.2 (+/- 8.2)	51.6 (+/- 12.2)
Not too likely	30.0 (+/- 14.8)	34.5 (+/- 5.1)	31.2 (+/- 8.8)	22.8* (+/- 9.8)
Very/fairly likely	42.9* (+/- 15.2)	9.6 (+/- 3.7)	17.7* (+/- 8.3)	25.7* (+/- 13.5)

Source: GAO analysis of data from the 2010 General Social Survey. | GAO-15-168R

Note: Proportions may not add up to 100 percent due to rounding. We also examined self-employed workers, but the sample size was too small to compute reportable estimates.

\* Statistically different from standard full-time at 95 percent confidence level.

Size

Characteristics

Earnings and benefits

### Part-Time Job Stability

Part-time workers are often in stable employment situations, and we estimated with GSS data that a relatively low proportion of standard part-time workers—those not included in another arrangement—reported they had been laid off in the prior year (see table 8). A relatively low proportion also expected to lose their jobs in the coming year (see table 9). However, part-time workers may experience instability in other forms, particularly where wide fluctuations in the hours offered for work can lead to instability in income levels.

### Variable Work Hours and Unpredictable Schedules

In addition to standard part-time workers, workers in standard full-time or alternative arrangements may have variable work schedules. With advanced scheduling software, employers can minimize labor costs by quickly adjusting work schedules to respond to shifts in customer demand. However, “on-time” staffing decisions may disregard workers’ scheduling considerations. According to Department of Labor officials, the Department currently has no authority under the Fair Labor Standards Act to require advance notification of schedules. Congress has expressed interest in issues related to work scheduling predictability and stability.

The 2014 GSS included a question on advance work scheduling, for the first time, in one of its modules.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

## Reasons Workers Obtain Contingent Work Vary, though Many Do So Out of Necessity

### Job Security: Instability and Involuntary Contingent Work

Just as employment stability varies among contingent worker groups, so too do workers’ reasons for obtaining alternative work. Some do so involuntarily as a last resort. The 2005 CWS data show that agency temps and on-call/day laborers were more likely than others to report that they had their job because it was the only work they could find (see table 10).

**Table 10: Estimated Percentage of Workers who Obtain Contingent Work as a Last Resort or as a Path to Permanent Employment (by Work Arrangement), 2005**

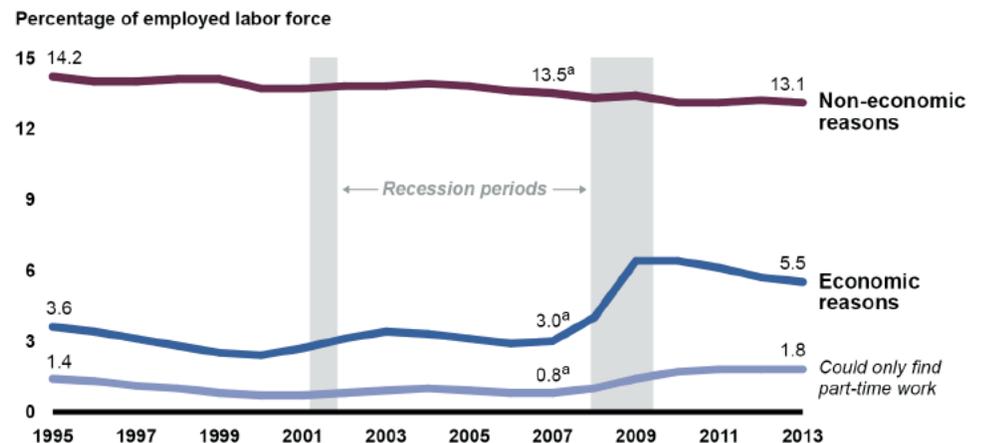
	Agency temps	On-call workers and day laborers	Independent contractors	Self-employed
Only type of work found	50.9 (+/- 8.2)	24.2 (+/- 6.7)	3.1 (+/- 3.9)	1.8 (+/- 5.1)
Laid off, rehired as temp	0.7 (+/- 11.6)	---	0.9 (+/- 4.0)	0.3 (+/- 5.2)
Hope job leads to permanent work	12.8 (+/- 10.9)	7.0 (+/- 7.4)	0.5 (+/- 4.0)	0.6 (+/- 5.2)

Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey. | GAO-15-168R

Note: This question was only asked specifically of these four worker groups. Percentages are based on valid responses and are not intended to add up to 100 because workers obtain jobs for many different reasons including, for example, other economic reasons, flexibility of schedule, child care, and health limitations. Proportions of agency temps and on-call/day laborers that responded “only type of work found” were statistically different from independent contractors and the self-employed at the 95 percent confidence level.

More recent CPS data show that the percentage of the employed labor force who are “involuntary part-time”—those who work part-time for economic reasons, such as not being able to find full-time work—is almost double what it was estimated to be in 2007 before the onset of the recent recession (see fig. 4). In addition, some who work part-time for reasons categorized as non-economic may not do so entirely by choice but rather out of economic necessity due to child care or other scheduling needs; thus, even more workers could be considered involuntary part-time.

**Figure 4: Estimated Share of Employed Labor Force Working Part-Time, by Reason**



Source: GAO analysis of data from the Current Population Survey. | GAO-15-168R

Note: Data are calculated from BLS’s Labor Force Statistics: “Table A-8.” Part-time refers to those who worked 1-34 hours. “Could only find part-time work” is a subset of “economic reasons.” Each estimate has a 95 percent confidence interval of within +/- 0.2.

<sup>a</sup> Percentages shown represent annual averages, and 2007 was the most recent prior to the Dec. 2007-Jun. 2009 recession.

Size

Characteristics

Earnings and benefits

### Fringe Benefits in the GSS

GSS data offer some insight into workers' access to work-provided benefits by asking workers whether they agree that their "fringe benefits are good." This measure of employment conditions is limited, as survey respondents may think of different things as fringe benefits. However, differences in perceptions between worker groups are apparent.

While the 2010 GSS question does not clearly define fringe benefits for respondents, a past GSS module that focused on fringe benefits asked questions about medical, dental, and life insurance; child care; maternity and paid sick leave; flexible scheduling; stock options; and pensions/retirement programs.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

### Data Are Limited, But Core Contingent Workers May Be Less Satisfied with Work-Provided Benefits

### Job Satisfaction: Access to Benefits

Without questions about specific work-provided benefits in the GSS and without a recent CWS,<sup>35</sup> current information about contingent workers' access to health insurance and retirement plans is limited. However, our prior work found that contingent workers had less access to work-provided health insurance and retirement plans than other workers.<sup>36</sup> Reported access varied among respondents in different types of alternative work arrangements and was lowest among agency temps, excluding those who identified themselves as independent contractors and self-employed workers and thus may not have employers. BLS researchers have noted that relatively low access to work-provided benefits may be a common characteristic of contingent workers, which may also suggest a need for further study. In our section on earnings and benefits, we examine an approximate population of contingent workers from 2012 CPS data to provide information on retirement plan and health insurance coverage.

While current data on contingent workers' access to work-provided benefits are limited, GSS data show that core contingent workers, as well as others who are not in standard full-time arrangements, report significantly lower satisfaction with their fringe benefits.<sup>37</sup> Most workers, regardless of group, reported that their fringe benefits were very or somewhat good, including 63.3 percent of core contingent workers (see table 11). However, core contingent and part-time workers, as well as independent contractors, were significantly less satisfied than standard full-time workers. For example, an estimated 28.4, 26.6, and 28.7 percent of these groups, respectively, responded that it was not at all true that their fringe benefits were good, as compared to just 12.9 percent of standard full-time workers (see table 11).

**Table 11: Estimated Percentage of Workers Who Agreed That Their Fringe Benefits Were Good, 2010**

"My Fringe Benefits Are Good"	Core contingent	Standard full-time	Standard part-time	Independent contractors
Very / somewhat true	63.3* (+/- 12.7)	75.6 (+/- 3.9)	55.7* (+/- 7.5)	61.0* (+/- 9.6)
Not too true	8.3 (+/- 8.4)	11.5 (+/- 2.7)	17.7 (+/- 7.3)	10.3 (+/- 7.2)
Not at all true	28.4* (+/- 12.2)	12.9 (+/- 3.5)	26.6* (+/- 8.6)	28.7* (+/- 10.8)

Source: GAO analysis of data from the 2010 General Social Survey. | GAO-15-168R

Note: Proportions may not add up to 100 percent due to rounding. We also examined self-employed workers, but the sample size was too small to compute reportable estimates for all responses.

\* Statistically different from standard full-time at 95 percent confidence level.

<sup>35</sup> A past GSS topical module had questions about fringe benefits, but was administered only in 1991 (see sidebar).

<sup>36</sup> [GAO/HEHS-00-76](#); [GAO-06-656](#). GAO previously reported on pension coverage. We use the term retirement plans because the survey questions analyzed ask about pension or retirement plan offerings. We also use the term "work-provided" rather than the legal term "employer-sponsored" because the survey questions ask about benefits offered by a worker's employer or union.

<sup>37</sup> Fringe benefits were open to the interpretation of respondents (see sidebar).

Size

Characteristics

Earnings and benefits

### GSS Job Satisfaction Questions

The GSS examines job satisfaction with various subjective measures. Whereas the CWS simply asked respondents whether they would prefer to be in a job with a different type of employer, the GSS asked about issues such as respect at work, job fatigue, fringe benefits, and overall satisfaction. After analyzing the GSS job satisfaction variables, we focused on two issues: fringe benefits (see table 11) and overall job satisfaction (see table 13).

## Enclosure I

# Contingent Workforce

## Job Satisfaction Differs Among Contingent Groups, though Core Contingent Workers Generally Like their Jobs Less

### Job Satisfaction: Current Employer and Job

Beyond contentment with benefits, contingent worker groups also vary in their overall job satisfaction. As stated in our prior work, the 2005 CWS data show differences between workers in alternative arrangements.<sup>38</sup> Of those worker groups asked, agency temps and on-call/day laborers were more likely to state that they would prefer a different type of employment. In contrast, more than 85 percent of independent contractors and the self-employed appeared content with their employment type (see table 12).

**Table 12: Estimated Percentage of Workers Who Want a Different Type of Employment, 2005**

Would you prefer a different type of employment?	Agency temps	On-call workers and day laborers	Independent contractors	Self-employed
Yes	59.3 (+/- 7.4)	48.3 (+/- 5.5)	9.4 (+/- 3.8)	7.5 (+/- 4.9)
Depends	6.8 (+/- 11.3)	6.2 (+/- 7.4)	5.4 (+/- 3.9)	4.0 (+/- 5.0)
No	33.8 (+/- 9.5)	45.5 (+/- 5.7)	85.2 (+/- 1.5)	88.4 (+/- 1.7)

Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey. | GAO-15-168R

Note: This question was only asked specifically of these four groups of workers and was phrased slightly differently by group, as appropriate. The percentages in this table are based on valid responses (those shown); proportions may not add up to 100 percent due to rounding. The proportions of agency temps and on-call workers/day laborers that responded "Yes" and "No" were statistically different from those of independent contractors and the self-employed at the 95 percent confidence level.

Similar to the 2005 CWS findings, core contingent workers in the 2010 GSS appeared more dissatisfied with their employment than some other worker groups. Compared with standard full-time workers, a larger proportion of core contingent workers indicated that they were not at all or not too satisfied with their jobs.<sup>39</sup> Independent contractors were also more likely to report being "very satisfied" with their jobs than core contingent workers—56.8 percent versus 36.1 percent (see table 13).<sup>40</sup>

**Table 13: Estimated Percentage of Workers Who Reported That They Were Satisfied with Their Jobs, 2010**

	Core contingent	Standard full-time	Standard part-time	Independent contractors
Not at all/Not too satisfied	18.0 (+/- 10.6)	9.5 (+/- 2.9)	21.6* (+/- 8.0)	8.1 (+/- 9.3)
Somewhat satisfied	45.9 (+/- 12.0)	45.2 (+/- 4.5)	39.9 (+/- 8.8)	35.1* (+/- 9.4)
Very satisfied	36.1 (+/- 13.2)	45.3 (+/- 4.3)	38.6 (+/- 8.1)	56.8* (+/- 8.1)

Source: GAO analysis of data from the 2010 General Social Survey. | GAO-15-168R

Note: Proportions may not add up to 100 percent due to rounding. We also examined self-employed workers, but the sample size was too small to compute reportable estimates.

\* Statistically different from standard full-time at 95 percent confidence level.

<sup>38</sup> GAO-06-656.

<sup>39</sup> Our results were significant at the 0.064 significance level; therefore, we can state with 90 percent confidence that the full population of core contingent workers would indicate more dissatisfaction with their jobs than standard full-time workers.

<sup>40</sup> The difference was significant at the 95 percent confidence level.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

Size

Characteristics

Earnings and benefits

### Temporary Worker Initiative

OSHA started the Temporary Worker Initiative in April 2013 to prevent injuries and illnesses among temporary workers. The initiative brings stakeholders together to ensure worksite protections are in place and that agency temps receive adequate hazard training. According to OSHA, through the initiative, inspectors assess and record instances when temporary workers are exposed to safety violations and clarify staffing firms' and host employers' shared responsibilities for providing hazard training and protective equipment, and for other safety issues. Challenges encountered by OSHA include the unavailability of injured workers because they are no longer employed at worksites by the time OSHA inspections occur, as well as the multiple layers of contractors and workers employed by different employers at some worksites.

### Limitations of Injury Data

Survey findings about workplace safety may be limited by the fact that the overall incidence of injuries is low and injury rates depend on the hazards present in an industry. These factors make it difficult to detect differences in injury rates between groups of workers, if any exist. Also, survey respondents may define injury differently. The GSS does not offer comprehensive injury data, as it is not designed to account for these dynamics.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

## Data on Work Injuries by Employment Type Are Limited, though Temporary Workers May Be at Greater Risk

### Workplace Safety

Evaluating workplace safety for contingent workers is challenging due to a lack of data that track the employment type of workers injured on the job. Occupational Safety and Health Administration (OSHA) officials said that the agency has implemented new procedures which require staff, upon receiving a report, to inquire whether the fatality, injury, or illness involved workers from a temporary staffing agency—one type of contingent employment.<sup>41</sup> Officials stated that, as a result, the agency is beginning to capture meaningful data and will soon have enough to conduct analyses.

According to OSHA officials, some temporary workers are more vulnerable to workplace safety and health hazards, for a variety of reasons, including because they often are not provided adequate safety training or equipment by either the staffing agency or the host employer (see sidebar).<sup>42</sup> Because some states' workers' compensation data track whether a worker is employed by a temp staffing agency, researchers have used these data to compare rates of injury between temporary and standard workers; for example, two such studies suggested that a greater proportion of temporary workers file claims for workers' compensation.<sup>43</sup>

To examine additional types of contingent and alternative arrangements, we analyzed GSS data on perceptions of workplace safety and self-reported injuries. We found no significant differences between worker groups, though small sample size and survey design limit the conclusions that can be drawn. Almost 90 percent of each worker group indicated they had not been injured in the past year (see table 14 and sidebar).<sup>44</sup>

Table 14: Workers Who Reported Being Injured on the Job in the Past Year, 2010

Estimated percent who reported:	Core contingent	Standard full-time	Standard part-time	Independent contractors
No injuries	86.6 (+/- 11.5)	89.7 (+/- 2.9)	90.3 (+/- 6.6)	90.0 (+/- 6.6)
Injured 1 time	8.1 (+/- 11.4)	6.9 (+/- 2.5)	6.1 (+/- 5.9)	3.9 (+/- 6.2)
Injured 2+ times	5.3 (+/- 8.1)	3.4 (+/- 2.1)	3.6 (+/- 4.4)	6.1 (+/- 5.4)

Source: GAO analysis of data from the 2010 General Social Survey. | GAO-15-168R

Note: Proportions may not add up to 100 percent due to rounding. We also examined self-employed workers, but the sample size was too small to compute reportable estimates.

<sup>41</sup> Officials said OSHA's new procedures are the result of a revised reporting rule effective Jan. 1, 2015. See 79 Fed. Reg. 56,130 (Sep. 18, 2014) (codified at 29 C.F.R. § 1904). Previously, OSHA found out the employer of only workers killed on the job or those among three or more hospitalized.

<sup>42</sup> For further discussion of why contingent workers are at risk of work injuries and illnesses, see OSHA, *Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job* (March 2015).

<sup>43</sup> Caroline K. Smith, et al., "Temporary Workers in Washington State," *American Journal of Industrial Medicine*, vol. 53, (2010); Yong-Seung Park and Richard J. Butler, "The Safety Costs of Contingent Work: Evidence from Minnesota," *Journal of Labor Research*, vol. 22, no. 4 (Fall 2001).

<sup>44</sup> Injury rates based on GSS data are higher than the injury and illness rate reported by BLS (about 4 percent for full-time workers) based on 2007 OSHA data, as we previously reported. However, GSS respondents may have included any work-related injury, whether reported to their employer or not. GAO, *Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data*, GAO-10-10 (Washington, D.C.: October 15, 2009).



**Worker Population Analyzed**

Our analyses examine a population of contingent workers identified in the May 2012 CPS Disability Supplement, which has only been released once. This supplement asked a temporary work question which was essentially identical to that in the CWS,<sup>45</sup> and by which most of the contingent workers in BLS's CWS estimates are identified. However, our analysis population includes some workers that BLS excludes, such as those who have held their jobs for more than a year or those who plan to leave a job for personal reasons in which they otherwise could have stayed (e.g., students).<sup>46</sup> Their inclusion should not adversely influence the validity of our analyses, as the jobs they hold may be characteristic of contingent work. To confirm this, we examined the 2005 CWS and found that workers identified solely by the temp work question had similar average earnings as those in BLS's estimates.<sup>47</sup> We thus use the term "contingent workers" to discuss our population and our findings.

**CPS Earnings Data**

We ran regression analyses on earnings data from two CPS sources. We merged the May 2012 supplement with (1) annual earnings data for calendar year 2011 from the March 2012 Annual Social and Economic Supplement (ASEC), and (2) weekly and hourly earnings data from the May-August 2012 CPS outgoing rotation group earnings modules. See enclosure II for more information on our data.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Contingent Workers Earn Less and Are Less Likely to Have Work-Provided Benefits than Standard Workers**

Because contingent work can be unstable, or may afford fewer worker protections depending on the arrangement, it tends to lead to lower earnings, fewer benefits, and a greater reliance on public assistance than standard work. We analyzed these measures using 2012 CPS data that allowed us to identify a similar population of contingent workers as that in the CWS (see sidebar). Because lower earnings could be due to fewer hours worked over a given period, lower hourly wages, or both, we examined multiple earnings measures (see sidebar). We found contingent work—as defined by BLS—had lower earnings by all measures.

**Differences in Median Earnings and Other Characteristics**

Contingent workers in our analysis populations had lower median earnings than standard workers (see table 15). However, a variety of factors affect earnings, such as work and personal characteristics, and we found that contingent and standard workers differed in a number of these ways. For example, contingent workers were less likely to work full-time or to be employed for the entire year. To fully examine earnings differences between these groups, we conducted regression analyses that controlled for these and other differences (see following pages).

**Table 15: Characteristics of Contingent Workers Analyzed in CPS Regressions**

Type of worker:	2012 ASEC		2012 Earnings Modules	
	Contingent	Standard	Contingent	Standard
Percent of analysis population	3.6 (+/- 0.2)	96.4 (+/- 0.2)	3.7 (+/- 0.2)	96.3 (+/- 0.2)
Median annual / weekly earnings	\$14,963 (+/- 1,636)	\$35,000 (+/- 1,154)	\$379 (+/- 22)	\$688 (+/- 7)
Median hourly earnings			\$11.95 (+/- 0.67)	\$17.00 (+/- 0.19)
<b>Percent of group who are:</b>				
Full-time (at least 35 hours)	57.7 (+/- 3.4)	82.1 (+/- 0.5)	59.6 (+/- 2.8)	82.7 (+/- 0.4)
Full-year & full-time (at least 50 weeks & 35 hours a week)	29.8 (+/- 3.2)	73.0 (+/- 0.6)		
Self-employed	15.4 (+/- 2.6)	9.9 (+/- 0.4)		

Source: GAO analysis of data from the 2012 Current Population Survey earnings modules, Annual Social and Economic Supplement (ASEC), and Disability Supplement. | GAO-15-168R

Note: Data presented are for workers with positive earnings. The proportion of contingent workers in each dataset differs due to how many workers from the Disability Supplement were present. The population percentages may not add up to 100 percent due to rounding. See enclosure II for more information about the datasets analyzed.

<sup>45</sup> The 2012 Supplement question is asked of all workers: "Some people are in jobs that last only for a limited time or until the completion of a project. Is your job temporary?" The similar temporary work question in the CWS is not asked of the self-employed; contingent self-employed are identified by other CWS questions. See enclosure II for analyses testing the effects of excluding the self-employed.

<sup>46</sup> Because it does not contain the CWS follow-up questions used to exclude certain workers, the 2012 Disability Supplement cannot characterize the size of the contingent workforce as defined by BLS. We were also unable to analyze individual work arrangements; this would require details from the CWS.

<sup>47</sup> For additional comparisons of the number and characteristics of workers in our proxy population (as it would have looked in the 2005 CWS) and the BLS estimates in the 2005 CWS, see enclosure II.



**Validity of Merged Sample**

To ensure that our results were not affected by the construction of our merged sample of CPS earnings modules, we ran weekly and hourly earnings regressions on only those workers who reported earnings in the May 2012 earnings module. Our results were qualitatively similar to those from the merged sample (see enclosure II). For example, contingent workers in the May-only sample, on average, earn 14.0 percent less per hour than standard workers.

**Earnings Analysis in Studies**

Other studies' results related to hourly earnings differences have varied. Two studies using data on the temporary help industry from the CPS and the American Community Survey, respectively, suggest that temporary help workers have lower hourly wages than similar workers in other industries.<sup>48</sup> In contrast to those studies and our regression results, a 2014 study using administrative data on disadvantaged workers in Wisconsin produced results that suggest temporary help workers earn more per hour than others. Consistent with our findings, that same study produced results that suggest temporary help workers earn significantly less per quarter than others. The authors stated that this observed earnings gap could be the result of working fewer hours per quarter.<sup>49</sup> Each of these studies focused on only a segment of the contingent workforce for which data were available.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Due to Lower Wages and Fewer Hours Worked, Contingent Workers Earn Less than Standard Workers**

**Hourly, Weekly, and Annual Earnings**

Our regression results suggest that even after accounting for other factors that affect earnings—such as education, age, unionization, industry, occupation, and geography—contingent workers earn less, on average, than standard workers on an hourly, weekly, and annual basis.<sup>50</sup>

Our analysis of the CPS earnings module data, which included hours worked and allowed us to estimate hourly earnings, showed that after controlling for various characteristics, contingent workers, on average, earn 10.6 percent less per hour than standard workers (see table 16).

Using the CPS earnings modules and the ASEC data, respectively, we also found that contingent workers, on average, earn 27.5 percent less per week and 47.9 percent less per year than standard workers (see table 16). Because these differences do not control for hours worked, they represent the cumulative difference between groups in both pay rate and hours worked over a given period. The larger differences illustrate, in part, the effects of contingent workers being less likely to have full-time work and working fewer weeks over a year as compared to standard workers (see table 15). The transitory nature observed here and in other data (e.g., as previously illustrated with SIPP) may be expected given definitions of contingent work. Controlling additionally for the earnings effects of part-time or partial year work (i.e., limiting the analysis to full-time or full-time, full-year workers) reduces the larger differences in weekly and annual earnings, again showing the combined effects of lower wages and fewer hours worked over a given period. Contingent workers earn 16.7 percent less per week and 12.9 percent less per year (see table 16).<sup>51</sup>

**Table 16: Contingent Workers' Earnings as a Percentage of Standard Workers', 2012**

Earnings measure, workers analyzed:	Hourly, all	Weekly, all	Annual, all	Weekly, full-time	Annual, full-time/full-year
Contingent earnings as a percentage of standard	0.894*	0.725*	0.521*	0.833*	0.871*

Source: GAO regression analysis using data from the 2012 Current Population Survey earnings modules, Annual Social and Economic Supplement (ASEC), and Disability Supplement. | GAO-15-168R

Note: Our models controlled for factors that affect earnings, such as education, age, unionization (weekly and hourly earnings models), industry, occupation, and geography (for full list, see enclosure II). Full-time includes those who worked at least 35 hours per week; full-year includes those who worked at least 50 weeks in the year. The self-employed are not included in the weekly and hourly models.

\* Indicates that the regression coefficient is statistically significant at least at the level of p-value < 0.05.

<sup>48</sup> Miranda Dietz, "Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California" (Berkeley, CA: UC Berkeley Labor Center, August 2012); Lewis M. Segal and Daniel G. Sullivan, "The Growth of Temporary Services Work," *The Journal of Economic Perspectives*, vol. 11, No. 2 (1997).

<sup>49</sup> Sarah Hamersma, Carolyn Heinrich, and Peter Mueser, "Temporary Help Work: Earnings, Wages, and Multiple Job Holding," *Industrial Relations*, vol. 53, no. 1 (January 2014).

<sup>50</sup> For a full list of regression covariates, see enclosure II. All of the earnings differences discussed in the text of this section are statistically significant at least at the level of p-value < 0.05.

<sup>51</sup> We limited the annual data to only full-time, full-year workers and the weekly data to only full-time. The earnings results differ because they rely on different datasets and include different workers; the weekly earnings regressions also control for union membership (see enclosure II).



**Enclosure I**

# Contingent Workforce

Within Certain Industries and Occupations, Contingent Workers Earn Significantly Less than Standard Workers

## Education Workers

Education generally has a higher share of the contingent workforce than other industries and occupations (see fig. 5). This may be a result of the large numbers of substitute teachers who may be on call and adjunct professors who may only work part of the year or few hours per week. Earnings differences in education were also large and generally significant. To confirm that education was not skewing our overall estimates for earnings, we re-ran our regression analyses excluding education workers.

While the resulting differences were slightly smaller, contingent workers still earned significantly less than standard workers on an hourly, weekly, and annual basis. For example, even after excluding workers in the education industry or occupation, contingent workers, on average, earn 9.8 percent less per hour than standard workers.<sup>52</sup>

## Controlling for More Precise Industries and Occupations

We also ran our regression analyses controlling for workers' more precise industries and occupations instead of the detailed groupings used elsewhere (e.g., postsecondary teachers instead of the education, training, and library occupation group). The differences between contingent and standard workers were only slightly smaller when the more precise industry and occupation controls were used (see enclosure II).

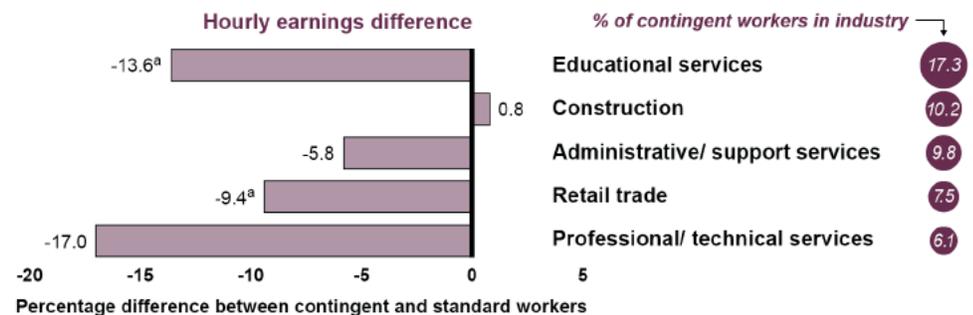
Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Earnings Differences by Industry and Occupation

Our regression analysis also showed that differences in earnings varied between contingent and standard workers in individual industries and occupations. We examined those industries and occupations that had the greatest share of the contingent workforce, as defined by BLS as having temporary jobs.<sup>53</sup> More contingent workers were in the education industry than in others (see fig. 5), and more were in education, construction, and office and administrative occupations than in others.

After controlling for various characteristics, we found that within some industries and occupations, contingent workers earn significantly less than standard workers on an hourly, weekly, and annual basis. For example, in the education industry, contingent workers, on average, earn 13.6 percent less per hour than standard workers (see fig. 5) and 65.7 percent less per year (33.6 percent less among full-time, full-year workers). Contingent workers in the transportation and material moving occupation also earn significantly less hourly, weekly, and annually than standard workers. In other industries and occupations, some but not all earnings measures were significantly less for contingent workers. In the construction industry and construction and extraction occupation, for example, only the difference in annual earnings was significant.<sup>54</sup> Figure 5 shows the percentage of contingent workers and earnings differences in the industries we analyzed.

**Figure 5: Percentage Differences between Contingent and Standard Workers' Hourly Earnings in Industries with the Greatest Share of Contingent Workers, 2012**



Source: GAO analysis of data from the 2012 Current Population Survey earnings modules and Disability Supplement. | GAO-15-168R

Note: Earnings differences shown are from our regression analyses—limited to workers within specified industries—that control for factors that affect earnings, such as education, age, and geography (for full list, see enclosure II). Estimated percentages of contingent workers in the industries shown (right side of figure) all have 95 percent confidence intervals of within +/- 2.3 percentage points; percentages are from the outgoing rotation group earnings module dataset and do not add up to 100 because only those industries with the highest share of contingent workers are shown (see enclosure II).

<sup>a</sup> Indicates that the earnings difference is statistically significant at least at the level of p-value < 0.05.

<sup>52</sup> For a full list of regression covariates, see enclosure II. All of the earnings differences discussed in the text of this section are statistically significant at least at the level of p-value < 0.05.

<sup>53</sup> We examined those industries and occupations that contained at least 5.0 percent of contingent workers in both the ASEC and CPS earnings modules datasets (see enclosure II).

<sup>54</sup> For the complete set of industry and occupation regression results and a full list of regression covariates, see enclosure II.



**Retirement Plans in ASEC**

The ASEC asks respondents two questions to determine whether they have a work-provided retirement plan:

- Other than Social Security did any employer or union that you worked for in 2011 have a pension or other type of retirement plan for any of its employees?
- Were you included in that plan?

Worded in this way, the ASEC data do not distinguish between different kinds of retirement plans, such as defined benefit or defined contribution plans. Defined benefit plans include traditional pensions, in which an employer provides a predefined monthly benefit after retirement. Defined contribution plans include 401(k) accounts, in which both the employee and the employer may contribute a certain amount to an employee's investment account—future benefits depend, in part, on employee investment decisions and market returns.

**Retirement Plans in CWS**

The CWS has asked more specific questions about retirement plans, such as whether workers had other retirement accounts (e.g., IRAs) and why workers did not participate in a work-provided plan. Our prior work reported that contingent workers who did not participate most frequently cited eligibility reasons, such as not working enough hours or weeks.<sup>55</sup>

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Contingent Workers Are Two-Thirds Less Likely to Have Work-Provided Retirement Plans than Standard Workers**

**Work-Provided Benefits: Retirement Plan Participation**

In addition to lower earnings from work, contingent workers are also less likely to have work-provided retirement plans.

From our analysis of the ASEC data, we found that contingent workers are less likely to have work-provided retirement plans (see sidebar) than standard workers.<sup>56</sup> Specifically, the odds of participating in a work-provided retirement plan are an estimated 67.6 percent lower for contingent workers than for standard workers (see table 17).<sup>57</sup> Even after limiting our analysis to full-time, full-year workers, the odds of participating in a work-provided plan remain about 56.0 percent lower for contingent workers than for standard workers (see enclosure II for additional detail regarding the calculation of odds ratios).<sup>58</sup>

**Table 17: Contingent Worker Participation in a Work-Provided Retirement Plan, 2012**

Workers analyzed:	All	Full-time/full-year
Relative odds of participating in a work-provided retirement plan (contingent workers compared to standard workers)	0.324*	0.440*

Source: GAO regression analysis using data from the 2012 Annual Social and Economic and Disability Supplements to the Current Population Survey. | GAO-15-168R

Note: Our models controlled for factors that could affect participation, such as education, age, industry, occupation, self-employment, and geography (for full list, see enclosure II). Full-time, full year includes those who worked at least 35 hours per week and at least 50 weeks in the year. The self-employed are included in the models, but we also include self-employment as a control variable because these workers may not necessarily have an employer with which they would qualify for a retirement plan (see enclosure II). Also see enclosure II for additional detail regarding the calculation of odds ratios.

\* Indicates that the regression coefficient is statistically significant at least at the level of p-value < 0.05.

<sup>55</sup> GAO-06-656.

<sup>56</sup> We use the term "work-provided" rather than the legal term "employer-sponsored" because the survey questions ask about benefits offered by a worker's employer or union.

<sup>57</sup> Under the Employee Retirement Income and Security Act of 1974, employer-sponsored retirement plans generally must permit employees to participate by the later of when the employee attains the age of 21 or completes a year of service. A year of service means completion of at least 1,000 hours of service during a 12-month period. 29 U.S.C. § 1052.

<sup>58</sup> All of the differences in participation discussed in the text of this section are statistically significant at least at the level of p-value < 0.05.



**Patient Protection and Affordable Care Act**

The estimates we report from CPS data do not reflect increased health insurance coverage under PPACA.

Although PPACA requires certain employers to provide coverage to full-time employees—averaging at least 30 hours per week<sup>59</sup>—or pay a penalty starting in 2015, these requirements do not apply to small employers, part-time employees, or seasonal employees and therefore may not directly affect coverage for some contingent workers. PPACA provides new options from which those who may not have access to affordable employer-sponsored insurance could benefit, including expanding Medicaid and providing new premium tax credits to assist those meeting income and other eligibility requirements to purchase health plans through marketplaces established under the law. The law requires individuals to maintain insurance, though tax penalties for failing to meet the law’s employer and individual mandates are being phased in over time.

The Department of Health and Human Services reported that as of mid-January 2015, more than 9.5 million individuals had selected or reenrolled in a 2015 health plan in the marketplace.<sup>60</sup> Also as of mid-January 2015, 28 states plus DC had expanded Medicaid. While enrollment data by worker type is not available, newly-covered individuals likely include contingent workers and their families because they have historically had less access to employer-based coverage than standard workers.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

**Enclosure I**

**Contingent Workforce**

**Contingent Workers Are Less Likely to Have Private or Work-Provided Health Insurance**

**Work-Provided Benefits: Health Insurance Participation**

Comparing contingent and standard workers’ health insurance coverage is complicated because workers may be covered by other family members’ plans. The ASEC does not ask respondents who are already covered by family members’ plans whether their own employers offer coverage. Thus, rather than conducting regression analysis, we examined the distributions of various measures of insurance coverage.

Within our analysis population of ASEC data, contingent workers were less likely than standard workers to have any private health insurance and less likely to have work-provided coverage. In particular, less than half the proportion of contingent workers reported having health insurance coverage in their own name (27.0 percent versus 57.8 percent of standard workers) as opposed to through another family member (see table 18). While most workers who had insurance in their own name had it through their employers, contingent workers were less than half as likely as standard workers to have health coverage through their own employer—21.4 percent versus 53.1 percent (see table 18).

**Table 18: Health Insurance Coverage of Contingent and Standard Workers, 2012**

Worker type:	Contingent	Standard
Covered by any private insurance plan <sup>a</sup>	61.0* (+/- 3.0)	77.9 (+/- 0.5)
Covered by private insurance in own name	27.0* (+/- 2.8)	57.8 (+/- 0.6)
Worker has work-provided health insurance plan <sup>b</sup>	21.4* (+/- 2.6)	53.1 (+/- 0.6)

Source: GAO analysis of data from the 2012 Annual Social and Economic and Disability Supplements to the Current Population Survey. | GAO-15-168R

Note: Proportions shown in the table are not intended to add to 100 percent as each represents a different population of workers.

<sup>a</sup> Private insurance includes work-provided and other health plans, such as those purchased directly from insurers.

<sup>b</sup> Participation in a work-provided plan does not indicate whether contingent or standard workers have access to work-provided health insurance because a worker could be offered a work-provided plan but choose not to participate (e.g., if the worker is covered under a spouse’s plan).

\* Statistically different from standard workers at 95 percent confidence level.

The Patient Protection and Affordable Care Act (PPACA) was intended to increase the accessibility and affordability of health coverage, including by expanding Medicaid and providing new health premium tax credits to assist eligible individuals to purchase health plans through health insurance marketplaces established under the law (see sidebar).<sup>61</sup> However, contingent workers, whose work hours and earnings fluctuate, could face changes in their eligibility for employer-sponsored insurance, premium tax credits, or Medicaid during the course of a year.

<sup>59</sup> PPACA defines full-time work differently than the Current Population Survey. We use the survey’s definition of 35 hours per week in our various analyses.

<sup>60</sup> Including more than 7.1 million in the 37 states using the HealthCare.gov platform and nearly 2.4 million in the 14 states (including DC) using their own platforms. In the HealthCare.gov states, 87 percent of plan selections qualify for premium tax credits or cost-sharing reductions.

<sup>61</sup> For more information on the PPACA, see enclosure III.

Size

Characteristics

Earnings and benefits

### Differences in Participation

Because CPS estimates are known to underestimate participation in public assistance programs,<sup>62</sup> our analysis provides an indicator of the difference in participation rates between contingent and standard workers rather than estimates of the absolute levels of program participation in either group.

Note: Estimates are shown at the 95 percent level of confidence, unless otherwise noted.

## Enclosure I

# Contingent Workforce

## Contingent Workers Are More Likely to Live in Poverty and Rely on Various Sources of Public Assistance

### Measures of Poverty: Family Income and Public Assistance

While measures of poverty depend on a worker's earnings as well as other factors, such as the earnings of other members of the family, poverty indicators and receipt of public assistance show some of the broader effects of contingent work. As with health care, we used data from the 2012 ASEC to evaluate summary statistics on poverty for contingent and standard workers rather than conducting regression analysis.<sup>63</sup>

Based on an examination of family income levels and various sources of public assistance, contingent workers are more likely to report being in situations of poverty than standard workers (see table 19). Specifically, contingent workers are more likely than standard workers to have family incomes below the poverty line and below 150 percent of the poverty line. They are also more likely to receive: benefits from the Supplemental Nutritional Assistance Program (SNAP, formerly known as the federal Food Stamp Program); cash assistance from state or county welfare programs; and Supplemental Security Income (SSI).

**Table 19: Estimated Proportion of Contingent and Standard Workers at Different Income-to-Poverty Ratios and Participating in Selected Programs, 2012**

Worker type:	Contingent	Standard
Family income below poverty line	15.2* (+/- 2.3)	6.2 (+/- 0.3)
Family income below 150 percent of poverty line	26.0* (+/- 2.8)	12.9 (+/- 0.4)
Anybody in family received Supplemental Nutritional Assistance Program (SNAP) benefits	11.1* (+/- 2.1)	5.6 (+/- 0.3)
Worker received cash assistance from state or county welfare program	1.8* (+/- 1.0)	0.4 (+/- 0.1)
Worker received Supplemental Security Income (SSI)	1.0* (+/- 0.8)	0.3 (+/- 0.1)

Source: GAO analysis of data from the 2012 Annual Social and Economic and Disability Supplements to the Current Population Survey. | GAO-15-168R

Note: Proportions shown in the table are not intended to add to 100 percent given that each represents a response to a different question. Because CPS estimates are known to underestimate public assistance program participation, the data in this table provide an indicator of the difference in participation rates between contingent and standard workers rather than estimates of the absolute levels of program participation in either group.

\* Statistically different from standard workers at 95 percent confidence level.

<sup>62</sup> Laura Wheaton, "Underreporting of Means-Tested Transfer Programs in the CPS and SIPP," 2007 Proceedings of the American Statistical Association, Social Statistics Section (Alexandria, VA: American Statistical Association, 2007); Bruce D. Meyer, Wallace K. C. Mok, and James X. Sullivan, "The Under-Reporting of Transfers in Household Surveys: Its Nature and Consequences," National Bureau of Economic Research, NBER Working Paper 15181 (July 2009).

<sup>63</sup> Family and household characteristics were not a focus of our work, and they would have been necessary for regression analysis.

## Enclosure II—Objectives, Scope, and Methodology

We analyzed and compared a number of data sources to examine (1) the size of the contingent workforce, (2) the characteristics and employment experiences of contingent versus standard workers, and (3) any differences in earnings, benefits, and measures of poverty between contingent and standard workers.

To gain an understanding of and provide context for the relevant contingent worker data that we analyzed, we interviewed officials who collect and maintain the respective datasets from the Department of Labor and the Census Bureau (Census), and an official from NORC at the University of Chicago. To provide additional context, we also interviewed officials from the Department of Labor, as well as subject matter experts and officials from organizations representing workers and employers, including the American Staffing Association; the Society for Human Resource Management; the National Employment Law Project; the Service Employees International Union; the National Staffing Workers Alliance; and the Chicago Workers' Collaborative. To provide additional context and to complement our findings, we reviewed studies that address topics related to contingent work. These studies were identified through our queries of bibliographic databases as well as through recommendations of the experts we interviewed. We assessed the methodological approaches of these studies and determined that they were sufficiently rigorous to support our use of their findings; we noted limitations as applicable.

To identify workforce protections provided to contingent workers, we reviewed our prior reports on this topic, and reviewed relevant federal laws, including the Patient Protection and Affordable Care Act (PPACA).

The remainder of this enclosure provides detailed information about the data and methods we used in our review. Section 1 identifies our key data sources; section 2 describes the methods we used to answer questions 1 and 2; and section 3 covers the methods for question 3.

### Section 1: Data Sources

To answer our research questions, we used data from the following sources:

**Table 20: Data Sources Used in GAO's Analyses**

Data file	Type of information in file used in analyses	Years of data analyzed	Used for question
Current Population Survey (CPS)	For all CPS data, we limit our analysis to individuals ages 16 and over		
CPS basic household survey, including outgoing rotation group earnings modules	General and earnings information about employed labor force	2005, 2012 (various months)	1, 2, 3
CPS Contingent Work Supplement (CWS)	Information about employed labor force, including identification of contingent workers and alternative work arrangements	1995, 1999, 2005	1, 2, 3

CPS Disability Supplement	Information about employed labor force, including identification of temporary (i.e., contingent) workers	2012	1, 3
CPS Annual Social and Economic Supplement (ASEC)	In part, information on annual earnings, benefits, income, and program participation for employed labor force	2012	3
General Social Survey (GSS)	Information about employed labor force, ages 18 and over	2006, 2010	1, 2
Quality of Working Life Module (QWL)	In part, information about employed labor force, including identification of alternative work arrangements and perceptions about employment, ages 18 and over	2006, 2010	1, 2
Survey of Income and Program Participation (SIPP)	Information about employed labor force, including identification of contingent workers, ages 15 and over (some data used are from a working paper)	2004, 2008	1, 2
Current Employment Statistics (CES)	Information about jobs by industry, age range is not explicitly restricted	1995-2014	1, 2
Occupational Employment Statistics (OES)	Information about jobs by occupation and within industries, age range is not explicitly restricted (data used are from an external study)	Selected years from 1990 through 2009	2

Source: GAO analysis of various data sources. | GAO-15-168R

While the minimum ages of respondents varied slightly, the data sources covering workers (as opposed to jobs) were representative of the employed labor force.

Throughout our analyses, we generally only report estimates from survey data where the maximum margin of error was within 15 percentage points. However, occasionally we report estimates with larger margins of error because we deemed them reliable representations of given findings due to the statistical significance of large differences between comparison groups. In all cases, we report the applicable margins of error (i.e., the maximum half-width of the 95 percent confidence interval around the estimate). In some cases, the confidence intervals around our estimates are asymmetrical; however, we present the maximum half-width for simplicity and for a consistent and conservative representation of the sampling error associated with our estimates.

Additional details about the datasets follow; for more information, refer to the technical documentation associated with each dataset.

### Current Population Survey (CPS)

The CPS is designed and administered jointly by Census and the Bureau of Labor Statistics (BLS). It is the source of official government statistics on employment and unemployment in the United States. The basic monthly survey is used to collect information on employment, such as employment status, occupation, and industry, as well as demographic information, such as age, sex, race, marital status, educational attainment, and family structure, among other things. The survey is based on a sample of the civilian, non-institutionalized population of the United States.

Using a multistage stratified sample design, about 60,000 households are selected on the basis of area of residence to represent the country as a whole and individual states.

### **CPS Outgoing Rotation Group Earnings Module**

Earnings data in the CPS are collected from approximately one-fourth of the CPS basic monthly sample, limited to wage and salary workers. All self-employed workers, both incorporated and unincorporated, are excluded from the CPS earnings module. The CPS monthly survey is administered to each household for four sequential months, followed by eight months out of the sample, and then again for an additional four sequential months. Each month, those respondents in their fourth or eighth survey month (the “outgoing rotation group”) who are wage or salary workers are administered the earnings module. Earnings data include usual weekly earnings, representing earnings before taxes and other deductions, and include any overtime pay, commissions, or tips usually received (at the main job in the case of multiple jobholders). The earnings module also includes information about usual hours worked per week, and actual hours worked last week. This report uses data from the 2012 May, June, July, and August earnings modules.

### **CPS Contingent Work Supplement (CWS)**

Census has administered the February CWS five times—in 1995, 1997, 1999, 2001, and 2005—to collect information on the contingent workforce. BLS designed the CWS to produce estimates of the number of workers in contingent jobs—that is, jobs structured to last only a limited period of time—as well as other information about employment and benefits, among other things. In addition, the supplement collected information on several alternative work arrangements. Using information collected in the supplement, BLS developed three estimates of the contingent workforce, in part to assess the impact of different assumptions about which factors may indicate contingent employment. All employed persons except unpaid family members are included in the supplement. For persons holding more than one job, the questions refer to the characteristics of their main job—the job in which they work the most hours. This report uses data from the February 1995, 1999, and 2005 CWS.

### **CPS Annual Social and Economic Supplement (ASEC)**

The ASEC provides supplemental data on work experience, such as weeks and hours worked, total income and income components, such as earnings, noncash benefits, and program participation, among other things. Data on employment and income refer to the preceding calendar year, although demographic data refer to the time of the survey. This file also contains data covering nine noncash income sources: the Supplemental Nutritional Assistance Program (SNAP, formerly known as the federal Food Stamp Program), school lunch program, employer-provided group health insurance plan, work-provided pension plan, personal health insurance, Medicaid, Medicare, CHAMPUS or military health care, and energy assistance. According to Census, the ASEC is a high quality source of information used to produce the official annual estimate of poverty, and estimates of a number of other socioeconomic and demographic

characteristics, including income, health insurance coverage, educational attainment, marital status, and family structure. This report uses data from the March 2012 ASEC.<sup>64</sup>

### **CPS Disability Supplement**

In May 2012, Census administered the Disability Supplement to the Current Population Survey. This supplement was designed to measure data in specific areas related to the employment of persons with disabilities. The supplement gives labor force participation rates, work history, barriers to employment, and types of workplace accommodations for persons with disabilities and those without disabilities. The supplement also includes the question: “Some people are in jobs that last only for a limited time or until the completion of a project. Is your job temporary?” This variable is available for all currently employed survey respondents who completed the May 2012 CPS Disability Supplement. We used this variable to obtain a recent population of workers in temporary jobs. We merged this population, from May 2012, with data from the March 2012 ASEC, and with data from the May, June, July, and August 2012 earnings modules from the basic monthly CPS surveys.

### **General Social Survey (GSS) and Quality of Working Life (QWL) Module**

The GSS, conducted annually or biannually since 1972, collects national data on social characteristics and attitudes, including information on workers in alternative work arrangements. The GSS is administered by NORC at the University of Chicago, and contains a standard core of demographic and attitudinal questions as well as additional questions related to topics of special interest. The GSS is administered as a nationally representative sample of households and includes weights for estimating population proportions for adults ages 18 and above. While the GSS is not specifically designed to generate labor force estimates, it includes several questions that enable identification and analysis of workers in various work arrangements in some years.

The QWL survey module collects information about respondents’ work arrangements and perceptions about their employment, among other things. The National Institute of Occupational Safety and Health developed the questions in the QWL module, and NORC has administered the module through a grant from the National Science Foundation every 4 years beginning in 2002 (completed surveys available for 2002, 2006, 2010, and 2014). We used data from the 2006 and 2010 QWL modules and full GSS (data from the 2014 GSS were released in March 2015, after our analysis was complete).

### **Survey of Income and Program Participation (SIPP)**

Administered by Census, SIPP is a household-based survey designed as a continuous series of national panels. Census uses a two-stage stratified design to produce a nationally representative panel of respondents who are interviewed over a period of approximately three to four years. Within a SIPP panel, the entire sample is interviewed at various intervals called

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<sup>64</sup> The ASEC sample includes March CPS respondents and it also includes the outgoing rotation group in February and the incoming rotation group in April (i.e., about one-quarter of the February and April CPS respondents).

waves (from 1983 through 2013, generally 4-month intervals). In addition to income and public program participation, the SIPP includes data on other factors of economic well-being, demographics, and household characteristics. We used data from the 2004 and 2008 SIPP.

### **Current Employment Statistics (CES)**

The CES program is a monthly survey conducted by BLS which provides employment, hours, and earnings estimates based on payroll records. The CES sample is a random sample of worksites, clustered by unemployment insurance account number and stratified by state, industry, and employment size. The active CES sample includes approximately one-third of all nonfarm payroll employees in the United States—covering about 144,000 business and government agencies, which represent about 554,000 worksites. We used data from the 1995 through 2014 CES.

### **Occupational Employment Statistics (OES)**

The OES program is a federal-state cooperative between BLS and State Workforce Agencies which produces estimates of employment and wages for about 800 occupations. The OES covers all full-time and part-time wage and salary workers in nonfarm industries in the United States, surveying approximately 200,000 establishments every six months and taking 3 years to complete a sample of 1.2 million establishments. Data from the self-employed are not collected or included in the estimates. The OES survey draws its sample from unemployment insurance files and is stratified by metropolitan and non-metropolitan area, industry, and size. We did not use OES data directly, but analyzed a study that relied on OES data.

### **Data Reliability**

For each of the datasets described above, we conducted a data reliability assessment of selected variables including those used in our analysis. We reviewed technical documentation and related publications and websites with information about the data. We spoke with the appropriate officials at each agency or company to review our plans for analyses, as well as to resolve any questions about the data and any known limitations. We also conducted electronic testing, as applicable, to check for logical consistency, missing data, and consistency with data reported in technical documentation. We determined that the variables that we used from the data we reviewed were reliable for the purposes of this report.

## **Section 2: Analyses of Size and Characteristics of Contingent Workforce**

This section discusses the data and methods we used to examine (1) the size of the contingent workforce, and (2) the characteristics and employment experiences of contingent versus standard workers. We analyzed data from various sources about the contingent workforce.

## CPS Contingent Work Supplement (CWS)

To analyze the size of the contingent workforce using CWS data, we estimated the percent of contingent workers in the employed labor force based on different definitions of contingent employment. We examined data from the 1995, 1999, and 2005 CWS, and limited our analysis to individuals ages 16 and older who responded that they were employed. For each of the three years, we estimated the proportion of the employed labor force consisting of workers included in BLS's three estimates of the contingent workforce, as well as workers identified as being in an alternative work arrangement.

BLS defines contingent workers as those who do not have an implicit or explicit arrangement for long-term employment. BLS does not include those workers who do not expect to continue in their jobs for personal reasons, such as retirement or returning to school. BLS developed three successively broader estimates of the contingent workforce based on this definition.<sup>65</sup>

- Estimate 1: "Wage and salary workers who expect their jobs will last for an additional year or less and who had worked at their jobs for 1 year or less. Self-employed workers and independent contractors are excluded from the estimates. For temporary help and contract workers, contingency is based on the expected duration and tenure of their employment with the temporary help or contract firm, not with the specific client to whom they were assigned." BLS explains that the rationale for excluding self-employed workers and independent contractors from this estimate "is that people who work for themselves, by definition, have ongoing employment arrangements, although they may face financial risks."
- Estimate 2: "Workers including the self-employed and independent contractors who expect their employment to last for an additional year or less and who had worked at their jobs (or been self-employed) for 1 year or less. For temporary help and contract workers, contingency is determined on the basis of the expected duration and tenure with the client to whom they have been assigned, instead of their tenure with the temporary help or contract firm."
- Estimate 3: "Workers who do not expect their jobs to last. Wage and salary workers are included even if they already have held the job for more than 1 year and expect to hold the job for at least an additional year. The self-employed and independent contractors are included if they expect their employment to last for an additional year or less and they had been self-employed or independent contractors for 1 year or less."

We calculated each BLS estimate of the contingent workforce as a percentage of all employed workers in 1995, 1999, and 2005. We also compared the number of temporary workers identified in the 2005 CWS to the number of temporary workers identified in the May 2012 CPS Disability Supplement, in the context of the total employed labor force for both years. Because the question about temporary work in the CWS is not asked of self-employed workers, we estimated the number of temporary workers in the May 2012 CPS Disability Supplement both including and excluding the self-employed for consistency.

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<sup>65</sup> All descriptions are from Bureau of Labor Statistics, "Contingent and Alternative Employment Arrangements, February 2005," Bureau of Labor Statistics News Release (Washington, DC, July 27, 2005).

Our previous work identified 8 subgroups of workers using the CWS: (1) on-call workers/day laborers;<sup>66</sup> (2) agency temps; (3) independent contractors; (4) contract company workers; (5) self-employed workers; (6) direct-hire temps; (7) standard part-time workers; and (8) standard full-time workers.<sup>67</sup> We identified the first four subgroups using variables in the CWS that BLS created to identify these workers. We identified self-employed workers using a CPS variable identifying the class of worker as self-employed (among those workers not already included in the first 4 groups; e.g., independent contractors). As in our prior work, we identified direct-hire temps using several variables in the CWS. We included workers who indicated that although they did not work for a temporary employment agency, their job was temporary or they could not stay in their job as long as they wished for one of the following reasons: (a) they were working only until a specific project was completed; (b) they were temporarily replacing another worker; (c) they were hired for a fixed period of time; (d) their job was seasonal; or (e) they expected to work for less than a year because their job was temporary.<sup>68</sup> Among those remaining workers not already identified as being in an alternative work arrangement, we identified standard part-time workers and standard full-time workers using a CPS variable identifying worker status—part-time work indicates fewer than 35 hours per week and full-time generally indicates at least 35 hours per week. We also identified a population of “core contingent” workers, in which we included agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers. We calculated each subgroup of workers as a percentage of all employed workers in 2005 (most recent CWS data available). We used percentages for 1995 and 1999 from our prior published work.<sup>69</sup>

Using the 2005 CWS data, we analyzed various demographic and employment characteristics of core contingent workers or workers in alternative work arrangements, as applicable, and compared them to those of standard full-time workers. The characteristics we analyzed included age, sex, race, level of education, proportion of workers with low family income (defined as below \$20,000), and responses to questions about why workers had their respective jobs and whether certain workers would like to have different jobs.<sup>70</sup> We only included valid responses in our analyses of characteristics; for example, we disregarded non-responses as necessary.

Findings from our analysis of CWS data are generalizable to the employed labor force and to the contingent workforce or other worker groups, as defined. All estimates and calculations were weighted using the PWSUPWGT variable, and confidence intervals were calculated according to BLS guidance using parameters provided by BLS.

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<sup>66</sup> As in GAO’s previous work, we combined on-call workers and day laborers because the definitions and characteristics of these workers are similar and the number of day laborers alone was not large enough to be statistically significant.

<sup>67</sup> GAO/HEHS-00-76; GAO-06-656.

<sup>68</sup> Reasons (a) through (d) correspond to CWS follow-up questions that ask specifically about those conditions (variables PES1A, PES1B, PES1C, and PES1D). Those four questions are mutually exclusive and asked consecutively; for instance, if a respondent answers PES1A affirmatively that they are only working until a specific project is completed, then they are not asked the three remaining questions. Three CWS questions relate to reason (e) that they expected short-term employment because their jobs were temporary: PES1I (for workers who expect their jobs to last less than a year), PES1IDK (for workers who don’t know how long their job will last), and PES1IIN (for workers who left the job they held last week). Those workers who responded to one of these three questions that the reason is because the “job is temporary” were included.

<sup>69</sup> GAO-06-656.

<sup>70</sup> To analyze the reasons why workers had their respective jobs, we included agency temps’ responses to mutually exclusive questions about why they had temporary jobs and why they worked for temp agencies. For other types of workers, we analyzed separate questions asking specifically why they held their respective jobs.

## **General Social Survey (GSS)**

To analyze the size, characteristics, and demographics of the contingent workforce using the GSS, we analyzed data from the core questionnaire and from a special topic module on the Quality of Working Life (QWL) in 2006 and 2010. We identified similar subgroups of workers as in the CWS. We identified on-call workers, agency temps, independent contractors, and contract company workers from a question in the QWL module (variable is WRKTYPE). Among those remaining workers not already identified as being in an alternative work arrangement, we identified standard part-time workers as those who worked fewer than 35 hours per week and standard full-time as those who worked at least 35 hours per week, and identified self-employed workers using a question about self-employment status (variable is WRKSLF). The GSS does not identify direct-hire temps or day laborers as separate work arrangements. As with the CWS data, we also identified a population of “core contingent” workers, in which we included agency temps, contract company workers, and on-call workers. We calculated each subgroup of workers as a percentage of all employed workers in 2006 and 2010.

Using the 2010 GSS data (and 2006 GSS data for a question about family income), we analyzed various demographic and employment characteristics of core contingent workers and workers in alternative work arrangements, as applicable, and compared them to those of standard full-time workers. We do not present distributions of some individual subgroups because their respective sample sizes were too small to produce reliable estimates. We analyzed the following demographic characteristics: age, sex, race, level of education as well as the proportion of workers with low family income (defined as below \$20,000). We also analyzed responses to questions about job security, satisfaction with fringe benefits, overall job satisfaction, and workplace safety. We only included valid responses in our analyses of characteristics and experiences; for example, we disregarded non-responses as necessary.

Findings from our analysis of GSS data are generalizable to the employed labor force and at the level of the individual subgroups analyzed, except where noted otherwise (e.g. sample sizes often too small to compute reportable estimates for self-employed workers). When generating estimates from GSS data, we followed guidance in the codebook and used population weight and variance variables (WTSSALL and VSTRAT) to ensure that our standard errors appropriately accounted for the survey sample design.

## **Survey of Income and Program Participation (SIPP)**

To estimate the percentage of contingent workers in the employed labor force, we obtained the Wave 1 core data for both the 2004 and 2008 SIPP panels. We did not use data from the 2014 SIPP panel because the first wave was being collected during the audit and was not yet available. We used the SIPP variable that indicated the respondent had a paid job during the reference period (EPDJBTHN) for the denominator and the variable that indicated the paid work was contingent (ECFLAG) for the numerator to estimate the percent of employed workers who were in contingent work. According to Census officials, the contingent work variable (ECFLAG) consists of respondents who state that they have some “other” work arrangement—defined as including odd jobs, on-call work, day labor, one-time jobs, and informal arrangements, such as babysitting, lawn mowing, or leaf raking for neighbors—and that they do not have a definite

arrangement to work on an ongoing basis.<sup>71</sup> The SIPP paid work and contingent work variables are defined for people who are age 15 or older.

Findings from our analysis of SIPP data are generalizable to the employed labor force and to the contingent workforce, as defined in the SIPP data. Per the SIPP technical documentation, we used population weight and variance variables (WPFINWGT and GVARSTR) to ensure that our standard errors appropriately accounted for the survey sample design. We also followed Census technical documentation to scale the population weight variable we used (WPFINWGT) so that the weights summed up correctly to the U.S. population eligible for participation in SIPP.

To analyze the employment characteristics of contingent workers, specifically job transitions, we reviewed a 2009 Census working paper which provided information on the month-to-month employment status of contingent workers based on SIPP data.<sup>72</sup> The data we used were from accompanying tables of data analysis (“Table 6. Employed SIPP Estimate 1 Contingent Workers by Month by Employment Status in the Following Month: 2001 and 2004;” and “Table 7. People Employed as SIPP Estimate 1 Contingent Worker in January of Year: 2001 and 2004”), and were based on the paper’s narrowest estimate of contingent workers, constructed to reflect a population similar to BLS’ Estimate 1. Our analysis focused on the most recent data provided in the report—monthly data for 2004. We converted the 90 percent confidence intervals provided in the working paper to 95 percent confidence intervals to be consistent with other estimates in our report. The 2009 working paper also highlighted a contrast between the turnover experienced by contingent workers and that of the overall labor force by citing a 2004 Census report on labor force dynamics.<sup>73</sup> We examined the 2004 report and estimated a monthly job turnover rate of 1.9 percent for the overall labor force by multiplying the average turnover rate (5.5 percent) times “turnover due to separations” (33.8 percent). We used generalized variance functions from the 2008 SIPP technical documentation and guidance from a Census official to calculate 95 percent confidence intervals for our estimates.

### **Current Employment Statistics (CES)**

To illustrate temporary help services as a percentage of total nonfarm employment, we calculated annual proportions using CES data on “Employment, Hours, and Earnings” and specifically, estimates of the number of workers employed in temporary help services and total nonfarm from 1995 to 2014. BLS provided us with historical standard errors for the annual estimates dating back to 2003. As a result of a coding change from the Standard Industrial Classification (SIC) system to North American Industry Classification System (NAICS), comparable pre-2003 standard errors were not available because data for these years were reconstructed to conform with the NAICS. As a result of discussion with BLS officials, we used the maximum standard error reported between 2003 and 2014 to estimate a confidence interval, which we applied to the entire period analyzed (1995-2014).

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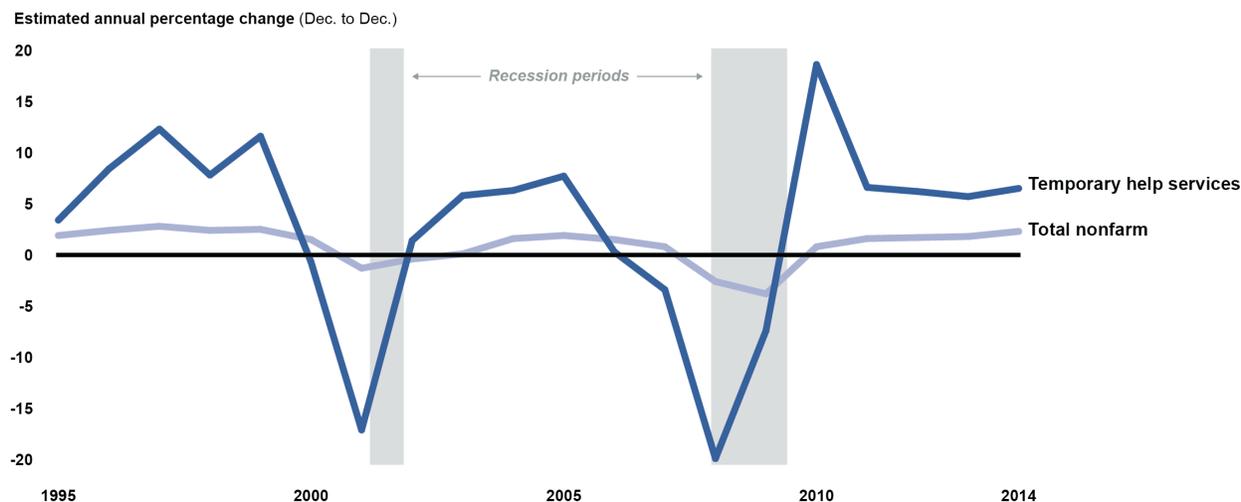
<sup>71</sup> ECFLAG is constructed from the SIPP variables JBORSE, which asks respondents whether they work for an employer, are self-employed, both, or are in some other arrangement, and the CONCHK variables, which ask respondents if they have a definite arrangement with an employer to work on an ongoing basis.

<sup>72</sup> Thomas Palumbo, "Using the Survey of Income and Program Participation (SIPP) to Measure Workers in Contingent and Alternative Employment Arrangements" (paper presented at the 2009 Annual Conference of the Eastern Economic Association, 2009). As a working paper, this research underwent a more limited review than would official Census publications.

<sup>73</sup> Alfred O. Gottschalck, U.S. Census Bureau, Dynamics of Economic Well-Being: Labor Force Turnover, 1996-1999, Current Population Reports, p. 70-96 (Washington, D.C.: July 2004), Table 1.

To assess the extent to which employment in temporary help services is cyclical, we used seasonally adjusted “12-month percent change” estimates from CES data on “Employment, Hours, and Earnings.” As a result of our analysis, we found that employment swings in temporary help are highly cyclical, with job numbers decreasing at a higher rate than overall employment in recessions and increasing at a higher rate than overall employment in recoveries (see fig. 6).

**Figure 6: Estimated Annual Percentage Change in Temporary Help Services and Total Nonfarm Employment, 1995-2014**



Source: GAO analysis of data from the Current Employment Statistics. | GAO-15-168R

Note: The data shown are seasonally adjusted estimates and annual changes are based on December to December employment. Each estimate for temporary help services and total nonfarm has a 95 percent confidence interval of within +/- 8.8 and 0.4 percentage points, respectively. These confidence intervals are based on the largest standard errors reported from 2003 through 2014 as comparable pre-2003 standard errors were not available. Recession periods are identified by the National Bureau of Economic Research’s Business Cycle Dating Committee.

## Occupational Employment Statistics (OES)

To analyze changes in the occupational distribution of staffing services—a subgroup of contingent workers—we examined a 2012 study based on OES data.<sup>74</sup> The study examined 1990-2009 OES data (selected years) and illustrated that, as of 2000, the proportion of workers in the staffing services industry employed in blue collar occupations had surpassed the proportion employed in office and administrative support. We calculated subtotals for blue collar, office and administrative support, and all other occupations by adding up the proportions employed in each occupation grouping presented in the OES-based study. Standard errors for 1990 were not directly available and we estimated a confidence interval based on the range of confidence intervals from 1996 through 2009.

<sup>74</sup> Matthew Dey, Susan N. Houseman, and Anne E. Polivka, “Manufacturers’ Outsourcing to Staffing Services,” *ILR Review*, vol. 65, no. 3 (July 2012). As the authors do, we use the term “staffing services” in this report. This industry is also referred to as employment services and, according to current industry classifications, consists of three components: (1) temporary help services; (2) professional employer organizations; and (3) employment agencies and executive search services. Temporary help is by far the largest, with 81 percent of industry employment in the 2014 CES data.

## CPS Data on Part-Time Workers

To identify the percentage of the employed labor force who work part-time involuntarily, we used data from BLS's CPS Labor Force Statistics historical table: "A-8. Employed persons by class of workers and part-time status." Table A-8 presents estimates of the number of part-time workers as well as the total labor force. For our estimated proportions of the labor force who worked part-time for various reasons, we calculated the total employed labor force (i.e., the denominator) by combining the totals employed in "Agriculture and Related Industries" and "Nonagricultural Industries." For the numerators, we used the total numbers of workers who were "Part-Time for Non-economic Reasons," "Part-Time for Economic Reasons" (i.e., involuntary part-time); and part-time because they "Could only find part-time work" (a subset of "Economic Reasons").

To estimate the standard errors that we used to calculate 95 percent confidence intervals around our estimated proportions, we utilized the generalized variance functions presented in technical documentation.<sup>75</sup> The documentation did not provide generalized variance function parameters for "Could only find part-time work." To avoid underestimating our standard errors for this estimate, we utilized the largest parameter listed in the documentation.

## Section 3: Analyses of Earnings, Benefits, and Poverty Measures of Contingent Workers

This section discusses the data and methods we used to examine any differences in earnings, benefits, and measures of poverty between contingent and standard workers. To explore these issues, we identified a population of contingent workers in the May 2012 CPS Disability Supplement and merged this population with other CPS datasets to obtain information about workers' earnings, benefits, income, and other related economic measures. We conducted multivariate regression analyses on various measures of earnings and on the probability of workers participating in a work-provided retirement plan, and we examined descriptive statistics on workers' access to health insurance, poverty status, and participation in income-related public assistance programs. We limited all analyses to individuals age 16 and older.

We used two datasets to conduct our analyses of earnings, benefits, and measures of poverty. Both datasets consist of observations from the May 2012 CPS Disability Supplement, which contains the survey question, "Is your job temporary?"<sup>76</sup> For the purpose of these analyses, workers who responded "yes" to this question are identified as contingent workers, and workers who responded "no" to this question are considered standard workers (i.e., non-contingent). Workers who did not respond or responded "don't know" were excluded from the analyses.

The temporary job question from the May 2012 CPS Disability Supplement served as the basis for our regression analyses because most workers included in BLS' estimates of the size of the contingent workforce responded "yes" to a nearly identical question in the CWS. In the 2005 CWS, 86.1 percent, 73.1 percent, and 70.6 percent of contingent workers in Estimates 1, 2, and 3, respectively responded "yes" to the first temporary work screening question (Q1), "Is your job

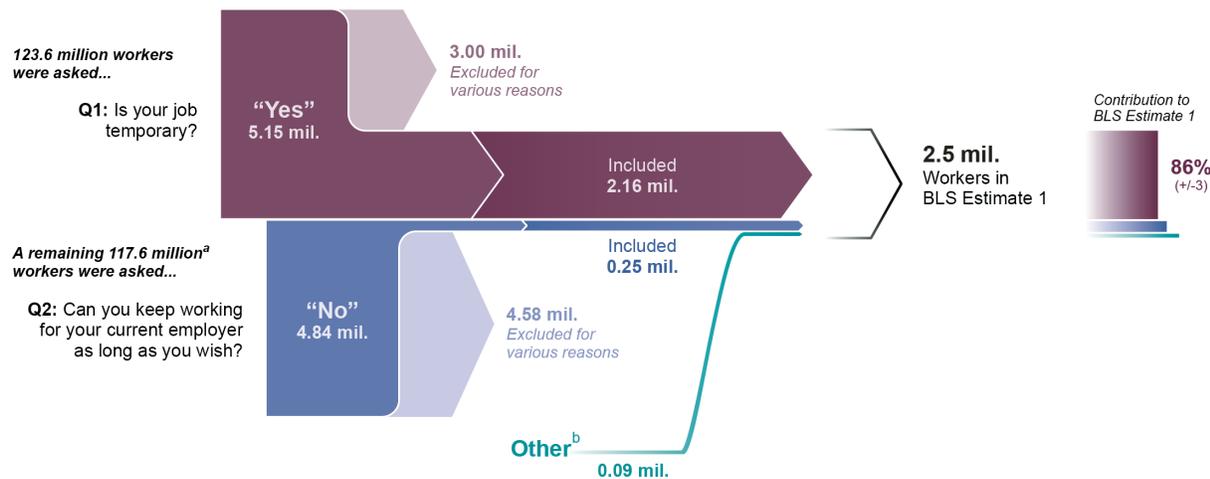
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<sup>75</sup> "Employment and Earnings", Household Data ("A" tables, monthly; "D" tables, quarterly) February 2006.

<sup>76</sup> Variable name PESD18 in the 2012 CPS Disability Supplement.

temporary?”<sup>77</sup> Not all workers who responded “yes” were included in the BLS estimates because BLS includes and excludes workers for a variety of reasons (see fig. 7 for an illustration of Estimate 1). For example, BLS excludes individuals who do not plan to continue in their job for personal reasons, such as retirement or returning to school, provided they would have the option to keep the job otherwise. In addition, BLS includes some workers who did not respond that their job was temporary based on their responses to other questions; for example, responses that indicate they expect to stay in their current job for one year or less and have worked for their current employer for one year or less.

**Figure 7: Identification of Workers in Bureau of Labor Statistics (BLS) Estimate 1 of the Contingent Workforce, 2005**



Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey. | GAO-15-168R

Note: Each estimate shown has a 95 percent confidence interval of within +/- 9% of the estimate itself, except the 0.25 mil. included from Q2 (+/- 25%) and the 0.09 mil. from other (+/-41%).

<sup>a</sup> BLS estimates represent the employed labor force (estimated at 139.0 million in 2005). However, question 1 is not asked of the self-employed; they are asked other questions to determine whether their jobs are temporary, though they are not included in Estimate 1 (shown in the figure). Question 2 is asked of remaining respondents in the universe who did not answer “yes” to question 1 and who are in the same job they held the previous week.

<sup>b</sup> Additional workers are identified with other questions; for instance, those who do not view their jobs as temporary, but who have been and expect to be at their job for one year or less.

Since BLS does not include everyone who responds “yes” to Q1 in its contingent workforce estimates, we performed additional checks to ensure that our analysis population was not biased. Using 2005 CWS data, we compared the characteristics of those who responded “yes” to Q1 (i.e. those who would have been our 2012 proxy population of contingent workers) with those in BLS’ three estimates of the contingent workforce. We found that respondents in all four groups were similar. For example, the estimated mean hourly earnings of those who responded “yes” to Q1 (i.e., the equivalent of our 2012 proxy population) was \$13.57 compared to an estimated range of \$12.45 to \$14.35 for BLS’ three contingent worker populations (see table

<sup>77</sup> The complete phrasing of the question in the 2005 CWS (variable PES1) was, “Some people are in temporary jobs that last only for a limited time or until the completion of a project. Is your job temporary?” The complete phrasing of the question in the 2012 Disability Supplement (variable PESD18) was, “Some people are in jobs that last only for a limited time or until the completion of a project. Is your job temporary?” Estimates presented have 95 percent confidence intervals of within +/- 3.0, 3.7, and 2.9 percentage points, respectively.

21).<sup>78</sup> Our estimated median hourly earnings were \$9.93 for those who responded “yes” to Q1 compared to a range of \$8.96 to \$9.96 for BLS’ three populations.<sup>79</sup> The four populations were similar in terms of sex, race, education level, and age (see table 21 for descriptive statistics and standard errors for survey-based estimates). While the 2005 equivalent of our proxy population included a greater proportion of part-time workers than BLS’ contingent workforce estimates (approximately 50 percent compared to a range of about 42 percent to 46 percent of the BLS population; see table 21 for associated standard errors), we controlled for hours worked in our regression analyses in different ways to account for this difference (e.g., examining hourly earnings, and limiting our analyses to only full-time workers).

**Table 21: Comparison of Worker Characteristics between 2005 Equivalent of 2012 Contingent Worker Proxy Population Used in Analyses and BLS Estimates of the Contingent Workforce (Self-Employed Workers Excluded), 2005 Contingent Work Supplement (CWS)**

Worker characteristic (percent of population unless otherwise noted)	Job is temporary (equivalent of 2012 proxy population)	BLS contingent workforce estimate 1	BLS contingent workforce estimate 2	BLS contingent workforce estimate 3
<b>Respondents in sample</b>	1,636	769	820	1,648
<b>Weighted population (number of workers)</b>	5,154,397 (147,617)	2,504,414 (105,357)	2,694,962 (109,250)	5,223,108 149,311
<b>Men</b>	51.5 (1.5)	52.9 (2.1)	52.9 (2.0)	51.5 (1.5)
<b>Women</b>	48.5 (1.5)	47.1 (2.1)	47.1 (2.0)	48.5 (1.5)
<b>White, non-Hispanic</b>	60.2 (1.4)	58.8 (2.0)	58.9 (1.9)	59.6 (1.4)
<b>Black, non-Hispanic</b>	11.0 (1.0)	11.0 (1.4)	11.1 (1.4)	10.8 (1.0)
<b>Asian, non-Hispanic</b>	5.7 (0.7)	4.6 (1.0)	4.9 (1.0)	6.1 (0.7)
<b>Other, non-Hispanic</b>	2.0 (0.3)	1.6 (0.4)	1.7 (0.4)	2.2 (0.4)
<b>Hispanic</b>	21.3 (1.2)	24.1 (1.8)	23.3 (1.7)	21.3 (1.2)
<b>Less than high school diploma</b>	20.1 (1.2)	21.8 (1.8)	21.4 (1.7)	18.1 (1.1)
<b>High school diploma, no college</b>	23.2 (1.2)	24.2 (1.8)	23.9 (1.7)	22.9 (1.2)
<b>Some college</b>	30.8 (1.3)	30.8 (1.9)	31.0 (1.8)	30.5 (1.3)
<b>Bachelor’s degree or more</b>	25.9 (1.3)	23.2 (1.8)	23.7 (1.7)	28.5 (1.3)
<b>Full-time (at least 35 hours/week)</b>	50.2 (1.4)	53.6 (2.1)	54.5 (2.0)	57.8 (1.4)

<sup>78</sup> The range of mean hourly earnings estimates for Q1 and the three BLS estimates all have 95 percent confidence intervals of within +/- \$1.01.

<sup>79</sup> The range of median hourly earnings estimates for Q1 and three BLS estimates all have 95 percent confidence intervals of within +/- \$1.04.

<b>Part-time (less than 35 hours/week)</b>	49.8 (1.4)	46.3 (2.1)	45.4 (2.0)	42.0 (1.4)
<b>Mean age (years)</b>	35.1 (0.4)	32.5 (0.5)	33.0 (0.5)	36.1 (0.4)
<b>Mean hourly earnings (\$/hour)</b>	13.57 (0.39)	12.45 (0.51)	12.68 (0.49)	14.35 (0.42)
<b>Median hourly earnings (\$/hour)</b>	9.93 (0.14)	8.96 (0.34)	9.47 (0.28)	9.96 (0.09)
<b>Mean weekly earnings (\$/week)</b>	400 (12)	379 (16)	386 (15)	460 (13)
<b>Median weekly earnings (\$/week)</b>	280 (7)	280 (11)	288 (10)	318 (9)
<b>Detailed industry group</b>				
<b>Construction</b>	11.6 (1.0)	13.0 (1.5)	13.0 (1.4)	11.6 (0.9)
<b>Retail trade</b>	7.5 (0.8)	6.4 (1.0)	6.2 (1.0)	6.1 (0.7)
<b>Professional and technical services</b>	6.1 (0.7)	6.6 (1.0)	7.5 (1.0)	6.5 (0.7)
<b>Administrative and support services</b>	12.5 (1.0)	11.4 (1.4)	12.9 (1.4)	11.3 (1.0)
<b>Educational services</b>	19.5 (1.1)	17.1 (1.5)	16.4 (1.4)	20.8 (1.1)
<b>Arts, entertainment, and recreation</b>	3.2 (0.5)	3.6 (0.8)	3.3 (0.8)	2.7 (0.5)
<b>Food services and drinking places</b>	4.8 (0.6)	5.5 (1.0)	5.3 (1.0)	4.1 (0.6)
<b>Detailed occupation group</b>				
<b>Management</b>	2.4 (0.4)	1.6 (0.5)	1.5 (0.4)	3.4 (0.5)
<b>Education, training, and library</b>	11.7 (0.9)	9.7 (1.2)	9.0 (1.1)	13.2 (1.0)
<b>Arts, design, entertainment, sports, and media</b>	4.3 (0.6)	4.3 (0.9)	4.7 (0.9)	4.0 (0.6)
<b>Food preparation and serving related</b>	5.3 (0.6)	5.7 (1.0)	5.5 (0.9)	4.8 (0.6)
<b>Building and grounds cleaning and maintenance</b>	4.0 (0.6)	4.8 (0.9)	4.6 (0.9)	3.5 (0.5)
<b>Sales and related</b>	6.8 (0.7)	4.9 (0.8)	5.0 (0.8)	5.2 (0.6)
<b>Office and administrative support</b>	16.4 (1.1)	19.4 (1.7)	18.9 (1.6)	15.9 (1.0)
<b>Construction and extraction</b>	10.0 (0.9)	11.4 (1.4)	11.5 (1.3)	10.6 (0.9)
<b>Production</b>	5.9 (0.7)	4.5 (0.8)	4.3 (0.8)	5.5 (0.6)
<b>Transportation and material moving</b>	6.9 (0.8)	9.1 (1.3)	9.1 (1.2)	6.6 (0.7)

Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey. | GAO-15-168R

Note: Populations presented in the table include workers who answered “yes” to the question “Is your job temporary?” (variable is PES1) and BLS’ three estimates of the contingent workforce (variables are PRCONDF1, PRCONDF2, and PRCONDF3). Because self-employed workers are not asked the question “Is your job temporary?” self-employed workers are excluded from all populations in this table. Earnings averages are for positive earners only. Standard errors are presented in parentheses below the estimates.

## Constructing the Merged Datasets

We merged data by matching respondents from the May 2012 CPS Disability Supplement with additional CPS datasets to obtain earnings, benefits, and related information for contingent and standard workers. We used the first of the two datasets, the May-Annual Social and Economic Supplement (May-ASEC) merged dataset, to analyze differences in annual earnings, as well as participation in work-provided retirement plans, health insurance coverage, and poverty measures such as family income-to-poverty ratios and participation in selected public assistance programs. The second dataset, the May-Merged Outgoing Rotation Group (May-MORG) merged dataset, is used to analyze differences in weekly and hourly earnings.

Data on annual earnings and retirement plan participation in the ASEC are only collected for individuals who worked during calendar year 2011. Similarly, data on weekly and hourly earnings are only collected in the outgoing rotation modules. These data were present in the May 2012 CPS Disability Supplement for the roughly quarter of our sample who were in their outgoing rotation month in May 2012. However, for the majority of the May-MORG merged dataset, these data were obtained from months June, July, and August 2012. Only those individuals who were employed both in May 2012 and during their outgoing rotation month are represented in the May-MORG merged dataset. Therefore, individuals who were continuously employed over multiple months are more likely to be represented in analyses conducted on the merged datasets than individuals with intermittent employment.

### Merging the datasets

The May-ASEC merged dataset consists of observations from the May 2012 CPS Disability Supplement merged with observations from the March 2012 CPS Annual Social and Economic Supplement (ASEC). Due to the rotation structure of the CPS, approximately half of the units who were interviewed in May 2012 (i.e., present in the May 2012 CPS Disability Supplement) were also interviewed for the 2012 ASEC (i.e., present in the ASEC). Units are interviewed for four consecutive months; therefore, those who were in their first or second interview month in March were also interviewed in May. Following guidance from Census, we merged individual person records from the two datasets by household ID (parts 1 and 2) and person line number. We then dropped from the merged sample any observations where sex, race, or Hispanic status did not match in the two samples, or where age differed by more than 1 year across the two samples. Following guidance from Census, we then constructed a post-stratification adjustment to the population weights in which we raked the sample by the race/ethnicity of the householder and the presence of children in the household. This raking was done to rebalance the merged sample, to take account of the ASEC's oversampling of a "CHIP expansion sample," which consists of any household in which the householder is minority (Hispanic or non-white or both) and/or contains at least one child (18 years or younger). The ASEC population weights take account of the oversampling of the CHIP expansion sample, but other supplement weights do not. Therefore, we constructed a post-stratification adjustment to the population weights to ensure that members of the CHIP expansion sample are appropriately represented in our analysis. We also examined the distribution of additional characteristics in the full May sample and the merged sample, including sex, education, and age. However, we did not identify any additional differences that warranted further post-stratification adjustments to the population weights.

The May-MORG merged dataset consists of observations from the May 2012 CPS Disability Supplement merged with observations from the June, July, and August 2012 basic monthly files. As discussed in our previous section covering data sources used, individuals who are in their fourth or eighth interview month in the CPS and who meet certain employment criteria are administered a set of detailed earnings questions. Self-employed workers are not administered these earnings questions. Each month, therefore, only about one-quarter of the employed CPS sample is administered these questions. In order to obtain detailed earnings information for a larger portion of the May 2012 sample, we merged individuals in their first, second, and third (or fifth, sixth, and seventh) interview months with their outgoing rotation group data from August, July, or June (respectively); those in their fourth or eighth interview month are eligible to have earnings data present in the May sample itself. From the full May CPS, we restrict the sample to adult civilians. From the full June, July, and August CPS files, we restrict the sample to adult civilians in their fourth or eighth interview month. We merged the datasets using the household ID (parts 1 and 2) and person line number variables. After this merge, we restrict our earnings analyses to observations that were administered the May 2012 CPS Disability Supplement, and that answered either “yes” or “no” to the question, “Do you consider your job temporary?”

The sample frame for the May-MORG merged dataset is defined by both the May 2012 CPS Disability Supplement population and the population that responded to the outgoing rotation group earnings modules. BLS produces a different set of weights for each of these populations. Because the earnings questions are asked of only one quarter of the monthly CPS sample, BLS produces outgoing rotation group weights (also called the earnings weights) to ensure that the earnings module data reflect the demographic and economic characteristics of the weighted full sample data. BLS also produces a May 2012 CPS Disability Supplement weight, which adjusts for the response rate to the supplement. In addition, BLS produces a composited final weight, which is used to produce BLS labor force statistics. Normally, variables from the May 2012 CPS Disability Supplement are tabulated using the supplement weights, and variables from the earnings module are tabulated using the earnings weights (outgoing rotation group weights).

Our sample is based on earners and on the May 2012 CPS Disability Supplement sample frame because it is limited to individuals present in the supplement who answered the earnings module questions in May, June, July or August, and who answered the temporary work question from the May 2012 CPS Disability Supplement. In consultation with BLS, we therefore constructed a population weight for the merged sample defined by the ratio of the supplement weight to the individual’s composited final weight, multiplied by the earnings weight. We examined the characteristics of workers in the full May 2012 CPS Disability Supplement sample and of workers in the May-MORG merged dataset and did not find significant differences along the characteristics we examined (race, Hispanic ethnicity, education, sex, and age). We therefore did not make any additional post-stratification adjustments to the May-MORG merged dataset population weights.

#### Variance estimates using the merged datasets

Census has made a replicate weight file available for the May 2012 CPS Disability Supplement. However, the replicate weights are constructed for the full supplement dataset. In both the May-ASEC merged dataset and the May-MORG merged dataset used in this analysis, we are using a subset of the full supplement dataset (the merged sample) that will be reweighted up to the size of the employed labor force (defined as workers responding yes or no to the question about whether their jobs were temporary). Because of this, we determined that using the replicate

weights would be inappropriate for this analysis. In the absence of replicate weights, Census provides guidance for adjusting the standard errors of selected statistics from the CPS using generalized variance functions and parameters, including the standard errors of means, proportions, ratios, and population counts. However, Census does not provide any guidance for using generalized variance functions and parameters to adjust standard errors of regression coefficients. To take account of the CPS sampling structure in our multivariate analysis, we decided to use state of residence as a generalized variance stratification variable, because CPS samples are drawn independently within states. We assume sampling with replacement. We tested this approach by comparing selected estimates we obtained from the full May sample using the May replicate weights to estimates obtained from the full May sample using our variance estimating approach, and found the results to be consistent across model specifications. We therefore determined that our method was an acceptable approach to variance estimation in the merged datasets in which we could not use the replicate weights.

### **Sample Characteristics**

Table 22 (below) presents the distribution of the variables used in the regression analyses for each of our four population samples. Estimates are shown for standard workers and for contingent workers. The first sample (sample A) is the May 2012 CPS Disability Supplement sample, restricted to individuals who responded “yes” or “no” to the question, “Do you consider your job temporary?” The second sample (sample B) is the subset of the first sample who were administered the earnings module in May, and who had positive values for weekly earnings. The third sample (sample C) is data from the May-MORG merged dataset, described above, who had positive values for weekly earnings. The fourth sample (sample D) is data from the May-ASEC merged dataset, described above, who had positive values for annual earnings. We used samples C and D for the regression analyses of earnings differences among standard and contingent workers.

- Sample A shows the characteristics of all standard and contingent workers identified in the May 2012 CPS Disability Supplement. This complete sample was not used for our analyses because most observations did not have earnings data.
- Sample B shows the characteristics of workers with earnings data from only the May 2012 outgoing rotation group. This sample can be used to compare the characteristics of these workers to those with earnings data obtained from later CPS months. This sample was also used in an iteration of our basic regression model to further test the robustness and validity of our May-MORG merged dataset and regression results (see below for comparison).
- Sample C shows the characteristics of standard and contingent workers in the 2012 May-MORG merged dataset, which was the sample used for our regressions of hourly and weekly earnings.
- Sample D shows the characteristics of standard and contingent workers in the 2012 May-ASEC merged dataset, which was the sample used for our regressions of annual earnings and participation in work-provided retirement plans. This sample was also used for our analyses of participation in work-provided health insurance plans and various measures of poverty and program participation.

**Table 22: Characteristics of Standard (stnd.) and Contingent (cont.) Workers in Analysis Populations**

Worker characteristic (percent of population unless otherwise noted)	Sample A (stnd.)	Sample A (cont.)	Sample B (stnd.)	Sample B (cont.)	Sample C (stnd.)	Sample C (cont.)	Sample D (stnd.)	Sample D (cont.)
<b>Respondents in sample</b>	51,345	2,359	11,162	457	41,976	1,565	29,086	1,118
<b>Men</b>	53.0 (0.3)	53.9 (1.2)	51.7 (0.5)	52.5 (2.6)	51.8 (0.3)	54.3 (1.4)	53.3 (0.3)	55.5 (1.7)
<b>Women</b>	47.0 (0.3)	46.1 (1.2)	48.3 (0.5)	47.5 (2.6)	48.2 (0.3)	45.7 (1.4)	46.7 (0.3)	44.5 (1.7)
<b>White, non-Hispanic</b>	67.4 (0.2)	57.5 (1.2)	66.9 (0.5)	57.8 (2.6)	67.0 (0.3)	54.3 (1.5)	67.9 (0.3)	59.7 (1.7)
<b>Black, non-Hispanic</b>	10.2 (0.2)	10.3 (0.8)	10.7 (0.3)	9.8 (1.7)	10.3 (0.2)	11.1 (1.0)	10.0 (0.2)	8.7 (1.0)
<b>Asian, non-Hispanic</b>	4.9 (0.1)	6.3 (0.6)	5.0 (0.2)	4.5 (1.1)	5.1 (0.1)	6.6 (0.7)	5.1 (0.1)	5.6 (0.7)
<b>Other, non-Hispanic</b>	2.1 (0.1)	3.4 (0.4)	2.2 (0.2)	5.5 (1.2)	2.2 (0.1)	3.4 (0.5)	2.2 (0.1)	3.2 (0.6)
<b>Hispanic</b>	15.3 (0.2)	22.6 (1.0)	15.1 (0.4)	22.4 (2.3)	15.4 (0.2)	24.6 (1.3)	14.8 (0.2)	22.8 (1.5)
<b>Less than high school diploma</b>	9.1 (0.1)	17.9 (0.9)	8.8 (0.3)	18.0 (2.0)	8.8 (0.2)	17.5 (1.1)	8.3 (0.2)	16.5 (1.3)
<b>High school diploma, no college</b>	27.2 (0.2)	22.4 (1.0)	27.7 (0.5)	24.5 (2.3)	27.3 (0.2)	23.8 (1.3)	26.8 (0.3)	21.6 (1.4)
<b>Some college</b>	29.2 (0.2)	28.6 (1.1)	29.3 (0.5)	27.5 (2.4)	29.5 (0.3)	29.8 (1.3)	29.0 (0.3)	28.5 (1.5)
<b>Bachelor's degree or more</b>	34.5 (0.2)	31.2 (1.1)	34.1 (0.5)	30.1 (2.4)	34.4 (0.3)	28.9 (1.3)	36.0 (0.3)	33.5 (1.6)
<b>Mean age (years)</b>	42.2 (0.1)	37.6 (0.4)	41.3 (0.1)	38.9 (0.8)	41.6 (0.1)	36.6 (0.4)	42.2 (0.1)	38.9 (0.5)
<b>Full-time (at least 35 hours/week)</b>	80.4 (0.2)	50.1 (1.2)	81.4 (0.4)	51.4 (2.6)	82.7 (0.2)	59.6 (1.4)	82.1 (0.3)	57.7 (1.7)
<b>Part-time (less than 35 hours/week)</b>	19.6 (0.2)	49.4 (1.2)	18.6 (0.4)	48.3 (2.6)	17.3 (0.2)	40.4 (1.4)	17.9 (0.3)	42.3 (1.7)
<b>Not full-year (less than 50 weeks/year), full-time</b>							27.0 (0.3)	70.2 (1.6)
<b>Full-year (at least 50 weeks/year), full-time</b>							73.0 (0.3)	29.8 (1.6)
<b>Not a union member<sup>a</sup></b>			86.9 (0.4)	89.8 (1.5)	87.2 (0.2)	90.4 (0.8)		
<b>Union member<sup>a</sup></b>			13.1 (0.4)	10.2 (1.5)	12.8 (0.2)	9.6 (0.8)		
<b>Detailed industry group</b>								
<b>Construction</b>	6.0 (0.1)	11.4 (0.7)	4.7 (0.2)	11.7 (1.7)	4.9 (0.1)	10.2 (0.9)	5.9 (0.2)	13.1 (1.1)
<b>Retail trade</b>	11.4 (0.2)	6.4 (0.6)	11.9 (0.4)	8.6 (1.5)	11.7 (0.2)	7.5 (0.8)	11.1 (0.2)	6.3 (0.8)
<b>Professional and technical services</b>	7.1 (0.1)	7.2 (0.6)	6.2 (0.3)	6.9 (1.5)	6.4 (0.1)	6.1 (0.7)	7.4 (0.2)	8.5 (1.0)
<b>Administrative and support services</b>	3.8 (0.1)	10.1 (0.7)	3.3 (0.2)	9.9 (1.5)	3.2 (0.1)	9.8 (0.9)	3.7 (0.1)	8.7 (1.0)

<b>Educational services</b>	9.0 (0.1)	17.6 (0.9)	9.7 (0.3)	17.4 (2.0)	9.5 (0.2)	17.3 (1.1)	9.3 (0.2)	16.9 (1.3)
<b>Arts, entertainment, and recreation</b>	2.0 (0.1)	4.8 (0.5)	2.0 (0.2)	5.3 (1.2)	1.8 (0.1)	4.1 (0.6)	1.9 (0.1)	5.3 (0.8)
<b>Food services and drinking places</b>	6.5 (0.1)	5.1 (0.5)	6.5 (0.3)	4.3 (1.0)	6.6 (0.1)	5.7 (0.7)	5.9 (0.2)	4.0 (0.7)
<b>Detailed occupation group</b>								
<b>Management</b>	11.5 (0.2)	5.1 (0.5)	9.3 (0.3)	4.3 (1.1)	10.1 (0.2)	4.1 (0.6)	11.7 (0.2)	5.8 (0.8)
<b>Education, training, and library</b>	5.9 (0.1)	11.6 (0.8)	6.4 (0.3)	11.9 (1.7)	6.2 (0.1)	11.2 (0.9)	6.2 (0.2)	12.3 (1.1)
<b>Arts, design, entertainment, sports, and media</b>	1.9 (0.1)	4.6 (0.5)	1.7 (0.1)	3.4 (0.9)	1.5 (0.1)	2.8 (0.5)	1.9 (0.1)	5.9 (0.8)
<b>Food preparation and serving related</b>	5.9 (0.1)	5.1 (0.5)	6.3 (0.3)	5.3 (1.1)	6.2 (0.1)	5.4 (0.7)	5.5 (0.2)	4.6 (0.7)
<b>Building and grounds cleaning and maintenance</b>	3.9 (0.1)	6.8 (0.6)	3.6 (0.2)	5.4 (1.1)	3.6 (0.1)	5.5 (0.6)	3.5 (0.1)	5.7 (0.8)
<b>Sales and related</b>	10.7 (0.2)	6.2 (0.6)	10.3 (0.3)	5.9 (1.3)	10.3 (0.2)	6.9 (0.8)	10.6 (0.2)	5.4 (0.8)
<b>Office and administrative support</b>	12.4 (0.2)	10.8 (0.7)	14.1 (0.4)	11.6 (1.7)	13.6 (0.2)	12.7 (1.0)	12.3 (0.2)	9.5 (1.0)
<b>Construction and extraction</b>	4.6 (0.1)	10.3 (0.7)	4.1 (0.2)	11.4 (1.7)	4.1 (0.1)	9.6 (0.9)	4.5 (0.1)	11.8 (1.1)
<b>Production</b>	5.9 (0.1)	6.3 (0.6)	6.4 (0.3)	6.2 (1.3)	6.4 (0.1)	7.4 (0.8)	6.0 (0.2)	6.7 (0.9)
<b>Transportation and material moving</b>	6.0 (0.1)	6.5 (0.6)	6.3 (0.3)	7.0 (1.4)	6.1 (0.1)	7.0 (0.8)	5.8 (0.2)	5.9 (0.8)

Source: GAO analysis of data from the 2012 Current Population Survey earnings modules, Annual Social and Economic Supplement (ASEC), and Disability Supplement. | GAO-15-168R

<sup>a</sup> We only present union percentages for samples where all respondents were asked about membership.

Note: All four samples presented in the table are limited to observations where PESD18=1 or 2 (i.e., where a respondent answered "yes" or "no" to the question "Is your job temporary?" in the May 2012 CPS Disability Supplement). Samples B, C, and D are further limited to observations where relevant earnings data > 0 (self-employed workers are thus excluded from samples B and C). Sample A consists of the May 2012 CPS Disability Supplement. Sample B consists of the May 2012 CPS Disability Supplement, outgoing rotation group only. Sample C consists of the May 2012 CPS Disability Supplement merged with May-August 2012 outgoing rotation groups. Sample D consists of the May 2012 CPS Disability Supplement merged with the 2012 ASEC. Standard errors are presented in parentheses below the estimates.

### Comparing sample characteristics across the samples

Table 22 (above) shows differences in the characteristics of workers across the four samples. There were broad similarities comparing contingent workers to contingent, and standard workers to standard across, all four samples. A comparison of sample A and sample B shows that there are some slight differences between the characteristics of all workers who responded yes or no to the May 2012 CPS Disability Supplement temporary work question (sample A), and the subset of those workers who received the earnings module in May and had positive earnings (sample B). There is little difference between the samples in gender, race, ethnicity, education, age, or full-time work status.

Table 22 also allows us to assess whether workers whose earnings data may come from subsequent months (sample C) differ from those whose earnings data come from May (sample B). The samples are similar in gender, race, ethnicity, education, and age. The merged sample (sample C) contains slightly more full-time workers than the May earnings sample. In our

regression analyses, we control for hours of work by examining weekly earnings among full-time workers and by examining hourly earnings.

Table 22 also shows differences between the May-MORG merged dataset (sample C) and the May-ASEC merged dataset (sample D). Though not identical, the samples have similar characteristics in terms of gender, race, education, and part-time status, whether one compares contingent workers or standard workers.

### Comparing sample characteristics between contingent and standard workers

Table 22 (above) also shows some broad differences in the characteristics of standard and contingent workers. In this discussion we describe the characteristics shown in sample D, the May-ASEC merged dataset. The differences discussed here are also seen in sample C, the May-MORG merged dataset, although the estimates are not identical.

Contingent and standard workers in the May-ASEC merged dataset are not significantly different in terms of sex, but exhibit some other demographic differences, specifically in terms of race, age, and level of education (see table 22 for the associated standard errors for the following survey-based estimates).

- Contingent workers and standard workers are similarly likely to be men. Approximately 55.5 percent of contingent workers are men, compared to an estimated 53.3 percent of standard workers.
- About 67.9 percent of standard workers are white, non-Hispanic, significantly higher than the estimated 59.7 percent of contingent workers who are white, non-Hispanic. About 14.8 percent of standard workers are Hispanic, significantly lower than the estimated 22.8 percent of contingent workers who are Hispanic. Similar percentages of standard and contingent workers are Black and Asian.
- Contingent workers are younger, on average, than standard workers.
- Contingent workers are more likely to report low levels of education. For example, only an estimated 8.3 percent of standard workers have less than a high school degree, compared to approximately 16.5 percent of contingent workers.

In addition, in the May-MORG merged dataset (sample C), standard workers are more likely to report that they are union members than contingent workers.

About 42.3 percent of contingent workers usually work part-time, significantly more than the estimated 17.9 percent of standard workers who usually work part-time. In addition, contingent workers are much less likely to be full-year, full-time workers (i.e., at least 50 weeks of work per year and at least 35 hours of work per week)—only about 29.8 percent of contingent workers compared to an estimated 73.0 percent of standard workers.

Contingent and standard workers are also concentrated differently in some industries and occupations. Table 22 presents the proportions of contingent and standard workers that are employed in certain industries and occupations (e.g., an estimated 11.4 percent of contingent workers in the May 2012 CPS Disability Supplement—sample A—are employed in the

construction industry).<sup>80</sup> Contingent and standard workers are distributed similarly over some industries and occupations. For example, an estimated 5.8 to 6.3 percent of standard workers, depending on the sample, were employed in the transportation and material moving occupation; similarly, that occupation accounted for about 5.9 to 7.0 percent of contingent workers, depending on the sample (see table 22). Worker distributions over other industries and occupations varied considerably more. For example, an estimated 4.7 to 6.0 percent of standard workers, depending on the sample, were employed in the construction industry; in contrast, that industry accounted for about 10.2 to 13.1 percent of contingent workers, depending on the sample (see table 22).

## Regression Analysis

We conducted multivariate regression analyses of annual, weekly, and hourly earnings, as well as participation in work-provided retirement plans.

All of our earnings regressions use survey regression software that permitted us to use state of residence as a generalized variance stratification variable, assuming sampling with replacement, with standard errors estimated using Taylor-series linearization. We use the natural log of earnings for our dependent variable in a linear model, reflecting both the assumption that the underlying distribution of earnings is closer to log normal than normal, and the assumption that changes in the values of independent variables are associated with percentage changes—not level changes—in earnings.

Our retirement plan regression is run using a logistic model, using state as a generalized variance stratification variable, and assuming sampling with replacement.

### Regression analysis: dependent variables

For our analysis of annual earnings, we use the ASEC variable PEARNVAL, which measures individual earnings from wages, salaries, and self-employment income from all jobs in the previous calendar year (i.e., the 2012 ASEC has data for earnings in calendar year 2011). We only include workers with positive values of annual earnings in our analysis. Self-employment earnings can have negative values. We do not exclude observations in which Census imputed or allocated components of the annual earnings variable.

The CPS earnings module reports weekly earnings for wage and salary workers, which we use for our weekly earnings regressions. We do not exclude observations in which Census imputed or allocated components of the weekly earnings variable. We also construct a measure of hourly earnings, following guidance received from BLS officials. For those workers who report their earnings hourly, we use their reported hourly wage. For those workers who report their earnings using another unit of time (such as weekly, monthly, or annually) we construct hourly earnings by dividing weekly earnings by usual hours worked per week. A number of workers report that their usual hours worked per week “varies.” For these workers, we examine two additional variables: actual hours worked last week, and whether the worker is normally full-time or part-time. If the worker indicates that they are normally full-time, and their reported actual hours

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<sup>80</sup> Table 22 presents industries and occupations in which at least 5 percent of contingent workers were employed (i.e., exactly 5.0 percent or more) in either of the samples used in our regression analyses (i.e., samples C and D).

worked last week exceeds 20 hours per week, then we construct hourly earnings by dividing weekly earnings by actual hours worked last week. Similarly, if the worker indicates that they are normally part-time, and their actual hours worked last week is less than 40 hours per week, then we construct hourly earnings by dividing weekly earnings by actual hours worked last week. If the worker indicates that they are normally full-time, but their actual hours worked last week was less than 20 hours per week, we construct hourly earnings by dividing weekly earnings by 42.8 (the mean hours of work among full-time workers who reported usual hours of work in our 2012 sample). If the worker indicates that they are normally part-time, but their actual hours worked last week exceeded 60 hours per week, we construct hourly earnings by dividing weekly earnings by 21.4 (the mean hours of work among part-time workers who reported usual hours of work in our 2012 sample).

For our analysis of access to work-provided retirement plans, we coded a worker as having access to a work-provided retirement plan if they responded “yes” to both of the following questions from the ASEC: (1) “Other than Social Security, did the employer or union that [worker] worked for [last year] have a pension or other type of retirement plan for any of the employees?” (variable is PENPLAN) and (2) “Was [worker] included in that plan?” (variable is PENINCL). We use the term “work-provided” rather than the legal term “employer-sponsored” because the survey questions ask about benefits offered by a worker’s employer or union.

We conducted regressions using the following dependent variables:

1. Log (annual earnings) – In our analysis of the May-ASEC merged dataset, we used the natural log of annual earnings as our dependent variable. Annual earnings reflect both the wages and work experience (hours and weeks worked) of contingent and standard workers throughout calendar year 2011. This analysis is limited to positive earners.
  - We also conduct regression analysis on this dependent variable limited to full-time, full-year workers.
2. Log (weekly earnings) – In our analysis of the May-MORG merged dataset, we used the natural log of weekly earnings as our dependent variable. Weekly earnings reflect both the wages and work experience (hours worked) of contingent and standard workers during the reference week. This analysis is limited to positive earners.
  - We also conduct regression analysis on this dependent variable limited to full-time workers.
3. Log (hourly earnings) – In our analysis of the May-MORG merged dataset, we also constructed a measure of hourly earnings using information about weekly earnings, usual hours of work, and actual hours worked last week (for those workers who indicated that their usual hours of work varied), following guidance from BLS as described above. Hourly earnings reflect only the wage rate of contingent and standard workers during the reference week. This analysis is limited to positive earners.
4. Access to Work-Provided Retirement Plan. We also ran a multivariate regression on access to a work-provided retirement plan (as described above) as our dependent variable. We used a logistic model. This analysis includes all workers, regardless of their level of earnings.

## Regression analysis: independent variables

The independent variable of primary interest in our analysis is the binary variable “contingent,” which identifies contingent workers. This variable is obtained from the May 2012 CPS Disability Supplement survey question “Do you consider your job temporary?” (variable is PESD18). Workers who respond “yes” to this question are identified as contingent workers for the purpose of this analysis. Workers who respond “no” to this question are considered standard workers (i.e., non-contingent). Workers who did not respond or responded “don’t know” were excluded from the analysis.

All of our regression analyses include controls for selected human capital, demographic, and job characteristics. In addition, we include controls for state to capture geographic variation in wages. The human capital characteristics include age, age squared, and education. The demographic characteristics include sex, race, and ethnicity. The job characteristics include detailed industry groups and detailed occupation groups. In addition, in our analysis of weekly and hourly earnings we include controls for union membership. We could not include this variable in our analysis of annual earnings because it is only present in the earnings module. We also include self-employed as a control variable for our regression analyzing participation in work-provided retirement plans because these workers may not necessarily have an employer with which they would qualify for a retirement plan. We did not include self-employed as a control variable for our earnings regressions. We examined whether our annual earnings regression results were sensitive to the inclusion of self-employed workers in our sensitivity analyses, described below.<sup>81</sup>

Table 23 (below) shows coefficients and standard errors from each of our earnings regressions. The table shows the exponents of the model coefficients and standard errors. Because the dependent variables in the earnings models are the natural logarithms of earnings, subtracting 1 from the presented coefficients on indicator variables can be interpreted as the percentage change in the dependent variable associated with a change in the indicator variable. For example, the exponent of the coefficient on “Contingent” is 0.871 in the regression of the log of annual earnings for full-time, full-year workers. This can be interpreted as: contingent worker’s earnings are 12.9 percent lower than the earnings of standard workers, holding all other predictors constant, because  $0.871 - 1 = -.129$ , or  $-12.9$  percent.

**Table 23: Multivariate Regression Results on Earnings of Contingent Workers as a Percentage of Standard Workers**

Dependent variable:	Log of annual earnings	Log of annual earnings	Log of weekly earnings	Log of weekly earnings	Log of hourly earnings
Population (workers):	All	Full-time, full-year	All	Full-time	All
<b>Contingent</b>	0.521 (0.021)	0.871 (0.034)	0.725 (0.016)	0.833 (0.018)	0.894 (0.015)
<b>Age</b>	1.126 (0.003)	1.061 (0.003)	1.090 (0.002)	1.056 (0.002)	1.046 (0.001)
<b>Age squared</b>	0.999 (0.000)	0.999 (0.000)	0.999 (0.000)	0.999 (0.000)	1.000 (0.000)

<sup>81</sup> Self-employed workers are excluded from the May-MORG merged dataset, but they are included in the May-ASEC merged dataset.

<b>Men</b>	(base)	(base)	(base)	(base)	(base)
<b>Women</b>	0.679 (0.009)	0.745 (0.008)	0.757 (0.006)	0.808 0.006	0.850 (0.006)
<b>White non-Hispanic</b>	(base)	(base)	(base)	(base)	(base)
<b>Black non-Hispanic</b>	0.924 (0.018)	0.892 (0.014)	0.901 (0.011)	0.864 (0.010)	0.900 (0.009)
<b>Asian non-Hispanic</b>	0.924 (0.022)	0.892 (0.018)	0.964 (0.016)	0.955 (0.014)	0.976 (0.013)
<b>Other non-Hispanic</b>	0.906 (0.038)	0.920 (0.030)	0.924 (0.023)	0.914 (0.023)	0.959 (0.015)
<b>Hispanic</b>	0.962 (0.018)	0.869 (0.014)	0.949 (0.011)	0.889 (0.010)	0.909 (0.009)
<b>Less than high school</b>	(base)	(base)	(base)	(base)	(base)
<b>High school</b>	1.362 (0.033)	1.203 (0.028)	1.264 (0.018)	1.216 (0.017)	1.135 (0.012)
<b>Some college</b>	1.465 (0.037)	1.354 (0.033)	1.322 (0.020)	1.297 (0.019)	1.205 (0.013)
<b>Bachelor's degree or more</b>	2.080 (0.056)	1.837 (0.048)	1.833 (0.030)	1.766 (0.029)	1.595 (0.020)
<b>Union membership (base: no)</b>	N/A	N/A	1.203 (0.012)	1.130 (0.011)	1.141 (0.010)
<b>Detailed industry group</b>	(see note)				
<b>Detailed occupation group</b>	(see note)				
<b>State</b>	(see note)				
<b>Unweighted sample</b>	30,204	21,568	43,541	35,615	43,504
<b>R2</b>	0.402	0.389	0.436	0.386	0.396
<b>F statistic</b>	111.163	86.523	209.309	146.531	196.693

Source: GAO regression analysis using data from the 2012 Current Population Survey earnings modules, Annual Social and Economic Supplement (ASEC), and Disability Supplement. | GAO-15-168R

Note: Regressions on weekly and hourly earnings use the May-MORG merged dataset and regressions on annual earnings use the May-ASEC merged dataset. Regressions also include controls for detailed industry group, detailed occupation group, and state, not presented in this table. Full-time includes those who worked at least 35 hours per week; full-year includes those who worked at least 50 weeks in the year. The self-employed are not included in the weekly and hourly earnings models. Standard errors have been estimated as described earlier in this enclosure, and are presented in parentheses below the regression coefficients. The exponents of coefficients and standard errors are presented to ease interpretation. Earnings models are linear models with a logged dependent variable and are limited to positive earners.

Table 24 (below) shows the odds ratios and standard errors from logistic regressions to analyze participation in retirement plans, and can be interpreted as relative odds. Relative odds of less than 1 mean that contingent workers are less likely than standard workers to participate in a work-provided retirement plan.

Prior to adjusting for other factors, only an estimated 19 percent of contingent workers participate in a work-provided retirement plan, compared to about 45 percent of standard workers (not shown in table 24). The odds that a contingent worker participates in a work-provided plan can be expressed as 19:81, or 0.23, whereas the odds that a standard worker participates are 45:55, or 0.82. To compare the relative odds of participating in a plan between contingent and standard workers, we take the ratio of the two unadjusted odds, 0.23 to 0.82, which would yield an odds ratio of 0.28. This indicates that prior to adjusting for other factors,

the odds that a contingent worker has a retirement plan are approximately just 28 percent of the odds of a standard worker. Alternatively stated, we can conclude that before adjusting for other factors, contingent workers have odds of participating in a work-provided retirement plan that are about 72 percent lower (1-0.28) than standard workers. Conversely, to compare the odds of standard workers' participation relative to contingent workers, we can take the inverse of the odds ratio (1/0.28, or approximately 3.6); this suggests that—without adjusting for other factors—the odds that standard workers participate in a work-provided retirement plan are more than three and a half times those of contingent workers.

After adjusting for factors other than employment status that can have an impact on the likelihood of participating in a work-provided retirement plan, we find that the odds ratio for contingent to standard workers is 0.324 (see table 24). This indicates that the odds that contingent workers participate in a work-provided retirement plan are an estimated 67.6 percent lower than for standard workers, holding other predictors constant. Alternatively stated, the inverse of the odds ratio is (1/0.324, or approximately 3.1); this suggests that the odds that standard workers participate in a work-provided retirement plan, holding other predictors constant, are over three times those of contingent workers.

**Table 24: Multivariate Logistic Regression Showing the Relative Odds of Participating in a Work-Provided Retirement Plan**

Dependent variable:	Participation in work-provided retirement plan	Participation in work-provided retirement plan
Population (workers):	All	Full-time, full-year
Contingent (relative to standard)	0.324 (0.033)	0.440 (0.067)
Age	1.208 (0.010)	1.170 (0.012)
Age squared	0.998 (0.000)	0.998 (0.000)
Men	(base)	(base)
Women	0.865 (0.031)	0.928 (0.039)
White non-Hispanic	(base)	(base)
Black non-Hispanic	0.814 (0.046)	0.778 (0.051)
Asian non-Hispanic	0.735 (0.051)	0.733 (0.058)
Other non-Hispanic	0.754 (0.078)	0.761 (0.092)
Hispanic	0.651 (0.035)	0.633 (0.039)
Less than high school	(base)	(base)
High school	1.902 (0.14)	2.022 (0.174)
Some college	2.204 (0.166)	2.476 (0.219)
Bachelor's degree or more	3.266 (0.258)	3.433 (0.319)

<b>Self-employed (base: no)</b>	0.181 (0.012)	0.19 (0.014)
<b>Detailed industry group</b>	(see note)	
<b>Detailed occupation group</b>	(see note)	
<b>State</b>	(see note)	
<b>Unweighted sample</b>	30,204	21,568
<b>F statistic</b>	33.790	22.565
<b>AL<sup>a</sup></b>	1.07	1.21
<b>p &gt; AL<sup>a</sup></b>	0.38	0.28

Source: GAO regression analysis using data from the 2012 Current Population Survey Annual Social and Economic Supplement (ASEC) and Disability Supplement. | GAO-15-168R

<sup>a</sup> AL indicates the Archer-Lemeshow goodness-of-fit test statistic (a modification for survey data of the Hosmer-Lemeshow goodness of fit test) and p>AL is the p-value associated with the goodness-of-fit test statistic. Higher p-values for the goodness-of-fit test indicate a better model fit; p-values less than .05 indicate that the model is a poor fit.

Note: Regressions on retirement plan participation use the May-ASEC merged dataset. Regressions also include controls for detailed industry group, detailed occupation group, and state, not presented in this table. Full-time includes those who worked at least 35 hours per week; full-year includes those who worked at least 50 weeks in the year. Standard errors have been estimated as described earlier in this enclosure, and are presented in parentheses below the regression coefficients. The exponents of coefficients (called odds ratios) and standard errors are presented to ease interpretation. Retirement plan models are logistic models, estimating the odds that a contingent worker has a work-provided retirement plan relative to standard workers; all workers are included, regardless of their level of earnings.

### Regression analysis: additional analyses and sensitivity tests

In addition to the regressions described above, we ran several sensitivity tests to examine the robustness of our results.

- To make sure that our results were not driven by the large share of contingent workers in the education-related industry and occupation, we ran all of our earnings regressions on populations that excluded workers employed in education.
- To examine whether our results would be sensitive to the inclusion of more precise industry and occupation categories, we ran all of our earnings regressions replacing our initial industry and occupation categories with more precise controls (i.e., moving from 51 industry codes and 22 occupation codes to 259 industry codes and 478 occupation codes).
- To make sure that our results were not significantly affected by the construction of our merged samples, we ran our weekly and hourly earnings regressions on the May 2012 earnings sample.
- To make sure that our results were not affected by the inclusion of self-employed workers in our May-ASEC merged dataset, we ran our annual earnings regressions on a sample that excluded self-employed workers.
- We also ran each of our earnings regressions separately for men and women to account for any earnings differences based on sex.

The results of our sensitivity tests were qualitatively similar to the results of our primary regression models presented in this report (see table 25). The differences between contingent and standard workers were consistently, though only slightly, smaller when education workers were excluded and when the more precise industry and occupation controls were used, and

were consistently, though only slightly, larger when only workers in the May earnings module were included. Differences in the other sensitivity tests varied. Table 25 shows the exponents of estimated coefficients and standard errors on the “contingent” variable from sensitivity tests on our five primary earnings regressions. The first row shows the earnings results that are presented in the body of this report. Beneath that, we present: (a) all earnings regressions, excluding workers employed in the education industry or occupation; (b) all earnings regressions, using more precise individual industry and occupation controls instead of detailed industry and occupation groups; (c) weekly and hourly earnings regressions run on workers from the May earnings sample, using only those workers whose earnings data were collected from the May outgoing rotation module (no earnings data were collected from merging with subsequent months of data); (d) annual earnings regressions, excluding self-employed workers; (e) all earnings regressions for men only; and (f) all earnings regressions for women only.

**Table 25: Multivariate Regression Results on Earnings of Contingent Workers as a Percentage of Standard Workers, Sensitivity Tests of Alternate Samples in GAO’s Analyses**

Dependent variable:	Log of annual earnings	Log of annual earnings	Log of weekly earnings	Log of weekly earnings	Log of hourly earnings
Population (workers):	All	Full-time, full-year	All	Full-time	All
Earnings of contingent workers as a percentage of standard (main models)	0.521 (0.021)	0.871 (0.034)	0.725 (0.016)	0.833 (0.018)	0.894 (0.015)
Sensitivity tests:					
(a) Education workers excluded	0.570 (0.025)	0.900 (0.037)	0.768 (0.018)	0.862 (0.019)	0.902 (0.016)
(b) Precise industry and occupation controls used <sup>a</sup>	0.538 (0.022)	0.892 (0.034)	0.739 (0.016)	0.851 (0.018)	0.905 (0.015)
(c) Workers in full May earnings module only (unmerged sample)			0.636 (0.028)	0.780 (0.040)	0.860 (0.033)
(d) Self-employed workers excluded	0.504 (0.022)	0.879 (0.036)			
(e) Men only	0.543 (0.029)	0.840 (0.042)	0.759 (0.022)	0.855 (0.022)	0.901 (0.020)
(f) Women only	0.498 (0.031)	0.951 (0.057)	0.693 (0.023)	0.808 (0.032)	0.890 (0.022)

Source: GAO regression analysis using data from the 2012 Current Population Survey earnings modules, Annual Social and Economic Supplement (ASEC), and Disability Supplement. | GAO-15-168R

<sup>a</sup> Regressions in row b, where precise industry and occupation controls are used, contain a large number of parameters and model fit statistics are not. This set of results should therefore be interpreted with caution.

Note: Regressions on weekly and hourly earnings use the May-MORG merged dataset and regressions on annual earnings use the May-ASEC merged dataset, except for sensitivity test C. In sensitivity test C, regressions on weekly and hourly earnings use the outgoing rotation group module from the May 2012 CPS (not merged with additional months); this model also uses the May 2012 CPS Disability Supplement weight (PWSUPWGT) instead of the weights used in other models to account for the merged data (see description earlier in this enclosure. Our models controlled for factors that affect earnings, such as education, age, unionization (weekly and hourly earnings models), industry, occupation, and geography; detailed industry and occupation groups were used for all models, unless specified otherwise in the table. Full-time includes those who worked at least 35 hours per week; full-year includes those who worked at least 50 weeks in the year. The self-employed are not included in the weekly and hourly earnings models. Standard errors have been estimated as described earlier in this enclosure, and are presented in parentheses below the regression coefficients. The exponents of coefficients and standard errors are presented to ease interpretation. Earnings models are linear models with a logged dependent variable and are limited to positive earners.

To make sure that our results were not affected by the construction of our merged samples, we also ran several sensitivity tests to examine the effects the weights and the variance estimation approach we use on our merged sample (described above). Using the May only earnings sample, which does not involve a merge to additional months of data, we compare the effect of using the CPS replicate weights for variance estimation, the May 2012 CPS Disability Supplement weight for point estimates, and the May earnings weight for point estimates, to the weighting and variance estimation approach that we developed (described above).

The sensitivity tests demonstrate consistency across model specifications, including the main regressions presented in this report. Table 26 shows the impact of using different population weights and variance estimation techniques on our results, using the May only earnings sample. The first row in the table uses the weight and variance methods that we use in our main regression analyses (presented elsewhere in this report), namely the constructed population weight and variance estimation using state as a stratification variable. The three rows of sensitivity test results show the effects of using replicate weights to calculate model standard errors. The first row (a) presents the regression results using the same constructed population weight that we use in our main models, but instead of using our method of variance estimation (described above) that sets state as a survey stratification variable, uses replicate weights. A comparison of the standard errors on the contingent worker coefficients in the main models and the sensitivity tests in row (a) demonstrate consistency across model specifications. The sensitivity tests in rows (a), (b), and (c) show the result of using various population weights, holding constant the variance estimation method using replicate weights. Row (a) uses the weight that we constructed, which is defined as the ratio of the May 2012 CPS Disability Supplement weight (PWSUPWGT) to the individual's composited final weight (PWCMPWGT), multiplied by the earnings weight ((PWSUPWGT / PWCMPWGT) x PWORWGT). Row (b) uses the earnings weight (PWORWGT). Row (c) uses the May 2012 CPS Disability Supplement weight (PWSUPWGT). Table 26 shows that the estimates resulting from these different population weights are consistent across model specifications.

**Table 26: Multivariate Regression Results on Earnings, Sensitivity Tests of Population Weights and Variance Estimation Techniques, Using May 2012 Sample Only**

Dependent variable (all workers included):	Log of weekly earnings	Log of hourly earnings
Earnings of contingent workers as a percentage of standard	0.637	0.861
Population weight: constructed population weight (ratio of the May 2012 CPS Disability Supplement weight to the individual's composited final weight, multiplied by the earnings weight; PWSUPWGT / PWCMPWGT x PWORWGT) – method for main models	(0.029)	(0.032)
Variance estimation method: state stratification variable – method for main models		
Sensitivity tests:		
(a) Population weight: constructed population weight (same as above )	0.637	0.861
Variance estimation method: replicate weights	(0.028)	(0.033)
(b) Population weight: outgoing rotation group weight (PWORWGT)	0.636	0.860
Variance estimation method: replicate weights	(0.028)	(0.033)

(c) Population weight: May 2012 CPS Disability Supplement weight (PWSUPWGT)	0.636 (0.028)	0.860 (0.033)
Variance estimation method: replicate weights		

Source: GAO regression analysis using data from the 2012 Current Population Survey earnings modules and Disability Supplement. | GAO-15-168R  
 Note: Our models controlled for factors that affect earnings, such as education, age, unionization, industry, occupation, and geography. The self-employed are not included in the weekly and hourly earnings models. Standard errors have been estimated as described earlier in this enclosure, and are presented in parentheses below the regression coefficients. The exponents of coefficients and standard errors are presented to ease interpretation. Earnings models are linear models with a logged dependent variable and are limited to positive earners.

To further test the validity of our proxy population,<sup>82</sup> we also ran our regression models on the 2005 CWS to compare results for those workers who simply answered “yes” to the temporary work screening question with those workers included in BLS’s three estimates of the contingent workforce. We ran the regression models on only those workers who had earnings data present in the CWS, which may be a different population than the group of workers who were administered earnings questions in the outgoing rotation group earnings module, used in our 2012 regressions. We excluded self-employed workers because they were not asked the temporary work screening question in the 2005 CWS.<sup>83</sup> In all other ways, our regression models were the same as our main analyses using data from the May 2012 CPS Disability Supplement.

Results from these sensitivity tests again demonstrated results consistent with the main regression specification presented in this report. Table 27 shows the similarities between each population measure. For example, the estimated differences in hourly earnings between contingent and standard workers resulting from our multivariate models were similar whether using the temporary work population (i.e., the population similar to our proxy population, though without self-employed workers) or BLS’s Estimate 1. The results on weekly earnings were slightly different, largely because, as previously noted, the temporary work population included a greater proportion of part-time workers than workers included in BLS’s three estimates. In our analyses using the May 2012 CPS Disability Supplement data we address this potential difference by presenting regressions of hourly earnings (which implicitly control for hours worked), presenting regressions of weekly earnings limited to full-time workers, and presenting regressions of annual earnings limited to full-time, full-year workers.

**Table 27: Multivariate Regression Results on Earnings, Sensitivity Tests of Proxy Population Using 2005 CWS Data to Compare Temporary Workers and BLS Contingent Worker Estimates**

Dependent variable (all workers included):	Log of weekly earnings	Log of hourly earnings
Earnings of contingent workers as a percentage of standard		
(a) Workers who responded “Yes” to temporary work screening question (variable PES1); practically identical to question used to identify proxy population in May 2012 CPS Disability Supplement	0.665 (0.020)	0.862 (0.021)
(b) Workers in BLS Estimate 1 of the contingent workforce	0.763 (0.028)	0.863 (0.024)

<sup>82</sup> As previously discussed, we identified a proxy population of contingent workers as those who answered “yes” to the temporary work screening question in the May 2012 Disability Supplement.

<sup>83</sup> As previously discussed, contingent self-employed were identified using other questions in the CWS. Self-employed workers were asked the temporary work screening question in the May 2012 Disability Supplement and thus we include them in our main regression analyses that use the 2012 data, as we are able.

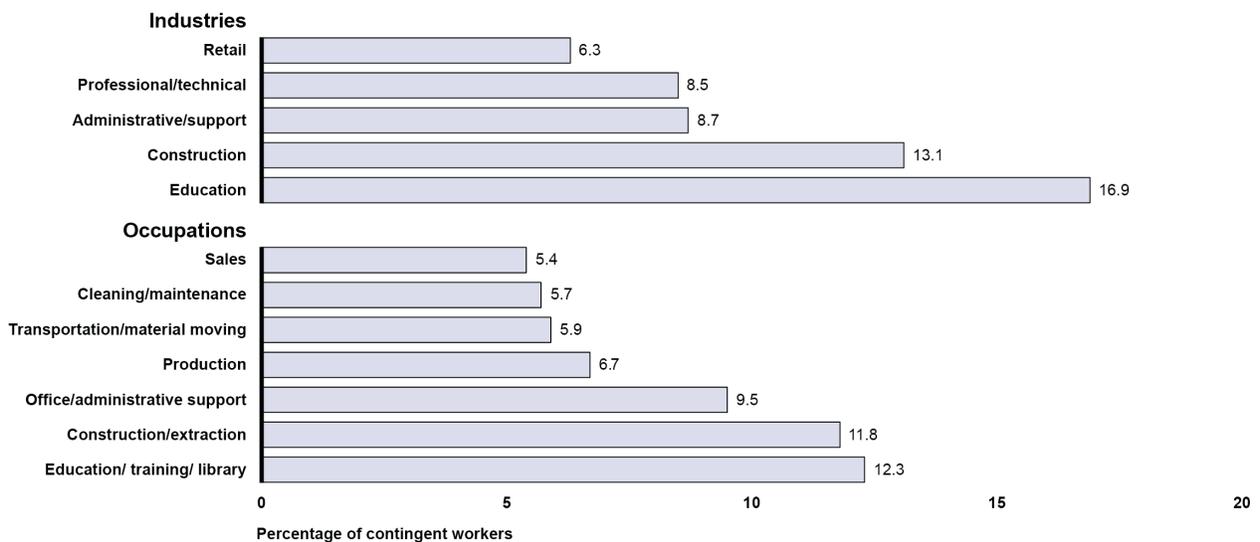
(c) Workers in BLS Estimate 2 of the contingent workforce	0.759 (0.027)	0.867 (0.023)
(d) Workers in BLS Estimate 3 of the contingent workforce	0.770 (0.023)	0.874 (0.021)

Source: GAO regression analysis using data from the 2005 Contingent Work Supplement to the Current Population Survey. | GAO-15-168R

Note: Our models controlled for factors that affect earnings, such as education, age, industry, occupation, and geography. The self-employed are not included in the weekly and hourly earnings models. Standard errors have been estimated as described earlier in this enclosure, and are presented in parentheses below the regression coefficients. The exponents of coefficients and standard errors are presented to ease interpretation. Earnings models are linear models with a logged dependent variable and are limited to positive earners.

In addition to the sensitivity tests described above, we also ran each of our earnings regressions separately by detailed industry group and detailed occupation group. We ran separate regressions on each industry and occupation that employed at least 5.0 percent of contingent workers in both our May-MORG merged dataset and our May-ASEC merged dataset (see fig. 8 for the percentages of contingent workers in industries and occupations in the ASEC data and see also table 22 above for percentages in sample C and sample D).

**Figure 8: Distribution of Contingent Workers by Industry and Occupation in the 2012 ASEC Merged Dataset**



Source: GAO analysis of data from the 2012 Annual Social and Economic and Disability Supplements to the Current Population Survey. | GAO-15-168R

Note: Industry and occupation numbers do not add up to 100 percent of contingent workers because only those with the highest share of contingent workers are shown. Each estimate has a 95 percent confidence interval of within +/- 2.7 percentage points.

Within some industries and occupations, such as the education industry and the transportation and material moving occupation, contingent workers earned significantly less than standard workers on an annual, weekly, and hourly basis. Within other industries and occupations, such as the construction industry and construction and extraction occupation only the difference in annual earnings was significant (see table 28).

**Table 28: Multivariate Regression Results on Earnings, Limited to Workers in Individual Detailed Industry Groups and Detailed Occupation Groups**

Dependent variable:	Log of annual earnings	Log of annual earnings	Log of weekly earnings	Log of weekly earnings	Log of hourly earnings
Population (workers):	All	Full-time, full-year	All	Full-time	All
<b>Detailed industry group</b>					
Construction	0.782*	1.000	0.897	1.007	1.008
Retail trade	0.507*	0.647*	0.770*	0.941	0.906*
Professional and technical services	0.503*	0.924	0.749*	0.962	0.830
Administrative and support services	0.555*	0.779	0.929	0.867*	0.942
Educational services	0.343*	0.664*	0.577*	0.658*	0.864*
<b>Detailed occupation group</b>					
Education, training, and library	0.332*	0.587*	0.616*	0.696*	0.914
Building and grounds cleaning and maintenance	0.513*	0.880	0.792*	0.799*	0.896*
Sales and related	0.569*	0.975	0.765*	0.809*	0.896*
Office and administrative support	0.514*	0.943	0.736*	0.886*	0.921*
Construction and extraction	0.720*	0.946	0.900	1.011	0.972
Production	0.628*	0.731	0.787*	0.797*	0.884
Transportation and material moving	0.495*	0.747*	0.775*	0.857*	0.904*

Source: GAO regression analysis using data from the 2012 Current Population Survey earnings modules, Annual Social and Economic Supplement (ASEC), and Disability Supplement. | GAO-15-168R

Note: Regressions on weekly and hourly earnings use the CPS outgoing rotation group earnings module dataset and regressions on annual earnings use the May-ASEC merged dataset. Our models controlled for factors that affect earnings, such as education, age, unionization (weekly and hourly earnings models), industry, occupation, and geography. Full-time includes those who worked at least 35 hours per week; full-year includes those who worked at least 50 weeks in the year. The self-employed are not included in the weekly and hourly earnings models. The exponents of coefficients are presented to ease interpretation. Earnings models are linear models with a logged dependent variable and are limited to positive earners.

\* Indicates that the regression coefficient is statistically significant at least at the level of p-value < 0.05.

**Descriptive analysis:**

We used the May-ASEC merged dataset to examine health insurance coverage and measures of poverty among contingent workers and standard workers; we included all workers, regardless of their level of earnings. We did not analyze these variables using the framework of our earnings regression model because health insurance and family poverty are determined by many factors besides the individual and job characteristics of workers, such as marital status, family structure, the earnings of other adults in the family, and whether other adults in the family have work-provided benefits. Examining these broader aspects of the circumstances of contingent workers was outside the scope of this report. However, we present basic information and descriptive statistics on the following measures:

- Private health insurance coverage: The ASEC contains information about whether individual workers are covered by private health insurance, as well as whether that coverage is in their own name and through their own employer. We present distributions for contingent and standard workers who are in each of these coverage groups in the report. The ASEC does not provide information about whether workers who do not have private health insurance in their own name (e.g., had health insurance through a family member or had no health insurance) worked for employers who offered health insurance.

- Family poverty: We present information about the percentage of contingent workers and standard workers who live in families whose income is less than 100 percent of Census's official poverty line and those whose income is less than 150 percent of the official poverty line.
- Receipt of selected forms of public assistance and income support: We present information about the percentage of contingent and standard workers who live in families that receive income from Supplemental Nutrition Assistance Program (SNAP, formerly known as the federal Food Stamp Program); who receive cash assistance from a state or county welfare program; and who receive Supplemental Security Income.

## Enclosure III: Key Worker Protection and Benefit Laws

This enclosure provides general summaries of key federal worker protection and benefit laws, including those identified in our previous reports on contingent work. The scope of coverage for each law varies, and as a result, the extent to which a particular law applies to different types of contingent workers will vary depending on the particular facts and circumstances of their employment arrangements.

**Table 29: General Summaries of Key Federal Worker Protection and Benefit Laws**

Law	General Summary
<b>Fair Labor Standards Act of 1938, codified at 29 U.S.C. §§ 201-219</b>	<p>Establishes minimum wage, overtime, and child labor protections for most private and public sector employees.</p> <p>Certain employers and employees are exempt from either the minimum wage or overtime standards of the act or both, and the child labor provisions do not apply to children employed in certain industries.</p>
<b>Family and Medical Leave Act of 1993, codified at 29 U.S.C. §§ 2601-2654</b>	<p>Requires private sector employers who employ at least 50 employees for 20 weeks or more in the current or preceding calendar year and public sector employers of any size to allow employees to take up to 12 weeks of unpaid, job-protected leave during any 12-month period for medical reasons related to a family member's or the employee's own health, or for a qualifying exigency arising out of a family member's covered active duty in the Armed Forces.</p> <p>An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member.</p> <p>Employees are eligible if they worked for the employer for at least 12 months and for at least 1,250 hours in the 12 months prior to the start of leave.</p>
<b>Occupational Safety and Health Act, codified at 29 U.S.C. §§ 651-678</b>	<p>Requires employers to furnish their employees with a workplace free from recognized hazards that are causing or are likely to cause serious physical harm and requires employers and employees to comply with applicable occupational health and safety standards.</p> <p>The U.S. Department of Labor sets and enforces standards for certain private sector employers in about half the states; the remaining states operate their own occupational safety and health programs under Department of Labor -approved state plans. State plans must cover state and local government employers.</p> <p>Provisions in Department of Labor's annual appropriations acts have limited the agency's enforcement authority over certain small employers.</p>
<b>National Labor Relations Act, codified at 29 U.S.C. §§ 151-169</b>	<p>Provides employees the right to join or form a labor union and to bargain collectively over conditions of employment such as wages and hours.</p> <p>Applies to private employers, except those in the railway and airline carrier industries. Excludes from the definition of employee supervisors, independent contractors, agricultural laborers, individuals employed by a parent or spouse, and in-home domestic workers employed by a family or person.</p>

<b>Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 29 U.S.C. §§ 1161-1169 and 42 U.S.C. §§ 300bb-1-300bb-8</b>	<p>Requires that temporary continuation of group health plan coverage be offered to covered employees and their family members who would lose coverage under employer-sponsored group health plans as a result of certain events, such as employees being laid off from or changing their jobs.</p> <p>Applies to group health plans sponsored by private sector employers or state or local governments that employed at least 20 employees in the previous calendar year.</p>
<b>Employee Retirement Income Security Act of 1974, codified at 26 U.S.C. §§ 401-436 and 4971-4982 and 29 U.S.C. §§ 1001-1461</b>	<p>Does not require employers to provide employee benefit plans but establishes requirements that must be met by employee pension and welfare benefit plans sponsored by employers or employee organizations in order to qualify for tax preferences, including minimum participation, accrual, and vesting requirements; fiduciary responsibilities; and reporting and disclosure requirements.</p> <p>No qualified pension plan may require an employee, as a condition of participation, to complete a period of service extending beyond the later of when the employee attains the age of 21 or completes one year of service (defined generally as a 12-month period during which the employee has at least 1,000 hours of service).</p>
<b>Unemployment Insurance, see generally 26 U.S.C. §§ 3301 – 3311 and 42 U.S.C. §§ 501-505</b>	<p>Provides temporary, partial wage replacement to employees who become unemployed and meet eligibility rules of state programs established in accordance with requirements of federal law.</p> <p>Unemployment insurance is a joint federal-state system funded by federal and state payroll taxes. Employers who pay state taxes under a state unemployment insurance program meeting federal requirements receive a credit against federal tax liability, and states with such unemployment insurance programs may receive grants for the costs of administering their programs.</p>
<b>Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. §§ 2000e-2000e-17</b>	<p>Protects employees and job applicants from discrimination in employment based on race, color, religion, sex, or national origin.</p> <p>Applies to employers that have 15 or more employees for each working day in each of 20 or more calendar weeks in a year.</p>
<b>Title I of the Americans with Disabilities Act of 1990, codified at 42 U.S.C. §§ 12111-12117</b>	<p>Protects qualified employees and job applicants with disabilities from discrimination based on disability.</p> <p>Applies to employers that have 15 or more employees for each working day in each of 20 or more calendar weeks in a year.</p>
<b>Age Discrimination in Employment Act of 1967, codified at 29 U.S.C. §§ 621-634</b>	<p>Protects employees and job applicants 40 years of age or older from discrimination in employment based on age.</p> <p>Applies to employers that have 20 or more employees for each working day in each of 20 or more calendar weeks in a year.</p>

Source: GAO analysis of selected federal laws. | GAO-15-168R

Note: The focus of this enclosure is federal worker protection and benefit laws. However, in our prior work, we have also highlighted state workers' compensation programs as being potentially relevant to contingent workers. See GAO, *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, [GAO-06-656](#) (Washington, D.C.: July 11, 2006). Workers who are injured on the job or who contract a work-related illness may receive benefits under state workers' compensation programs. The federal government is not involved in financing or administering these programs nor does it set standards for such programs to enable them to receive favorable tax treatment. State workers' compensation programs vary in terms of employer coverage as well as which injuries or illnesses are compensable and the level of benefits provided. However, these programs generally pay for medical care, rehabilitation, and provide cash benefits for workers who are injured on the job or contract work-related illnesses. In addition, benefits are generally provided to families of workers who die from work-related causes. See National Academy of Social Insurance, *Workers' Compensation: Benefits, Coverage, and Costs, 2012* (Washington, D.C.: August 2014).

## Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA) refers to the health reform law enacted in 2010.<sup>84</sup> The act includes provisions aimed at expanding access to affordable health insurance coverage. It requires certain employers to provide and most individuals to obtain health insurance or face financial penalties. PPACA allows states to expand eligibility for Medicaid to most low-income adults with incomes at or below 133 percent of the federal poverty level.<sup>85</sup> As of mid-January 2015, 28 states plus the District of Columbia had implemented Medicaid expansion programs, with additional programs under consideration, according to the Department of Health and Human Services and the Kaiser Family Foundation.

With respect to private health insurance coverage, the act required the establishment, in each state, of health insurance exchanges (marketplaces) in which eligible families and individuals can purchase private insurance. It also established a refundable health insurance premium tax credit, generally paid in advance, to offset some of the cost of health insurance purchased through such an exchange. The act also mandates that individuals, subject to certain exceptions, obtain health insurance coverage or pay a financial penalty beginning in 2015.

In addition, the act provides, beginning in 2014, that large employers—those with 50 or more full-time employees—who fail to offer their full-time employees (and their dependents) health coverage that is affordable and meets certain other requirements will be subject to a tax penalty for each full-time employee who enrolls in an exchange plan and receives a premium tax credit. A full-time employee under the act is one who works, on average, 30 or more hours a week. Seasonal employees, defined under the law as those seasonal and temporary positions for which the customary annual employment is six months or less, are not included in the calculation of full-time employees. The Internal Revenue Services has announced it will gradually phase in this “employer shared responsibility requirement” beginning in 2015.

PPACA also imposes requirements on individual and group health plans, including both insured and self-insured group health plans. Among other provisions, the act guarantees the availability and renewability of health insurance coverage in the individual and group markets and limits the waiting period a group health plan may impose before an employee or dependent who is otherwise eligible to enroll can do so to a maximum of 90 days.

The act amended the Fair Labor Standards Act to require employers with more than 200 full-time employees that offer employees enrollment in one or more health benefit plans to automatically enroll new full-time employees in one of those plans, and to continue the enrollment of current employees in a health benefit plan offered through the employer. Any automatic enrollment program must include adequate notice and an opportunity for an employee to opt out of coverage. These amendments require employers to inform employees of the existence of a health benefit exchange, that they may be eligible for a premium tax credit and cost sharing reduction, and that if the employee purchases a health plan through the exchange, the employee may lose the employer contribution to any health benefit plan offered by the employer.

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<sup>84</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010). References to the Patient Protection and Affordable Care Act include amendments made by the Health Care and Education Reconciliation Act of 2010.

<sup>85</sup> PPACA imposes a 5 percent income disregard when calculating modified adjusted gross income (MAGI), which, in effect, raises this income limit to 138 percent of the federal poverty level.

## Enclosure IV: Characteristics of the Contingent Workforce in the 2005 Contingent Work Supplement and the 2010 General Social Survey

**Table 30: Characteristics of the Contingent Workforce in the 2005 Contingent Work Supplement**

Characteristic (percentage of workers unless otherwise noted)	Agency temps	On-call workers and day laborers	Contract company workers	Direct-hire temps	Core contin. <sup>a</sup>	Indep. cntrct.	Self-emp. workers	Stnd. part-time	Stnd. full-time
<b>Age</b>									
Mean age (years)	37.4 (+/- 1.5)	38.9 (+/- 1.1)	40.3 (+/- 1.7)	35.2 (+/- 1.1)	37.4 (+/- 0.7)	46.4 (+/- 0.5)	47.9 (+/- 0.6)	36.2 (+/- 0.5)	40.8 (+/- 0.2)
16-19 years	2.7 (+/- 11.2)	6.9 (+/- 7.3)	0.9 (+/- 13.8)	10.9 (+/- 6.9)	7.1 (+/- 4.3)	0.9 (+/- 3.9)	0.4 (+/- 5.1)	20.0 (+/- 2.6)	1.2 (+/- 1.3)
20-24 years	16.6 (+/- 10.4)	15.1 (+/- 7.0)	10.7 (+/- 13.1)	21.5 (+/- 6.4)	17.3 (+/- 4.1)	3.5 (+/- 3.8)	1.2 (+/- 5.0)	17.3 (+/- 2.7)	8.5 (+/- 1.2)
25-34 years	29.8 (+/- 9.5)	21.5 (+/- 6.7)	25.2 (+/- 12.0)	25.3 (+/- 6.3)	24.7 (+/- 3.9)	14.7 (+/- 3.6)	12.8 (+/- 4.7)	15.1 (+/- 2.7)	24.0 (+/- 1.1)
35-54 years	37.2 (+/- 9.0)	39.1 (+/- 5.9)	47.0 (+/- 10.1)	28.5 (+/- 6.2)	35.6 (+/- 3.6)	53.7 (+/- 2.7)	55.3 (+/- 3.4)	30.0 (+/- 2.5)	52.1 (+/- 0.9)
55-64 years	11.1 (+/- 10.7)	10.7 (+/- 7.2)	14.0 (+/- 12.9)	8.7 (+/- 7.0)	10.3 (+/- 4.3)	18.8 (+/- 3.5)	21.4 (+/- 4.5)	10.0 (+/- 2.8)	12.6 (+/- 1.2)
65+ years	2.7 (+/- 11.2)	6.7 (+/- 7.3)	2.3 (+/- 13.8)	5.2 (+/- 7.1)	5.0 (+/- 4.4)	8.5 (+/- 3.7)	8.9 (+/- 4.8)	7.7 (+/- 2.8)	1.7 (+/- 1.3)
<b>Gender</b>									
Men	47.2 (+/- 8.1)	52.7 (+/- 5.1)	69.0 (+/- 7.6)	48.6 (+/- 5.1)	52.0 (+/- 3.1)	64.7 (+/- 2.3)	63.2 (+/- 3.0)	31.5 (+/- 2.4)	55.6 (+/- 0.8)
Women	52.8 (+/- 7.4)	47.3 (+/- 5.2)	31.0 (+/- 11.0)	51.4 (+/- 4.8)	48.0 (+/- 3.1)	35.3 (+/- 3.0)	36.8 (+/- 3.8)	68.5 (+/- 1.6)	44.4 (+/- 0.9)
<b>Race</b>									
White, non-Hispanic	49.7 (+/- 8.1)	68.1 (+/- 4.3)	61.9 (+/- 8.6)	63.5 (+/- 4.4)	62.8 (+/- 2.8)	80.0 (+/- 1.8)	80.9 (+/- 2.2)	75.7 (+/- 1.4)	68.7 (+/- 0.7)
Black, non-Hispanic	21.8 (+/- 10.7)	8.3 (+/- 7.7)	14.9 (+/- 13.6)	9.4 (+/- 7.4)	11.5 (+/- 4.5)	5.4 (+/- 4.0)	3.6 (+/- 5.3)	8.9 (+/- 3.0)	11.4 (+/- 1.3)
Other, non-Hispanic	7.5 (+/- 10.9)	4.7 (+/- 7.4)	6.8 (+/- 13.4)	9.3 (+/- 6.9)	7.1 (+/- 4.3)	5.4 (+/- 3.8)	9.0 (+/- 4.8)	4.8 (+/- 2.9)	6.1 (+/- 1.2)
Hispanic	21.0 (+/- 10.7)	19.0 (+/- 7.2)	16.4 (+/- 13.5)	17.8 (+/- 7.0)	18.6 (+/- 4.3)	9.2 (+/- 3.9)	6.5 (+/- 5.2)	10.7 (+/- 2.9)	13.8 (+/- 1.3)
<b>Highest degree</b>									
Less than high school	18.0 (+/- 10.3)	20.2 (+/- 6.8)	16.7 (+/- 12.7)	14.9 (+/- 6.7)	17.4 (+/- 4.1)	8.2 (+/- 3.7)	7.9 (+/- 4.9)	21.1 (+/- 2.6)	9.2 (+/- 1.2)
High school	29.4 (+/- 9.6)	28.7 (+/- 6.4)	22.1 (+/- 12.3)	20.8 (+/- 6.5)	25.1 (+/- 3.9)	27.5 (+/- 3.3)	28.4 (+/- 4.3)	27.0 (+/- 2.5)	30.6 (+/- 1.1)
Some college <sup>b</sup>	32.0 (+/- 9.4)	28.2 (+/- 6.4)	29.1 (+/- 11.7)	33.3 (+/- 5.9)	30.8 (+/- 3.8)	29.2 (+/- 3.3)	25.9 (+/- 4.4)	34.6 (+/- 2.4)	28.5 (+/- 1.1)
Bachelors	18.5 (+/- 10.3)	16.4 (+/- 6.9)	17.8 (+/- 12.6)	17.1 (+/- 6.6)	17.1 (+/- 4.1)	21.9 (+/- 3.4)	22.7 (+/- 4.5)	12.4 (+/- 2.7)	20.8 (+/- 1.1)
Graduate	2.1 (+/- 11.2)	6.4 (+/- 7.3)	14.4 (+/- 12.9)	14.1 (+/- 6.7)	9.5 (+/- 4.3)	13.2 (+/- 3.6)	15.2 (+/- 4.7)	5.0 (+/- 2.9)	10.9 (+/- 1.2)

Source: GAO analysis of data from the 2005 Contingent Work Supplement to the Current Population Survey. | GAO-15-168R

Note: Core contingent workers, independent contractors, self-employed workers, and standard part-/full-time workers abbreviated as core contin., indep. cntrct., self-emp. workers, and std. part-/full-time, respectively.

<sup>a</sup> Core contingent includes agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers.

<sup>b</sup> Some college includes individuals who attended college but did not obtain a degree as well as those who completed associate degrees in either academic or vocational programs.

**Table 31: Characteristics of the Contingent Workforce in the 2010 General Social Survey**

Characteristic (percentage of workers unless otherwise noted)	Agency temps	On-call workers <sup>a</sup>	Contract company workers	Core contingent <sup>b</sup>	Independent contractors	Self- employed workers	Standard part-time	Standard full-time
<b>Age</b>								
Mean age (years)	33.8 (+/- 6.5)	40.6 (+/- 5.3)	43.7 (+/- 6.1)	40.7 (+/- 3.6)	50.4 (+/- 2.2)	53.7 (+/- 4.4)	41.9 (+/- 2.9)	41.9 (+/- 1.0)
18-24 years	---	---	---	18.7 (+/- 11.2)	2.1 (+/- 3.5)	2.1 (+/- 12.0)	20.1 (+/-8.8)	7.4 (+/-3.2)
25-34 years	---	27.2 (+/- 14.0)	---	26.0 (+/- 11.2)	11.8 (+/- 6.9)	---	18.7 (+/-7.3)	25.9 (+/- 3.9)
35-54 years	---	20.1 (+/-14.2)	---	33.2 (+/- 11.3)	48.0 (+/- 8.6)	---	32.6 (+/- 9.0)	49.0 (+/- 5.1)
55-64 years	---	---	---	10.2 (+/- 9.7)	21.7 (+/- 8.9)	---	17.3 (+/- 7.7)	15.7 (+/- 3.2)
65+ years	---	15.0 (+/- 12.4)	---	12.0 (+/- 8.3)	16.4 (+/- 7.5)	---	11.2 (+/- 6.3)	2.0 (+/- 1.6)
<b>Gender</b>								
Men	---	---	---	61.5 (+/- 12.6)	66.0 (+/- 8.2)	---	27.9 (+/-8.5)	47.7 (+/- 4.4)
Women	---	---	---	38.8 (+/- 12.6)	34.0 (+/- 8.2)	---	72.1 (+/- 8.5)	52.3 (+/- 4.4)
<b>Race</b>								
White, non-Hispanic	---	---	---	47.9 (+/- 12.4)	75.3 (+/- 7.7)	---	72.0 (+/- 8.2)	70.1 (+/- 5.0)
Black, non-Hispanic	---	10.5 (+/- 13.3)	---	19.3 (+/- 12.1)	8.1 (+/- 6.0)	---	15.4 (+/- 7.5)	13.4 (+/- 4.3)
Other, non-Hispanic	---	---	---	3.6 (+/- 12.4)	8.4 (+/- 6.9)	6.6 (+/- 12.6)	3.6 (+/- 4.9)	3.5 (+/- 1.8)
Hispanic	---	---	---	29.2 (+/- 13.5)	8.2 (+/- 6.9)	---	9.0 (+/- 7.7)	13.0 (+/- 5.4)
<b>Highest degree</b>								
Less than high school	---	---	---	30.8 (+/- 13.0)	14.5 (+/- 8.0)	---	10.2 (+/- 6.8)	7.7 (+/- 3.4)
High school	---	---	---	52.9 (+/- 13.8)	35.8 (+/- 8.4)	---	56.4 (+/- 8.5)	47.7 (+/-4.7)
Associate/junior college	---	2.1 (+/- 11.8)	---	2.9 (+/- 6.2)	10.5 (+/- 7.9)	2.3 (+/- 11.8)	11.9 (+/- 8.0)	8.6 (+/- 2.9)
Bachelors	---	7.5 (+/- 12.3)	---	11.0 (+/- 9.8)	25.6 (+/- 8.5)	---	10.6 (+/- 5.8)	22.4 (+/- 3.4)
Graduate	---	4.3 (+/- 11.6)	1.2 (+/- 7.3)	2.4 (+/- 5.2)	13.6 (+/- 7.0)	---	10.9 (+/- 5.7)	13.6 (+/- 3.1)

Source: GAO analysis of data from the 2010 General Social Survey. | GAO-15-168R

Note: Dashes indicate that the sample size was too small to compute reportable estimates.

<sup>a</sup> The General Social Survey does not identify direct-hire temps or day laborers as separate work arrangements.

<sup>b</sup> Core contingent includes agency temps, direct-hire temps, contract company workers, on-call workers, and day laborers (direct-hire temps and day laborers not identified separately in the GSS).

## Enclosure V: Agency Comments

**U.S. Department of Labor**

APR 09 2015

Office of the Assistant  
Secretary for Policy  
Washington, D.C. 20210



Charles A. Jeszeck  
Director  
Education, Workforce, and Income Security Issues  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Dr. Jeszeck:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled "*Contingent Workforce: Size, Characteristics, Earnings, and Benefits*." We appreciate that GAO has undertaken to study such an important topic.

The nature of work is changing in significant ways for many Americans, whether through the use of labor brokers, third-party management or independent contractors, the broader "fissuring" of employment and the workplace, the increasing prevalence of the "gig economy," or the growth of other nonstandard work arrangements. As a result of these trends, the traditional relationship between an employer and an employee is changing significantly for many.

For some, these changes represent greater access to the labor market. For others, they mean reduced access to workplace protections, benefits and stable income, and increased exposure to health and safety risks. In any case, understanding evolving trends in the structure of work is crucial, and it requires exactly the sort of attention GAO has brought to the subject with this report. Of course, not all nonstandard work arrangements are "contingent," and the category of contingent work does not encompass all of the changes going on in the labor market, but it is an essential component.

We would note that both contingent work and other changing work arrangements are driven in part by the changing shape of business relationships, including the fissuring of responsibility for hiring, evaluation, pay, supervision, training and coordination across multiple organizations. The motivations for this fissuring are sometimes related to labor cost concerns, but also derived from other sources such as the desire by businesses to focus on a core set of activities for the benefit of their consumers and investors. As a result, responsibility for working conditions has become murkier. Certain measures used in GAO's report reflect this dimension, such as independent contracting and temporary agency work. But these measures do not cover the full span of changes, such as contractual relationships between lead business organizations and subordinate businesses, and we note the importance of considering this dynamic in future inquiries regarding changes in the structure of work.

We also want to echo some of the notes of caution expressed in your introduction to the report. Lack of clarity in the available data and inconsistent definitions of contingent work make nuanced analysis difficult. As you point out, the Contingent Worker and Alternative Work Arrangement supplement administered by the Bureau of Labor Statistics (BLS) was last conducted in 2005, and many of the other data sources, such as the General Social Survey (GSS), are less suited to the purpose of tracking nonstandard work arrangements.

Combining these data sources can also lead to complex data manipulations and imprecise measurement—in light of their differing definitions and methods of measuring work arrangements—that make differentiating among distinct, widely varying arrangements yet more difficult. Understanding such distinctions is critical. A permanent part-time worker is likely to have very different characteristics and concerns from a temporary agency worker, for example.

The BLS defines contingent workers as those who do not have an implicit or explicit contract for on-going work. The defining dimension of this definition is the instability of a work arrangement and the corresponding lack of benefits a worker may achieve from a long-term employment relationship. The Contingent Worker and Alternative Work Arrangement supplement embodied this definition of contingent work in addition to measuring four alternative work arrangements: temporary help supply workers, contract company workers, on-call workers and independent contractors. With concerns about the possible rise of a “disposable” or “just-in-time” workforce, we believe it is important to maintain a focus on the instability of work when discussing and defining contingent workers.

Each of these challenges GAO faced in preparing its report illustrates the importance of funding the Contingent Work and Alternative Work Arrangement supplement as well as supporting other data collection that would provide necessary insight into changes that impact millions of American workers.

The DOL is actively engaged in figuring out how best to measure evolving trends and address them. For example, the Wage and Hour Division has been reshaping its enforcement and outreach strategy in response to changes in the structure of work since David Weil’s 2010 report, *Improving Workplace Conditions Through Strategic Enforcement*. Similarly, the Occupational Safety and Health Administration’s (OSHA) Temporary Worker Initiative, which began in 2013, brings stakeholders together to better protect temporary workers. OSHA also recently enacted procedures effective this year under which the agency will gather data on whether each covered illness, injury or fatality involved a temporary worker. This will provide greater clarity regarding the heightened risks temporary workers face and will build on existing indications that temporary workers are more vulnerable to safety and health hazards than other workers. The reasons for temporary workers’ greater vulnerability to these hazards are discussed in OSHA’s recent report, *Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job*. These are just a few of several initiatives going on at the DOL focused on addressing changes in the structure of work.

Better data, a clearer understanding of evolving trends and strategic assessment of where they are headed are critical to ensuring meaningful protections and real opportunity for the 21st-century workforce. We share your interest in this important topic, and we thank you for devoting resources to examining it.

Sincerely,



Mary Beth Maxwell  
Principal Deputy Assistant Secretary  
Office of the Assistant Secretary for Policy

## **Enclosure VI: GAO Contact and Staff Acknowledgments**

### **GAO Contact**

Charles A. Jeszeck, Director, (202) 512-7215 or [jeszeckc@gao.gov](mailto:jeszeckc@gao.gov).

### **Staff Acknowledgments**

In addition to the contact named above, Gretta L. Goodwin, Assistant Director; Julianne Hartman Cutts, Michael Kniss, Justin Gordinas, Susanna Clark, Rhiannon Patterson, and Jesse Tow, along with Carl Barden, Melinda Cordero, Kirsten Lauber, and Anna Maria Ortiz, made significant contributions to this report. In addition, key support was provided by James Bennett, Jessica Botsford, Susan Bernstein, Holly Dye, Kathy Leslie, and Sheila McCoy.

## Related GAO Products

*Contingent Workers: Incomes and Benefits Lag Behind Those of Rest of Workforce.* [GAO/HEHS-00-76](#). Washington, D.C.: June 30, 2000.

*Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention.* [GAO-09-717](#). Washington, D.C.: August 10, 2009.

*Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification.* [GAO-07-859T](#). Washington, D.C.: May 8, 2007.

*Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification.* [GAO-06-656](#). Washington, D.C.: July 11, 2006.

*Fair Labor Standards Act: Extending Protections to Home Care Workers.* [GAO-15-12](#). Washington, D.C.: December 17, 2014.

*Unemployment Insurance: Low-Wage and Part-Time Workers Continue to Experience Low Rates of Receipt.* [GAO-07-1147](#). Washington, D.C.: September 7, 2007.

*Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance.* [GAO-02-925](#). Washington, D.C.: September 26, 2002.

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## Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries

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### Introduction and Background

Employers increasingly misclassify their employees as independent contractors, denying them the protection of workplace laws, robbing unemployment insurance and workers' compensation funds of billions of much-needed dollars, and reducing federal, state and local tax withholding and revenues. State-level task forces, commissions, and research teams are using agency audits along with unemployment insurance and workers' compensation data to document the scope of independent contractor misclassification. Confirming the findings of earlier national studies, these state reports show that 10 to 30% of employers, or even more, misclassify their employees as "independent contractors," meaning that several million workers nationally may be misclassified. State and federal governments lose billions in revenues annually.

### **1. National studies and reports**

Several government studies document the extent to which misclassification drains federal revenues. The data is limited, however, and should be updated to give a more accurate assessment of the current economic impact.

A 1994 study by Coopers and Lybrand estimated the federal government would lose \$3.3 billion in revenues in 1996 due to independent contractor misclassification, and \$34.7 billion in the period from 1996 to 2004.<sup>1</sup>

A 2000 study commissioned by the U.S. Department of Labor (DOL) – the "Planmatics" study – found that between 10% and 30% of audited employers misclassified workers.<sup>2</sup>

Misclassification of this magnitude exacts an enormous toll: researchers found that misclassifying just one percent of workers as independent contractors would cost unemployment insurance (UI) trust funds \$198 million annually. This report also shows that workers would benefit tremendously from increased scrutiny; up to 95% of workers who claimed they were misclassified as independent contractors were reclassified as employees following review.

A 2009 report by the Government Accountability Office (GAO) estimated independent contractor misclassification cost federal revenues \$2.72 billion in 2006.<sup>3</sup> The GAO's estimate

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\* Special thanks to Jean Choi for his research and writing on this report.

was derived from data reported by the IRS in 1984, finding that 15% of employers misclassified 3.4 million workers at a cost of \$1.6 billion (in 1984 dollars). From 2000 to 2007, the number of misclassified workers identified by state audits increased from approximately 106,000 workers to over 150,000 workers. These counts likely undercount the overall number of misclassified employees because states generally audit less than 2% of employers each year.

A 2010 study by the Congressional Research Service estimated that a proposed modification to the IRS's "Safe harbor" rules, which currently allow employers significant leeway to treat workers as independent contractors for employment tax purposes, would yield \$8.71 billion for FYs 2012-21. The proposal would permit the IRS to require prospective reclassification of workers who are currently misclassified and whose reclassification has been prohibited under current law.<sup>4</sup>

## **2. Findings from State Studies and Reports**

A growing number of states have been calling attention to independent contractor abuses by creating inter-agency task forces and committees to study the magnitude of the problem and passing new legislation to combat misclassification. Along with academic studies and other policy research, the reports document the prevalence of the problem and the attendant losses of millions of dollars to state workers' compensation, unemployment insurance, and income tax revenues.

The following chart summarizes the findings from over 20 state-level studies. The studies rely on a range of data. Most studies rely on data from unemployment insurance and workers' compensation audits; some draw on the records of multi-level government agencies; and a few used interviews with workers. Some studies examine the workforce as a whole, while others focus on industries where misclassification is rampant, such as construction.

## **3. Trends in the Findings From State Studies**

The findings from these state studies demonstrate the staggering scope of misclassification, the difficulties in reaching precise counts of workers affected and funds lost, and the potential for enforcement initiatives to return much-needed funds to state coffers.

## Annual Losses Due to Independent Contractor Misclassification: Summary of Leading State Studies<sup>5</sup>

\* Indicates figures for the construction industry only.

State	% Employers who misclassify	Loss to UI	Loss to Wkrs Comp	Unpaid state income taxes
CA <sup>6</sup>	29% of audited employers			\$194 mil (collected)
CO <sup>7</sup>	33.9%			
CT <sup>8</sup>	42% of audited employers	\$17 mil	\$57 mil	\$65 mil \$611,600 (collected)
IL <sup>9</sup>	19.5% ('05)	\$53.7 mil ('05) \$8.9 mil*	\$97.9 mil \$23.2 mil*	\$124.7 - \$207.8 mil \$14.8 mil*
IN <sup>10</sup>	16.8%	\$36.7 mil	\$24.1 mil	\$147.5 mil
IA <sup>11</sup>		\$2.5 mil recovered		
ME <sup>12</sup>	11% 14% *	\$314,000*	6.5 million*	\$2.6 – 4.3 mil*
MA <sup>13</sup>	12% 14% *	\$35 mil \$3.9 mil* \$2.4 mil (collected 2011)	\$91 mil \$7 mil* \$2.2 (collected)	\$91 -152 mil \$6.9 mil* \$1.6 mil (collected 2004)
MD <sup>14</sup>	20-30% DOL study: 30%	\$22 mil \$3.5 mil (collected)		
MI <sup>15</sup>	30%	\$17 mil		\$20-33 mil
MN <sup>16</sup>	14% 15% *			
NE <sup>17</sup>	10%			
NV <sup>18</sup>	31,000 misclassified employees	\$8.2 mil		
NJ <sup>19</sup>	38-42% of audited cases	\$15 mil (UI and disability)		\$5 mil
NY <sup>20</sup>	10.3% 14.9% *	\$198 mil annually \$14.5 mil (collected by JETF in 2011) \$13 mil (IDed by NY DOL audits)	\$1.1 mil (incl. penalties) \$640,000 (collected 2011)	\$170 mil
OH <sup>21</sup>		\$12 - \$100 mil	\$60-510 mil	\$21-\$248 mil
PA <sup>22</sup>	9%	\$200 mil	\$81 mil	
TN <sup>23</sup>	17% *	\$8.4 - \$15 mil	\$52 - 91.6 mil \$3 mil*	
Austin, TX <sup>24</sup>				\$8,618,869 (state and federal combined)
VT <sup>25</sup>	10-14%			
VA <sup>26</sup>	27% of audited cases 30% *			\$28
WA <sup>27</sup>	62% of audited cases <sup>28</sup>	\$2.51 mil (collected)	\$25.4 mil	\$29.7 mil (collected)
WI <sup>29</sup>	44% of audited employers			

- **A staggering number of workers are misclassified.** Audits generally uncover numerous cases of misclassification at an individual workplace or employer, resulting in large numbers of workers who are reclassified as employees following review. For example, targeted audits conducted by the Ohio 1099 Task Force resulted in the

reclassification of almost 47% of the workers interviewed.<sup>30</sup> At just one company it audited, the Maryland Division of Labor & Industry's Division of UI Fraud found 537 misclassified workers and a total of \$2,257,596 in taxable unreported wages.<sup>31</sup> From 2005-2008, California's Employment Development Department identified 49,738 workers who had been misclassified, including 13,202 in 2008 alone. According to its latest Taskforce report, the Connecticut DOL identified close to 6,500 misclassified workers.<sup>32</sup> The New York Task Force reported that it identified 18,500 misclassified workers in 2010, a total of 50,000 since the task force's start in September 2007, and that the NY DOL identified nearly 218,000 misclassified workers through UI audits.<sup>33</sup> Studies that extrapolate from audit data put the actual numbers of misclassified workers at much higher levels: an estimated 368,685 workers in Illinois;<sup>34</sup> 4,792 in Maine;<sup>35</sup> between 125,725 and 248,206 in Massachusetts;<sup>36</sup> 704,785 in New York;<sup>37</sup> between 54,000 and 459,000 in Ohio;<sup>38</sup> 580,000 in Pennsylvania;<sup>39</sup> and 214,000 in Virginia.<sup>40</sup>

- **Studies most likely underestimate the true scope of misclassification.** Many of the studies are based on unemployment insurance tax audits of employers registered with the state's UI program. The audits seek to identify employers who misclassify workers, workers who are misclassified, and the resulting shortfall to the UI program. Researchers extrapolate from UI audit data to estimate the incidence of misclassification in the workforce and its impact on other social insurance programs and taxes. These UI audits miss a large portion of the misclassified workforce, however, because they rarely identify employers who fail to report any worker payments to state authorities or workers paid completely off-the-books – the “underground economy” – where misclassification is generally understood to be even more prevalent.
- **Billions of dollars of payroll are never reported to state governments.** As explained above, many employers underreport their payroll, or pay workers off-the-books and do not report any wages. In California and New York alone, employers fail to report billions of dollars to state agencies each year.<sup>41</sup> Reliance on random audits as the sole investigatory strategy may result in an undercount of violations and unpaid taxes.
- **Misclassification also results in lost income tax revenue to local governments.** Municipal governments supported by payroll taxes are also hit hard by misclassification. This includes some of the nation's largest and most important economic centers.
- **Independent contractor misclassification rates are rising.** In Illinois, the rate of misclassification by violating employers increased by 21% from 2001 to 2005. A recent report by the Ohio Attorney General reported a 53.5% increase in the number of workers reclassified from 2008 to 2009.<sup>42</sup> And a study of misclassification in Massachusetts's construction industry from 2001 to 2003 noted that both the prevalence of misclassification and the severity of its impact have worsened over the years.
- **Misclassification rates are disproportionately high in certain industries, such as construction, real estate, home care, trucking, janitorial and hi-tech jobs.** Many misclassification studies focus on the construction because the industry has been so plagued by independent contractor abuses. The Maine, Massachusetts, Minnesota and New York studies found rates of misclassification up to several points higher in construction as compared with the workforce as a whole. Delivery drivers and truckers have also experienced widespread abuse.<sup>43</sup> Sixteen states have negotiated with FedEx to

end the delivery company's practice of misclassifying its drivers as independent contractors.<sup>44</sup> Reports indicate that employers in several other key sectors routinely misclassify workers.

- **Targeted audits are cost-effective and have the potential of returning hundreds of millions of dollars to state coffers.** Audits conducted by California's Employment Development Department between 2005 and 2008, for example, recovered roughly \$173 million in payroll tax assessments, over \$28 million in labor code citations, and more than \$64 million in assessments on employment tax fraud cases. Since it was formed in September 2007, the New York Joint Enforcement Task Force has assessed over \$21.5 million in unemployment taxes and over \$1.85 million in unemployment insurance fraud penalties, and over \$2.3 million in workers' compensation fines and penalties. The Washington State Labor & Industry Fraud Prevention and Compliance Program (focused on workers' compensation) reported that it brought in over \$7 for every dollar invested in enforcement efforts.<sup>45</sup> These numbers do not take into account fraud that is deterred before a violation even takes place, when employers take note of aggressive enforcement activities and voluntarily come into compliance.

Misclassification of employees as independent contractors exacts an enormous toll on workers and our economy. Accurate information on the prevalence of the problem, and on patterns of violations, can help state officials to direct their efforts at the worst violators and most problematic industries. The growing body of research summarized here has been vital to recent efforts in the states to combat misclassification; new research will further facilitate enforcement.

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<sup>1</sup> Coopers & Lybrand, *Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers*, Prepared for the Coalition for Fair Worker Classification (1994).

<sup>2</sup> Lalith De Silva, et al., *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, Planmatics, Inc., Prepared for the US Department of Labor Employment and Training Administration (2000), available at <http://wdr.doleta.gov/owsdrr/00-5/00-5.pdf>.

<sup>3</sup> U.S. General Accounting Office, *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* (August 2009), available at <http://www.gao.gov/products/GAO-09-717>. See also, Treasury Inspector General for Tax Administration, *While Actions Have Been Taken to Address Worker Misclassification, and Agency-Wide Employment Tax program and Better Data are Needed* (February 4, 2009), available at <http://www.treas.gov/tigta/auditreports/2009reports/200930035fr.pdf> (explaining that "Preliminary analysis of Fiscal-Year 2006 operational and program data found that underreporting attributable to misclassified workers is likely to be markedly higher than the \$1.6 billion estimate from 1984.")

<sup>4</sup> A 2010 study by the Congressional Research Service built on earlier national studies to compare the costs and benefits of improved classification if President Obama's proposed modification of Section 530 of the Revenue Act of 1978 were passed. The modification would permit the IRS to prospectively reclassify workers who are misclassified. The US Treasury estimated that the proposal would yield \$8.71 billion for the period of FY 2012 through 2021. The CRS study acknowledged, however, that the work needed to reduce misclassification "would impose significant costs." James M. Bickley, *Tax Gap: Misclassification of Employees as Independent Contractors*, Congressional Research Service (March 10, 2011), available at [http://op.bna.com/dlrcases.nsf/id/vros-8euvqa/\\$File/taxgap.pdf](http://op.bna.com/dlrcases.nsf/id/vros-8euvqa/$File/taxgap.pdf).

<sup>5</sup> Some states have created task forces but have not conducted a quantitative study, demonstrating the difficulty in compiling data on misclassification. For example, New Hampshire established the Joint Agency Task Force on Employee Misclassification Enforcement in September of 2010 and published its first report in September of 2011, but the report did not contain state-specific data on the incidence or cost of independent contractor misclassification. Joint Agency Task Force on Employee Misclassification Enforcement, *First Report of the Joint Agency Task Force on Employee Misclassification Enforcement* (September 1, 2011), available at <http://www.nh.gov/nhworkers/documents/1stReportofthejaeme.pdf>.

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The Governor of North Carolina recently issued an executive order creating the Governor’s Task Force on Employee Misclassification but the Task Force has not yet issued a report. See “EO 125: Establishing the Governor’s Task Force on Employee Misclassification” (August 2012), available at <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderDetail.aspx?newsItemID=2555>.

<sup>6</sup> Tax audits conducted by California’s Employment Development Department (EDD) from 2005 to 2008 identified 49,738 previously unreported employees. The number of unreported employees increased 54% from 2005 to 2007, reaching 15,751 workers in 2007. The number then dipped to 13,202 in 2008. During the 4-year period from 2005 to 2008, the EDD recovered a total of \$173,516,334 in payroll tax assessments, \$28,950,656 in labor code citations, and \$ 64,229,829 in assessments on employment tax fraud cases. The Tax Audit Program as a whole in 2008 conducted 6,356 audits and investigations resulting in assessments totaling \$193,781,599 and identifying 64,539 previously unreported employees. California Employment Development Department, *Annual Report: Fraud Deterrence and Detection Activities*, report to the California Legislature (June 2009), available at [http://www.edd.ca.gov/pdf\\_pub\\_ctr/report2009.pdf](http://www.edd.ca.gov/pdf_pub_ctr/report2009.pdf).

<sup>7</sup> The US DOL reported that 33.9% of audited employers in Colorado misclassified employees as independent contractors; 41,915 employers in the state had misclassified new workers as independent contractors; 8.5% of workers at audited employers were found to have been misclassified; 172,609 workers statewide misclassified; total taxable wages underreported statewide for new workers misclassified as independent contractors: \$36,291,042; tax underreported statewide for new workers misclassified as ICs: \$6,429,685; average UI tax rate: 17.7%; percent of state UI taxes underreported due to workers misclassified as ICs: 3.6%. See Planmatics report, note 2, supra.

<sup>8</sup> A 1992 study estimated that the state and the federal governments were losing \$500 million annually as a result of worker misclassification. Each year, state income tax receipts were reduced by \$65 million; the workers’ compensation system lost \$57 million in unpaid premiums; and the unemployment insurance fund lost \$17 million. William T. Alpert, *Estimated 1992 Costs in Connecticut of the Misclassification of Employees*, Department of Economics, University of Connecticut (1992). The 2011 annual report from the Joint Enforcement Commission on Worker Classification reported that from March 1, 2010 through February 28, 2011 the Tax Division’s Field Audit Unit completed approximately 1,600 audits and another 9,000 individual wage complaint investigations. Those investigations resulted in the reclassification of approximately 6,500 workers and the discovery of roughly \$50 million in previously unreported or underreported payroll. During the same period, the Department of Revenue Services conducted audits that resulted in the assessment of \$611,568 in additional taxes, penalties and interest. The Department of Revenue Services assessed an additional almost \$611, 600 in unpaid taxes, penalties and interest. *State of Connecticut Joint Enforcement Commission on Worker Misclassification, Annual Report, Prepared for the Honorable Dannel Malloy, Governor and the Labor and Public*, Employees Committee of the General Assembly (December 2011), available at <http://www.ctdol.state.ct.us/gwvkstnd/JEC/JEC.pdf>. Figures on incidence of misclassification among audited workers from Planmatics report, note 2, supra.

<sup>9</sup> A 2006 study estimated that independent contractor misclassification resulted in a loss of \$39.2 million in unemployment insurance taxes, and between \$124.7 million and \$207.8 million in state incomes taxes each year from 2001 to 2005. Close to 18% of audited employers, about 56,650, misclassified employees as independent contractors. The study estimated that an average 368,685 employees were misclassified each year. The rate of misclassification by violating employers increased 21% from 2001 to 2005. Michael P. Kelsay, *et al.*, *The Economic Costs of Employee Misclassification in the State of Illinois*, Department of Economics, University of Missouri-Kansas City (2006), available at [http://www.carpenters.org/EmployerPayrollFraud/studies\\_reports.aspx](http://www.carpenters.org/EmployerPayrollFraud/studies_reports.aspx). Other reports for which there no url is listed can be found on the United Brotherhood of Carpenters website.

<sup>10</sup> According to a 2010 report, 47.5% of Indiana employers audited by the state in 2007-2008 – approximately 73,629 employers – were found to have misclassified workers as independent contractors ; 8,200 of these employers were in the construction industry. The number of Indiana employees affected by improper misclassification is estimated to have averaged 418,086 annually for the period 2007-2008, about 16.8% of employees overall. In each year from 2007-2008, the state lost \$147.5 million in state income tax revenue and \$24.1 million in unpaid workers’ compensation premiums, while the unemployment insurance system lost an average of \$36.7 million. Michael P. Kelsay and James I. Sturgeon, *The Economic Costs of Employee Misclassification in the State of Indiana*, Department of Economics, University of Missouri-Kansas City (2010) available at <https://www.carpenters.org/misclassification/all%20documents/Misclassification%20in%20Indiana%20Summary%20Report%209-10.pdf>.

<sup>11</sup> The Iowa Misclassification Task Force’s 2<sup>nd</sup> Report noted that 230 employers were found to have flouted the law by misclassifying workers, creating a competitive advantage over some 72,000 law-abiding employers. Through audits and missing wage investigations completed by Unemployment Insurance Tax Bureau field auditors from July 1, 2009 through December 30, 2010, 134 employers were found to have misclassified a total of 544 workers. These employers failed to report \$5,692,181 in employee wages to IWD for unemployment insurance tax purposes and owed a total of \$130,511 in unpaid unemployment insurance taxes, penalty and interest. *Iowa Misclassification*

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*Task Force 2<sup>nd</sup> Report*, Iowa Workforce Development (December 30, 2010), available at <http://www.iowaworkforce.org/misclassification/MisClass2010Report.pdf>.

<sup>12</sup> From 1999 to 2002, 11% of all Maine employers and 14% of construction employers misclassified their workers, totaling 4,792 misclassified workers across all industries. Misclassification of construction workers resulted in an annual average loss of \$314,000 in unemployment compensation taxes, \$6.5 million in workers compensation premiums, between \$2.6 million and \$4.3 million in state income taxes, and \$10.3 million in FICA taxes.

Françoise Carré and Randall Wilson, *The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry*, Construction Policy Research Center, Labor and Worklife Program, Harvard Law School and Harvard School of Public Health (2005), available at

<http://www.law.harvard.edu/programs/lwp/Maine%20Misclassification%20Maine.pdf>.

<sup>13</sup> A study of misclassification in the state's construction industry from 2001-2003 found that at least 14% of Massachusetts construction employers and 13% of all Massachusetts employers misclassified workers. Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of Massachusetts construction employers. An estimated 7,478 to 15,790 of construction employees were misclassified. In the workforce as a whole, an estimated 125,725 to 248,206 workers were misclassified. The state lost an estimated \$91 million to \$152 million in income tax revenue and up to \$91 million of worker compensation premiums. The study noted that both the prevalence of misclassification and the severity of the impact have worsened over the years. Françoise Carré and Randall Wilson, *The Social and Economic Costs of Employee Misclassification in the Construction Industry*, Construction Policy Research Center, Labor and Worklife Program, Harvard Law School and Harvard School of Public Health (2004), available at

<http://www.law.harvard.edu/programs/lwp/Misclassification%20Report%20Mass.pdf>. In 2011, Massachusetts' Joint Task Force on the Underground Economy and Employee Misclassification recovered roughly \$10.9 million through its enforcement efforts: the Department of Unemployment Assistance recovered \$2.4 million in new unemployment insurance taxes; the Department of Revenue recovered \$3.4 million in unpaid taxes; and the Attorney General's Office brought in \$3 million in restitution, penalties, and fines related to violations of the state's wage and hour and independent contractor laws. The Department of Industrial Accidents brought under coverage 7,568 workers who had previously been without coverage, issued 3,058 stop work orders and assessed \$2.1 million from employers for WC violations. Massachusetts Department of Labor, *Joint Task Force on the Underground Economy and Employee Misclassification 2011 Annual Report* (April 2012), available at <http://www.mass.gov/lwd/docs/dia/task-force/jtfannualreport2011-fs.pdf>.

<sup>14</sup> Audits conducted by Maryland's Unemployment Insurance Division found an average of 20% of employers misclassify workers. The Division's report estimated that misclassification accounts for an annual loss of between \$15 million and \$25 million to the Unemployment Trust Fund. The Secretary of the Department of Labor noted that the estimate is likely conservative because audits are random, do not target industries where misclassification is most prevalent, and do not capture the underground economy. Testimony of Thomas E. Perez, Secretary of the Department of Labor, Licensing and Regulation, on HB 1590, before the House Economic Matters Committee (March 20, 2008), available at <http://www.dlir.state.md.us/whatsnews/testimony/misclass.shtml>. In 2009 Maryland passed the Workplace Fraud Act of 2009 and created the Joint Enforcement Task Force on Workplace Fraud. The Task Force established work-groups on enforcement and education and began coordinating unemployment insurance tax investigations, identifying 8,474 misclassified workers and approximately \$50.9 million in unreported wages paid to employees. David W. Stevens, *An Estimate of Maryland's Annual Net Unemployment Compensation Tax Loss from Misclassification of Covered Employees*, Baltimore, MD (February 1, 2009). In its 2011 report, the Task Force noted that misclassification costs the Unemployment Insurance Trust Fund up to \$22 million every year. In 2011, the Department of Labor & Industry opened 660 investigations and issued citations to 12 companies; the Division of Unemployment Insurance completed 76 UI Workplace Fraud Audits and identified 3,178 misclassified workers and over \$17 million in unreported wages paid to employees, while UI Workplace Fraud Audits resulted in \$618,752 paid into the UI trust fund; and the Comptroller completed 7 joint audits with the Task Force, which resulted in \$364,400 assessed for withholding taxes. Department of Labor, Licensing and Regulation, *Annual Report of the Joint Enforcement Task Force on Workplace Fraud* (December 2011), available at

<http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000113/014000/014584/unrestricted/20120420e.pdf>.

<sup>15</sup> A 2008 study of Michigan's unemployment insurance system found that an average of 30% of employers misclassify employees or underreport employee payroll, and that 8% of the state's construction workers are misclassified or receive income that is not reported by their employer. Each year, about \$1.5 billion in payroll is not reported to the UI Agency. Misclassification costs the state's unemployment insurance trust fund \$17 million each year, and results in an estimated loss of \$20 to 33 million in state income taxes. Dale Belman and Richard Block, *Informing the Debate: The Social and Economic Costs of Employee Misclassification in Michigan*, Michigan State University (2009), available at <http://www.ippss.msu.edu/Publications/BEBelman.pdf>. Michigan established its Underground Economy Task Force in June 2008. The Task Force found that more than 8% of Michigan employees

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are misclassified, \$16.8 million in UI payments went uncollected, and \$30 million in wages were not reported. Michigan Supreme Court, *Underground Economy* (June 2010), available at: <http://courts.michigan.gov/scao/resources/publications/reports/UETF-2010.pdf>.

<sup>16</sup> The Minnesota Office of the Legislative Auditor used UI audit data to estimate that 14% of employers misclassified workers in 2005 – about 17,500 employers. Misclassification rates in the construction industry were higher: 15% of construction employers and 31% of drywall employers misclassify their employees. The estimates are conservative because they exclude employers that operate in the “cash” economy or fail to register in the unemployment program.

James Noble, *Misclassification of Employees as Independent Contractors*, Program Evaluation Division, Minnesota Office of the Legislative Auditor (2007), available at <http://www.auditor.leg.state.mn.us/ped/pedrep/missclass.pdf>.

<sup>17</sup> From July 1, 2010 - June 30, 2011, Nebraska UI Tax field representatives conducted 938 audits and investigations; 669 of these audits targeted high violation industries. Of these 669 audits, 1,039 misclassified workers and additional tax collections of \$42,559 were uncovered. *Nebraska Employee Misclassification Act, Annual Report 2010-11*. Nebraska Department of Labor (2011), available at <http://dol.nebraska.gov/employers/safety/EmpClassAct/2011%20Employee%20Classification%20Act%20Annual%20Report.pdf>.

<sup>18</sup> Nevada Employment Security Division records indicate that 12.4 percent of benefit claims investigations involved a claim of independent contractor misclassification and 2.7 percent of audited employment was misclassified. This led to a conservative estimate of approximately 31,000 employees in the state that may be misclassified. The estimated annual revenue lost to the Unemployment Trust Fund is \$8.2 million. *Employee Misclassification-Bulletin No. 11-07*. Nevada Legislative Counsel Bureau (January 2011), available at <http://leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-07.pdf>.

<sup>19</sup> New Jersey Department of Labor and Workforce audits found that between 38% and 42% of employers either misclassified workers or paid in cash “off-the-books,” and between 25,000 and 28,286 workers were misclassified. *New Jersey State Agency Will Share Employment Tax Examination Results with the IRS*, State of New Jersey Department of Labor and Workforce Development (Nov. 8, 2007).

<sup>20</sup> A 2007 study issued by the Cornell University School of Industrial and Labor Relations, based on audits by the New York DOL UI Division of select industries from 2002-05, estimated annual misclassification rates of about 10.3% in the state’s private sector and approximately 14.9% in the construction industry. Each year, an estimated 39,587 employers within those audited industries misclassified workers. Approximately 704,785 workers were misclassified. Average UI taxable wages underreported due to misclassification each year was \$4,238,663, and UI tax underreported was \$175,674,161. Linda H. Donahue, James Ryan Lamare, Fred B. Kotler, *The Cost of Worker Misclassification in New York State*, Cornell University School of Industrial Labor Relations (February 2007), available at <http://digitalcommons.ilr.cornell.edu/reports/9/>. According to the February 2012 report by the Joint Enforcement Task Force on Employee Misclassification, since its inception in 2007, the Task Force has identified over 68,100 instances of employee misclassification and discovered over \$1.1 billion in unreported wages; it has conducted 106 joint sweeps. In 2011, the JETF identified over 19,600 cases of employee misclassification; discovered over \$412 million in unreported wages; and assessed over \$14.5 million in unemployment insurance taxes. The JETF conducted 27 sweeps in 2011, uncovering over \$84.6 million in unreported wages, resulting in the assessment of nearly \$1.5 million in additional unemployment insurance taxes, and uncovering over \$640,000 in unpaid employee compensation. In addition to the JETF investigations conducted in 2011, the Department of Labor completed 14,800 audits and investigations finding nearly 131,700 misclassified workers and unpaid taxes of \$48.5 million. *Annual Report of the Joint Enforcement Task Force on Employee Misclassification*, (February 1, 2012), available at <http://www.labor.ny.gov/agencyinfo/PDFs/Misclassification-Task-Force-Report-2-3-2012.pdf>.

A 2007 study estimated that between \$25 billion and \$50 billion in payroll – 20% of total payroll – was unreported for workers’ compensation. The estimate may be conservative, because it was calculated by comparing payroll reported to the state for UI with payroll reported to the WC system, and did not account for payroll that was not reported to either system. Fiscal Policy Institute, *Building up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City’s Construction Industry* (December 2007), available at [http://www.fiscalspolicy.org/publications2007/FPI\\_BuildingUpNY\\_TearingDownJobQuality.pdf](http://www.fiscalspolicy.org/publications2007/FPI_BuildingUpNY_TearingDownJobQuality.pdf).

<sup>21</sup> A 2009 report by the Ohio Attorney General – extrapolating from UI audit data, and using findings from other state studies – estimated that between 54,000 and 459,000 workers were misclassified each year, and found that the state lost between \$12 million and \$100 million in unemployment compensation payments, between \$60 million and \$510 million in workers compensation premiums and between \$21 million and \$248 million in forgone state incomes tax revenues. Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio (Feb. 18, 2009), available at <http://www.ohioattorneygeneral.gov/getattachment/f2b2aa5b-de26-45a2-9631-2e0fd21cf9b5/Misclassification-Report.aspx>.

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<sup>22</sup> A 2008 study found that 9% of Pennsylvania’s workforce, or 580,000 workers, are misclassified as independent contractors each year. Misclassification resulted in a loss of over \$200 million to the unemployment compensation trust fund and \$81 million to the workers compensation system.

Testimony of Patrick T. Beaty, Deputy Secretary for Unemployment Compensation Programs, Pennsylvania Department of Labor and Industry, before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act (April 23, 2008), available at [http://www.legis.state.pa.us/cfdocs/legis/TR/transcripts/2008\\_0091\\_0001\\_TSTMNY.pdf](http://www.legis.state.pa.us/cfdocs/legis/TR/transcripts/2008_0091_0001_TSTMNY.pdf).

<sup>23</sup> The Employee Misclassification Advisory Task Force’s first annual report in 2012 highlights findings contained in Dr. William Canak and Dr. Randall Adams’ 2010 study. The study estimates that between 21,990 and 38,680 construction workers were either misclassified or unreported in 2006 - approximately 17% of all construction workers. The study also estimated losses of between \$8.4 million and almost \$15 million to the state’s unemployment insurance program, between \$52 million and \$91.6 million to the state’s workers compensation program, between \$15.2 million and \$73.4 million in federal incomes taxes, and between \$7.8 million and \$42 million in Social-Security and Medicare taxes. William Canak & Randall Adams, *Misclassified Construction Employees in Tennessee* (January 15, 2010); Employee Misclassification Advisory Task Force, *2012 Annual Report* (January 30, 2010), available at [http://www.tn.gov/labor-wfd/EMEEF/2012\\_EMATF\\_AnnualReport.pdf](http://www.tn.gov/labor-wfd/EMEEF/2012_EMATF_AnnualReport.pdf).

<sup>24</sup> A 2009 study found that 38% of the construction workers in the Austin area were misclassified. In “vertical construction” alone, this misclassification resulted in an estimated loss of at least \$8,618,869 in federal taxes and state unemployment taxes. *Building Austin, Building Injustice: Working Conditions in Austin’s Construction Industry*, Workers Defense Project in collaboration with the Division of Diversity and Community Engagement at the University of Texas at Austin (June 2009), available at [http://www.buildaustin.org/Building%20Austin\\_Report.pdf](http://www.buildaustin.org/Building%20Austin_Report.pdf)

<sup>25</sup> The Vermont Workers’ Compensation Task Force issued a report in April 2009. It found that 10-14% of Vermont employers misclassify their workers. *Vermont Workers’ Compensation Task Force 2008-2009 Progress Report*, available at [http://www.nh.gov/nhworkers/documents/vt\\_08-09\\_rpt.pdf](http://www.nh.gov/nhworkers/documents/vt_08-09_rpt.pdf).

<sup>26</sup> The Virginia Joint Legislative Audit and Review Commission (JLARC) relied on data compiled by the Virginia Employment Commission (VEC) in 2010, finding that of the 1% of employers audited by the VEC, 27% of them had misclassified at least 1 employee. The study acknowledged that the targeted nature of the audits may have resulted in an inflated estimate of the proportion of employees misclassified in all sectors. JLARC’s study also found that roughly \$28 million was lost in unpaid state income taxes. Joint Legislative Audit and Review Commission, *Review of Employee Misclassification in Virginia*, Report to the Governor and the General Assembly of Virginia (June 11, 2012), available at [http://www2.timesdispatch.com/mgmedia/file/768/20120612\\_jlarc/](http://www2.timesdispatch.com/mgmedia/file/768/20120612_jlarc/).

<sup>27</sup> The 2010 Washington State Underground Economy Benchmark Report reported that, in FY 2010, the three departments uncovered a combined 1,677 unregistered businesses that were assessed nearly \$39 million in unpaid taxes, premiums, penalties, and interest. The department of Labor & Industries conducted 5,846 audits with an associated \$26.4 million in assessments from worker misclassification and unregistered businesses; the Employment Security Division conducted 4,006 audits with an associated \$2.51 million in assessments from worker misclassification, unreported wages and unregistered businesses; and the Department of Revenue assessed a total of \$29,718,684 in unpaid taxes, penalties and interest from previously unregistered businesses that were involuntarily registered. *Underground Economy Benchmark Report: 2010 Report to the Legislature*, Joint Report of the Washington State Department of Labor and Industries, Washington State Department of Revenue, and the Washington State Employment Security Division (November 2010), available at <http://www.lni.wa.gov/Main/docs/UWBenchmarkFY2010.pdf>.

An earlier report by the Washington Department of Revenue studied discrepancies in the number of businesses that had registered with the IRS but not with the State, finding that in-state and out-of-state businesses registered with the IRS in 2004 failed to pay \$274 million in state taxes: \$225 million in state income taxes, \$14.8 million in unemployment insurance taxes, and \$34.5 in workers compensation premiums. In-state construction employers failed to pay \$13.1 million in taxes: \$1 million in state income tax, \$3.4 in unemployment insurance taxes, and \$8.7 million in workers compensation. In 2001, the state lost \$183 million in taxes from employers registered with neither the IRS nor the state. Washington State Dept. of Labor and Industries and the Washington State Employment Security Dept., *Unregistered Business Study: Joint Report of the Washington State Dept. of Revenue* (November 2007), available at [http://dor.wa.gov/docs/reports/Unregistered\\_Business\\_Study\\_finalfinal.pdf](http://dor.wa.gov/docs/reports/Unregistered_Business_Study_finalfinal.pdf). The Joint Legislative Task Force on the Underground Economy in the Construction Industry also found that over \$100 million state income taxes were not being paid in that industry. Available at [http://www.leg.wa.gov/JointCommittees/UECI/Documents/FinalReport\\_1-20-2009.pdf](http://www.leg.wa.gov/JointCommittees/UECI/Documents/FinalReport_1-20-2009.pdf).

<sup>28</sup> The *2010 Annual Fraud Report to the Legislature: Targeting Fraud and Abuse*, Washington State Department of Labor & Industries, reported on the Fraud and Compliance program examining workers’ compensation fraud in Washington State. The program identified unpaid premiums for 62% of employers that were targeted for audits,

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based on a screening process, and they assessed \$26.4 million through employer audits. The Report also noted that the program brought in over \$7 for every dollar invested, when the program's operating costs were compared to the money recovered, collected and avoided during the fiscal year. For FY 2010, nearly 250 FTEs were employed in the program.

<sup>29</sup> The Wisconsin Unemployment Insurance Division found that 44% of the workers investigated in the course of employer audits had been misclassified. *Report of the Worker Misclassification Task Force*, Submitted to Secretary Roberta Gassman, Wisconsin Department of Workforce Development (June 2009).

<sup>30</sup> Richard Cordray, Ohio Attorney General, *Misclassification of Employees as Independent Contractors* (May 11, 2010).

<sup>31</sup> Maryland Department of Labor, Licensing and Regulation, *Annual Report of the Joint Enforcement Task Force on Workplace Fraud* (December 2011), available at <http://dllr.state.md.us/workplacefraudtaskforce/2010workplacefraudrpt.pdf>.

<sup>32</sup> See *State of Connecticut Joint Enforcement Commission on Worker Misclassification, Annual Report* (December 2011), note 8, supra.

<sup>33</sup> See *Annual Report of the Joint Enforcement Task Force on Employee Misclassification*, note 20, supra.

<sup>34</sup> See *The Economic Costs of Employee Misclassification in the State of Illinois*, note 9, supra.

<sup>35</sup> *The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry*, note 12, supra.

<sup>36</sup> *The Social and Economic Costs of Employee Misclassification in the Construction Industry*, note 13, supra.

<sup>37</sup> *The Cost of Worker Misclassification in New York State*, note 20, supra.

<sup>38</sup> Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio, note 21, supra.

<sup>39</sup> Testimony of Patrick T. Beaty, Deputy Secretary for Unemployment Compensation Programs, Pennsylvania Department of Labor and Industry, before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act (April 23, 2008), note 22, supra.

<sup>40</sup> *Review of Employee Misclassification in Virginia*, Report to the Governor and the General Assembly of Virginia (June 11, 2012), note 26, supra.

<sup>41</sup> See California Employment Development Department, *Annual Report*, note 6, supra, and New York DOL *Annual Report of the Joint Enforcement Task Force on Employee Misclassification*, note 20, supra.

<sup>42</sup> See Cordray, *Misclassification of Employees as Independent Contractors*, note 30, supra.

<sup>43</sup> See, for example, Erin Johansson, *Fed Up with FedEx: How FedEx Ground Tramples Workers' Rights and Civil Rights* (American Rights at Work, October 2007), available at <http://www.americanrightsatwork.org/dmdocuments/ARAWReports/fedupwithfedex.pdf>; and Rebecca Smith, David Bensman, and Paul Alexander Marvy, *The Big Rig: Poverty, Pollution, and the Misclassification of Truck Drivers at America's Ports*, (National Employment Law Project and Change to Win, 2010), available at <http://www.nelp.org/page/-/Justice/PovertyPollutionandMisclassification.pdf?nocdn=1>.

<sup>44</sup> See, for example, *AG Coakley's Office Recovers over \$3 Million in Taxpayer Funds Back to Commonwealth in Settlement with FedEx Ground*, (July 15, 2010), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2010/ago-recovers-over-3-million-in-taxpayer-funds.html>; *McDaniel Joins Inquiry into FedEx Worker Misclassification*, (March 18, 2010), available at [http://ag.arkansas.gov/newsroom/index.php?do:newsDetail=1&news\\_id=301](http://ag.arkansas.gov/newsroom/index.php?do:newsDetail=1&news_id=301).

<sup>45</sup> See website for the Washington Department of Labor and Industries, at <http://lni.wa.gov/ClaimsIns/FraudComp/WCFraud/About/Reports/default.asp>.

Key data and research questions for DOL evaluation of OSHA enforcement programs

In the President's 2010 budget request, Federal and State enforcement programs accounted for nearly 60% of the total budget.

(b) (5) [Redacted]

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# McJobs

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Low Wages and Low Standards around the World

# McJobs

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Low Wages and Low Standards around the World



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**McDonald's is the global fast food leader, with more than 36,000 stores in 119 countries.** The McDonald's system also employs 1.9 million workers, making it the second largest private-sector employer in the world.<sup>1</sup>

Given its scale and prominence, McDonald's should take responsibility for creating high quality jobs that pay living wages and treat its workers fairly. Instead, the company has adopted a low-road employment strategy, becoming a leader in the development of low-wage, precarious service jobs around the globe. It is no surprise that the Random House Dictionary has defined "McJob" as "an unstimulating, low-wage job with few benefits, especially in a service industry."<sup>2</sup>

This report details abusive employment practices in the McDonald's system that make the iconic golden arches a global symbol of the low-road economy:

#### **Wage Theft.**

In addition to setting the standard for low wages, McDonald's and its franchisees have been found guilty of stealing workers' wages in Europe, Latin America, and other regions, paying millions in fines and penalties as a result.

#### **Employment Discrimination.**

McDonald's has a long record of employment discrimination litigation, including allegations of unequal treatment based on gender, race, disability, and sexual orientation.

#### **Child Labor and Migrant Worker Abuses.**

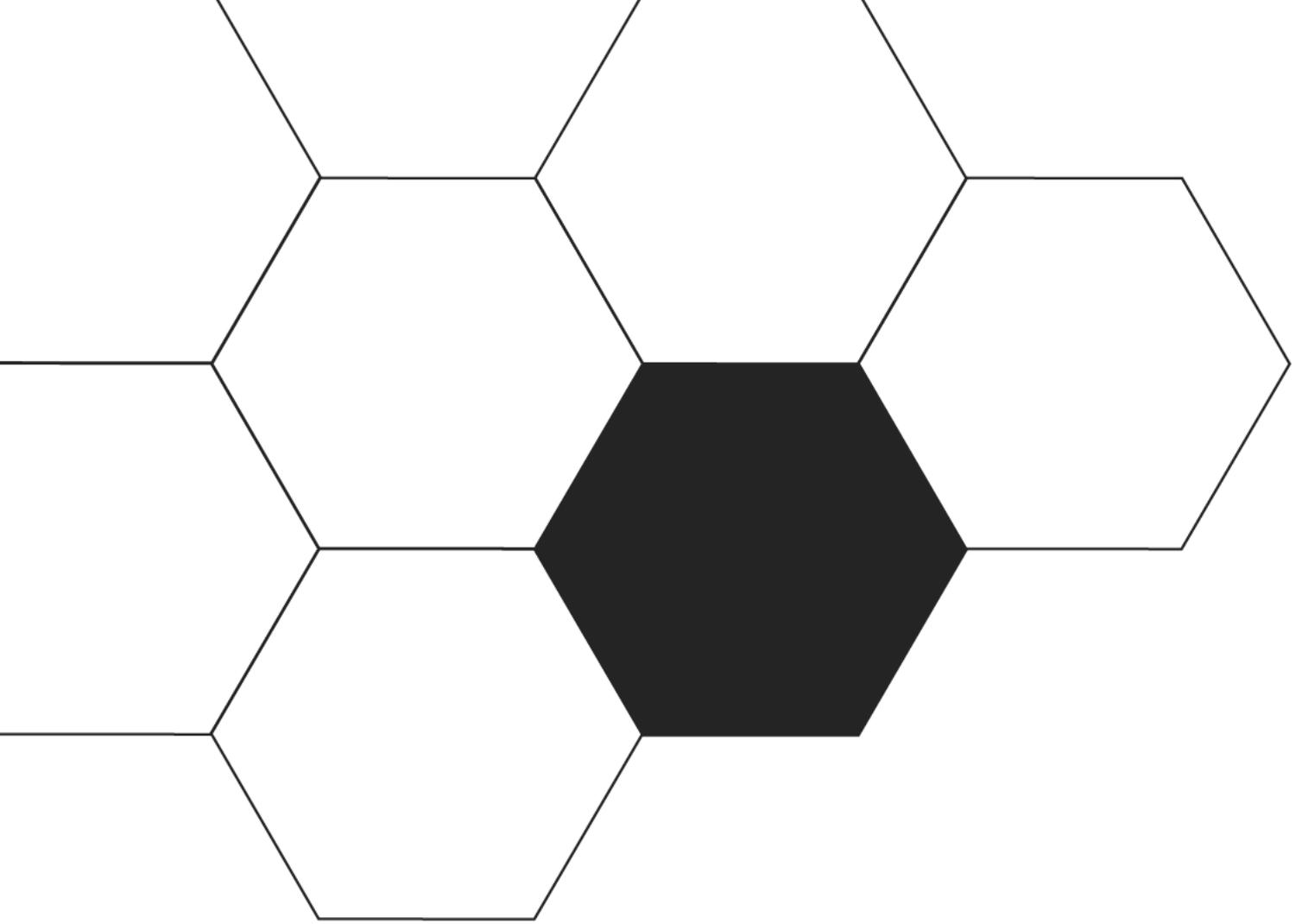
McDonald's and its franchisees have been fined in several countries for exploiting children and other vulnerable workers.

#### **Worker Safety.**

McDonald's has failed to protect workers in its stores around the globe from burns and other serious workplace injuries.

#### **Anti-Union Practices.**

McDonald's has refused to negotiate with workers who have organized to demand improved working conditions, retaliated against workers for organizing activity, and evaded responsibility for workplace standards at franchised stores.



McDonald's, like every corporation, has two choices: it can adopt high-road employment practices and take responsibility for maintaining quality, family-supporting jobs, or it can pursue low-road strategies to suppress wages and circumvent labor law.

McDonald's has demonstrated it is capable of being a high-road employer. In countries such as Denmark, McDonald's workers are paid a living wage, have access to stable

schedules and benefits, and are covered by market-wide collective agreements that provide for a decent standard of living.

Unfortunately, in most countries McDonald's has chosen the road of low wages and low standards. This pattern of workplace abuses at one of the world's most recognized companies is intolerable. We call on McDonald's to provide stable, living-wage jobs for all of the nearly two million workers at its stores.

# INTRODUCTION

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In November of 2012, several hundred fast food workers in New York City went on strike to call for a US\$15/hour basic wage and the right to form a union without retaliation. These workers sent a powerful message that it is wrong for corporations like McDonald's – transnational behemoths that make billions in profits – to pay so little that workers and their families live in poverty.

That first strike sparked a movement that has swept across the United States. Thousands of workers in more than 230 American cities have joined several waves of national strikes. Commentators in the U.S. media have noted that the strikes have created a new “social justice movement” and have “completely rewired how the public and politicians think about wages.”<sup>3</sup>

Workers in Europe, the United States, and elsewhere see common issues arising from McDonald's abusive labor practices. In May 2014, a national strike by fast food workers in the United States was supported by solidarity actions in more than 30 countries from Argentina to the Philippines.<sup>4</sup>



IN 2013, THE  
AVERAGE  
MCDONALD'S  
WORKER HAD  
TO WORK  
1,196 HOURS  
TO MAKE  
WHAT THE  
CEO MADE IN  
ONE HOUR



Then, on April 15th of 2015, massive worker actions in dozens of countries and approximately 350 cities around the world led to sit-ins in McDonald's stores in Brazil and the United Kingdom and strikes led by McDonald's workers in France, Italy, and New Zealand.<sup>5</sup> This broad movement is a response to the many exploitative working conditions found at McDonald's stores around the globe.

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## ***Ronald McDonald: the face of the new economy***

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Poor working conditions at McDonald's contribute to the broader social problem of growing inequality. Over the last 30 years, the service sector has expanded from one in four jobs to approximately three quarters of the workforce in much of Europe, and has grown significantly in emerging markets such as China and Brazil as well.<sup>6</sup> The dramatic increase of service work and the disappearance of many middle-income positions have led to an increased polarization between low- and high-wage jobs, creating a “service underclass” of workers in poor quality, poorly-paid positions.<sup>7</sup> The McJob is the world's leading symbol of this growing service underclass.

The Organization for Economic Cooperation and Development (OECD) wrote last year that income inequality is now at its highest level in 30 years. It argued that “the enormous increase of income inequality on a global scale is one of the most significant – and worrying – features of the development of the world economy in the past 200 years.”<sup>8</sup>

Nowhere is this divide more evident than at McDonald’s. Analysts of the growing gap between CEO compensation and worker pay reported that accommodation and food services was the most unequal sector of the U.S. economy in 2013, driven by extreme inequality in the fast food industry with CEO-to-worker pay ratios of more than 1,000 to one.<sup>9</sup> They also highlighted McDonald’s as the most extreme case in 2013. At that time, the average McDonald’s worker had to put in 1,196 hours to make what the CEO earned in an hour. Working full-time, that would take seven months.<sup>10</sup>

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## ***How McDonald’s really works***

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McDonald’s uses a franchise model for most of its stores around the world. More than 80 percent of McDonald’s stores are operated by franchisees, often small business owners with a fraction of the resources and experience of McDonald’s itself. This system makes McDonald’s one of the leading examples of the growing trend of “fissured employment,” in which large transnational corporations outsource work to small employers or independent contractors and avoid responsibility for workplace standards.<sup>11</sup>

# McDonald’s Terms Defined

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## ‘McJob’ \mək-ˈjəb\ ---

### ***noun***

An unstimulating, low-wage job with few benefits, especially in a service industry.

*Random House Dictionary*

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## ‘McBudget’ \mək-ˈbɛ-dʒət\ ---

### ***noun***

A guide produced by McDonald’s for its U.S. workers with advice on making ends meet, which assumed workers had a second job and no childcare, food, or transportation expenses.

*“An insult to those living in poverty.”*

*The Miami Herald*

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## ‘McResource’ \mək-ˈrē-sɔrs\ ---

### ***noun***

A McDonald’s employee hotline that has provided guidance to U.S. McDonald’s workers on how to apply for public benefits like food stamps and Medicaid to supplement low wages.

*Los Angeles Times*

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## ‘Fissured Employment’ \ˈfɪʃ-əd ɪm-ˈplɔɪ-mənt\

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An employment relationship, such as franchising, under which lead firms that collectively determine product market conditions in which wages and conditions are set have become separated from the actual employment of workers.

*Adapted from David Weil, The Economic and Labour Relations Review*

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## ‘Union Busting’ \ˈyʊn-yən ˈbʌst-əŋ\

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Trying to destroy or weaken a union, as through prosecution or intimidation.

*Adapted from Random House Dictionary*

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## ‘Wage Theft’ \wāj ˈtheft\

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The failure to pay what workers are legally entitled to.

*Economic Policy Institute*

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## ‘Zero-Hours’ \zē-()rō ˈəʊ(-ə)rz\

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An employment contract in which workers are not guaranteed work but are expected to remain available. The amount of work can vary resulting in little or no pay.

*Adapted from Financial Times Lexicon*

McDonald’s exerts an enormous amount of control over store-level operations, even at stores operated by its franchisees. For example, many stores use a software package that tracks labor costs and revenue on an hourly basis, putting pressure on store managers to make workers work off the clock when labor costs in comparison to revenue get too high.<sup>12</sup>

McDonald’s could use this level of visibility and control to ensure that its stores live up to responsible social values, the values McDonald’s itself espouses in its standards of business conduct: equal treatment, safe workplaces, freedom from harassment and abuse, and treating workers with fairness, respect, and dignity.<sup>13</sup>

Despite these espoused standards, too many McDonald’s workers around the world are paid poverty wages, have limited or insecure working hours, and endure harmful managerial practices such as retaliation against union activists. These working conditions create the setting for further abuses, including wage theft, unsafe workplaces, and discrimination. And despite its high level of control over working conditions at franchised stores, McDonald’s denies any responsibility for them in many of the stores that operate under its brand.

As one of the largest employers in the world, McDonald’s should live up to its own standards by improving the quality and stability of its jobs and ending practices that drive down wage and labor standards. We call on McDonald’s to take full responsibility for all McDonald’s workers around the globe, and to ensure that the golden arches become synonymous with fair pay and good jobs, instead of low wages and low standards.

# BIG MACS, SMALL PAYCHECKS

The primary characteristic of McJobs is low wages. Fast food workers are among the lowest-paid workers in much of the developed world.<sup>14</sup> More than half of all fast food workers in the United States rely on some form of public assistance for low-income earners, such as income supports, food stamps, and similar social welfare programs, in order to make ends meet.<sup>15</sup> In much of Asia, the Middle East, and Latin America, McDonald's workers make less than €1 per hour on average.<sup>16</sup>

Low wages at McDonald's are not an accident; they are a key part of the corporation's business model. In fact, it seems that paying workers as little as it can get away with is an extension of what McDonald's founder Ray Kroc professed decades ago: "We sold [workers] a dream and paid them as little as possible."<sup>17</sup>

## United States: the origin of the fast food economy

In the United States, McDonald's corporate home, fast food workers are among the lowest paid in the country, earning lower hourly wages than retail and child care workers. In fact, two of the largest occupational groups in the fast food industry have the two lowest median wage rates of any jobs in the U.S.<sup>18</sup> These workers are often paid close to the legal minimum – which is the higher of the federal minimum wage of US\$7.25 per hour or state minimum wages ranging from US\$5.15 to US\$9.47 – with no guarantee that they will ever receive a raise.<sup>19</sup>

In 2013, McDonald's created a "Practical Money Skills Budget Journal," popularly known as the "McBudget," to advise its

SETTING UP A BUDGET	
Everyone can benefit from having a plan for how to save and spend money. A budget is just the plan you need. Read on to learn about what goes into a monthly budget.	
<b>Monthly Net Income</b>	
To begin you need to know how much money you earn on average every month, after taxes are paid. This will include your paycheck, gifts or any other sources of income you may have.	
<b>Monthly Expenses</b>	
These are the bills you receive on a monthly basis such as rent, car payments, insurance and utilities. Knowing how much your <i>Monthly Expenses</i> add up to will help you make a balanced budget.	
<b>Monthly Spending Money</b>	
This is the amount of money you have after you subtract your <i>Monthly Expenses</i> from your <i>Monthly Net Income</i> . This is your spending money – it's important to budget this so you don't run out of money before you get paid.	
<b>Daily Spending Money Goal</b>	
You can figure out your <i>Daily Spending Money Goal</i> by dividing your <i>Monthly Spending Money</i> by 30 (the average days in a month).	
<b>Sample Monthly Budget</b>	
Monthly Net Income	
Income (1st job)	\$ 1,105
Income (2nd job)	\$ 955
Other Income	\$ 0
<b>Monthly Net Income Total</b>	<b>\$ 2,060</b>
<b>Monthly Expenses</b>	
Savings	\$ 100
Mortgage/Rent	\$ 600
Car Payment	\$ 150
Car/Home Insurance	\$ 100
Health Insurance	\$ 20
Heating	\$ 50
Cable/Phone	\$ 100
Electric	\$ 90
Other	\$ 100
<b>Monthly Expenses Total</b>	<b>\$ 1,310</b>
<b>Monthly Spending Money</b>	<b>\$ 750</b>
<small>(Monthly Net Income Total minus Monthly Expenses Total)</small>	
<b>Daily Spending Money Goal</b>	<b>\$ 25</b>
<small>(Monthly Spending Money divided by 30*)</small>	

Screenshot of McDonald's "Practical Money Skills Budget Journal."

workers on money issues, claiming that “everyone can benefit from having a plan for how to save and spend money.” The McBudget reported that a typical McDonald’s worker in the United States brought home US\$1,105 in monthly earnings from his or her McDonald’s job, which is below the official U.S. poverty line for families of two or more.<sup>20</sup> That rate is the equivalent of only US\$7.72 per hour for a full-time worker, barely above the federal minimum wage. The McBudget further highlighted the inadequacy of McDonald’s wages by including a line item for a second job and underestimating the costs of many basic necessities, such as rent and health insurance. The McBudget also failed to include the costs of other key necessities altogether, including childcare – which is essential for many low wage workers to sustain employment.<sup>21</sup>

McDonald’s consistently fights to keep the minimum wage low. U.S. franchising and restaurant associations, business groups in which McDonald’s plays a prominent role, spend significant sums of money to fight increases in minimum wages or other worker benefits including health care and paid sick leave legislation, ensuring that McDonald’s workers’ real budgets remain wholly inadequate in meeting their financial needs.<sup>22</sup>

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## **Exporting low wages around the globe**

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Following the model it developed in the United States, McDonald’s seeks to keep its payroll costs as low as possible everywhere it operates.

In Brazil, unions alleged in 2013 that many McDonald’s workers were paid less than €1 per hour, with conditions amounting to slave labor.<sup>23</sup> In 2006, unions in Hong Kong protested after the release of a study that showed McDonald’s and other fast food restaurants paid poverty wages to their employees, averaging €1.91 per hour.<sup>24</sup> In South Korea, part-time workers at McDonald’s stores in Seoul have protested low wages and claim McDonald’s fails to pay them on time.<sup>25</sup>

McDonald’s low wages do not only impact its workers and their families. In the famous “McLibel” trial in the United Kingdom, the judge ruled that McDonald’s not only pays low wages but actually “depresses wages for other workers in the [fast food] industry.”<sup>26</sup>

THE BRITISH MCDONALD'S  
OPERATION PAYS LOW  
WAGES AND IT **DEPRESSES**  
**WAGES** FOR OTHER WORKERS  
IN THE INDUSTRY.

”

– Judicial ruling, *McLibel trial*

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## ***Public subsidies shore up the golden arches***

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The societal cost of McDonald's low wages is most easily measured in the billions of dollars of public assistance provided to McDonald's workers every year. Workers use income supplements, healthcare subsidies, food stamps, and other forms of public benefits to make ends meet for themselves and their families.

In the United States, most of these programs are intended for only the neediest individuals, with income limits linked to the official U.S. poverty line. A recent study of the fast food industry's dependence on federal public assistance found that McDonald's alone costs U.S. taxpayers almost €1 billion each year, even without accounting for additional programs at the state and local levels.<sup>27</sup>

McDonald's also encourages its workers to apply for government assistance programs to supplement their McDonald's income. In fact, McDonald's staffs a hotline, known as McResource, to help workers at both corporate and franchised stores apply to the various government assistance programs that they qualify for due to their meager wages.<sup>28</sup>

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## ***McDonald's takes advantage of programs intended for the neediest***

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In addition to the millions of dollars in public assistance that subsidize the insufficient wages of its workforce, McDonald's has come under fire for abusing government programs intended to create job placements for unemployed workers.

McDonald's was criticized for participating in the United Kingdom's controversial "workfare" program, in which welfare recipients were required to work for private employers for free in order to continue receiving benefits.<sup>29</sup> McDonald's U.K. also received £10 million from the government to create an apprenticeship program, which, according to investigators, did not create a single new job.<sup>30</sup>

In New Zealand, McDonald's has also been accused of abusing subsidies from the country's Work and Income agency. Program participants were given six-month placements at McDonald's, during which a portion of their pay was funded by the government. After the six-month subsidy period ended, though, workers were moved to zero-hours schedules like all other employees, with no guaranteed hours.<sup>31</sup>

And in the Philippines, McDonald's master franchisee, Golden Arches Development Corporation, created a program with the Department of Labor and Employment (DOLE) to hire almost 4,000 low-income school students for a summer job program. McDonald's agreed to pay 60 percent of students' salaries, which would be tied to the local minimum wage, with the remainder paid through education vouchers issued by the DOLE.<sup>32</sup>

# HOLD THE FRIES, HOLD THE PAY

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McDonald's low wages are a serious problem for its workers and for taxpayers, but many McDonald's workers do not even receive the wages they are entitled to. Worldwide, McDonald's and its franchisees have repeatedly been found to have committed wage theft, which is the illegal underpayment of wages that are rightfully owed to workers.

Intense pressure throughout the McDonald's system to keep labor costs low incentivizes store managers to underpay workers, violating employment laws in the process.<sup>33</sup> McDonald's workers have reported multiple wage theft practices, including being paid less than the legally-mandated minimum wage, not being paid for all time worked, receiving paychecks with improper deductions, and not receiving legally-required overtime pay.

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## ***McDonald's wage theft around the globe***

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In recent years, regulators around the globe have found McDonald's has engaged in illegal wage theft practices. In 2009, McDonald's in Brazil was found liable for underpaying 13,000 workers over five years, a period of time which included the handover of operations from McDonald's to a master franchise operator, Arcos Dourados. McDonald's was ordered to pay back wages totaling €33 million.<sup>34</sup>

Despite the franchising of its operations in Brazil, as well as the entirety of Latin America and the Caribbean, to Arcos Dourados, wage theft problems at McDonald's stores persist. Earlier this year, workers in Brazil filed two lawsuits against Arcos Dourados, alleging both that it has continued to violate federal labor laws and that these violations have allowed the company to illegally undercut competitors and circumvent the country's competition laws.<sup>35</sup>

**MCDONALD'S ORDERED TO  
PAY BRAZILIAN WORKERS  
€33 MILLION IN BACK PAY.**

*19 October 2009*

In the United States, workers filed seven class-action lawsuits against McDonald's in 2014, alleging wage theft violations at both corporate-owned and franchised stores. In particular, they highlighted the striking level of control exerted by McDonald's, and the role that corporate policies and systems played in encouraging and enabling wage theft practices in McDonald's stores in three states.<sup>36</sup> These suits were filed following the release of a poll of U.S. fast food workers showing that 84 percent of McDonald's workers surveyed experienced at least one form of wage theft.<sup>37</sup>



A few years before, the U.S. Department of Labor found that a McDonald's franchisee in New York City required cashiers to count money from the cash register before punching in and after punching out each day. The Department of Labor ordered the franchisee to pay back wages to 390 workers who had not been compensated for time spent working.<sup>38</sup>

McDonald's Japan disclosed in 2006 that it had failed to pay approximately €17 million in overtime wages to more than 100,000 workers. This revelation followed reports that some affected workers were required to put in as many as 2,000 overtime hours per year.<sup>39</sup>

In Russia, an inspection by the Moscow region's prosecutor's office and regional labor inspector found that McDonald's had not paid workers what was due to them in their final days of employment. In 2010, a number of citations were issued to the corporation in order to force it to comply with employment laws in the country.<sup>40</sup>

These are a small sample of the wage theft investigations carried out by enforcement agencies, investigative journalists, and workers' rights groups around the world. Taken together with the U.S. poll and widespread worker reports of wage theft, they indicate the seriousness and pervasiveness of wage theft at McDonald's.

# JUST IN TIME SCHEDULING

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McDonald's scheduling practices require workers to tolerate unpredictable hours and inconsistent paychecks. Most McDonald's workers are limited to part-time hours or zero-hours contracts, which have no set work schedules at all. Inconsistent scheduling and inadequate work hours hurt workers' incomes and make it more difficult to obtain second jobs, pursue education, and care for their families. This ultimately makes workers more vulnerable to McDonald's illegal practices, including wage theft.

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## ***McDonald's penalized for scheduling practices***

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In some countries, precarious work arrangements at McDonald's have run afoul of labor laws.



For example, the public labor ministry of the State of Pernambuco in Brazil fined McDonald's Latin American master franchisee, Arcos Dourados, over €2 million in 2013 for violations including variable, unfixed work schedules.<sup>41</sup> The lawsuits filed earlier this year, which are discussed above, alleged that these illegal scheduling practices have continued throughout Brazil.

Other workers have raised concerns about the effects of McDonald's scheduling practices on earnings. Wage theft lawsuits filed last year by McDonald's workers in the United States alleged that workers were not allowed to clock in at the beginning of their scheduled shift but rather were required to wait in their stores for business to pick up before they could clock in, depriving them of pay for portions of their scheduled shifts.

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## ***Zero-hours means zero stability***

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McDonald's tracks labor costs to ensure they do not exceed a certain percentage of each store's gross sales.<sup>42</sup> This puts pressure on store managers to engage in aggressive scheduling arrangements, such as on-call systems, that aim to ensure that a store has only the staff management deems necessary to satisfy its current demand levels.



In many countries, McDonald's makes use of zero-hours contracts, which are employment arrangements that do not guarantee a consistent schedule or number of hours. Most McDonald's workers in the United Kingdom and Ireland work on zero-hours contracts. McDonald's is one of the largest zero-hours employers in the U.K., where nine out of ten of its workers work under these precarious arrangements.<sup>43</sup>

Some zero-hours contract workers are required to be available for work, or on-call, without any guarantee that they will be given any hours of work at all. While management at McDonald's has argued that workers want the flexibility of a job with no set hours, workers report that such arrangements make it difficult for them to find other jobs and otherwise make ends meet.<sup>44</sup>

Following years of protests and negotiations, New Zealand workers recently won an agreement to end zero-hours contracts at McDonald's stores. McDonald's was the last major fast food chain in the country to agree to stop the controversial practice.<sup>45</sup>

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### ***Fewer hours, fewer benefits***

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Most McDonald's workers are part-time employees, many of them without consistent hours from week to week. In much of Europe, two-thirds or more of all McDonald's workers were part-time as of 2001; in the United States that proportion reaches 80 percent.<sup>46</sup>

In some cases, keeping workers on part-time schedules allows McDonald's to limit or avoid costs for its employee benefits. In the United States, some McDonald's stores have cut back on workers' hours in order to minimize payments mandated under new national health care regulations.<sup>47</sup>

Scheduling schemes such as zero-hours contracts and part-time positions with no benefits give McDonald's stores flexibility as customer traffic ebbs and flows, but that flexibility comes with a price – a price that is paid by McDonald's workers.

# UNSAFE AT ANY SIZE

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McDonald's strategy of doing what is easy for the corporation and difficult for its workers extends to many areas, including the troubling inadequacy of occupational safety and health protections at McDonald's stores around the world.

Fast food is a high-risk industry, posing many health and safety hazards to workers.<sup>48</sup> Nearly 200,000 workers in Europe's hotel and restaurant sector experienced occupational injuries severe enough to miss more than three days at work in a single year.<sup>49</sup> And in March of this year, the National Council for Occupational Safety and Health released a survey in which four in five fast food workers in the United States reported having been burned at work.<sup>50</sup>

The highly pressurized work environment at McDonald's, where workers are required to meet the corporation's tight production and speed benchmarks, demands that employees work quickly with scalding oil and hot grills. Workers report they often do not have access to proper protective equipment or the training to do their jobs safely.

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## ***A history of unsafe conditions at McDonald's stores***

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McDonald's has repeatedly been fined or subjected to regulatory action over unsafe conditions in its stores around the world.

In 2011, Brazil's public labor ministry found that McDonald's stores had failed to follow workplace safety documentation requirements, report worksite injuries, and provide safe working conditions for employees. The company was fined €6 million as a result of the investigation.<sup>51</sup>

In addition to the burns caused by hot grills and oil, McDonald's stores themselves can get very hot when cooling and ventilation systems are not adequately maintained, posing additional health risks. The Canadian Ministry of Labour issued multiple orders related to heat stress after inspecting an Ottawa restaurant in response to an anonymous complaint.<sup>52</sup>

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## ***Growing allegations of safety problems***

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Earlier this year, McDonald's workers at 28 stores in the United States filed complaints with the Occupational Safety and Health Administration (OSHA), alleging that understaffing, lack of protective equipment, pressure to work quickly, and greasy floors put workers at risk of burns and other injuries.<sup>53</sup> At the same time, a McDonald's worker in Los Angeles sued the corporation for serious injuries sustained when a faulty coffee container exploded, causing second and third degree burns on her body. A store manager refused to get emergency help and, in attempting to treat the burns with makeshift medical supplies, removed a layer of skin from her foot.<sup>54</sup>

Numerous allegations of unsafe conditions have also led to legal action in Brazil. The lawsuits against McDonald's master franchisee Arcos Dourados, described in a previous section, also allege gross health and safety violations spanning three decades. Specific complaints include workers forced to work in unsanitary conditions and failure to receive hazard pay for dangerous work.<sup>55</sup>

Similarly, a recent investigation of McDonald's by Metropolitan Autonomous University in Mexico found that the chain hired young workers on a temporary basis without giving them appropriate training or protective equipment. Workers who missed work due to occupational injuries or complained about working conditions were fired.<sup>56</sup>

Workers have also taken collective action over heat-related safety concerns in McDonald's stores. In New Zealand, Italy, and the United States, McDonald's workers have gone on strike after broken ventilation systems caused serious heat-related health conditions and at least one hospitalization.<sup>57</sup>

Safety on the job is a basic and fundamental worker right. Its erosion has serious consequences for McDonald's workers and their families. For workers, fast food injuries, and burns in particular, can take weeks or months to heal and may leave permanent scars or result in disfigurement. And the lost wages caused by such injuries places financial strain on these workers, their families, and the social safety net.



A STORE MANAGER **REFUSED TO GET EMERGENCY HELP** AND, IN ATTEMPTING TO TREAT THE BURNS WITH MAKESHIFT MEDICAL SUPPLIES, REMOVED A LAYER OF SKIN FROM HER FOOT.



# MARGINALIZED WORKERS

McDonald's relies on young people, immigrants, and other vulnerable workers to staff many of its stores worldwide. Far too often, McDonald's treatment of these workers exploits their lack of job prospects and limited legal protections.

## Happy Meals, unhappy jobs

Everything about McDonald's, from the choice of Ronald McDonald as a mascot to the well-known Happy Meal toys, is designed to reinforce the corporation's image around the world as a fun, family-friendly environment. At the same time, working conditions in McDonald's stores suggest a very different environment, in which McDonald's puts young workers in harm's way and fails to follow laws that support their well-being.

In several countries, McDonald's has been subject to fines or other regulatory actions as a result of child labor violations. In Australia, McDonald's has been convicted of illegally employing children under the age of 15 multiple times.<sup>58</sup> Similarly, the Tel Aviv Labor Court in Israel found McDonald's guilty of recurring child labor infractions for which prosecutors sought the maximum penalty.<sup>59</sup> A McDonald's franchise in New Zealand was also accused by a union of hiring children as young as 12, who were paid in store coupons.<sup>60</sup>

Many child labor laws are designed to protect children from excessive hours or working conditions that could be unsafe for younger, less experienced workers. In Russia, McDonald's was found to have violated working hours limits and safety rules for teenage workers.<sup>61</sup>

## McDONALD'S POOR RECORD ON CHILD AND IMMIGRANT LABOR



Similarly, several McDonald's franchises in the United States have been subject to penalties for violating hours restrictions and safety rules for minors.<sup>62</sup> A McDonald's store in the U.K. has also been fined for requiring 15- and 16-year-old workers to work late at night.<sup>63</sup>

Poor working conditions for children extend beyond McDonald's stores and into its supply chain. In China, children were reported to be working 17 hours a day in sweatshop conditions to produce Happy Meal toys.<sup>64</sup>

In addition to violations of child labor laws around the world, McDonald's and its franchisees operate camps and other programs for children in several countries, which serve as an early recruitment effort for future customers and low-wage workers. For example, McDonald's runs a summer day camp in the Philippines which has been described as "thinly veiled child labor," during which participating children work in McDonald's stores for no pay.<sup>65</sup> McDonald's Japan also invites children into the workplace to work alongside McDonald's employees for free.<sup>66</sup>

Child labor laws are designed to protect children's health and personal development, and to prevent work from interfering with their education. Violations of child labor laws at a major transnational corporation such as McDonald's are unacceptable.

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## ***Discrimination at McDonald's***

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Earlier this year, 10 Black and Latino workers in the United States filed a lawsuit against McDonald's, alleging they were wrongfully fired and replaced with White staff after managers declared that there were "too many Black people" in their store. These workers also alleged that female employees were physically harassed by managers.<sup>67</sup>

Although these allegations are shocking, discrimination at McDonald's has a long history: "An unwritten rule during McDonald's first decade prohibited the hiring of women in the restaurants," according to a history of the company.<sup>68</sup> Apparently that legacy persists. The United States Equal Employment Opportunity Commission has sued McDonald's stores multiple times in recent years for allowing sexual harassment in the workplace. In 2012, for example, the owner of 25 McDonald's restaurants in Wisconsin agreed to pay €815,000 after multiple women, including several teenagers, complained that they had been groped at work and harassed on a regular basis.<sup>69</sup> McDonald's also paid €36,000 in 2010 to settle a New Jersey teenager's similar allegations.<sup>70</sup>

In addition to sexual harassment, female McDonald's workers report facing pregnancy discrimination. A study examining the systemic nonpayment of wages to pregnant workers at McDonald's stores in Brazil found many cases of women forced to resign before their pregnancy came to term so that the company would not need to provide severance pay or make workplace accommodations.<sup>71</sup>

McDonald's workers have also reported discrimination based on sexual orientation and gender identity. A worker in New Zealand alleged that he was disciplined for being "too gay."<sup>72</sup> A transgender teen in the United States also filed a complaint with the Florida Commission on Human Relations, claiming she was denied a job twice and told by a manager that "we do not hire faggots."<sup>73</sup>

Additionally, McDonald's and its franchisees have settled a number of recent lawsuits brought by workers with disabilities alleging discriminatory mistreatment, demotion, and termination.<sup>74</sup> In Taiwan, McDonald's has regularly been among the worst-rated employers on compliance with disability hiring laws.<sup>75</sup>

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### *Immigrants and migrant workers on the margins of labor protections*

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Discrimination at McDonald's goes hand in hand with the corporation's reliance on immigrants and other vulnerable workers. Undocumented immigrants often have fewer labor protections than other workers and may have little choice but to tolerate employment practices such as wage theft and substandard working conditions.

For decades, McDonald's has employed immigrants entering Western Europe, from those fleeing the eastern Soviet Bloc in the early 1980s to today's African and Filipino immigrants. These workers typically have limited job opportunities and may lack legal documents and status.

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SENEGALESE-BORN WORKERS IN SPAIN CHARGED MCDONALD'S WITH REQUIRING THEM TO **ASK SPECIAL PERMISSION TO USE THE RESTROOM** OR TO DRINK WATER AND BARRING THEM FROM COMMUNICATING IN THEIR NATIVE LANGUAGE.

For foreign workers with few options, McDonald's appears to offer the promise of formal employment with a successful, well-known corporation, even if the wages are low.<sup>76</sup>

The lack of legal status heightens undocumented workers' vulnerability to abuse. In Sweden, undocumented workers won back wages from McDonald's after it was found they were paid 36 percent of what their domestic counterparts made.<sup>77</sup> In February of 2011, a group of Senegalese-born workers in Spain charged McDonald's with requiring them to ask special permission to use the restroom or to drink water and barring them from communicating in their native language. Workers also complained that managers displayed racist posters in their stores and attempted to foment divisions among workers based on ethnicity.<sup>78</sup>

In the United States, student guest workers won nearly €160,000 in back wages and damages from a McDonald's franchisee after the U.S. Department of Labor found they had been paid less than the minimum wage and overcharged for crowded housing. Some workers reported working shifts longer than 25 hours and being threatened with deportation if they complained about long hours or exorbitant rents.<sup>79</sup>

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## ***Migrant worker recruitment schemes***

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Immigrant workers whose legal status is entirely dependent on short-term employment visas are particularly vulnerable to unscrupulous employers. In Sweden, McDonald's managers were alleged to have sold work permits to immigrants from Pakistan for over €13,000.<sup>80</sup> Unions and other civil society groups suggested that the violations uncovered reflected a broader pattern of abuse within the country's work permit programs.

In 2014, foreign workers from Belize working in Canada under its Temporary Foreign Worker Program accused McDonald's of treating them like "slaves." McDonald's allegedly required them to live in housing it controlled and overcharged them on rent. One worker reported that a McDonald's representative told them that the corporation "does not give overtime to foreigners."<sup>81</sup> After intense public scrutiny, the Canadian government banned three McDonald's restaurants from the program and ultimately placed a moratorium on the recruitment of temporary foreign workers in the food service industry.<sup>82</sup>



# ANTI-UNION PRACTICES

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Collective bargaining is among the most important avenues for workers to address discrimination, unfair pay, unsafe conditions and the other abuses discussed above. Unions and other workers' organizations have brought about dramatic improvements in working conditions ranging from the elimination of child labor to the creation of occupational safety laws.

Globally, collective bargaining is under attack, and McDonald's has been a major union opponent for decades. In the late 1960s and 1970s, McDonald's had a "flying squad" of experienced McDonald's store managers who were dispatched the same day that word came in of an attempt to organize a union.<sup>83</sup> Since then, McDonald's has engaged in a number of specific business and labor relations strategies that undercut workers' rights and disregard international standards.

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## ***McDonald's uses franchising to avoid responsibility for its workers***

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In some places, McDonald's uses its fissured employment model to counteract the requirements of labor laws and corporate social responsibility standards.

In France, for example, McDonald's has a national agreement with labor unions that sets workplace standards, but it does not cover franchised stores, which make up 83 percent of all McDonald's stores in the country.<sup>84</sup> Workers at these stores may face poor working conditions and anti-union pressure, and McDonald's national contract does not address these problems in any way.<sup>85</sup>

In the United States, the National Labor Relations Board has charged McDonald's with coordinating anti-union abuses, such as disciplinary actions against union supporters, across both corporate and franchised stores in response to strikes and other workplace actions. Last year, the Board's general counsel determined that McDonald's should be considered a joint employer of workers at franchised stores because of the control it exercises over employment practices throughout its store network.<sup>86</sup>

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## ***Union busting and interference in workplace organizations***

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McDonald's approach to worker organizations may be best summarized by a manual for store managers that was in use in Germany when workers first formed works councils in that country.

The manual called attempts by workers to elect works councils a failure on the part of management and at least one manager was demoted for allowing such an election to take place.<sup>87</sup> After the works councils were instituted, McDonald's improved its labor relations in Germany, but an oppositional approach still seems to prevail in other McDonald's operations around the world.

In Ireland and the United Kingdom, where sectorial bargaining is not a legal requirement, McDonald's does not recognize or negotiate with any unions or workers' organizations.<sup>88</sup> In Canada, when workers at one British Columbia store voted to form a union, McDonald's stalled and filed numerous legal objections until it was able to mount a decertification campaign. McDonald's never negotiated a contract for the store.<sup>89</sup>

Additionally, McDonald's has directly subverted workplace organizations that are required by law. In Spain, McDonald's took steps to change the parameters of works council elections to make it easier for salaried managers to be elected in an effort to stack works councils with managers rather than rank and file workers.<sup>90</sup>

When McDonald's is unable to avoid negotiating with unions, it has sometimes created company unions to compete with other worker organizations that might more effectively and independently advocate for raising standards, including in Brazil and Mexico. In Brazil, salaries for workers in the company union are 35 percent lower than those of workers covered by independent unions' contracts.<sup>91</sup>

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## ***Retaliation against workers for organizing***

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McDonald's has also retaliated against individual workers on the basis of union activity. In countries with as varying labor conditions as Brazil, Ireland, and South Korea, McDonald's workers have been discouraged from forming unions by management and union activists have been fired.<sup>92</sup> Senegalese-born workers in Spain elected as union delegates claimed that managers threatened to fire them in response.<sup>93</sup> In the United States, McDonald's is currently under investigation by the National Labor Relations Board for a systematic pattern of retaliation against workers for organizing, including threats and "coercive conduct."<sup>94</sup>

Taken together, these actions indicate that McDonald's, like its workers, is fully aware of the central role that worker organization and collective power has played in improving working conditions throughout history. They also suggest that McDonald's takes steps to prevent collective action from improving working conditions at its stores.



# A BETTER WAY IS POSSIBLE

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The prevalence of low-wage, fissured employment in the service sector does not mean that McJobs are an inevitable function of the economic pressures facing fast food companies.

In some countries, McDonald's is a very different, and more responsible, employer. There, McDonald's sets wages and working conditions at both corporate and franchised stores, creating uniform standards throughout the McDonald's system. It bargains in a fair and above-board manner with unions and other workers' organizations. And the standards it provides, from wages to benefits to scheduling practices, make it possible for McDonald's workers to support themselves and achieve a decent quality of life.

For example, all McDonald's workers in Denmark, including those at franchised stores, are covered by a national collective agreement between McDonald's and their union, the United Federations of Danish Workers, known as 3F. The contract sets wages, working conditions, and other critical terms of employment.

These standards will not make McDonald's workers in Denmark rich, nor will they bankrupt McDonald's stores in the country. At the same time, they promise a different future for the corporation than the history of violations and conflicts outlined in this report, and they promise something better than McJobs for McDonald's workers.

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## CONTRACT TERMS: DENMARK<sup>95</sup>

### Wages:

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Workers 18 years of age or older receive a **base hourly wage of €15.43** (kr.115,26), which is higher than the country's average negotiated minimum rate.

Hours worked on evenings, weekends, and holidays are subject to higher rates of pay.

Workers also receive **overtime pay** after the first 148 hours worked in any four week period.

### Benefits:

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Workers receive **full sick pay** for up to four weeks and 90 percent of full pay thereafter after four months on the job.

Workers receive 18 and 14 weeks of **paid maternity and paternity leave**, respectively, in addition to 13 weeks of paid leave thereafter that are shared between two parents.

Workers with more than 20 years tenure receive 12 percent of their salary in a **pension plan**, two-thirds of which is funded directly by the employer.

Workers receive an extra week of **fully paid vacation** in addition to the five weeks of holiday pay required under national law.

### Scheduling:

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All McDonald's workers in Denmark have **guaranteed minimum hours**.

McDonald's is required to publish a schedule covering at least four weeks at a time and to coordinate with workers and their union when schedule conflicts arise.

# CONCLUSION

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The McJob is a symbol of the low-road economy: precarious, low-wage service work, in which fissured employment relationships and union avoidance tactics keep workers in unsustainable conditions. In contrast, McDonald's management in Denmark abides by labor laws, takes responsibility for all McDonald's stores, and cooperates with the workers who serve McDonald's customers each day.

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## Recommendations

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First and most important, McDonald's management should immediately meet with its workers around the world and the labor unions and other worker organizations they have formed to address the numerous workplace problems detailed in this report. McDonald's should commit to raising standards at all of its stores, including those operated by franchisees, and negotiate a plan to offer high-road, family-supporting jobs to all McDonald's workers.

Although the ultimate responsibility for providing safe and high-quality jobs at its stores rests solely with McDonald's, governments and civil society can take a stand against inequality and work to eradicate McJobs. The following steps are of particular importance to addressing the problems identified in this report:

**1. Governments should make a substantial investment in the enforcement of labor standards**, including sufficient funding in human capital at regulatory agencies.

Enforcement should rely on significant fines that are calibrated to an employer's size in order to encourage compliance from transnational corporations such as McDonald's as well as small, local businesses. High standards across the service sector would provide broad social benefits.

**2. McDonald's employs hundreds of thousands of workers directly, but it also controls the terms of employment for more than one million additional workers at franchised stores. Regulators and civil society groups should evaluate labor problems at McDonald's and other transnational corporations on a systematic basis**, focusing on how these corporations implement labor standards throughout their operations.

**3. Furthermore, governments should consider the reality of joint employer arrangements, such as McDonald's franchising network, in their implementation of labor laws.** Where possible, requirements for coverage by collective agreements should be extended to all workers effectively controlled by a transnational corporation, as opposed to restricting coverage to direct employees of a specific corporate entity. Full compliance with such legal requirements should be a priority for regulators.

**The McJob is not the only possible future.** Global corporations such as McDonald's can be held accountable for the quality of jobs they create and challenged to raise standards throughout the world, reflecting an understanding that reducing inequality is vital to the future of the global economy.

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- <sup>72</sup> Cavan Sieczkowski, "New Zealand McDonald's Employee Reprimanded For Being 'Too Gay,' Told Not To 'Turn' Customers Gay," The Huffington Post, May 2, 2013, [http://www.huffingtonpost.com/2013/05/02/new-zealand-mcdonalds-employee-too-gay\\_n\\_3200514.html](http://www.huffingtonpost.com/2013/05/02/new-zealand-mcdonalds-employee-too-gay_n_3200514.html)
- <sup>73</sup> Jessica Green, "US trans teen sues McDonald's for discrimination," Pink News, Dec. 8, 2009, <http://www.pinknews.co.uk/2009/12/08/us-trans-teen-sues-mcdonalds-for-discrimination/>; "TLDEF Files Employment Discrimination Complaint Against McDonald's," Transgender Legal Defense Fund, Dec. 7, 2009, [http://transgenderlegal.org/headline\\_show.php?id=198](http://transgenderlegal.org/headline_show.php?id=198)
- <sup>74</sup> Nic Underhill, "McDonald's Franchisee to Pay \$100K to Settle EEOC Disability Discrimination Suit," Fair Employment Legal Update, July 15, 2013, <http://fairemploymentlegalupdate.com/2013/07/15/mcdonalds-franchisee-to-pay-100k-to-settle-eeoc-disability-discrimination-suit/>; "McDonald's Franchisee to Pay \$90,000 to Settle EEOC Disability Discrimination Lawsuit," Press Release, EEOC, Mar. 2, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/3-2-10.cfm>; Michelle Keahey, "Disabled and mentally handicapped man sues McDonald's after termination," South Texas Record, April 17, 2012, <http://setexasrecord.com/news/243338-disabled-and-mentally-handicapped-man-sues-mcdonalds-after-termination>
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- <sup>76</sup> Royle (2000), p. 76-80; Lila MacLellan, "What Can Europe Teach Us About Better Pay, Conditions at McDonald's?" Minyanville, Dec. 6, 2012, <http://www.minyanville.com/sectors/consumer/articles/Europe2527s-Model-of-Wages-McDonald2527s-and/12/6/2012/id/46437>
- <sup>77</sup> "Illegal immigrants win unpaid wages in Stockholm," LibCom.org, Apr. 3, 2008, <https://libcom.org/news/illegal-immigrants-win-unpaid-wages-stockholm-03042008>

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- <sup>80</sup> Currency translation using Google Finance; rates effective as of April 15, 2015
- <sup>81</sup> Kathy Tomlinson, “McDonald’s foreign workers call it ‘slavery,’” CBC News, Apr. 17, 2014, <http://www.cbc.ca/news/canada/edmonton/mcdonald-s-foreign-workers-call-it-slavery-1.2612659>
- <sup>82</sup> Frank McGurty, “Canada says freeze on foreign workers is wake-up call,” Reuters, Apr. 25, 2014, <http://ca.reuters.com/article/domesticNews/idCABREA3016K20140425>
- <sup>83</sup> John F. Love, *McDonald’s Behind the Arches*, Revised Edition, New York: Bantam Books, 1995, p. 394
- <sup>84</sup> “A Quick Snapshot,” McDonald’s Europe Virtual Press Office, <http://www.mcdpressoffice.eu/aboutus.php>
- <sup>85</sup> Tony Royle, “Just vote no! Union-busting in the European fast-food industry the case of McDonald’s,” *Industrial Relations Journal* 33:3, 2002, p. 267-269, [http://homepages.se.edu/cvonbergen/files/2013/11/Just-Vote-No\\_Union-busting-in-the-European-Fast-food-Industry\\_The-Case-of-McDonalds.pdf](http://homepages.se.edu/cvonbergen/files/2013/11/Just-Vote-No_Union-busting-in-the-European-Fast-food-Industry_The-Case-of-McDonalds.pdf)
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- <sup>88</sup> Royle (2000), pp. 95-97.
- <sup>89</sup> Liza Featherstone, “The Burger International Revisited,” *Left Business Observer*, #91, Aug. 1999, <http://www.leftbusinessobserver.com/McDonalds2.html>
- <sup>90</sup> Tony Royle, “Just vote no! Union-busting in the European fast-food industry the case of McDonald’s,” *Industrial Relations Journal* 33:3, 2002, pp. 271 and 274
- <sup>91</sup> Jeroen Beirnaert, “Brazil’s Fast Food Slaves,” *Equal Times*, Mar. 28, 2013; “El pasatiempo oculto del zar de los contratos de protección,” *Proceso*, Dec. 26, 2005; Royle (2000), p. 100
- <sup>92</sup> “McDonald’s Korea union member dismissed for fast food activism,” Nov. 24, 2014, IUF.org; Royle (2000) pp. 96-7; “Denúncia ao MPT contra o SINDIFAST,” SINTHORESP, 2013
- <sup>93</sup> “CCOO denuncia el acoso de una empresa contra trabajadores senegaleses, pretendiendo enfrentarles con el resto,” Press Release, CCOO, Feb. 21, 2011, [http://www.industria.ccoo.es/fecoht/Areas:Territorios:Eus kadi:130876--CCOO\\_denuncia\\_el\\_acoso\\_de\\_una\\_empresa\\_contra\\_trabajadores\\_senegaleses,\\_pretendiendo\\_enfrentarles\\_con\\_el\\_resto](http://www.industria.ccoo.es/fecoht/Areas:Territorios:Eus kadi:130876--CCOO_denuncia_el_acoso_de_una_empresa_contra_trabajadores_senegaleses,_pretendiendo_enfrentarles_con_el_resto)
- <sup>94</sup> NLRB – Press Release, Dec. 19, 2014, <http://nrlb.gov/news-outreach/news-story/nlr-office-general-counsel-issues-consolidated-complaints-against>
- <sup>95</sup> Contract summary provided by United Federation of Danish Workers – 3F. Currency translation using Google Finance; rates effective as of April 15, 2015. Comparative wage rates from “Country Reports on Human Rights Practices for 2013: Denmark,” U.S. Department of State Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

**From:** [Barab, Jordan - OSHA](#)  
**To:** [Smith, M. Patricia - SOL](#)  
**Cc:** [Rosenthal, Ann - SOL](#)  
**Subject:** More on Franchise document  
**Date:** Friday, August 28, 2015 2:02:00 PM  
**Attachments:** [Solicitor"s Office "Economic Realities" Key OSHA Test Of Joint Employer Status InsideOshaOnline.pdf](#)

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E5 Attorney-client

A large section of the email body is redacted with black bars. The redaction covers approximately four lines of text, starting from the 'E5 Attorney-client' header and extending across the width of the email content area.

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Jordan Barab  
Deputy Assistant Secretary  
Occupational Safety and Health Administration

**From:** [Rodriguez, Idelisse OASAM PMC](#)  
**To:** [Jackson, Kwanice - OSEC](#)  
**Cc:** [Schoenbaum, Miriam - OSHA](#); [Svenson, Jens - OSHA](#); [Mellinger, Wendy - OSHA](#); [Michaels, David - OSHA](#); [Barab, Jordan - OSHA](#); [Berkowitz, Deborah - OSHA](#); [Dougherty, Dorothy - OSHA](#); [Locey, Kimberly A. - OSHA](#); [Ortiz, M. Lucero - OSHA](#); [Slavet, Beth - OSHA](#); [Johnson, Terri L - SOL](#); [Kerr, Michael - ASAM](#); [Hayes, Charlotte - ASAM](#); [Robins, Douglas - ASAM](#); [Palugyai, Natalie - OSEC](#); [Donnelly, Holly A - OASAM PMC](#); [Frederickson, David - OASAM PMC](#); [Kenyon, Geoffrey - OASAM DBC](#); [Nightingale, Demetra- ASP](#); [Johnson, Terri L - SOL](#); [Pongrace, David M - OASAM DBC](#); [Swirsky, Stephanie - EXECSEC](#); [Richardson, Steven - OASAM PMC](#)  
**Subject:** OSHA FY 2014 Q2 Operating Plan Review - Meeting Materials  
**Date:** Wednesday, September 03, 2014 10:06:02 AM  
**Attachments:** [OSHA FY 2015 Operating Plan Draft.docx](#)  
[OSHA Q3 FY 2014 Operating Plan Review.docx](#)  
[OSHA FY 2015 Operating Plan and FY 2014 Q3 Assessment Final Draft.docx](#)  
[OSHA FY 2015 Operating Plan and FY 2014 Q3 Agenda.docx](#)  
[OSHA Q3 Measures.pdf](#)  
[OSHA Q3 Milestones.pdf](#)  
[OSHA Q3 Regional.pdf](#)  
[OSHA Q3 5yr.pdf](#)

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Good morning Kwanice,

We're attaching the following meeting materials for OSHA's FY 2015 Operating Plan and FY 2014 Q3 meeting on Friday, September 5:

- OSHA FY 2015 Operating Plan
- OSHA FY 2014 Q3 Memo
- OSHA FY 2015 Operating Plan and Q3 Performance Assessment
- Agenda
- OSHA DEBS Reports (Measures, Milestones, 5yr, and Regional)

Please contact me if you have any questions.

Thanks,

Idelisse Rodriguez

Program Specialist

OASAM | Performance Management Center

U.S. Department of Labor

202.693.7128

Occupational Safety and Health Administration

# FY 2015 Operating Plan

8/25/2014

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**From:** [Michaels, David - OSHA](#)  
**To:** [Berkowitz, Deborah - OSHA](#)  
**Subject:** RE: additional questions on the OSHA Policy Forum request for research  
**Date:** Thursday, November 17, 2011 10:40:04 AM

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[If its easy](#)

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**From:** Berkowitz, Deborah - OSHA  
**Sent:** Thursday, November 17, 2011 10:38 AM  
**To:** Michaels, David - OSHA  
**Subject:** FW: additional questions on the OSHA Policy Forum request for research

As I figured, the first question seems to broad for folks. We did have some specifics that I think in our last email we struck. SHould I take a look

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Deborah Berkowitz  
Chief of Staff  
Occupational Safety and Health Administration  
202-693-2000

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**From:** Richie, Celeste J - ASP  
**Sent:** Thu 11/17/2011 8:07 AM  
**To:** Berkowitz, Deborah - OSHA  
**Subject:** additional questions on the OSHA Policy Forum request for research

Dear Debbie,

With regards to the DOL – NYU Wagner policy forum project. There have been some questions from researchers as to what exactly OSHA is looking for on the first item posed in the research invite. Our suggestion is to add some sub-bullets to that item to clarify.

CURRENT QUESTION—1) Alternative methods for identifying and targeting high-risk (e.g. injuries or illness) industries and establishments.

#### SUGGESTED SUB-QUESTIONS TAKEN FROM ORIGINAL SET

- Targeting a handful of the worst offenders versus targeting many moderate offenders;
- Targeting a historically neglectful industry versus targeting individual firms with high injury rates, regardless of industry;
- Targeting individual franchises and individual establishments within a corporation versus targeting corporate parents or large corporations;

Let me know if you think that any of the suggested sub-questions would be appropriate (if modified as OSHA sees fit) to include going forward.

Thanks so much,

Celeste Richie  
Evaluation Specialist

Chief Evaluation Office  
U.S. Department of Labor  
200 Constitution Avenue NW  
Room S2316  
Washington, DC 20210  
202-693-5076  
[richie.celeste.j@dol.gov](mailto:richie.celeste.j@dol.gov)

**From:** [Block, Sharon](#)  
**To:** [Barab, Jordan - OSHA](#); [Garza-Ahlgren, Kathryn J - OCIA](#); [Linares, Elva E - OCIA](#); [Rosenthal, Ann - SOL](#); [Cantrell, Margaret - OCIA](#)  
**Cc:** [Bishop, Jeremy - OCIA](#); [Maxwell, Mary Beth - ASP](#)  
**Subject:** Re: Alexander will ask about OSHA Joint Employer guidance  
**Date:** Tuesday, September 22, 2015 11:18:43 PM

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**E5 Attorney-Client**  
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**OSHA probes franchises on joint employment**

By Brian Mahoney

8/25/15 6:40 PM EDT

OSHA is gathering information about relationships between franchisors and franchisees, marking a potential expansion of the Obama administration's scrutiny of the fast-food industry's employment practices.

OSHA officials in Washington have asked regional officials to take into account, when considering potential violations at franchised businesses, whether the franchisor in question controls the workplace safety practices of the franchisee, according to an [internal draft memorandum](#) obtained by the International Franchise Association and given to POLITICO.

The draft memo suggests that OSHA is contemplating joint employer citations against fast-food and other franchisors for violations of the Occupation Safety and Health Act of 1970, much as the NLRB's general counsel is already doing with respect to labor law. OSHA, which is part of the Labor Department, has never before held a fast-food franchisor to be a joint employer.

The NLRB's general counsel filed complaints against McDonald's in December, alleging it shares liability with its franchisees for possible labor violations. The complaints are being considered by an administrative law judge in New York City. The SEIU brought the allegations to the NLRB.

The OSHA memorandum asks area directors to check franchising fee agreements; details of interactions between franchised and corporate entities; the extent of corporate investment in franchisee equipment; and whether corporate entities set wages and hours, among other factors.

"The concept of joint employment has been recognized under the OSH Act," an OSHA representative told POLITICO in a statement. "The information in this document is meant to help OSHA inspectors determine whether there is joint responsibility for worker health and safety at a particular business."

While the memorandum is marked "draft," OSHA area directors have begun to follow through on the directive, subpoenaing at least one fast-food franchisee about its relationship with the franchisor.

POLITICO obtained a copy of the subpoena, which seeks documents about "guidelines, policies, practices, procedures or instructions ... relating to hazard communication." The identity of the fast-food franchisor was blacked out in the document.

Specifically, the OSHA subpoena sought documents concerning safety data; how employees used hazard information; and whether the franchisor controlled hazard labeling systems — and if so, how. The subpoena also sought information about whether franchisees were required to seek "approval, authorization or consent" from the franchisor before discussing safety hazard guidelines with employees.

In the coming days the NLRB is expected, in a case involving Browning-Ferris Industries, to loosen the standard under which it determines whether a company is a joint employer with a sub-contractor, franchisee or staffing agency.

Richard Griffin, the NLRB's general counsel, has urged the board to return to a "traditional" joint employer standard under which "economic and industrial realities of employment relationships" determine whether a business should be named a joint employer. Under

Griffin's proposed standard, Browning-Ferris would be compelled to negotiate with a staffing agency union if effective bargaining could not occur in its absence. In the McDonald's complaints, the looser standard proposed by Griffin would make it easier to establish McDonald's as joint employer (though Griffin maintains that McDonald's is a joint employer even under the existing standard).

Griffin's proposed language closely resembles that in the draft OSHA memo.

The IFA strongly suspects that SEIU is behind OSHA's new inquiry. The union's Fight for \$15 movement has lobbied workplace regulators to hold McDonald's responsible for the conduct of its franchisees. Complaints or petitions initiated by SEIU on this issue are pending in the federal courts, [at OSHA](#), and at the FTC, in addition to the NLRB complaints.

Michael Lotito, a management-side attorney with Littler Mendelson who represents the IFA, said OSHA's requests seem "way beyond the pale."

Workplace advocates disagree. "OSHA already has a multi-employer policy, which it applies to construction, so it's not a far stretch," said Mary Vogel, executive director of the National Council for Occupational Safety and Health, which submitted a brief in the Browning-Ferris case.

SEIU's Fight for \$15 declined to comment.

*To view online:*

<https://www.politicopro.com/go/?id=51728>

---

**From:** Linares, Elva E - OCIA  
**Sent:** Tuesday, September 22, 2015 5:14 PM  
**To:** Garza-Ahlgren, Kathryn J - OCIA; Barab, Jordan - OSHA; Rosenthal, Ann - SOL; Cantrell, Margaret - OCIA  
**Cc:** Bishop, Jeremy - OCIA; Maxwell, Mary Beth - ASP; Sharon Block (sharon\_i\_block@who.eop.gov); Cantrell, Margaret - OCIA  
**Subject:** RE: Alexander will ask about OSHA Joint Employer guidance

Kate,

Jordan sent this last week.

**Elva Linares**

Legislative Officer

Office of Congressional and Intergovernmental Affairs

U.S. Department of Labor

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---



**From:** [Michaels, David - OSHA](#)  
**To:** [Berkowitz, Deborah - OSHA](#); [Galassi, Thomas - OSHA](#); [Fairfax, Richard - OSHA](#)  
**Subject:** RE: edits to the research proposal-- see bottom of document  
**Date:** Wednesday, November 02, 2011 10:27:41 AM  
**Attachments:** [Academic Research Collaborative 110111db dm.doc](#)

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[Here's a simpler, cleaner version. What do you think?](#)

---

**From:** Berkowitz, Deborah - OSHA  
**Sent:** Tuesday, November 01, 2011 3:06 PM  
**To:** Galassi, Thomas - OSHA; Fairfax, Richard - OSHA; Michaels, David - OSHA  
**Subject:** edits to the research proposal-- see bottom of document

Hi, Tom's folks pulled together some suggested changes—which is the second part of this document. I still think it needs work—and we need to get this to NYU tomorrow. I will try to by us another few days. Rich- can we meet on this tomorrow? Thanks

---

Deborah Berkowitz  
Chief of Staff  
Occupational Safety and Health Administration  
202-693-2000

**From:** [Michaels David - OSHA](#)  
**To:** [Pannocchia Orlando - SOL](#); [Stille Kim - OSHA](#); [Kalinowski Doug - OSHA](#); [Galassi Thomas - OSHA](#); [Lynn Mary - OSHA](#)  
**Cc:** [Barab Jordan - OSHA](#); [Walters Nick - OSHA](#); [Dougherty Dorothy - OSHA](#); [Berkowitz Deborah - OSHA](#); [Rosenthal Ann - SOL](#); [Jones Tina - OSHA](#)  
**Subject:** RE: Fatality at Sawmill in Cadillac  
**Date:** Tuesday, May 27, 2014 9:50:35 AM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)  
[image004.jpg](#)

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**E5 Attorney-Client**

[Redacted]

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[Redacted]







**From:** Barab, Jordan - OSHA  
**To:** [McGinnis, Laura K - OPA](#)  
**Subject:** RE: Joint employer memo  
**Date:** Friday, August 28, 2015 11:07:00 AM

---

I don't think there's anything we want to add to that unless he has any specific questions.

---

**From:** McGinnis, Laura K - OPA  
**Sent:** Friday, August 28, 2015 11:06 AM  
**To:** Barab, Jordan - OSHA  
**Subject:** FW: Joint employer memo

Jordan,

Stephen Lee (BNA) is writing another story on the joint employer memo, now that he's got a copy of it. He's asked for a comment.

We already supplied one for his first story:

For more than 10 years, the case law under the OSH Act has explicitly recognized that the concept of joint employment applies. There are many different work arrangements, including temporary workers, subcontractors and franchising arrangements, that could be considered joint employers. The information in this document is meant to help OSHA inspectors determine whether there is joint responsibility for worker health and safety at a particular business. As with all guidance OSHA's inspectors follow, our chief concern is protecting the lives and wellbeing of America's workers.

Do we have anything more we want to say, or should I simply refer him to the earlier statement?

*Laura K. McGinnis*  
*Office of Public Affairs, U.S. Department of Labor*  
*202.693.4653 (phone) | 202.251.7929 (BlackBerry)*  
<https://twitter.com/USDOL>

---

**From:** Lee, Stephen [<mailto:stephenlee@bna.com>]  
**Sent:** Friday, August 28, 2015 11:01 AM  
**To:** McGinnis, Laura K - OPA  
**Subject:** Joint employer memo

Laura, one of our reporters got a hold of the OSHA memo titled "Can Franchisor (Corporate Entity) and Franchisee Be Considered Joint Employers." I'll probably be writing about this and wondered if OSHA had any comment on it.

FYI, I'm not at my desk today, but can be reached via cell at 202-297-7249.

Thanks!  
Stephen





**From:** Barab, Jordan - OSHA  
**To:** [Rosenthal, Ann - SOL](#); [Galassi, Thomas - OSHA](#); [Berkowitz, Deborah - OSHA](#)  
**Cc:** [Dougherty, Dorothy - OSHA](#)  
**Subject:** RE: Joint employer/OSHA story: POLITICO  
**Date:** Wednesday, August 26, 2015 9:51:00 AM

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E5 Attorney-Client



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**From:** Rosenthal, Ann - SOL  
**Sent:** Tuesday, August 25, 2015 3:01 PM  
**To:** Galassi, Thomas - OSHA; Barab, Jordan - OSHA; Berkowitz, Deborah - OSHA  
**Cc:** Dougherty, Dorothy - OSHA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

E5 Attorney-Client


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**From:** [Rosenthal, Ann - SOL](#)  
**To:** [Barab, Jordan - OSHA](#)  
**Subject:** Re: Joint employer/OSHA story: POLITICO  
**Date:** Wednesday, August 26, 2015 9:09:51 AM

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**E5 Attorney-Client** [REDACTED]

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**From:** Barab, Jordan - OSHA  
**Sent:** Tuesday, August 25, 2015 7:12:38 PM  
**To:** McGinnis, Laura K - OPA; Henry, Dori B - OPA; Berkowitz, Deborah - OSHA; Rosenthal, Ann - SOL  
**Cc:** Galassi, Thomas - OSHA; Dougherty, Dorothy - OSHA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

**E5 Attorney-Client** [REDACTED]

[REDACTED]

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**From:** McGinnis, Laura K - OPA  
**Sent:** Tuesday, August 25, 2015 2:49 PM  
**To:** Barab, Jordan - OSHA; Henry, Dori B - OPA; Berkowitz, Deborah - OSHA; Rosenthal, Ann - SOL  
**Cc:** Galassi, Thomas - OSHA; Dougherty, Dorothy - OSHA  
**Subject:** RE: Joint employer/OSHA story: POLITICO

**E5 Attorney-Client** [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]





**From:** [Rosenthal, Ann - SOL](#)  
**To:** [Barab, Jordan - OSHA](#)  
**Subject:** RE: Joint employer/OSHA story: POLITICO  
**Date:** Wednesday, August 26, 2015 10:01:05 AM

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E5 Attorney-Client

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[Redacted]

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[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]







**From:** [Nayak, Rajesh - ASP](#)  
**To:** [Barab, Jordan - OSHA](#); [Garza-Ahlgren, Kathryn J - OCIA](#); [Linares, Elva E - OCIA](#)  
**Cc:** [Cantrell, Margaret - OCIA](#)  
**Subject:** RE: Question re q/a OSHA  
**Date:** Thursday, September 17, 2015 3:51:39 PM

---

Yes, that would be great, too! I had intended to put that on the list. Thanks Jordan!

---

**From:** Barab, Jordan - OSHA  
**Sent:** Thursday, September 17, 2015 3:41 PM  
**To:** Garza-Ahlgren, Kathryn J - OCIA; Nayak, Rajesh - ASP; Linares, Elva E - OCIA  
**Cc:** Cantrell, Margaret - OCIA  
**Subject:** RE: Question re q/a OSHA

(b) (5) [Redacted]

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[Redacted]

**From:** [Nayak, Rajesh - ASP](#)  
**To:** [Barab, Jordan - OSHA](#); [Garza-Ahlgren, Kathryn J - OCIA](#); [Linares, Elva E - OCIA](#)  
**Cc:** [Cantrell, Margaret - OCIA](#)  
**Subject:** RE: Question re q/a OSHA  
**Date:** Thursday, September 17, 2015 3:51:11 PM

---

Hey Jordan,

Indeed – I pasted a link to the Fairfax memo below: <https://www.osha.gov/as/opa/whistleblowermemo.html>

Thanks,

Raj

---

**From:** Barab, Jordan - OSHA  
**Sent:** Thursday, September 17, 2015 3:41 PM  
**To:** Garza-Ahlgren, Kathryn J - OCIA; Nayak, Rajesh - ASP; Linares, Elva E - OCIA  
**Cc:** Cantrell, Margaret - OCIA  
**Subject:** RE: Question re q/a OSHA

(b) (5) [Redacted]

---

[Redacted]

(b) (5) [REDACTED]  
[REDACTED]

From: [Nayak, Rajesh - ASP](#)  
To: [Linares, Elva E - OCIA](#)  
Cc: [Barab, Jordan - OSHA](#); [Cantrell, Margaret - OCIA](#); [Garza-Ahlgren, Kathryn J - OCIA](#); [Swirsky, Stephanie - ASP](#)  
Subject: RE: Question re q/a OSHA  
Date: Friday, September 18, 2015 12:44:35 PM

---

Hello Jordan and Elva,  
Just wanted to ping you on this – not sure if this is on OCIA’s plate (looking for Q&A/QFRs) or OSHA’s or both, but would love any TPs you could provide on the items below – so we can arm MB when she’s asked about them (or at least inform her as to what they’re about). I’ve clarified and/or added in red below based on our further discussions yesterday.

Really appreciate any help to help arm MB here!

Thanks,

Raj

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**From:** [Rosenthal, Ann - SOL](#)  
**To:** [Barab, Jordan - OSHA](#)  
**Subject:** Re: Questions for OSHA  
**Date:** Monday, October 19, 2015 10:01:34 PM

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**E5 Attorney-Client**

[Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

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DASHBOARD - EO - REGINFO.GOV

Total Pending Actions: 88 View ...

[Read more...](#)

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[Redacted]

E5 Attorney-Client

[Redacted text block]





**From:** [Cantrell, Margaret - OCIA](#)  
**To:** [Barab, Jordan - OSHA](#); [Oliver, Andria - OCIA](#)  
**Subject:** RE: Tomorrow's conference call with HELP Dem Staff RE: Labor Violations in the Franchise Sector  
**Date:** Tuesday, August 25, 2015 9:31:49 AM

---

Thanks, forwarded the invite to her. Aren't you getting on a plane or something?

-----Original Message-----

**From:** Barab, Jordan - OSHA  
**Sent:** Tuesday, August 25, 2015 9:31 AM  
**To:** Cantrell, Margaret - OCIA; Oliver, Andria - OCIA  
**Subject:** Re: Tomorrow's conference call with HELP Dem Staff RE: Labor Violations in the Franchise Sector

Ann Rosenthal. **E5 Attorney-Client**

-----  
Jordan Barab  
Deputy Assistant Secretary

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**From:** Cantrell, Margaret - OCIA  
**Sent:** Tuesday, August 25, 2015 9:27:40 AM  
**To:** Barab, Jordan - OSHA; Oliver, Andria - OCIA  
**Subject:** RE: Tomorrow's conference call with HELP Dem Staff RE: Labor Violations in the Franchise Sector

Yes, who from OSH should we include? Andria can you please loop in the appropriate wage and hour SOL folks?

-----Original Message-----

**From:** Barab, Jordan - OSHA  
**Sent:** Tuesday, August 25, 2015 9:15 AM  
**To:** Cantrell, Margaret - OCIA; Oliver, Andria - OCIA  
**Subject:** Fw: Tomorrow's conference call with HELP Dem Staff RE: Labor Violations in the Franchise Sector

Shouldn't we invite SOL?

-----  
Jordan Barab  
Deputy Assistant Secretary

---

**From:** McKinney, Nikki - OCIA  
**Sent:** Tuesday, August 25, 2015 8:40:52 AM  
**To:** Martinez, Tony - WHD; Weil, David - WHD; Cantrell, Margaret - OCIA; Oliver, Andria - OCIA; Sanders, Samantha - WHD; Maxwell, Mary Beth - ASP; Goldman, Tanya L - WHD; Linares, Elva E - OCIA; Barab, Jordan - OSHA; Sander, Kirk - OSHA  
**Subject:** Tomorrow's conference call with HELP Dem Staff RE: Labor Violations in the Franchise Sector

Good morning!

Tomorrow at 10:30am, you will have a call with Sen. Murray's HELP staff. For those folks in the office, feel free to join Margaret Cantrell in the OCIA conference room. For those not in the office, the conference line info is in the scheduler notification. I'm out of the office, so OCIA's WHD/OSHA gurus, Andria/Margaret, will lead the call.

As I mentioned, the participants on the call are HELP staff of Sen. Patty Murray:  
Beth Stein—Oversight Counsel  
Carly Rush—Oversight Counsel  
Letty Mederos—Professional Staff Member (may not participate)

Senator Murray's HELP Committee staff is beginning to look into the prevalence of labor violations by franchises. They asked for a call with Dr. Weil, MB, and someone from OSHA to:

- a. Get their thoughts about how to think about this issue
- b. Discuss the current penalty structure under the FLSA and OSH Act
- c. Discuss states that may be good sources of information on violations

If you have any questions, let me know.

**From:** [Allen Justin - ASP](#)  
**To:** [Allen Justin - ASP](#); [Bishop Jeremy - OCIA](#); [Alexander Elizabeth N - OPA](#); [Cornale Samuel P - OSEC](#); [Mason Jen - OCIA](#); [Bloom Teresa - EBSA](#); [Capolongo Mabel - EBSA](#); [Khwar ali@dol.gov](#); [Zaffirini Tony - OCIA](#); [Barab Jordan - OSHA](#); [Gupta Pronita - WB](#); [S.helper@doc.gov](#); [Kim Elizabeth - OSEC](#); [Walstedt Jane - WB](#); [Protos Grace - WB](#); [Polyvka Anne - BLS](#); [Monaco Kristen - BLS](#); [Grossman Elizabeth - OSHA](#); [Tom Phillip - OSEC](#); [Gibbons Scott M - ASP](#); [Irwin Molly E - ASP](#); [Yancey Christina L - ASP](#); [Sharma Avin P - OSEC](#); [Humphrey Tanisha M - OSEC](#); [Block Sharon I - OSEC](#); [Simonetta Jonathan A - ASP](#); [Svenson Jens - OSHA](#); [Schoepfle Gregory - ILAB](#); [Bernt Jon - OSHA](#); [Vockrodt Jeff - ASP](#); [Hayes Michael - OLMS](#); [Davis Andrew - OLMS](#); [Garza Jose P - ASP](#); [Bissell Katherine - SOL](#); [Chris Lu](#); [Jennifer.hunt@treasury.gov](#); [Shierholz Heidi S - OSEC](#); [Reimherr Patrick M - OSEC](#); [Rose Michelle - OCIA](#); [Nayak Rajesh - SOL](#); [Krierim Tara M - WHD](#); [Weeks Daniel - WHD](#); [Mejia Tania - OPA](#); [Acocella Bart M - OPA](#); [Moore James H - ASP](#); [Huynh Minh - ASP](#); [Shepherd.robert@dol.gov](#); [Mittelhauser Mark - ILAB](#); [Pier Carol - ILAB](#); [Lenhoff Donna R - OFCCP](#); [Coukos Pamela - OFCCP](#); [Casta Heidi M - OFCCP](#); [Bocchini Michael J - VETS](#); [Edgell John R - OCIA](#); [Stone Robert F - OSHA](#); [Franks Kathleen - ASP](#); [Huggins Jennifer L - WHD](#); [Davidson Patricia J - WHD](#); [Palugyai Natalie - OSEC](#); [Swirsky Stephanie - EXECSEC](#); [Pasternak Allison - ASP](#); [Berman Jay - ASP](#); [Sloboda Brian W - ASP](#); [hong.kim@dol.gov](#); [Peters Pamela - ASP](#); [Tatum Laura - WHD](#); [Stuart Lisa - ASP](#)  
**Subject:** RE: US DOL OASP Policy Forum-WHD Administrator Dr. David Weil, Fissured Workplace and the Breakdown of Employment: Strategic Implications for Policy and Enforcement  
**Date:** Thursday, October 09, 2014 2:36:49 PM  
**Attachments:** [WHD Admin Weil Forum - Feedback Form 10 8 14.docx](#)

---

Thank you all for joining us yesterday! I've attached the feedback form.

We'd really appreciate your insights. Please send me your thoughts by COB on Tuesday 10/14.

Best,

Justin

Justin Allen

Chief of Staff

U.S. Department of Labor, Office of the Assistant Secretary for Policy

202-693-6042

[allen.justin@dol.gov](mailto:allen.justin@dol.gov)

-----Original Appointment-----

**From:** Allen, Justin - ASP On Behalf Of Maxwell, Mary Beth - ASP

**Sent:** Tuesday, September 16, 2014 12:42 PM

**To:** Maxwell, Mary Beth - ASP; Moore, James H - ASP; Vockrodt, Jeffrey R - ASP (Vockrodt.Jeffrey.R@dol.gov); Goode, Jeffrey H - ASP; Aaronson, Julie - OCIA; Alexander, Elizabeth N - OPA; Allen, Justin - ASP; Angelo, Robert A. - OCIA; Archila, Ernesto - ASP; Barab, Jordan - OSHA; Benoff, Jared L - OPA; Berkowitz, Deborah - OSHA; Bermejo, Elmy - OCIA; Biel, Eric R - ILAB; Bishop, Jeremy - OCIA; Block, Sharon I - OSEC; Bocchini, Michael J - VETS; Borzi, Phyllis - EBSA; Cantrell, Margaret - OCIA; Cartwright, Sean - ETA; Casillas, Ofelia M - OSEC; Cisneros, Eduardo - OSEC; Colangelo, Matthew - OSEC; Contractor, Harin J. - OSEC; Cornale, Samuel P - OSEC; Davis, Marilyn D - OSEC; Edgell, John R - OCIA; Fillichio, Carl - OPA; Fortman, Laura - WHD; Garza, Jose P - ASP; Garza-Ahlgren, Kathryn J - OCIA; Gaspard, Kathleen - WB; Gerton, Teresa W - VETS; Gonzalez, Edgar - OSEC; Gordon, Claudia - OFCCP; Greenfield, Deborah - SOL; Gupta, Pronita - WB; Gurule, Dusti - OCIA; Hallstrom, Eric C - SOL; Hawthorne, Brian A - VETS; Hayes, Charlotte - ASAM; Hayes, Michael - OLMS; Henderson, Erika - ETA; Henry, Dori B - OPA; Hinojosa, Xochitl - OPA; Hughes, Xavier - OSEC; Humphrey, Tanisha M - OSEC; Hunt, Wrendon P - OSEC; Jayaratne, Adri - OCIA; Jemilohun, Kemi - ETA; Kelly, Keith - VETS; Kerr, Michael - ASAM; Kim, Elizabeth - OSEC; Kuruvilla, Jason - OPA; Lawder, Jesse - OPA; Lin, Amy Y - OSEC; Linares, Elva E - OCIA; Lu, Christopher P - OSEC; Lund, John - OCIA; Lyles, Latifa - WB; MacDonald, Laura - OSEC; Main, Joseph - MSHA; Mares, Judith - EBSA; Martinez, Kathy - ODEP Assistant Secretary; Martinez, Tony - WHD; McCarty, Shauna L - OSEC; McKinney, Nikki - OCIA; McNearney, Joe - WHD; Mejia, Tania - OPA; Michaels, David - OSHA; Miller, Laura E - OPA; Montelongo, Claudia - OFCCP; Moscoso, Patricia G - OSEC; Mosley, Carolyn D - OSEC; Nanda, Seema - OSEC; Nayak, Rajesh - SOL; Nightingale, Demetra - ASP; Norman, Jane - EBSA; North, Lauren A - OPA; Ogle, Rebecca - WHD; Oliver, Andria - OCIA; Orr, Dylan - ODEP; Palugyai, Natalie - OSEC; Pandya, Amit - ILAB; Parker, Douglas - MSHA; Pier, Carol - ILAB; Pruss, Kalen H - OSEC; Regine, Meredith E - EBSA; Reimherr, Patrick M - OSEC; Richards, Thomas JR - ILAB; Rizzo, Carolina - ASAM; Roberts, David - OPA; Rose, Michelle - OCIA; Roybal, Soledad - OSEC; Seigel, Benjamin - ETA; Seleznow, Eric - ETA; Sharma, Avin P - OSEC; Shearns, Patrick J - OSEC; Shierholz, Heidi S - OSEC; Shiu, Patricia A - OFCCP; Skinner, Wayne - OSEC; Smith, M. Patricia - SOL; Snyder, Kimble B - OSEC; Soberanis, Roberto - OCIA; Solomon, Lafe E - SOL; Suiter, Carrianna - OCIA; Surbey, Jason - OPA; Tatum, Laura - WHD; Tom, Phillip - OSEC; Torres, Carmen F - OCIA; Uzzell, Megan - ASP; Vega, Sandra - WB; Waits, Jennifer B - OCIA; Wardlow, Devon - OSEC; Weatherford, Stephen - OCFO; Weil, David - WHD; Woodbury, Victoria - OCIA; Wu, Portia - ETA; Young, Clarisse - OPA; Zaffirini, Tony - OCIA; Zeitlin, Daniel L - OCIA; Bascus, Carrol - ASP; Berman, Jay - ASP; Brizzi, Djuna Y. - ASP; Clafflin, Daniel - OASAM OCIO; Couell, Kenneth F - ASP CTR; Edwards, Michelle - ASP; Faulk, Lynda - ASP; Fort, Harvey D - ASP; Franklin, Cormen - ASP; Franks, Kathleen - ASP; Gibbons, Scott M - ASP; Hinton, Natalie E - ASP CTR; Hoesly, Laura C - ASP CTR; Howard, Sherry - ASP; Irwin, Molly E - ASP; Javar, Janet O - ASP; Jones, Tiffany - ASP; Kim, Hong J - ASP; Kretch, David A - ASP CTR; Layne, China J - ASP CTR; Lilledahl, Erika - ASP; Lizik, Megan - ASP; NO, ASP Template; NO, ASP Template - VIP1; NO, ASP Template - VIP2; Nolan, Michelle - ASP; Pasternak, Alison - ASP; Peters, Pamela - ASP; Richie, Celeste J - ASP; Simonetta, Jonathan A - ASP; Sloboda, Brian W - ASP; Stuart, Lisa - ASP; tt- 9/11/2014 - Waly, Alia G - ASP; tt- 9/14/2014 - Fryer, Terry - ASP; Yancey, Christina L - ASP; Huynh, Minh - ASP; Olinsky, Ben; 'Furman, Jason L.'; Sander, Kirk - OSHA; Schmidt, Dave - OSHA; Bupp, Jaye - OSHA; Bernt, Jon - OSHA; Svenson, Jens - OSHA; Galassi, Thomas - OSHA; Kapust, Patrick - OSHA; Lynn, Mary - OSHA; Grossman, Elizabeth - OSHA; Maddux, Jim - OSHA; Bolon, Paul - OSHA; Stone, Robert F. - OSHA; Burt, Robert - OSHA; Bilbro, Rebecca - OSHA; Groshen, Erica - BLS; shelper@doc.gov; mdoms@doc.gov; Betssey\_A\_Stevenson@b(6)(6); Jordan\_D\_Matsudaira@b(6)(6); abigail\_k\_wozniak@b(6)(6); aviva\_r\_aron-dine@b(6)(6); karen.dyman@treasury.gov; Swinnerton, Kenneth - ILAB; jane\_k\_dokko@b(6)(6); elaine.buckberg@treasury.gov; gerald.cohen@treasury.gov; seth.carpenter@treasury.gov; Matthew\_A.Fiedler@b(6)(6); Acocella, Bart M - OPA; Davis, Karlyn - ASP; Jennifer.Hunt@treasury.gov; Capolongo, Mabel - EBSA; Bloom, Teresa - EBSA; Khwar, Ali - EBSA; Dowd, Tom M - OFCCP; Litras, Marika - OFCCP; Narcho, Herman J - OFCCP; Casta, Heidi M - OFCCP; Carr, Debra A - OFCCP; Mehta, Parag V - OFCCP; Lenhoff, Donna R - OFCCP; Coukos, Pamela - OFCCP; Haymaker, John C - OFCCP

**Cc:** Auerbach, Andrew D - OLMS; Davis, Andrew - OLMS; Comer, Ann M - OLMS; Davidson, Patricia J - WHD; Williams, Dionne - OSHA; Chris Lu; Heimlich, Judith - EXECSEC; Harthill, Susan - SOL; Bissell, Katherine - SOL (Bissell.Katherine@dol.gov); Brand, Jennifer S. - SOL (Brand.Jennifer.S@dol.gov); Lesser, William - SOL; Swirsky, Stephanie - EXECSEC; Monaco, Kristen - BLS; Polyvka, Anne - BLS; Carson, Charles M. - OSEC; Hankin, Stanley - OPA; Andy - OPA Bailey; Bailey, Andy - OPA; Farrelly, Joan - WB; Schoepfle, Gregory - ILAB; Cooke, Jacqueline - WB (cooke.jacqueline@DOL.GOV); Protos, Grace - WB (Protos.Grace@dol.gov); Bruce, Lucia - WB (Bruce.Lucia@DOL.GOV); Lock, Betty - WB (Lock.Betty@dol.gov); Boiman, Tiffany H - WB; Mason, Jen - OCIA; Ingram, Ashleigh N - OPA; Duncan, Alex - OPA; Pfeifer, Ken - OPA (Pfeifer.Ken@dol.gov); Harding, Sarah G. - OPA; Huggins, Jennifer L - WHD; Crowley, Thomas - ETA; Bedford-Billinghurst, Marzette - WB; Bennett, S

Jamie - WB; Burnette, Suzanne - WB; Cater, Caitlin D - WB; Miller, Sarah - WB; Patterson, Gail - WB; Thompson, Tonya - WB; Tucker, David - WB; Vaca, D Michelle - WB; Walstedt, Jane - WB; Gary Fabiano (Fabiano.Gary.N@dol.gov); Moore, Shawn - OPA (moore.shawn@dol.gov)  
**Subject:** US DOL OASP Policy Forum-WHD Administrator Dr. David Weil, Fissured Workplace and the Breakdown of Employment: Strategic Implications for Policy and Enforcement  
**When:** Wednesday, October 08, 2014 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Secretary's Conference Room S-2508

**Due to an overwhelming response, the forum will now be held in the Secretary's Conference Room S-2508.**

**Call-In Information:**

(b) (6)

[Redacted]

[Redacted]

The U.S. Department of Labor, Office of the Assistant Secretary for Policy invites you to a policy forum with

**WHD Administrator Dr. David Weil**

***Fissured Workplace and the Breakdown of Employment:***

***Strategic Implications for Policy and Enforcement***

*Wednesday, October 8<sup>th</sup> – 1 to 2 pm*

In the twentieth century, large companies employing many workers formed the bedrock of the U.S. economy. Today, on the list of big business's priorities, sustaining the employer-worker relationship ranks far below building a devoted customer base and delivering value to investors. In his work on the fissured workplace, Dr. David Weil, the US DOL Wage and Hour Administrator, argues that large corporations have shed their role as direct employers of the people responsible for their products, in favor of outsourcing work to small companies that compete fiercely with one another. The result has been declining wages, eroding benefits, inadequate health and safety protections, and ever-widening income inequality. From the perspectives of CEOs and investors, fissuring—splitting off functions that were once managed internally—has been phenomenally successful. Despite giving up direct control to subcontractors and franchises, these large companies have figured out how to maintain the quality of brand-name products and services, without the cost of maintaining an expensive workforce. But from the perspective of workers, this strategy has meant violation of many of the standards and regulations enforced by the Department of Labor and growing wage inequality.

Weil will discuss both this evolution as well as ways to modernize enforcement and workplace policies so that employers can meet their obligations to workers while allowing companies to keep the beneficial aspects of this business strategy.

WHERE: U.S. Department of Labor

Frances  
Perkins  
Building

200 Constitution Avenue NW

OASP  
Large  
Conference  
Room

WHEN: Wednesday, October 8<sup>th</sup>

1-2pm

Please RSVP to Djuna Brizzi ([brizzi.djuna.y@dol.gov](mailto:brizzi.djuna.y@dol.gov) or 202.693.5959) by 5:00 pm on Tuesday, October 7<sup>th</sup>. **This invitation is not**

**transferable.**

--

*Read ahead materials –*

“Vignettes from the Fissured Workplace” by David Weil [attached] and

WSJ Article “A New Twist on Income Inequality (September 29, 2014) [<http://blogs.wsj.com/atwork/2014/09/29/a-new-twist-on-income-inequality/>]

<< File: D.Weil.Vignettes from the Fissured Workplace.pdf >>

**From:** [Dougherty, Dorothy - OSHA](#)  
**To:** [Michaels, David - OSHA](#); [Gonzales, Ricky - OSHA](#)  
**Cc:** [Barab, Jordan - OSHA](#); [Berkowitz, Deborah - OSHA](#); [Sander, Kirk - OSHA](#)  
**Subject:** Re: What sort of Franchises are We Seeing (For Next Week)  
**Date:** Thursday, July 02, 2015 4 53:28 PM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)

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Yes we can

Sent using OWA for iPhone

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**From:** Michaels, David - OSHA  
**Sent:** Thursday, July 02, 2015 4:13:06 PM  
**To:** Dougherty, Dorothy - OSHA; Gonzales, Ricky - OSHA  
**Cc:** Barab, Jordan - OSHA; Berkowitz, Deborah - OSHA; Sander, Kirk - OSHA  
**Subject:** What sort of Franchises are We Seeing (For Next Week)

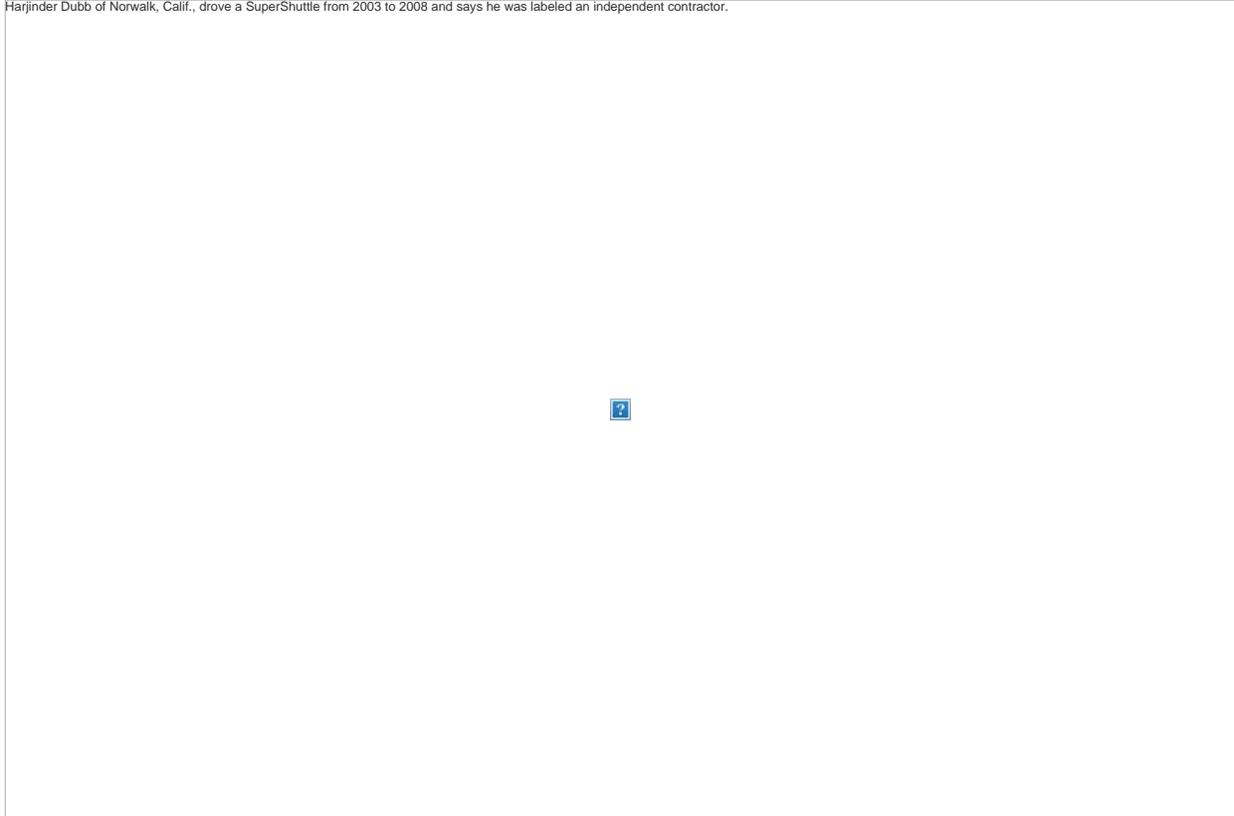
This, from the WSJ, identifies a problem other DOL agencies are seeing. Can we look at our data bases, and ask our RAs, what sort of franchise operations we are seeing?

[BUSINESS](#)

## Bosses Reclassify Workers to Cut Costs

Scrutiny into relationships with contractors leads to new strategies

Harjinder Dubb of Norwalk, Calif., drove a SuperShuttle from 2003 to 2008 and says he was labeled an independent contractor.



ENLARGE

Harjinder Dubb of Norwalk, Calif., drove a SuperShuttle from 2003 to 2008 and says he was labeled an independent contractor. PHOTO: JONATHAN HANSON FOR THE WALL STREET JOURNAL

By

**LAUREN WEBER**

June 30, 2015 5:36 p.m. ET

[219 COMMENTS](#)

As courts and regulators increase their scrutiny of the relationship between businesses and independent contractors, employers are turning to a range of tactics to classify workers, taking them off the formal payroll and lowering costs.

Employers have long shifted work from employees to independent contractors, often relabeling the workers and slightly altering the conditions of their work, court documents and settlements indicate. Now, businesses are turning to other kinds of employment relationships, such as setting up workers as franchisees or owners of limited liability companies, which helps to shield businesses from tax and labor statutes.

In response, some state and federal agencies are aggressively clamping down on such arrangements, passing local legislation, filing briefs in

workers' own lawsuits, and closely tracking the spread of what they see as questionable employment models.

All this is happening against the backdrop of a broader shifting of risk from employers to workers, who shoulder an increasing share of responsibility for everything from health-insurance premiums to retirement income to job security. Alleged misclassification of workers has been one of the primary battlegrounds of this shift, leading to high-profile lawsuits against Uber Technologies Inc. and FedEx Corp., among others. Both have recently lost or settled big cases. Uber is appealing one decision, and FedEx settled in California for \$228 million but is continuing to challenge classification lawsuits in other states.

"We're seeing more creative ways to misclassify workers," Patricia Smith, chief litigator at the U.S. Labor Department, said at a legal conference in the spring, referring to a recent victory by the agency over construction companies in Arizona and Utah using phony LLCs.

Former SuperShuttle driver Harjinder Dubb. Drivers for SuperShuttle purchase their own vans.



ENLARGE

Former SuperShuttle driver Harjinder Dubb. Drivers for SuperShuttle purchase their own vans. PHOTO: JONATHAN HANSON FOR THE WALL STREET JOURNAL

"LLCs are generally small businesses that are trying to get back to business and are facing an increasingly difficult time because of this kind of enforcement," said Jerry Howard, chief executive of the National Association of Home Builders. "We educate our members on a very regular basis and teach them how to comply" with labor statutes, he added. He declined to comment on the findings of the Arizona and Utah investigation.

Advertisement

In that investigation, the department and its state counterparts found that more than 1,000 construction workers were building houses as employees one day and then a day later had begun performing the same work on the same job sites as so-called owners of LLCs, but without any wage or safety protection. In April, the construction firms that had put the plan in place—and had avoided paying hundreds of thousands of dollars in payroll taxes—were ordered to pay \$700,000 in back wages, damages and penalties.

In the coming days, David Weil, the administrator of the Labor Department's Wage and Hour Division, is expected to release a detailed memo on worker classification, the first such guidance since President [Barack Obama](#) took office.

A particular focus for Mr. Weil and for plaintiffs' lawyers is brands that sell franchises not to a traditional small-business owner—say, a person who owns six outlets of a national fast-food chain and hires dozens of employees—but to low-wage workers such as janitors and delivery drivers who essentially pay franchise fees in exchange for work.

"There are a lot of legitimate franchise forms," but companies that abuse the franchise model deny workers access to overtime and minimum-wage pay requirements as well as health and safety protections, and they lower the standards at rival firms, which can't compete unless they follow the lead of unscrupulous firms, Mr. Weil said in an interview. "They can undermine responsible employers and take root in an industry," he added.

to buy a franchise from CleanNet USA, a janitorial service. In exchange for paying the \$10,000 franchise fee, she said she was told she would receive accounts valued at several thousand dollars a month to clean offices and other commercial buildings. Ms. Jacobo had been a solo housecleaner before she seized the opportunity to become a small-business owner through CleanNet, according to court documents.

But last year, Ms. Jacobo joined a lawsuit against the company, charging that it controls all aspects of the cleaners' work, including their fees and communications with clients, making them essentially employees of the firm even as it uses the franchise model to avoid the obligations of an employer, such as minimum-wage and overtime payments.

Janitorial services were among the first to use the franchise model to designate individual workers, often low-skilled immigrants, as independent owners. CleanNet alone has faced claims from workers in California, Maryland, Texas, Pennsylvania and Illinois in the past two years. Those claims are in settlement discussions or have moved to arbitration due to a clause in the company's contracts. Another franchise cleaning service, Coverall North America Inc., agreed to pay \$5.5 million and stop operating in Massachusetts as part of a pending settlement with franchisees there and has faced other franchisee lawsuits in at least two other states. A case in Tennessee was settled in 2007, and a case in California in 2014. Ms. Jacobo's case is currently in arbitration; she declined to comment.

"CleanNet has no reason to believe that its California franchisees are misclassified," said its outside general counsel, Benjamin Hahn, who added that aside from Massachusetts, states have upheld the janitorial franchise model. Norman Leon, an attorney with DLA Piper who has represented Coverall and whose firm is general counsel to the International Franchise Association, said, "The premise that some of the smaller janitorial companies abuse the franchise model or that all of those franchises are operated as sole proprietorships—both of those assertions are incorrect."

The model isn't limited to cleaning companies. Last year, SuperShuttle agreed to pay \$12 million to drivers in California who had argued that they weren't true franchisees—independent owners operating businesses and controlling their own destinies—but in practice were employees who should be reimbursed for business expenses like fuel and maintenance and paid for the overtime hours they worked.

Harjinder Dubb drove for SuperShuttle from 2003 to 2008 and says he was labeled an independent contractor. He quit after SuperShuttle tried to convert him to a franchisee, which would have required him to pay fees to "rent" the SuperShuttle brand—essentially paying to do the same work he had done before.

As part of the settlement, SuperShuttle maintained its franchise model but changed its contract terms to reduce its control over drivers and give them more opportunities to earn other income with their vans, which the drivers purchase themselves for as much as \$35,000. SuperShuttle had settled similar suits in Minnesota, New York and Florida, but the California settlement is the largest to date.

"We felt it was in our best interest to settle the case because we wanted to move on with running our business," said Tom Lavoy, deputy chief operating officer of SuperShuttle's parent, Transdev On Demand. He added that the franchise system has reduced turnover and improved safety among drivers. "We still believe it's the right model because independent business owners are more efficient than what we can generate from an employee business," he said.

**From:** Barab, Jordan - OSHA  
**To:** [Rosenthal, Ann - SOL](#); [Pannocchia, Orlando - SOL](#); [Kapust, Patrick - OSHA](#); [Moar, Ian - SOL](#)  
**Subject:** RE: WSJ McDonalds.docx  
**Date:** Tuesday, March 17, 2015 8:16:00 PM

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**(b)(5) -- attorney client**

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**From:** Rosenthal, Ann - SOL  
**Sent:** Tuesday, March 17, 2015 2:40 PM  
**To:** Pannocchia, Orlando - SOL; Kapust, Patrick - OSHA; Moar, Ian - SOL  
**Cc:** Barab, Jordan - OSHA  
**Subject:** Re: WSJ McDonalds.docx

**(b)(5) -attorney client**

Sent using OWA for iPad

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**From:** Pannocchia, Orlando - SOL  
**Sent:** Tuesday, March 17, 2015 2:16:15 PM  
**To:** Kapust, Patrick - OSHA; Rosenthal, Ann - SOL; Moar, Ian - SOL  
**Subject:** RE: WSJ McDonalds.docx

**E5**  
Attorney

*Orlando J. Pannocchia*

Counsel for Regional Litigation and Legal Advice  
Office of the Solicitor, OSH Division  
U.S. Department of Labor  
(202) 693-5463

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**To:** Rosenthal, Ann - SOL; Moar, Ian - SOL; Pannocchia, Orlando - SOL  
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**E5 Attorney-Client**

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**From:** Barab, Jordan - OSHA  
**Sent:** Tuesday, March 17, 2015 11:25 AM  
**To:** Rosenthal, Ann - SOL; Moar, Ian - SOL

**Cc:** Galassi, Thomas - OSHA; Kapust, Patrick - OSHA  
**Subject:** WSJ McDonalds.docx

E5 Attorney-Client [Redacted]

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- [Redacted]
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- [Redacted]

[Redacted]

**From:** Barab, Jordan - OSHA  
**To:** [Rosenthal, Ann - SOL](#); [Pannocchia, Orlando - SOL](#); [Kapust, Patrick - OSHA](#); [Moar, Ian - SOL](#)  
**Subject:** RE: WSJ McDonalds.docx  
**Date:** Tuesday, March 17, 2015 7:55:00 PM

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**(b)(5)**

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**From:** Rosenthal, Ann - SOL  
**Sent:** Tuesday, March 17, 2015 2:40 PM  
**To:** Pannocchia, Orlando - SOL; Kapust, Patrick - OSHA; Moar, Ian - SOL  
**Cc:** Barab, Jordan - OSHA  
**Subject:** Re: WSJ McDonalds.docx

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**To:** Kapust, Patrick - OSHA; Rosenthal, Ann - SOL; Moar, Ian - SOL  
**Subject:** RE: WSJ McDonalds.docx

**(b)(5) attorney client**

*Orlando J. Pannocchia*

Counsel for Regional Litigation and Legal Advice  
Office of the Solicitor, OSH Division  
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Subject: WSJ McDonalds.docx

**(b)(5) attorney client** [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**From:** [Rosenthal, Ann - SOL](#)  
**To:** [Barab, Jordan - OSHA](#); [Pannocchia, Orlando - SOL](#); [Kapust, Patrick - OSHA](#); [Moar, Ian - SOL](#)  
**Subject:** Re: WSJ McDonalds.docx  
**Date:** Tuesday, March 17, 2015 10:47:32 PM

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**From:** Barab, Jordan - OSHA  
**Sent:** Tuesday, March 17, 2015 8:16:05 PM  
**To:** Rosenthal, Ann - SOL; Pannocchia, Orlando - SOL; Kapust, Patrick - OSHA; Moar, Ian - SOL  
**Subject:** RE: WSJ McDonalds.docx

**(b)(5) attorney client**

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**To:** Pannocchia, Orlando - SOL; Kapust, Patrick - OSHA; Moar, Ian - SOL  
**Cc:** Barab, Jordan - OSHA  
**Subject:** Re: WSJ McDonalds.docx

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**Subject:** RE: WSJ McDonalds.docx

**(b)(5) attorney client**

*Orlando J. Pannocchia*  
Counsel for Regional Litigation and Legal Advice  
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(202) 693-5463

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**(b)(5) attorney client**



August 31, 2015

MEMORANDUM FOR CHRISTOPHER LU  
Deputy Secretary

FROM: ANN ROSENTHAL  
Associate Solicitor for Occupational  
Safety and Health

SUBJECT: SOL Elbow Report for OSHA Management Meeting  
on September 2, 2015

Significant Pending Litigation

E5 Attorney Work Product; Attorney Client Communication

[Redacted content]

[Redacted content]











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## OSHA DAILY

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# Solicitor's Office: 'Economic Realities' Key OSHA Test Of Joint Employer Status

Posted: August 28, 2015

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Labor Department lawyers have drafted a policy for OSHA to determine whether a joint employer relationship exists between franchisors and franchisees that includes several key tests, including an analysis of "economic realities," according to an internal document obtained by *Inside OSHA Online*.

[The draft policy](#) was devised in the run-up to a landmark decision reached Thursday (Aug. 27) by the National Labor Relations Board (NLRB) that will effectively result in franchising corporations being held partly responsible in OSHA and other labor law enforcement actions against franchise businesses. Sources say the contentious split ruling, long feared by large franchise enterprises, and DOL policy give OSHA a powerful new tool to widen enforcement against companies found to be joint employers.

Repeated efforts to contact the Solicitor's Office produced no response.

The draft policy addresses whether, for purposes of the OSH Act, a joint employment relationship can be found between the franchisor and the franchisee, leading both entities to be liable as employers.

"Ultimate determination will be reached based on factual information about the relationship between the franchisor and franchisee over the terms and conditions of employment," the guidance states. "While the franchisor and the franchisee may appear to be separate and independent employers, a joint employer standard may apply where the corporate entity exercises direct or indirect control over working conditions, has the unexercised potential to control working conditions or based on the economic realities."

The Solicitor's Office (SOL) draft policy states that as a general matter, two entities will be determined to be joint employers "when they share or codetermine those matters governing the essential terms and conditions of employment and the putative joint employer meaningfully affects the matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction."

**The following information should be obtained to reach the determination, SOL says:** any franchise agreement and written document that addresses relationship; how the franchisee obtains the franchise; what the franchise submits to corporate; what fee the franchisee pays to corporate; whether the franchise pays a royalty or other compensation for the use of corporate's trademarks and marketing system; whether the franchise has to agree to certain corporate conditions; and whether the franchise has to submit plans to corporate.

OSHA should also obtain information, according to the draft policy, on the franchise's interaction with corporate; with whom the franchise interacts from corporate; whether corporate has any ownership interest in the franchise; whether corporate has any investment in equipment; whether corporate selects/approve the location of the franchise; whether corporate approves advertising the franchise uses; and what rules/policies corporate has on brand standards.

The draft policy also says OSHA should find out: whether after franchise is established, corporate does any kind of review; what kind of ongoing communications take place between the franchise and corporate; whether the franchise contacts corporate for any type of assistance after the franchise is up and running; whether the franchise is separately incorporated; whether anyone from corporate visits the franchise, and if so, what corporate does during its visit; and whether corporate provides manuals detailing how a franchisee should operate its franchise, including the best way to staff a franchise or define job responsibilities.

SOL's draft further details that OSHA should determine: whether corporate provides a common set of operating procedures; whether corporate creates menus and/or products for franchisee to sell; whether corporate approves signage for the franchisee to use; and whether corporate requires franchisee to use any specific computer system.

Also the draft policy says OSHA should gather numerous pieces of written documentation of corporate direction and control of the franchise; corporate control over the essential terms and conditions of employment of the workers at the franchise; and corporate control over safety and health policies and practices at the franchisee.

**Already the draft solicitor's guidance is drawing contention from industry**, which is still determining the potential fallout from NLRB's decision in Browning-Ferris that makes it easier for agencies like OSHA and Wage & Hour to go after large franchisors and could also help union organizing.

One legal source calls the draft policy “outrageous” and “way beyond” Browning-Ferris, saying the investigation into the economic relationship between franchisor and franchisee is outside the authority of OSHA. “Evening Browning Ferris studiously avoided the 'economic realities' test, mouthing the common law 'right to control' test.”

“When all is said and done, the only authority OSHA has is the investigation of franchisor control over the day-to-day working conditions of employees; does the franchisor, for example, affect whether the machines are locked out or guarded, how hot the boiling oil for French fries that may splatter is, etc. The rest of this stuff is grist for the union organization,” the source says in an email.

Also Thursday, the International Franchise Association filed a Freedom of Information Act request with OSHA that the organization said was “asking for the rationale behind questions OSHA inspectors are asking franchise owners, which appear specifically designed to presume a joint employer relationship between brand companies and local franchise small business owners.” -- *Christopher Cole* ([ccole@iwpnews.com](mailto:ccole@iwpnews.com))

35081

**DRAFT 3/24/14**

**Panels and Speakers for Subcontracting Conference**

**Monday, May 12<sup>th</sup>  
Noon-4:30 pm, plus reception**

**Plenary #1**      **Opening speaker to kickoff conference:** Patricia Smith, Acting Deputy Secretary of Labor and and Solicitor of Labor (David Weil will sub if confirmed by then)

**Plenary #2**      **Panel of distinguished organizing leaders:**  
  
Saket Soni, National Guestworkers Alliance  
  
Lilia Garcia (MCTF)(Cathy invited)  
  
Autumn Weintraub re fast food (Cathy invited)  
  
Mike Munoz, National Staffing Workers Alliance

**Plenary #3**      **Panel with broad themes of conference—Data and quality panel**  
  
Annette Bernhardt, UC Berkeley  
  
Susan Houseman, Upjohn Institute  
  
Michael Grabell, ProPublica

**Tuesday May 13<sup>th</sup>**

**Plenary #4**      **Panel with broad themes of conference—Gov't Actions– USDOL- OSHA, EEOC, and state— MA?**  
  
EEOC speaker—Jenny Yang  
  
OSHA – David Michaels (invited)  
  
WHD – Cathy has asked if Mike Hancock or designee can speak  
  
MA underground economy rep—Sarah to ask Heather Rowe?

**Breakout session #1**      **Panel 1a**  
  
   **Panel 1b**  
  
   **Panel 1c**

**Lunch Plenary**      **Outside-the-box thinkers**

Paired employer/ union or employer/ organizer having a conversation—2-3 pairs

Other option?

**Breakout session #2 Panel 2a**

**Panel 2b**

**Panel 2c**

**Breakout session #3 Panel 3a**

**Panel 3b**

**Panel 3c**

**Closing Plenary #5 Resonating fast food campaign messages on these structures: broad brush themes: Berlin Rosen (Cathy)**

**Making the case to the broader public – media –VICE speaker with clips about the warehouse campaigns?**

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**Panel topics and speakers**

**Warehouse campaigns and use of temp/ staffing companies (Becki):**

- NSWA- Tim Bell,
- Chris Williams, legal developments
- Marien from New Labor

**Port truckers: (Becki),**

Nick Weiner will put something together speakers could include Cristina/ Fred Potter, lead in Teamsters port trucking campaign, LAANE; Savannah, GA person

**I.C.'s, franchisees, LLC's: (Cathy)**

- Shannon Liss-Riordan on janitorial franchising and cable installers
- Sonia Ramirez, BCTD (invited)
- Bhairavi Desai on taxi workers (invited)

**Institutional contracting-out and/or consolidation of contractors: (Sarah)**

- Matt Furshong, UNITE-HERE on hotels and universities;
- Nicole Berner, SEIU on hospitals (with building services comparison);
- Dennis Houlihan, AFSCME on schools.

**Comment [SL1]:** Must be in the a.m.

**Brand focus -- Codes of conduct and international agreements; fast food (Eunice):**

- JJ on J-1 and Hershey and Walmart;
- Scott Nova- Rana Plaza (invited)
- CIW (invited)
- Costco Code (RAS followed up with Oxfam—friendly employer panel at lunch?)
- Mark Barenberg

**Comment [CR2]:** Not Saket as he's on opening plenary

**Comment [c3]:** Eunice to ask re friendly employer pairing with CIW

**New models (Eunice):**

- CA responsible contractor – 2810, plus new ideas – Caitlin Vega (invited);
- IL day and temp labor act **Chris Williams**;
- MA right to know and new recommendations – Darlene Lombos

**Enforcing with broad joint employer laws (Cathy):**

- Tseyeye Gebreselassie, NELP, on individual joint employers in fast food and retail
- Larry Norton on a range of theories to get broad accountability
- Darin Dalmat, James & Hoffman on fast food cases against McD's corp

**Public funding hooks to address outsourcing and standards (Sarah):**

**Comment [CR4]:** Afternoon slot on Tuesday

- Nikki Base, PWF, leveraging subsidies, tax breaks for new developments, targeted hiring policies, *invited*;
- Gail MacInness, PHI, on home care;
- Joseph Geevarghese, CTW, federal contracting
- Amy Sugimori, 32BJ.

DRAFT 4/8/14

# Outsourced Work: Insourcing Responsibility

Monday, May 12<sup>th</sup>  
1:00-5:00 pm, plus reception

- Welcome** Chris Owens, NELP
- Plenary #1** **Opening speaker to kick off conference:** Patricia Smith, Acting Deputy Secretary of Labor and Solicitor of Labor<sup>1</sup>
- Plenary #2** **Panel of distinguished organizing leaders (Becki)**  
**Moderator:** Rebecca Smith, NELP  
Saket Soni, National Guestworkers Alliance  
Lilia Garcia, Maintenance Cooperation Trust Fund  
Kendall Fells, fast food campaign, SEIU  
Mike Munoz, National Staffing Workers Alliance  
Chris Schwartz, UAW
- Plenary #3** **Panel on Data and quality of subcontracted jobs (Cathy)**  
**Moderator:** Arun Ivatury, NELP  
Annette Bernhardt, UC Berkeley  
Susan Houseman, Upjohn Institute  
Michael Grabell, ProPublica
- Reception** 5:30-7:00 pm

Tuesday May 13<sup>th</sup>

- Plenary #4** **Gov't Actions around outsourcing– USDOL- OSHA, EEOC, and state official (Cathy)**  
**Moderator:** Haeyoung Yoon, NELP  
Sarah Crawford, EEOC

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<sup>1</sup> David Weil will join if confirmed by then.

David Michaels, OSHA

Michael Hancock, WHD

Heather Rowe, MA underground economy task force

**Breakout session #1 Panel 1a**

**Panel 1b**

**Panel 1c**

**Lunch Plenary Employers and worker advocates together (Cathy)**

**Moderator:** Chris Owens, NELP

Paired employer/ union or employer/ organizer conversation—2-3 pairs

Lilia Garcia, MCTF and Fabiano (LNU) janitorial contractor

Asks out to: SEIU 32BJ (Amy Sugiomori)

Workers Defense Project, Austin TX

Kaiser Permanente (via SEIU)

**Breakout session #2 Panel 2a**

**Panel 2b**

**Panel 2c**

**Breakout session #3 Panel 3a**

**Panel 3b**

**Panel 3c**

**Closing Plenary #5 A Framework for Expanding Employer Accountability: A Discussion with Experts**

**Moderator:** Cathy Ruckelshaus, NELP

Jeremias Prassl, Oxford University

Mark Barenberg, Columbia University Law School

Lynn Rhinehart, General Counsel, AFL-CIO

## Panel topics and speakers

### Warehouse campaigns and use of temp/ staffing companies (Becki):

**Moderator:** Claire McKenna, NELP (?)

- National Staffing Workers Alliance- Tim Bell, Chicago Workers Collaborative
- Marien from New Labor
- Diego Low, Metrowest Worker Center, MA (confirmed either him or Elvis)

### Port truckers: (Becki)

**Moderator:**

- Nick Weiner, CTW
- Christina Montorio, New Jersey Teamsters
- Jason Gately, Los Angeles port trucking campaign (invited)

### I.C.'s, franchisees, LLC's: (Cathy)

**Moderator:**

- Shannon Liss-Riordan on janitorial franchising and cable installers
- Dan Gardner, IBEW
- Ron Blount, Pennsylvania Taxi Workers Alliance

### Institutional contracting-out and/or consolidation of contractors: (Sarah)

**Comment [SL1]:** Must be in the a.m.

**Moderator:** Neil Gladstein, IAM

- Matt Furshong, UNITE-HERE on hotels and universities;
- Nicole Berner, SEIU on hospitals (with building services comparison);
- Dennis Houlihan, AFSCME on schools.

### Brand focus -- Codes of conduct and international agreements; fast food (Eunice):

**Moderator:** Tom Egan or Shauna from Solidarity Center

- JJ Rosenbaum, National Guestworkers Alliance on J-1 and Hershey and Walmart;
- Scott Nova, Workers Rights Consortium re Rana Plaza
- Steve Hitov, Coalition of Immokalee Workers

**Comment [CR2]:** Eunice to ask re employer to invite with CIW

### New models (Eunice):

**Moderator:** Eunice Cho, NELP

- Kevin Kish, Bet Tzedek Legal Services, CA responsible contractor – 2810, plus new ideas;

- Chris Williams, IL day and temp labor act;
- Darlene Lombos, CLU on MA right to know and new recommendations

**Enforcing with broad joint employer laws (Cathy):**

**Moderator:** Bruce Goldstein, Farmworker Justice

- Tsedeye Gebreselassie, NELP, on individual joint employers in fast food and retail
- Larry Norton on a range of theories to get broad accountability
- Darin Dalmat, James & Hoffman on fast food cases against McD's corp

**Public funding hooks to address outsourcing and standards (Sarah):**

**Comment [CR3]:** Afternoon slot on Tuesday

**Moderator:** Sarah Leberstein, NELP

- Nikki Base, PWF, leveraging subsidies, tax breaks for new developments, targeted hiring policies
- Gail MacInness, PHI, on home care;
- Joseph Geevarghese, CTW, federal contracting
- Amy Sugimori, 32BJ.

## US-EU CONFERENCE 2015

### Proposed Topic Area:

#### The Changing Structure of Work and its

#### Implications for Worker Health, Safety and Wellbeing

The structure of work, particularly in terms of the relationship between employer and employee, is undergoing dramatic changes in the 21<sup>st</sup> century, and these changes have important implications for the protection of workers from workplace safety and health hazards.

The recent International Labour Organization report “World Employment Social Outlook: The Changing Nature of Jobs” (2015) concludes that there “a shift away from the standard employment model, in which workers earn wages and salaries in a dependent employment relationship vis-à-vis their employers, have stable jobs and work full time. In advanced economies, the standard employment model is less and less dominant.”

In the US, a recent review by the US Government Accountability Office (GAO) evaluated the latest available sources, and yielded several key conclusions regarding both “core contingent workers” (i.e., “temporary” workers hired both directly and through staffing agencies, on-call workers and “contract company” workers) as well as a more broadly defined group of “contingent and alternative workers” (i.e., including regular part-time workers, as well as allegedly “independent contractors” and the self-employed):

- “... compared to standard full-time workers, core contingent workers appeared to be younger and more often Hispanic, and were more likely to have no high school degree and have low family income.”
- “...2010 GSS data [show] that core contingent workers were more than three times as likely as standard full-time workers to report being laid off in the previous year.
- “...contingent workers are more likely to report living in poverty and receiving public assistance than standard workers.
- Based on our analysis of the [most recent] 2010 ... data available, we estimated that 40.4 percent of the employed labor force was in alternative work arrangements ...” with 7.9% as “core contingent workers” and another 16.2% in standard part-time arrangements.

These estimates, and the methodology which produced them, has not been the subject of a formal response by the agency with the primary responsibility for characterizing workforce conditions – the US Bureau of Labor Statistics (some of whose surveys were the basis of the GAO estimates).<sup>1</sup> Nonetheless, the GAO’s estimates are of great concern regarding the diminution of workplace conditions due to the increasing importance of contingent work arrangements, both legal and illegal.

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<sup>1</sup> See “Comparison of BLS Definitions of Contingent and Alternative Work Arrangements with Definition in GAO Report “Contingent Workforce, Size, Characteristics, Earnings and Benefits (GAO-15-168R).” Anne Polivka, Supervisory Research Economist US BLS, June 10, 2015

Several types of changes are occurring simultaneously. Firms in many sectors, particularly in manufacturing, but increasingly in others like retail and service, use specialized contractors and subcontractors to perform work that firm's own employees once performed. Recent years have also seen an increase in the misclassification of wage employees as independent contractors, a practice sometimes called bogus self-employment, especially in the construction and domestic services sector (EU-OSHA European Risk Observatory 2014). Studies in the United States have estimated that one third or more of the construction workers in some states are misclassified as independent contractors (OSHA 2015). Legitimate forms of business organization such as LLCs, franchising, and third party management have also been used in a growing number of cases as means to avoid employment responsibility or obfuscate that relationship. Finally, the growth of the "shared" or "gig" economy, in which individuals ask or bid for specific jobs, is moving a growing number of workers out of traditional employer-employee relationships.

These changes have important implications for occupational safety and health, and, if not managed correctly, will result in increased risk of injury and illness among workers governed by these new relationships, as well as the other workers in the same locations. The increased presence of multiple levels of contractors at any workplace requires organized, concerted communications between all the employers and workers at the site. Failure to do this often results in the exposure of workers to preventable hazards. Similarly, temporary workers who are not trained in the required safe work practices and not informed of the hazards in the location to which they have been assigned are at increased risk of injury. All too often, the incentives facing the businesses involved in these complicated relationships do not push towards the type of coordination and supervision warranted by the arrangements.

According to EU OSHA, "changes in the nature of employment contracts and working time arrangements are associated with potentially damaging effects on worker health and wellbeing. Workers engaged in insecure and flexible contracts with unpredictable hours and volumes of work are more likely to suffer occupational injuries." (EU OSHA European Risk Observatory 2014) Workers employed in these new relationships face greater job insecurity, and in some cases lower wages as well. In some countries, social benefits that are linked to employment are lessened or eliminated for those workers involved. As a result, the changing structure of work also has important implications for overall wellbeing, including the psychosocial health, of workers.

[A recent trade union analysis of the health, safety and social risk factors in the food service industries in the EU and the US also reveals the franchising business model as \[a\] "leading example of the growing trend of 'fissured employment,' in which large transnational corporations outsource work to small employers or independent contractors and avoid responsibility for workplace standards." This analysis reviews both the clear health and safety risks, including non-compliance with mandatory standards, as well as violations of standards for](#)

wages, social benefits and trade union security. However, it also documents industry's corporate management systems which effectively require the franchise employers to limit stable employment arrangements, to reduce staffing, to impose excessive workloads, and to deny the vast majority of employees the regular schedules and a minimum hours that would allow workers to earn a living wage. Under such conditions, it is unrealistic to expect either contingent workers or their franchise employers to assure even physically safe working conditions, much less a psychosocial environment that can support worker health.

This analysis also reveals that the same industry can indeed support a healthful business model within the EU. In Denmark, the industry's dominant corporate employer accepts responsibility for working conditions at franchisees, providing a base wage of €15.43 (including overtime premium pay), retirement pay, sick pay, and both guaranteed hours and 4-weeks advance scheduling notice. Similar conditions are also available in other OECD countries as well. Under such conditions, employer policies and practices are capable of promoting worker health and safety, including favorable psychosocial conditions.

In many cases, changes in employment structures and definitions impact the work of government agencies. Non-standard forms of employment create greater complexity in establishing employer responsibility for agencies already facing resource limitations. These agencies therefore face greater challenges enforcing labor regulations, working with key stakeholders, improving compliance with laws and regulations, as well as collecting employment-related taxes.

The objective of the Topic meeting will be

- to discuss the nature and scope of the issues raised by the changing structure of work;
- to compare the activities of governments, employers and unions in addressing these issues; and
- to formulate new approaches to protecting the health, safety and well-being of workers faced with the changing nature of work in the 21<sup>st</sup> century.

Selected Sources/Resources:

EU-OSHA European Risk Observatory: 2014 [Scoping study for a foresight on new and emerging occupational safety and health \(OSH\) risks and challenges](#)

EU-OSHA: 2002 [New forms of contractual relationships and the implications for occupational safety and health](#) 2002

[EFFAT \(European Federation of Trade Unions in the Food, Agricultural and Tourism sectors\), McJobs: Low Wages and Low Standards around the world, May, 2015. Accessible at: \[http://www.effat.org/sites/default/files/news/13957/mcjobs\\\_report.pdf\]\(http://www.effat.org/sites/default/files/news/13957/mcjobs\_report.pdf\)](#)

**Comment [EF1]:** McJobs report, ref #43: <http://www.independent.co.uk/news/uk/home-news/they-wont-be-lovin-it-mcdonalds-admits-90-of-employees-are-on-zero-hours-contracts-without-guaranteed-work-or-a-stable-income-8747986.html>

**Comment [EF2]:** See "McJobs," ref 95

International Labour Organization 2015 [World Employment Social Outlook: The Changing Nature of Jobs](#) 2015

[US Government Accountability Office: "Contingent Workforce: Size, Characteristics, Earnings and Benefits," Report to Sens. Patty Murray and Kirsten Gillenbrand, April 20, 2015.](#)

US OSHA: [Adding inequality to injury: The costs of failing to protect workers on the job](#) 2015

Weil, D: *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It.* 2014

US-EU CONFERENCE 2015

Proposed Topic Area:

The Changing Structure of Work and its

Implications for Worker Health, Safety and Wellbeing

The structure of work, particularly in terms of the relationship between employer and employee, is undergoing dramatic changes in the 21<sup>st</sup> century, and these changes have important implications for the protection of workers from workplace safety and health hazards.

The recent International Labour Organization report “World Employment Social Outlook: The Changing Nature of Jobs” (2015) concludes that there “a shift away from the standard employment model, in which workers earn wages and salaries in a dependent employment relationship vis-à-vis their employers, have stable jobs and work full time. In advanced economies, the standard employment model is less and less dominant.”

In the US, a recent review by the US Government Accountability Office (GAO) evaluated the latest available sources, and yielded several key conclusions regarding both “core contingent workers” (i.e., “temporary” workers hired both directly and through staffing agencies, on-call workers and “contract company” workers) as well as a more broadly defined group of “contingent workers” (i.e., including regular part-time workers, as well as allegedly “independent contractors” and the self-employed):

- “... compared to standard full-time workers, core contingent workers appeared to be younger and more often Hispanic, and were more likely to have no high school degree and have low family income.”
- “...2010 GSS data [show] that core contingent workers were more than three times as likely as standard full-time workers to report being laid off in the previous year.
- “...contingent workers are more likely to report living in poverty and receiving public assistance than standard workers.
- Based on our analysis of the [most recent] 2010 ... data available, we estimated that 40.4 percent of the employed labor force was in alternative work arrangements ...” with 7.9% as “core contingent workers” and another 16.2% in standard part-time arrangements.

Several types of changes are occurring simultaneously. Firms in many sectors, particularly in the manufacturing, use specialized contractors and subcontractors to perform work that firm’s own employees once performed. Recent years have also seen an increase in the misclassification of wage employees as independent contractors, a practice sometimes called bogus self-employment, especially in the construction and domestic services sector (EU-OSHA European Risk Observatory 2014). Studies in the United States have estimated that one third or more of the construction workers in some states are misclassified as independent contractors (OSHA 2015). Finally, the growth of the “shared” or “gig” economy, in which individuals bid for individuals

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ask or bid for specific jobs is moving a growing number of workers out of traditional employer-employee relationships.

These changes have important implications for occupational safety and health, and, if not managed correctly, will result in increased risk of injury and illness among workers governed by these new relationships, as well as the other workers in the same locations. The increased presence of multiple levels of contractors at any workplace requires organized, concerted communications between all the employers and workers at the site. Failure to do this often results in the exposure of workers to preventable hazards. Similarly, temporary workers who are not trained in the required safe work practices and not informed of the hazards in the location to which they have been assigned are at increased risk of injury.

According to EU OSHA, “changes in the nature of employment contracts and working time arrangements are associated with potentially damaging effects on worker health and wellbeing. Workers engaged in insecure and flexible contracts with unpredictable hours and volumes of work are more likely to suffer occupational injuries.” (EU OSHA European Risk Observatory 2014) Workers employed in these new relationships face greater job insecurity, and in some cases lower wages as well. In some countries, social benefits that are linked to employment are lessened or eliminated for those workers involved. As a result, the changing structure of work also has important implications for overall wellbeing, including the psychosocial health, of workers.

A recent trade union analysis of the health, safety and social risk factors in the food service industries in the EU and the US also reveals the franchising business model as [a] “leading example of the growing trend of ‘fissured employment,’ in which large transnational corporations outsource work to small employers or independent contractors and avoid responsibility for workplace standards.” This analysis reviews both the clear health and safety risks, including non-compliance with mandatory standards, as well as violations of standards for wages, social benefits and trade union security. However, it also documents industry’s corporate management systems which effectively require the franchise employers to limit stable employment arrangements, to reduce staffing, to impose excessive workloads, and to deny the vast majority of employees the regular schedules and a minimum hours that would allow workers to earn a living wage. Under such conditions, it is unrealistic to expect either contingent workers or their franchise employers to assure even physically safe working conditions, much less a psychosocial environment that can support worker health.

This analysis also reveals that the same industry can indeed support a healthful business model within the EU. In Denmark, the industry’s dominant corporate employer accepts responsibility for working conditions at franchisees, providing a base wage of €15.43 (including overtime premium pay), retirement pay, sick pay, and both guaranteed hours and 4-weeks advance scheduling notice. Similar conditions are also available in other OECD countries as well. Under

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Comment [EF2]: See “McJobs,” ref 95

such conditions, employer policies and practices are capable of promoting worker health and safety, including favorable psychosocial conditions.

In many cases, changes in employment structures and definitions impact the work of government agencies. These agencies face greater challenges enforcing labor regulations, as well as collecting employment-related taxes.

The objective of the Topic meeting will be

- to discuss the nature and scope of the issues raised by the changing structure of work;
- to compare the activities of governments, employers and unions in addressing these issues; and
- to formulate new approaches to protecting the health, safety and well-being of workers faced with the changing nature of work in the 21<sup>st</sup> century.

Selected Sources/Resources:

EU-OSHA European Risk Observatory: 2014 [Scoping study for a foresight on new and emerging occupational safety and health \(OSH\) risks and challenges](#)

EU-OSHA: 2002 [New forms of contractual relationships and the implications for occupational safety and health](#) 2002

[EFFAT \(European Federation of Trade Unions in the Food, Agricultural and Tourism sectors\), McJobs: Low Wages and Low Standards around the world. May, 2015.](#)

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## Labor group seeks to hold fast food chains responsible for worker safety

Wall Street Journal

Updated March 16, 2015 5:58 p.m. ET

By Alexandra Berzon and Annie Gasparro

McDonald's says it is reviewing allegations filed by Fast Food Forward

A union-backed group is calling for McDonald's Corp. to be held accountable under federal rules for worker-safety violations at its franchised restaurants, expanding a continuing effort to reduce historical protections for corporations operating under franchise arrangements.

The group, Fast Food Forward, backed by the Service Employees International Union, announced on Monday a series of complaints it has filed to the Occupational Safety and Health Administration alleging violations by 19 McDonald's franchisees and nine McDonald's Corp.-owned stores.

The group has prepared a detailed legal argument that it hopes will persuade OSHA to cite McDonald's Corp. for violations that the agency might find at independently owned restaurants, according to a lawyer for the group. It aims to present the argument to OSHA in the next few weeks.

In a statement Monday, McDonald's said the company and its franchisees are committed to providing safe working conditions, and it will review the allegations.

A spokeswoman for OSHA said the agency couldn't comment on an ongoing investigation. "Until we perform the investigations, we can't know whether there are any violations, much less whether it's appropriate to cite the franchisor as well as the franchisee," the OSHA spokeswoman said.

Mary Vogel, executive director of the National Council for Occupational Safety and Health, said on a conference call Monday that the group's theory is similar to one that OSHA uses to hold multiple employers responsible in temp-worker situations. The council, which advocates for workplace safety, has helped to advise the fast-food workers' campaign.

Ms. Vogel said OSHA "looks at which company has some control over the working conditions, and certainly McDonald's does **in many of these franchises.**"

Such an action, however, would still likely be unprecedented, as experts say corporate entities haven't been cited by OSHA for franchisee violations in the past.

The attempt to shift more responsibility for workplace safety to the corporate level is part of a larger effort by Fast Food Forward, which has been helping organize fast-food workers' protests for higher wages and better workplace conditions. That effort has so far mainly included a series of claims to the National Labor Relations Board that have sought to hold McDonald's Corp. and other companies jointly accountable for labor violations at their franchisees.

The NLRB's general counsel last year made a legal determination that McDonald's Corp. could indeed be treated as a so-called "joint employer" in certain labor complaints, and in December issued complaints that named the corporation along with its franchisees, alleging they violated rights of restaurant workers who participated in activities to improve wages and working conditions.

The NLRB general counsel's office said its investigation found that McDonald's, through its franchise relationship and its use of resources and technology, "engages in sufficient control over its franchisees' operations, beyond protection of the brand, to make it a putative joint employer." If the finding holds up, it could fundamentally reshape the relationship between big retailers and their franchisees.

The International Franchise Association trade group says such a shift puts the industry at risk. The increased liability could lead corporations not to renew franchise agreements and run more stores themselves, hurting the business model that has traditionally allowed entrepreneurs to become small-business owners, it says.

The worker groups say that holding corporate brand-owners responsible is the only way to actually enforce labor laws since the larger companies have so much control over day-to-day decision-making, with brand standards extending not only to the physical appearance of the restaurant but also to specific decisions that affect employees.

The complaints announced on Monday are part of the union-backed group's attempts to win fast-food employees a \$15-an-hour minimum wage and the right to form a union without retribution. The group has helped to organize protests at McDonald's and other chains and to file a high-profile lawsuit for alleged wrongful termination at McDonald's restaurants in Virginia.

In a complaint to OSHA, one worker at a store in New Orleans said that he or she "got burned when cooking on the grill almost every shift," according to a statement reviewed by The Wall Street Journal.

"Grease pops up from the seasoning on the grill and it burns my hands and arms," the worker wrote. "We have no protective equipment to keep us from getting burned."

In written statements and on a conference call Monday, workers said they felt pressure to work faster, contributing to safety problems, and that stores lack protective equipment and safety training, and that first aid kits often lack basic items such as burn cream.

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