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Problems with Temporary and Subcontracted Work in California

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Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty:

Problems with Temporary and Subcontracted Work in California

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EXECUTIVE SUMMARY

The nature of employment is changing. Employees are increasingly seen as liabilities rather than assets, and so workers are kept at arm's length from the companies they ultimately serve. Middle-class long-term jobs are shifting to precarious, low-wage work. These contingent relationships include temporary and subcontracted workers, whose ranks have been growing over the past two decades.

In California almost one-quarter of a million people worked in the temporary help services industry in 2010; another 37,000 people worked for employee leasing firms totaling 282,000 workers in these two industries. This accounted for approximately 2.0 percent of all non-farm employment in California in 2010, approximately the same ratio as for the U.S. as whole. Employment services workers span a wide range of occupations, from professional white collar occupations like nursing, accounting, and computer programming, to blue collar work in transportation and material moving, housekeeping and landscaping, and manufacturing.

Temporary workers face lower wages, fewer benefits, and less job security. Temporary and contingent work by its very definition is less secure than full-time direct hire work. This lack of stability has implications for workers' wealth, health and well-being. Temporary workers are not compensated for their willingness to accept less reliable work; instead they tend to face lower wages than their non-temp counterparts. Median hourly wages were \$13.72 for temps and \$19.13 for non-temps in California in 2008-2010. Controlling for the type of occupation as well as personal characteristics of workers such as age, education, race,

sex, and English proficiency, temps make about 18 percent less per hour than their non-temp counterparts. The wage differential is even larger for blue-collar workers.

Temporary and subcontracted work presents two basic public policy problems:

1. Temporary and subcontracted arrangements **erode wages**. These lowered wages mean that contingent workers rely more on the state safety net. **Temps in California were twice as likely as non-temps to live in poverty, receive food stamps, and be on Medicaid.**
2. Temporary and subcontracted arrangements **undermine existing worker protections** first by allowing employers to avoid certain worker provisions, and second by making enforcement of the remaining protections difficult. **The ability of some employers to avoid paying into the system of employer-provided worker benefits disadvantages both high-road employers who hire directly, and contingent workers** who receive only limited worker protections. Even these more limited worker protections can be elusive for contingent workers who are particularly susceptible to employer retaliation.

Solutions to the problems of temporary and subcontracted work range from efforts to increase low wages generally to mandates to pay temps and non-temps the same wage. In addition, policies to combat retaliation and hold other actors in the supply chain accountable are promising ways to uphold existing worker protections in the face of workplace changes.

I. INTRODUCTION

The nature of employment is changing. Wages have been stagnant, risk has been shifted onto workers, and stability of employment has declined. Real wages for the median American male have been stagnant through the last four decades (Bernstein, 2005). Concurrent with this trend has been a change in the relationship between employers and employees. Jobs moved overseas as global markets opened up and technology enabled worldwide communication and coordination. At the same time, vertically integrated companies have given way to longer and longer chains of subcontracting (Weil, 2010). As part of this pattern of subcontracting, workers are increasingly seen as liabilities rather than assets, held at arm's length, dealt with as a procurement issue rather than human resources. The resulting contingent employment situations, including the focus of this report, subcontracting and employment services agencies, erect barriers between the powerful companies that set the terms of engagement within a supply chain and the workers themselves.

Examples of contingent work arrangements are well-documented in the U.S. and indeed worldwide. Consider recent examples from the hotel and warehousing industries. In the hotel industry, the entire housekeeping staff at three Boston Hyatt hotels was replaced by 'temporary' workers. In 2009, 98 housekeepers earning \$14 to \$16 per hour were fired en masse and workers earning \$8 per hour at Hospitality Staffing Solutions, a Georgia-based staffing firm, were brought in to replace them (Greenhouse, 2009). More recently in California, a former housekeeper at a Hilton in Southern California came before the California Assembly Labor Committee to describe a two-tiered system of employment, with some workers hired through a small employment services agency without being told that the agency was their employer, not the Hilton. Though she worked alongside regular employees and was hired, managed, and had paychecks distributed by hotel managers, her

paychecks came from a temporary employment agency and did not have all the proper state deductions (Flores, 2012). Complex chains of subcontracting can complicate the story: a "Hilton" hotel may be owned by a group of investors, run by a major hospitality operator such as HEI which buys the license to use the Hilton name, and use a company like Pro-Clean Services to provide housekeeping (Lewis, 2012; heihotels.com). At a hotel with a Hilton sign, there may be no employees of Hilton.

In the warehousing industry, long chains of subcontracting are also common. Wal-Mart and other large retailers contract with third party-logistics firms, who in turn contract with warehousing services firms, who in turn contract with temporary staffing agencies. In some cases workers from multiple staffing agencies work side-by-side, or workers from staffing agencies and direct-hire workers are indistinguishable (Jamieson, 2011). The work is physically demanding, fast-paced, and rife with opportunities for injury. Workers are constantly reminded that they are quickly replaceable and subtly or overtly discouraged from voicing concerns about health and safety or wages (McClelland, 2012). Brand name retailers like Wal-Mart and Amazon reap the eventual profits of increasingly efficient logistics and supply chains, but are often many levels removed from the workers whose employment conditions are too often below the minimum threshold required by existing wage and hour and health and safety laws.

Worker protections and benefits largely rely on the existence of an employer-employee relationship. Some contingent workers—independent contractors and the self-employed—have no employer and therefore receive very few protections. For subcontracted and staffing agency workers, firms often work hard to isolate the employment relationship to the subcontractor or staffing agency only. Even if warehouse workers handle goods

exclusively for one retailer, or a housekeeper cleans rooms in only one brand of hotel, technically these workers can be employees of the subcontractor or temp agency alone, and have no legally recognized employment relationship with the larger brand-name company.

The hotel and warehousing examples above represent just two of the more recent industries in which

the problems of contingent employment relationships have emerged. This report will focus on what is known about subcontracted and temporary workers in California, outline the public policy issues that these new patterns of work present, and discuss alternatives for addressing these problems.

II. CONTINGENT WORKERS IN CALIFORNIA

Who are California's contingent workers?

What is a contingent worker? There are different definitions of contingent work, but they generally refer to work that is temporary, unstable, or precarious (GAO, 2006; Kalleberg, 2009; Bureau of Labor Statistics, 2005).¹ This often includes **temps** whose labor is provided through temporary staffing agencies, professional employer organizations (PEOs),² or other labor market intermediaries; it can also include work done by **contract workers** who are employed by one company that contracts out their services to a 'user-employer'; other workers sometimes included in this category are independent contractors, on-call workers, direct-hire temps, day laborers, self-employed and part-time workers. This analysis focuses on temps and contract workers. This subset of contingent workers is not only the group for which data are available but also the group most likely to be unhappy with their current employment arrangement. Surveys of contingent workers have found that the majority of temps would prefer a different type of employment arrangement (GAO, 2006). In contrast, a majority

of part-time workers would prefer to remain part-time, and less than 10 percent of self-employed and independent contractors would like to work for someone else (Houseman, 2001; GAO, 2006).

How many contingent workers are there? In the United States about 30 percent of the workforce could be classified as "contingent workers" including roughly 13 percent part time workers, 7 percent independent contractors, 5 percent self-employed workers, and 5 percent a combination of agency temps, direct-hire temps, on-call, and contract company workers (GAO, 2006). The U.S. Census Bureau conducted the last national survey on contingent work in 2005, making more recent numbers and trends difficult to come by both nationally and statewide. Perhaps the subset of contingent workers that is easiest to count are workers employed through staffing agencies. The employment services industry is a recognized industry classification under the North American Industry Classification System (NAICS) and used in data collection at the firm level; it is also reported in major surveys of residents like the Current Population Survey (CPS)

¹ For example three different broad definitions are: "Work arrangements that are not long-term, year-round, full-time employment with a single employer"—GAO; Jobs of those "who do not expect their jobs to last or who reported that their jobs are temporary"—CPS; Work that is "uncertain, unpredictable, and risky from the point of view of the worker"—Kalleberg.

² Professional Employer Organizations generally perform payroll functions, benefits administration, and other HR functions. Workers are then technically employees of the PEO but do their work for and at another company. This is sometimes referred to as employee leasing.

Data Spotlight: Industry Classifications

The Employment Services Industry (NAICS code 56-13) consists of:

- Temporary Help Services (56-132)
- Professional Employer Organizations (56-133)
- Employment Placement Agencies and Executive Search Services (56-131)

The degree of discrepancy between industry classifications and a layperson's sense of a "staffing agency" remains unclear, but preliminary analysis suggests it could be significant, at least for firm level data. Hospitality Staffing Solutions, the firm that provided replacement "temp" housekeepers to hotels in Boston in 2009 had a primary industry classification as an "HR consulting service" (54-1612), and only if its secondary classification as a PEO were used would it be included as part of the Employment Services Industry. Similarly, Rogers-Premier Unloading Services, a defendant in a recent action brought by workers to recover unpaid wages, is classified as "All Other Professional, Scientific / Technical Services" (54-1690), and not part of the Employment Services Industry (Infogroup, 2012). Further research is needed on how to distinguish and combine classifications to get a more complete picture of staffing agency employment growth over the past few decades.

and American Community Survey (ACS). While these numbers are easier to track, they do not include contract workers or employees of some companies that are functionally indistinguishable from (or would be commonly understood as) "staffing agencies."

In the U.S. 1 to 2 percent of the workforce (around 2 million people) work for temp agencies

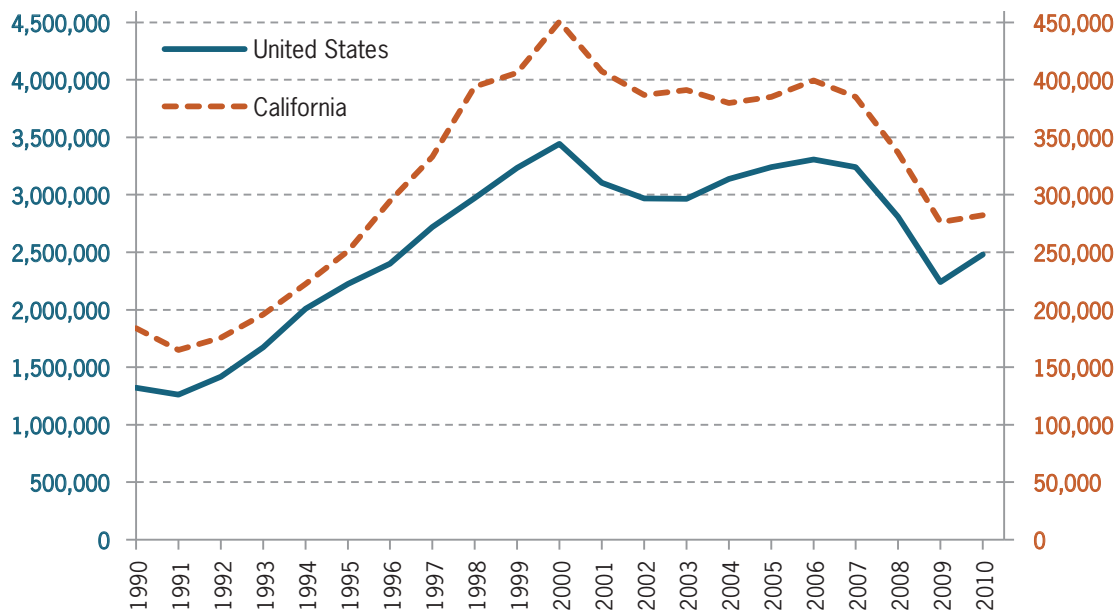
In the U.S., those employed by temporary staffing agencies accounted for 3 percent of contingent workers, about 0.9 percent of the entire workforce, according to the GAO's analysis of the 2005 Current Population Survey. Data from the Quarterly Census of Employment and Wages indicates that those employed by temporary help agencies accounted for 1.6 percent of the workforce—just over 2 million people—in 2010 (Bureau of Labor Statistics, 2012). Given the way industries are classified, this count likely misses a number of workers that could be considered staffing agency employees (see Data Spotlight above). However, this number also includes people who work directly for a temp

agency, as well as those who do work for client companies. The American Staffing Association estimates exclude those who work directly for staffing agencies and indicate that the number of temporary and contract workers provided by staffing agencies was 2.58 million in 2010, or about 2 percent of the workforce (Berchem, 2011).

In California almost one-quarter of a million people worked in the temporary help services industry in 2010; another 37,000 people worked for PEOs resulting in 282,000 workers in these two industries (see Figure 1, page 8). This accounted for approximately 2.0 percent of all non-farm employment in California in 2010, approximately the same ratio as for the U.S. as whole (California Employment Development Department, 2012; Bureau of Labor Statistics, 2012).

How is the temporary workforce changing? In the 1990s there was a sharp increase in the share of the U.S. population working for employment service agencies. At the same time that companies began outsourcing work globally, some also began outsourcing their HR departments or relying on

Figure 1. Total employment for temporary and leased employees followed similar patterns in the U.S. and California, 1990–2010



Source: Quarterly Census of Employment and Wages, annual average employment in Temporary Help Services Employment (NAICS 56132) and Professional Employer Organizations / Employee Leasing (NAICS 56133)

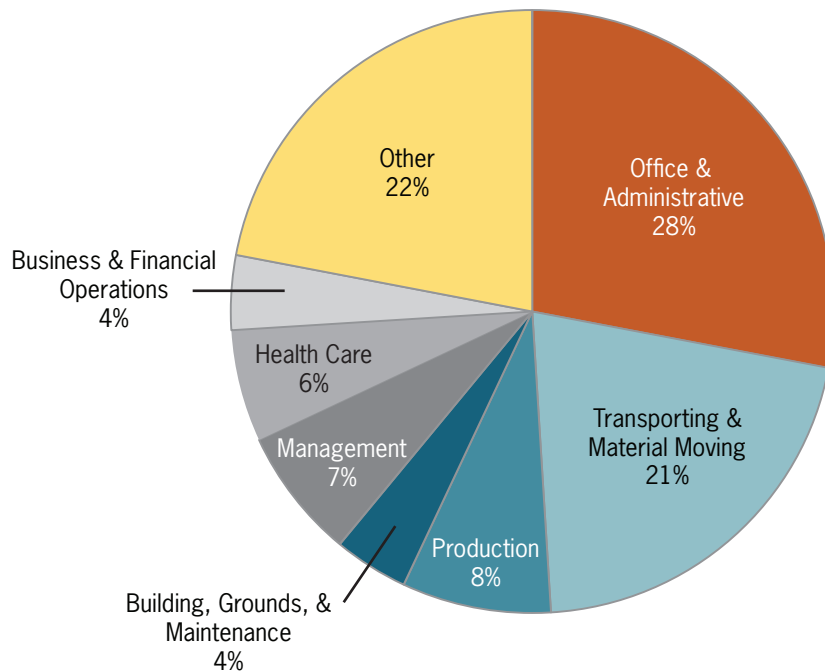
staffing agencies more heavily. Though still called temporary staffing agencies, some of the work ceased to be ‘temporary.’ Some employers were outsourcing or subcontracting whole segments of their workforce, using ‘permatemps’ in replace of permanent workers. The tenure of staffing agency workers increased, from an average of about ten weeks at one employer in the 1990s to closer to 12 to 14 weeks on average in the last few years, according to industry figures (Berchem, 2011). In California, 53 percent of temps reported usually working 40 hours per week and 41 percent of temporary workers had been employed for 50–52 weeks in the previous year, though whether that employment was at the same worksite is not evident (ACS, 2008–2010).

Jobs in employment services have been recovering faster than employment in the rest of the economy, but employment remains below peak levels of 2000

and 2006. Between 2009 and 2010 the total employment measured by the Quarterly Census of Employment and Wages fell by 787,000, but employment in the temporary help services industry saw an increase of 279,000 (Bureau of Labor Statistics, 2012). Similarly in California, net job loss was 215,000 but temporary help services employment increased by 23,000 (California Employment Development Department, 2012). These increases do not, however, offset the number of jobs lost in the temporary help services industry during and even prior to the great recession.

What types of work do they do? The term “temporary worker” may still conjure images of receptionists, data entry clerks, or administrative assistants. These occupations continue to be part of the temporary services industry, but both temporary services and contingent work more broadly have expanded to many other professions, including

Figure 2. Temps in California work in a variety of occupations, 2008–2010



Source: Author's calculations from ACS 2008–2010

both relatively low-skill jobs and highly-skilled professional positions. In California, as in the rest of the country, employment services workers span a wide range of occupations, from professional white collar occupations like nursing, accounting, and computer programming, to blue collar warehouse work in transportation and material

moving, housekeeping and landscaping, and manufacturing (see Figure 2; for a more detailed list of common occupations in the temp industry, see Appendix A.)

Who are temporary workers? Temporary workers are as diverse as California, but are on the whole slightly younger, more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or GED than the average non-temp worker (see Table 1).

Table 1. Demographics of employment services workers, 2008–2010

Demographics	Non-Temps	Temps
Median age	39	37
Female	46.3%	54.2%
Non-white and/or Hispanic	55.6%	65.0%
No high school diploma or GED	15.7%	21.1%

Source: Author's calculations from ACS 2008–2010

Temporary workers face lower wages, fewer benefits, and less job security

Work is less secure: Temporary and contingent work by its very definition is less secure and stable than full-time direct hire work. Such insecurity is well-documented to have negative physical and psychological effects (Kalleberg, 2009; Virtanen, et al., 2005). Job security matters not only emotionally

but also financially for both income and asset accumulation. Given the lack of job security, it is not surprising that temp workers are less likely to buy a home, usually a family's most important asset. In fact, suppressed or delayed homeownership is one of the primary mechanisms by which the financial effects of temping can last well beyond a spell of temporary work (McGrath & Keister, 2008).

Work is more dangerous: Contingent workers are more susceptible to workplace illness and injury for a variety of reasons. Temporary workers certainly engage in occupations with high levels of risk: production, transportation and material moving, and health care are particularly dangerous occupations with a sizable number of temps (California Department of Industrial Relations, 2010). In addition to occupational factors, temporary workers may get less safety training and protective gear, often because staffing agencies and user-employers are unclear about which entity is responsible for providing them (Cummings & Kreiss, 2008).

Workers earn less: Temporary workers are not compensated for their willingness to accept more dangerous and less reliable work; instead they tend to face lower wages than their non-temp counterparts. The Census Bureau's annual American Community Survey allows analysis within California of those who report being currently employed by the "employment services industry" which is primarily temporary help agencies (along with professional employer organizations and executive search firms). Looking at data from 2008–2010 for people who worked in the last 12 months reveals that the wages of employment services workers (referred to as "temps" for convenience) are consistently lower: median hourly wages were \$13.72 for temps and \$19.13

for non-temps. Controlling for personal characteristics of workers including age, education, occupation, race, sex, and English proficiency, the differential remains and is statistically significant. On the whole, temps make about 18 percent less than their non-temp counterparts.³

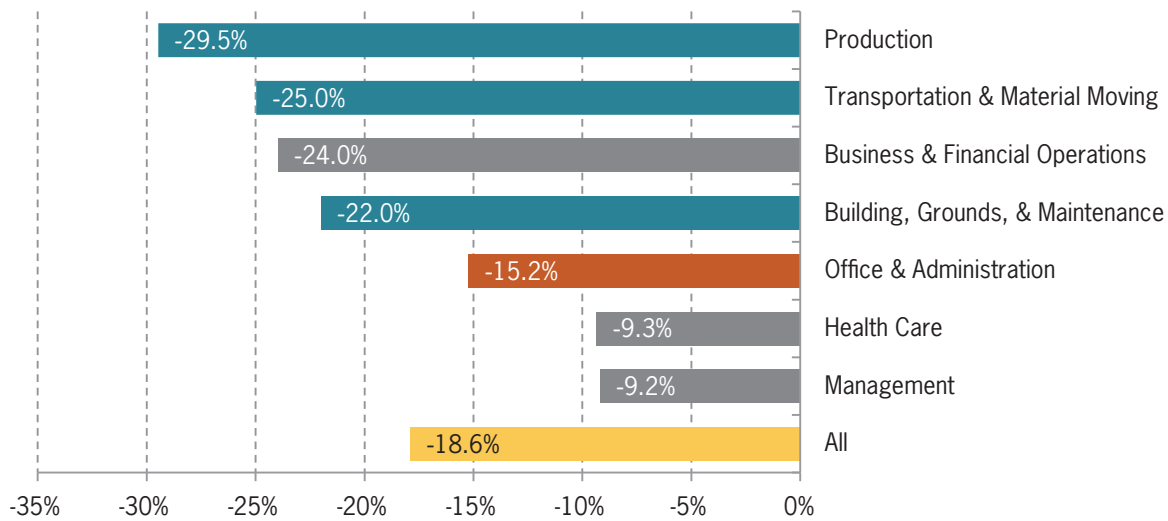
This pattern of lower wages for temporary workers appears to be even more severe within certain occupations (see Figure 3, page 11). Blue collar workers in production and transportation and material moving occupations tended to earn 20–30 percent less if they were a temp, controlling for other observable personal characteristics. Those in office and administrative positions also tended to have lower wages, though the differential was closer to 15 percent. For some highly skilled professions such as nursing the wage differential was smaller, on the order of 10 percent. These results largely corroborate findings of a study from the 1990s that found a 20–30 percent lower wage for those employed by temp agencies in Silicon Valley and Milwaukee (Benner, Leete, & Pastor, 2007).

Workers are less likely to get benefits: A similar pattern emerges for the likelihood of having health insurance from a current, former, or family member's employer or union. Controlling for the various categories of occupation and personal characteristics, the odds of having employment-based health insurance are lower if the worker is in the employment services industry: temps' odds of having health insurance through an employer or union are about one-third the odds of non-temps (ACS, 2008–2010).⁴

³ For a more detailed discussion of the methodology and results, see Appendix A. ACS Data on Employment Services Workers.

⁴ For a more detailed discussion of the methodology and results, see Appendix A. ACS Data on Employment Services Workers.

Figure 3. Blue collar temp workers face the largest wage differentials from temping, 2008–2010



Source: Author's calculations from ACS 2008–2010, controlling for occupation, age, sex, education, English proficiency, race and ethnicity. For more detail see Appendix A.

III. PROBLEMS WITH CONTINGENT WORK

Temporary work is often less desirable than a direct-hire job from a worker's perspective, but how can we categorize the problems from a public policy perspective? Temporary and subcontracted work presents two basic problems:

- Temporary and subcontracted arrangements erode wages. These lowered wages mean that contingent workers rely more on the state safety net than their direct-hire counterparts.
- Temporary and subcontracted arrangements undermine existing worker protections by allowing employers to avoid certain worker provisions and making enforcement of the protections that do remain difficult.

Each of these problems is addressed in turn below.

Temp staffing lowers wages, increasing state safety net costs

Temporary and subcontracted employment relationships create downward pressure on wages. Evidence that these wage differentials are not due to observable differences in worker skill is provided above: temp workers with the same level of education, occupation, age, sex, race and English proficiency were paid an average of 18 percent less than non-temps. Similarly, Dube and Kaplan find that outsourced janitors and security guards were paid less when they worked for outsourced janitorial or security only firms than when they worked as a janitor or security guard directly hired in a different industry (2008).

What are the consequences of lower wages? When firms in competitive industries are able to get the same work for lower wages, they may pass these

savings on to customers in the form of cheaper goods and services, for example free shipping via Amazon or cheaper groceries at Wal-Mart. However, these lower wages may affect those on the cusp of poverty, and the benefits may not be passed on to consumers but instead translated into higher company profits. To the extent that happens, this trend adds to the increasing concentration of wealth and the impoverishment of workers.

Downward wage pressure can push temp workers to rely on state safety net programs to make up for their lower wages. When this happens without an increase in funds to provide these safety net services, it exacerbates state budget problems. A study of warehouse workers in Illinois found that one-quarter of warehouse workers interviewed relied on government support to make ends meet for their families; almost all of those who relied on government support were temp workers (Warehouse Workers for Justice, 2010). As employers in California replace better-paid direct hires with lower-paid temporary workers, more workers are unable to make ends meet and must rely on state safety net programs for support. According to analysis of ACS data from 2008–2010, temps in California were twice as likely as non-temps to live in poverty, receive food stamps (Cal Fresh in California), and be on Medicaid (see Table 2). The majority (62 percent) have no health insurance through their employer while 39 percent have no health insurance at all.

In “The Hidden Public Costs of Low-Wage Jobs in California,” Zabin, Dube, and Jacobs (2004) find that a substantial portion of expenditures for state safety net programs go to working families. By paying workers more, billions in state expenditures could be saved. In California the wage differential between temporary and direct-hire workers can be enough to push workers and their families to rely on state social safety net programs. Within one category of relatively low-wage work, transportation

Table 2. Temp workers are twice as likely to be on government assistance, and less likely to have health insurance, 2008–2010

	Non-Temps	Temps
Government Assistance		
In poverty	8.9%	18.8%
Food stamp recipient	6.0%	14.5%
Has any welfare income	1.1%	4.2%
Health Insurance		
Without any health insurance	20.5%	39.1%
With public health insurance	10.2%	17.7%
With Medicaid	6.2%	15.1%

Source: Author’s calculations from ACS 2008–2010

and material moving occupations,⁵ approximately 30 percent of temp workers have family incomes that put them below the federal poverty line, compared to 15 percent of non-temps (ACS, 2008–2010). The difference between temp and non-temp wages corresponds to approximately the difference between \$12 and \$15 per hour. At those wages, an individual working 40 hours per week for 50 weeks would earn \$24,000 per year as a temp or \$30,000 per year as a direct-hire; a two-earner household would go from \$48,000 to \$60,000. Even though \$24,000 is above the federal poverty guidelines for a family of up to four, families in California earning these wages face serious difficulties in making ends meet. Workers whose pay goes from \$15 to \$12 per hour could, as a result, newly qualify for programs like Medi-Cal, free and reduced price lunch, and the Women, Infants and Children (WIC) supplemental nutrition program (see Table 3, page 13). This represents only a subset of the state and federally funded programs for which low-income working families can qualify.

⁵ Occupation codes beginning with “96” including two of the most common temp occupations: 9640 “Packers and Packagers, Hand” and 9620 “Laborers and Freight, Stock, and Material Movers, Hand.”

Table 3. A change from \$15 to \$12 per hour can make a family newly eligible for a variety of programs

Program and eligibility threshold (percent Federal Poverty Line)

Number of people in family	Federal Poverty Guidelines, 2010	Medi-Cal				Healthy Families	CalFresh	WIC	School Lunch
		Parents	Ages 0–1	Ages 1–5	Ages 6–17				
		<106% FPL	<200% FPL	<133% FPL	<100% FPL				
2	\$14,570	\$15,444	\$29,140	\$19,378	\$14,570	\$36,425	\$18,941	\$26,955	\$26,955
3	\$18,310	\$19,409	\$36,620	\$24,352	\$18,310	\$45,775	\$23,803	\$33,874	\$33,874
4	\$22,050	\$23,373	\$44,100	\$29,327	\$22,050	\$55,125	\$28,665	\$40,793	\$40,793
5	\$25,790	\$27,337	\$51,580	\$34,301	\$25,790	\$64,475	\$33,527	\$47,712	\$47,712

 Indicates that a single-earner family working full-time would newly qualify for this program if her wage dropped from \$15 to \$12 per hour, or \$30,000 to \$24,000 per year.

 Indicates that a dual-earner family working full-time would newly qualify for this program if their wages dropped from \$15 to \$12 per hour, or \$60,000 to \$48,000 per year.

Source: Department of Health & Human Services, 2010; Kaiser Family Foundation, 2012; California Department of Social Services; California Department of Public Health, 2011; Food and Nutrition Service, USDA, 2011

Similarly, the wage differences between temps and non-temps in many cases are right around the threshold of self-sufficiency. The Insight Center for Economic and Community Development calculates that the self-sufficiency wage for a family of two working adults and one preschooler in San Bernardino County is almost \$13 per hour, which translates to a household income of just over \$54,000 per year (Insight Center, 2011). The California Budget Project’s estimate of self-sufficiency wage for single adult is \$14.43 in San Bernardino County (2010). This assumes 40 hours worked per week and a steady stream of work, conditions that are less likely to be true for temporary workers.⁶ The difference between temp and non-temp wages is enough to tip the scales to self-sufficiency. An increase in lower-paid temporary work would mean not just lower wages for thousands of California

workers, but also significant increases in social safety net costs for the state.

Temps enable employers to benefit from avoidance and non-enforcement of worker protections

There are many reasons for using employment service agencies, some of which allow employers to avoid paying into the system of employer-provided worker benefits. To the extent that this drives employers’ decisions to subcontract out employment, it disadvantages both the high-road *employers* who continue to hire directly, and the contingent *workers* who receive only limited worker protections. Even these more limited worker protections can be elusive for contingent workers. Enforcement of wage and hour and health and safety protections for temporary and sub-contracted

⁶ Temps in these professions reported working an average of 33 hours per week and only 30 percent reported working 50-52 weeks in the last year; non-temps averaged 36 hours per week and 63 percent worked 50-52 weeks in the last year (ACS, 2008-2010).

workers is especially difficult, primarily because of the threat of retaliation.

This section outlines first the business case for using temps, second how using temps allows employers to dodge certain costs of employment and leaves workers with fewer protections, and finally how the public enforcement process fails to uphold the worker protections that temp workers do have.

The business case for using temps

While most temp workers would prefer a different employment arrangement, temporary help agencies are nevertheless a common part of the human resources strategy within many organizations. A survey of employers in the mid-nineties indicated that more than half of establishments with 50+ people had used temporary help agency workers over the past five years (Houseman, 2001). The same survey also indicated that among those employers that used them, use of temps had intensified, i.e., there had been an increase in the ratio of temps to direct-hires.

Screening candidates is one potential use of temp agency arrangements that benefits both workers and employers. Workers are given a chance to showcase their abilities, and employers can choose to hire directly those workers with the best performance. However, only about 1 in 5 employers indicate that screening is an important factor in the use of temporary help agencies, and only 12 percent of employers respond that they “often” move temporary workers to a regular position. While an additional 30 percent indicated that they “occasionally or sometimes” move temporary workers to regular positions, this rationale is far from the driving force behind temporary employment (Houseman, 2001).

Working for a temp agency may allow workers to find some form of work more quickly than if they

searched on their own, and can also provide more flexibility. By acting as a labor market intermediary, staffing agencies reduce search costs for both firms and workers. Staffing agencies may also be better equipped to manage more flexible arrangements that can allow a worker greater variety in the number of hours or a more flexible span of time in which to complete the work.⁷

Among the most common reasons companies cite for using temps is the fluctuation in demand (Houseman, 2001). Industries with significant seasonal or cyclical fluctuations in demand use temporary workers to insulate a core set of workers from lay-offs (Peck & Theodore, 2007). Warehousing and retailing, like agriculture, face seasonal demand fluctuations. In preparation for the increase in retail sales near Christmas, warehouses may hire temps (or additional temps) to meet this demand (Bonacich & Wilson, 2008; McClelland, 2012). Temp arrangements offer the ability to quickly hire and fire workers. One particular legal change, the “implied contractual obligation to ongoing employment” increased the risk that employers would face legal challenges when letting their regular employees go. Economist David Autor argues that this legal change, which happened in different states at different times, contributed between 14–22 percent of the increase in temporary agency employment from 1979–1995 (Autor, 2000). This rationale, however, does not fully explain why a company would replace an entire department of regular workers with temps. It also does not explain the use of temps in some areas such as hotel housekeeping which are already set up flexibly to meet fluctuating demand (Lewis, 2012).

Employers can gain access to specialized skills that are not part of their core business by contracting out or using temps. This rationale may be particularly relevant for the use of highly skilled temps like accountants. Such outsourcing allows businesses to focus on their core business and take

⁷For instance, Carl Camden, CEO of Kelley Services, describes at-home call centers that allow stay-at-home caregivers to work at select hours that fit their schedule (McKinsey Quarterly, 2011).

advantage of the lower cost of coordination due to technology (Weil, 2010).

Finally, employers may also use subcontracting and temp agencies to pay workers less but avoid the possible negative effects on worker morale that such disparities within a workforce could create. Workers who discover that a colleague doing very similar work is paid much more might lose motivation and become less productive, or be more likely to leave (Weil, 2010). As Dube and Kaplan hypothesize, “low tolerance for wage inequality” within a corporation may lead to outsourcing certain low-wage occupations (2008).

Using temps to avoid contributing to employee protections and benefits

Temporary employment agencies and professional employer organizations also offer companies a way to avoid paying certain fees associated with the employer-employee relationship. To the extent that these costs are picked up by the temp agencies themselves and paid indirectly by the user-employers, there is no problem; there may even be a benefit in terms of efficiency if the temp agency, through economies of scale, can do things more efficiently (for example, administer HR benefits). However, some costs can be avoided altogether simply by moving workers to a different payroll, resulting in fewer worker protections and unfair advantages for employers who exploit these loopholes.

Unemployment insurance

Unemployment insurance provides a safety net for workers who experience periods without work. The system is funded through employer taxes and uses an experience rating system that aims to set up an incentive for stable employment. Temp agencies have higher turnover rates and are more likely to max out the payroll tax rate, thus eliminating this incentive for either the temp agency or the user-employer (Smith & Emsellem, 2002). Temp agencies also have a strong incentive to challenge their employees’ unemployment insurance claims. To

receive unemployment insurance, a worker must be willing to accept any offer of “suitable work.” Because temporary work is a very broad designation, a wider range of work may be considered “suitable” for those most recently employed through a temp agency. These factors can create substantial barriers to temp workers getting the same protection from unemployment insurance as direct-hire employees (Smith & Emsellem, 2002).

Workers’ compensation

Workers’ compensation provides resources for workers who are injured on the job and limits the liability that employers face. Employers are required to purchase workers’ compensation insurance, and premiums are based on the industry as well as an employer’s safety record. Many of the common occupations for temp workers are among the more dangerous and most liable to file workers’ compensation claims. Staffing agencies must also provide workers’ compensation insurance for their employees, which incentivizes them to check the safety conditions of the user-employers where they place workers (Bonacich & Wilson, 2008). However, agencies that do not have supervisors located on-site have little ability to monitor conditions at the worksite and workers may be confused about who is responsible for preventive safety measures or where to report problems. In addition, companies can use temp agencies to screen workers for whether they make claims, all of which discourages valid claims and reporting, lowering costs but endangering workers. Finally, the use of temps may save money if workplaces skimp on safety measures and training, or agencies misclassify employees’ work to less dangerous categories.

Benefits

Employers qualify for special tax treatment when they provide employees with benefits such as pensions, life insurance, and health insurance under the conditions of the Employee Retirement Income Security Act (ERISA). Employers who offer these benefits must cover all employees, with some exceptions. These exceptions often include contingent

workers: those who are employed by staffing agencies and are not technically employees of the user-employer are not covered, and those who have worked less than a certain number of years or hours can also be excluded (GAO, 2006). When asked, employers are not likely to state that savings on wage and benefit costs are an important part of the reason they use temps. However, having good benefits for regular employees is a significant predictor of whether an establishment uses temporary agency workers. Thus, the ability to differentiate benefits among workers may be an important reason for using temporary staffing agencies (Houseman, 2001).

Collective bargaining /unions

Temps may also be used to avoid collective bargaining agreements, or to head off attempts to unionize workers. If unions do exist at a worksite, temps may not be eligible. The National Labor Relations Board *Oakwood Home Care* ruling found that temporary workers have to get consent from both the temporary agency and user-employer to join unions of permanent employees. Organizing workers at non-unionized sites is challenging because worker retaliation is difficult to prove and because organization must happen by employer, not by worksite. Companies can insulate themselves from the threat of unionization by using multiple staffing agencies and making effective organizing more difficult. There are also cases of companies illegally replacing permanent workers with temporary workers with the intent to thwart organizing efforts. Such cases are hard to prove and this is likely to be a motivation for using temps far more often than can be proven in court.⁸

Family and medical leave

Under the California Family Rights Act (CFRA) workers with more than 1,250 hours in the last twelve months whose employers have 50 or more

people are eligible for family medical leave of up to 12 weeks due to their own illness, to care for a sick family member or for parental leave for a newborn. Temporary work allows employers to more easily exploit either of these limitations. Temporary employees may work few enough hours that they are not covered. The size limitation also provides an extra incentive to outsource workers to small staffing firms that can limit their size and avoid having to provide leave (Smith & Emsellem, 2002).

Government enforcement of existing labor laws fails temporary workers

Despite the loopholes that leave many contingent workers uncovered by certain employment laws, they are still covered by the most basic wage and hour and health and safety laws. These employment laws provide minimum standards for work in part to try to protect vulnerable workers.

Outsourcing and temporary agency use does not imply intent to violate wage and hour laws, but it nevertheless “facilitates such evasions by creating greater legal distance between the ultimate employer and the worker” (Martelle, 2009). The extent of both wage and hour and health and safety violations is hard to gauge as many go unreported, but evidence suggests it is a significant problem, particularly for low-wage workers. In highly competitive industries with low profit margins, low-skilled labor, and low barriers to entry and exit, the temptation to not pay overtime or pay below the minimum wage is significant. At the federal level, the latest data on wages *recovered* for low-wage industries includes \$1,945,163 in back wages in the temporary help services industry (Department of Labor, 2008). Given the Wage and Hour Division’s poor track record especially around this time period in both following up on complaints and collecting back wages,⁹ combined with

⁸ A motel near San Francisco that was unionized eliminated an entire bargaining unit by hiring temps instead; because of the existing union contract the union couldn’t picket. Only because there happened to be an email stating the intent to use temps to bust the union was the union able to successfully fight back (Lewis, 2012).

⁹ See, for example, the General Accountability Office’s report from 2009, “Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft.”

underreporting, the real cost of wage theft for temp workers may be many times that number.

To be effective, the system of public enforcement of these laws requires that

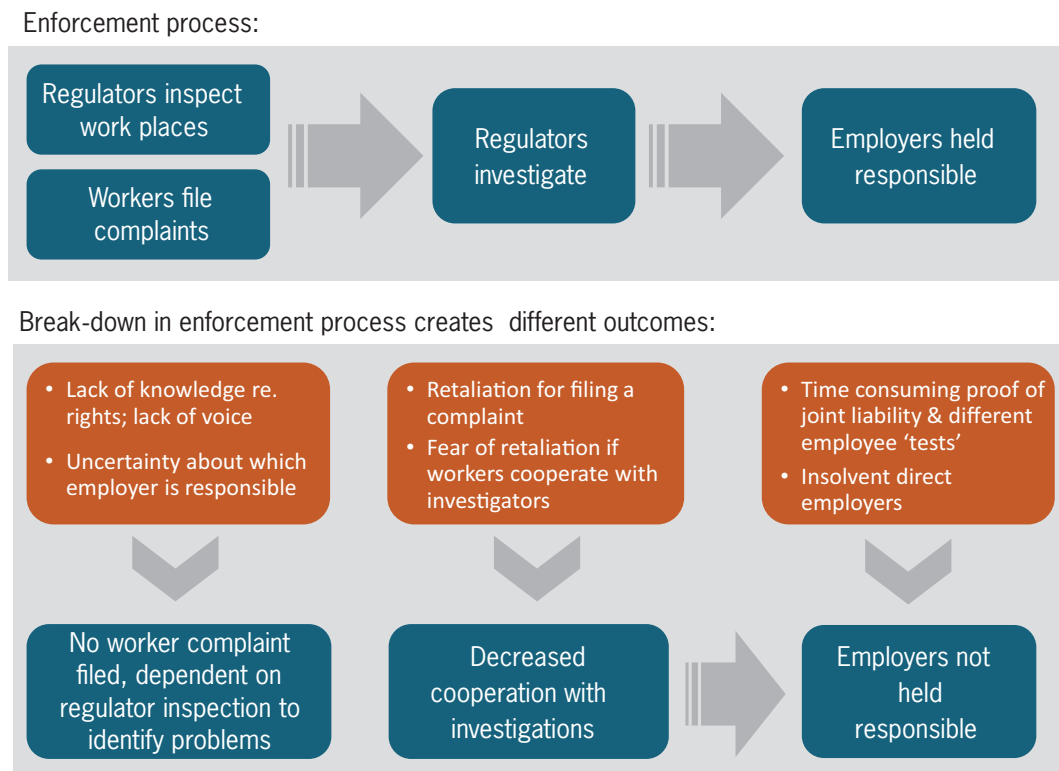
1. Workers are able to speak up and voice abuses;
2. Workers are not retaliated against for speaking up or cooperating with investigators; and
3. Employers can be held accountable for wrongdoing.

When this system works, it provides incentives for employers to follow the law and meet these minimum standards.

Experts disagree on the extent to which the current enforcement system provides those incentives and

on the degree to which current enforcement levels are sufficient to protect workers. At the federal level inadequate enforcement of wage and hour laws was the subject of Congressional scrutiny in 2009 (GAO, 2009). Analysts noted that the chance of enforcement action at an individual employer has decreased significantly over the past few decades with the number of inspectors declining even as the number of organizations to monitor has increased (Weil, 2009). Providing more resources for enforcement personnel or increasing the fines for employers could help, but the problems with enforcement for temporary workers are matters of systemic failing, not a matter of degree. There are structural reasons why this current system does not work for temporary and sub-contracted workers; see Figure 4 (Delp, 2012).

Figure 4. The enforcement process breakdowns for temporary workers



1. At the first step of the process, workers often lack clarity about who is responsible for working conditions, their technical employer of record or the user-employer. This makes it hard for workers to know how to report violations. In addition, low-skilled workers may lack the knowledge of their rights and may not voice concerns. Language barriers or low levels of literacy can exacerbate the issue (Lashuay & Harrison, 2006).
2. If workers do speak up, it is too easy for employers to retaliate by assigning workers no hours, requesting that the worker not be brought back, or getting rid of the staffing agency altogether. For the same reasons temporary workers are less likely to cooperate with regulators' spot-checks for fear of retaliation. Bonacich and Wilson report that staffing agencies can be used to check whether workers report injuries, wage and hour violations, or unsafe conditions (2008).
3. If violations are found, the burden of proof is on regulators to show that user-employers are in any way responsible. Proof of joint-employment is difficult and time-consuming for regulators. Findings against temporary agencies alone can be ineffectual and unfair if the user-employer had a substantial role to play in causing the violation. The system also fails to protect workers if the employment agency's contract with the user-employer is terminated, leaving workers without work, or if the agency goes out of business and cannot pay lost wages or damages assessed. Because entry and exit into the temporary help services industry is relatively easy, this strategy may be explicit on the part of smaller agencies—if they are caught in violations, they will simply go out of business rather than be liable. Agencies, especially smaller ones, may close or declare bankruptcy if serious violations are found, leaving workers with no way to collect back wages and penalties.

IV. ALTERNATIVES AND SOLUTIONS

Given this set of public policy problems, a wide range of solutions have been suggested. Legislation elsewhere at the local and national level as well as recent legal scholarship provide insight into potential strategies to pursue.

Wages

Attacking the problem of reduced wages for temp workers is particularly difficult. To some extent solutions that help low-wage workers in general are also helpful for the temporary workers of most concern—those with lowest wages. These solutions—everything from raising the minimum wage to extending family and medical leave to those who have worked fewer hours—each have their own set of employment and worker well-being tradeoffs that are important to consider. However, such analysis is beyond the scope of this report.

Equal pay for equal work: The UK's Agency Workers Regulations

A second approach has emerged in the UK where "Agency Workers Regulations" have been in effect since October 2011. These regulations require that temporary agency workers receive the same pay and basic working conditions as comparable permanent employees after a qualifying period of 12 weeks (UK Department for Business Innovation & Skills, 2011). Preliminary evidence suggests that this has not resulted in large change in the demand for temporary workers in the UK. An industry group reports from a survey of employers that 15 percent plan to reduce their use of temps, while 31 percent plan an increase (The Recruitment & Employment Confederation, 2012). Further research is needed to understand whether negative employment effects or positive wage effects dominate, as

well as what work-arounds employers find. Those primarily motivated by lower wages may switch to sub-contracting rather than using temporary staffing agencies. Understanding how companies in the UK continue to use temporary workers under the new regulations may be instructive about the business reasons for contingent and temp work generally. This policy change presents an interesting chance to understand how various industries react: a return to hiring directly, continuing to use temps, sub-contracting, off-shoring, or mechanizing.¹⁰

Enforcement and updating employment law

More enforcement

One obvious suggestion to protect workers is to spend more money on enforcement of existing laws. Enforcement efforts can successfully protect workers from retaliation, as evidenced by the recent efforts at warehouses in Southern California in November of 2011,¹¹ but such successes are more the exception than the rule. Though more money for enforcement could help, it would not solve the fundamental structural issues with the existing enforcement system: a lack of voice, ineffective protection from retaliation, and difficulty holding employers accountable. Companies could still get away with retaliation against sub-contractors whose workers report violations or temps who raise flags, even if there were more enforcers to respond to those complaints.

A rebuttable assumption of retaliation

Given that the problem of retaliation is a significant factor in the breakdown of the enforcement process, solutions that can help to overcome this problem are vital. One suggestion would be to

switch the burden of proof and presume retaliation if a temporary worker was let go within 90 days of voicing a concern. For example, San Francisco's 2006 law guaranteeing paid sick leave includes a rebuttable assumption of retaliation if a worker faces an "adverse action" (discipline, discharge, demotion, suspension) within 90 days of filing a complaint, alleging a violation, or cooperating with an investigation related to the law (San Francisco Administrative Code, 2006).

Joint liability

One set of strategies aims to expand liability beyond the employer of record and thus prevent violations, increase monitoring, and improve accountability. One straight-forward measure would be to legislate a presumption of joint-liability between user-employers and certain labor market intermediaries like temporary help agencies and professional employer organizations. A similar provision already applies to the garment industry in California, with some evidence of success in reducing wage and hour violations (Weil, 2010).

Currently courts employ a variety of multi-part tests depending on the law in question to determine whether a worker is jointly employed (Smith & Emsellem, 2002). As a result of the multiple standards and uncertainty about exactly how they will be applied in a particular case, companies spend time analyzing and managing their potential for joint-liability risk with their contingent workers. At a recent conference of Human Resources in Hospitality, an entire session was devoted to "managing the alternative hospitality workforce" (Hernaiz, Patrick, & Sherwyn, 2012). The thrust of the workshop was a recommendation to review and audit all staffing vendor's practices regardless of whether

¹⁰ For example Amazon, after receiving bad press for working conditions in its warehouses, signaled its efforts toward mechanization by purchasing a warehousing robotics company.

¹¹ An unannounced inspection of a warehouse in Southern California uncovered record-keeping violations, and shortly thereafter workers filed a class-action lawsuit. The sub-contracted firm, Rogers Premier, then announced its plans to end its contract with the user-employer Schneider Logistics, thereby terminating employment for its workers. The court found that such an action was retaliatory and that Schneider could end its contract with Rogers Premier but must keep the workers (Everardo Carrillo, et al. v. Schneider Logistics, Inc, et al., 2012).

workers were joint-employees, and discussing practices to avoid in order to protect a company from being found to be a joint employer.

Legislation imposing joint-liability would remove uncertainty about the responsibilities of user-employers to their temp workers. It would also impose costs on users of these staffing services by more forcefully suggesting what lawyers and HR executives are already recommending—audits and monitoring of staffing agencies. It would also level the playing field for employers who do not use temps: whether workers are temps or direct-hires, companies would be just as responsible for following employment laws and making sure workers get the protections they are meant to.

Move liability from the employer to the entity best able to deter violations

Recent scholarship proposes a different approach, focusing broadly on how to protect workers in these sectors rather than specifically on defining employment relationships. The proposal is to fundamentally change the nature of liability in employment law: rather than relying on tests to determine whether an entity is an employer and therefore responsible for the working conditions of a set of workers, those who are most able to prevent abuses would have the greatest responsibility to do so.

Sectors that use temporary or subcontracted low-wage workers tend to feature “large, concentrated business entities that have greater market power than the large set of smaller organizations with which they interact” (Weil, 2009). A cost effective way to increase compliance with wage and hour laws would be to locate liability at the points in the supply chain with the greatest ability to deter violations. Rather than assigning joint-liability, Brishen Rogers proposes a standard of “duty and reasonable care” that gives more weight and responsibility to those actors most able to prevent wage and hour violations (2010). Such a change would make enforcing wage and hour violations somewhat analogous to issues of negligence or product liability.

Major corporations have significant existing knowledge about and ability to monitor their supply chains. They already monitor the timing and quality within their supply chains. Given the considerable information costs to the government to investigate employment conditions, finding ways to use private enforcement is significantly more cost-effective. These powerful players within a sector can not only monitor compliance but also adjust or negotiate contracts in order to fix violations that arise.

A second legal scholar, Timothy Glynn, underscores that such a change in the basis for wage and hour protections could require significant case-by-case fact finding of who is to blame and how much; he worries that judges will be unwilling to find it “reasonable” for parties more than one step removed in the supply chain to have exercised care or monitored for wage and hour violations. His wariness leads him to conclude that firms would migrate to “least costly contractual and monitoring practices likely to withstand judicial scrutiny for reasonableness” (Glynn, 2011). This then begs the question of what that standard may be, and even if it is as gloomy as he predicts, might those “least costly” practices still be more effective than current enforcement?

Another consideration is the effectiveness of changing the standards for employment law on retaliation. If a large retailer implemented a system to monitor conditions at their warehouses, the logistics providers and staffing agencies might retaliate against workers who spoke up, even within this ‘internal’ enforcement scenario. While some amount of retaliation would still occur, the economic consequences of crossing a major supplier are potentially enough to create a significant disincentive. The key would be to enable the liability for such retaliation to travel far enough that the internal monitoring would be robust.

Such a fundamental change in the employment regulation system is unlikely for political reasons, but the re-framing is nevertheless useful. It clarifies the justification for linking large companies to

the workers in their sphere of influence. Weil analyzes the dynamics in sectors that tend to have contingent workers or multiple levels of subcontracting and suggests types of strategies with the same aims—to connect the most powerful players to the employment conditions they allow—under existing laws and employment regimes.

Weil’s analysis of sectors, outlined in more detail in Appendix B, shows how an understanding of the different sector dynamics can unearth points of leverage and target solutions to particular industries (Weil, 2009). Future efforts to protect workers whose connection to employment protections are increasingly vulnerable may be able to use this analysis to draft legislation that incentivizes the largest players to pay attention to the conditions of workers throughout their supply chains. For example:

- Federal labor enforcement officials have taken advantage of the importance of time in just-in-time manufacturing by seizing garments under the ‘hot goods’ provision of the FLSA. They then negotiated agreements with manufacturers to monitor and enforce minimum wage compliance among their subcontractors.
- Weil suggests that increased visibility of employment violations, similar to posting of health code compliance scores in restaurants, could be used to encourage national brands to pay more attention to the employment situations at locations carrying their name (for instance branded hotels).
- In the construction industry both prevailing wage and Project Labor Agreements have

been used to protect wages for construction workers.

- Similarly, sufficient contracting legislation in California—stipulating that a contractor is liable if they enter a contract that they know or should have known is not sufficient to meet minimum wage laws—currently covers the construction, garment, agricultural, janitorial, and security guard industries. AB 1855, currently under consideration by the California legislature, would extend this to the warehousing industry as well.

Increasing the incentives to monitor and comply with employment law will increase the costs of using temporary employment agencies and subcontractors generally. These increased costs would be expected to depress employment to some extent. Two considerations, however, make these potential costs worth the benefit. The first is that these costs are the merely the cost of enforcement of existing laws. The minimum wage, overtime, and health and safety protections are part of the system of minimal standards afforded to workers. Thus, jobs that are lost because they can only exist in violation of them are jobs that the law has already decided should not exist. Second, it is reasonable to assume that the impact on employment from increased enforcement costs would be small. Considering that these costs would accrue mostly for employers of low-wage workers, we can project outcomes in line with those occurring as a result of an increase in minimum wage (Card & Krueger, 1995; Dube, Lester, & Reich, 2010). A similar level of employment impact from better enforcement is well worth the cost.

V. CONCLUSION

Employment relationships have changed, but the laws to provide a minimum floor of worker protections have failed to keep up with the reality of work today. Sub-contracting and temporary staffing “solutions,” to use the employment services industry lingo, create real problems: for the workers who receive minimal protections from employment law, for the high-road employers who do not use these arrangements and are at a disadvantage, and for citizens whose employment laws are undermined and who face government deficits as the state shoulders the increasing safety-net costs associated with low-wage work.

California is not alone in its struggle with the problems of contingent and temporary work. But as we imagine the future of work in the Golden State, we must consider what is needed to provide both a vibrant economy and decent conditions for those who create it. Will flexibility increase and connections to employers continue to decline? If so, should social benefits move to be more tied to *employ-ment* rather than an *employ-er*? Who should provide those benefits, and how will they be paid for? And how can we ensure, especially for the most vulnerable in our society, that employment protections and the basic floor of worker conditions are real and enforced?

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APPENDICES

Appendix A. ACS data on employment services workers

To obtain a large enough sample of the California population, I use a three-year sample of the American Community Survey (ACS) for 2008-2010. The ACS asks respondents about their current or most recent job industry and job occupation. Employment Services, which includes temporary staffing agencies, professional employer organizations, and executive search and placement firms, is an *industry* classification; there are many *occupations* held by people who work within that industry.

I limit the sample to only those who report working within the last 12 months and for whom there is data on earned income in the last 12 months. This provides data from about 3,700 individuals who report being in the “Employment Services Industry” (see Table A1). Using the ACS survey weighting, this equates to 139,000 Californians. However, this number includes those who work directly for the employment services industry. To adjust for this, I recode occupations 620 “Human Resources, Training, and Labor Relations Specialists,” 630 “Human Resource Workers,” and 650 “Training and Development Specialists” within the employment services industry to “non-temps.” These occupations are among the most common employment services occupations within the “business operations specialists” group of occupations. There are both the most obvious candidates for occupations used directly by employment services agencies and unlikely to be occupations for which firms would hire temporary workers. This adjustment changes the exact figures for median and average wages for temps, but has no overwhelming effect on the overall conclusions. After removing these 384 workers from the “temp” category there are 3,343 survey respondents counted as “temps” or approximately 126,000 Californians (See Table A1).

This is likely an undercount of the true number of people working through temporary or staffing

Table A1. Survey sample size and population estimates, California employment services industry, 2008–2010

Employment services industry, California	Unweighted	Weighted
Total	4,968	183,269
Worked within the last 12 months	3,727	139,222
Worked within the last 12 months and not HR workers (occupations 620-650)	3,343	126,072

Source: Author's calculations from ACS 2008–2010

agencies. A worker is asked about her “chief job activity or business last week” including the business or industry, the type of work, and her most important activities or duties. If a worker does not report to the survey taker or does not know that she is employed through a temp agency rather than as a direct hire, she will not be coded as such.

I compute an estimated hourly wage per person using weeks worked in the last year (coded as a categorical variable) and usual hours per week. Using this estimate of hourly wages, the average and median hourly wage for temps and non-temps is shown in Table A2 (page 28). Two alternative estimates are given to show that the basic results (statistically significant differences in average hourly wages) are the same regardless. The first alternative narrows the sample from those with reported income in the last year to those reporting earned income who are also in the labor force (neither retired nor no longer looking). The second alternative restricts this population further to those who worked for most of the last year (48 weeks or more). The intervals for weeks worked in the last year are quite large for few weeks worked (1–13 and 14–26) but narrowed at the upper end (48–49 and 50–52 weeks per year); hourly wage

Table A2. Average and median hourly wages

Average hourly wage	“Temps”	“Non-temps”	Difference
Average hourly wage, all (n=3,343)	\$ 21.48 (SE=.590) med: \$13.73	\$ 27.90 (SE=.117) med: \$19.13	\$ 6.42***
Restricted to those currently in the labor force (n=2,921)	\$ 21.59 (SE=.505) med: \$14.43	\$ 27.38 (SE=.090) med: \$19.61	\$ 5.79***
Restricted to those currently in the labor force working 48 or more weeks in the last year (n=1,454)	\$ 24.18(SE=.700) med: \$18.13	\$ 27.54 (SE=.056) med: \$20.34	\$ 3.36**

Source: Author’s calculations from ACS 2008-2010. * p≤.05, ** p≤.01, ***p≤.001

calculations use the average of the number of weeks for each interval (e.g., 48.5 or 51). Hourly wage calculations are therefore more precise for those who worked more weeks per year.

The smallest difference in average wage occurs when I compare those who’ve worked for most of the last year and are currently in the labor force. These findings suggest that temps with the biggest wage differentials are also less likely to have long-term employment.

The relatively high average wage for employment services reflects the wide range of occupations

within the staffing industry, including better-paid, more highly skilled professionals such as computer programmers and accountants. Some of the difference in average wage is attributable to the different mix of occupations present in the temp and non-temp categories. In addition, average differences do not take into account individual characteristics such as age, education, sex and occupation that may explain the wage differential. Table A3 summarizes the remaining effect of the “employment services” categorization (referred to as “temp” for convenience) after controlling for these variables and occupation categories. The log of hourly wage is used so that the coefficient may be interpreted as

Table A3. Controlling for worker characteristics and occupation, Employment Services work is associated with lower hourly wage

Sample	Temp hourly wage coefficient	95 percent confidence interval
All (n=3,434)	-18.6%***	[-20.8%, -16.4%]
Restricted to those currently in the labor force (n=2,921)	-17.1%***	[-19.3%, -14.8%]
Restricted to those currently in the labor force, using dummy controls for weeks worked in the last year (n=2,921)	-16.2%***	[-18.5%, -14.0%]
Restricted to those currently in the labor force working 48+ weeks in the last year (n=1,454)	-11.8%***	[-14.7%, -9.0%]

Source: Author’s calculations from ACS 2008-2010. * p≤.05, ** p≤.01, ***p≤.001

a percent change in wages. In the equation below, X represents a set of demographic variables for each worker: age, age-squared, sex, race categories, Hispanic origin, educational attainment categories, and English proficiency categories. OC represents occupational category.

$$\ln(w_i) = \alpha + \beta_1 \text{Temp}_i + \beta_2 X_i + \text{OC} + \varepsilon_i$$

These findings suggest that being in the Employment Services Industry is associated with a 10–20 percent lower hourly wage. Comparing just those who worked most weeks of the last year, the differential in hourly wage is somewhat lower, in the range of 9–15 percent.

I next look at the twenty-two occupation categories (see Table A4, page 30). Within each category I calculate the weighted number of temps and non-temps, the share of the temp population that is in each category (i.e., Management occupations account for 7 percent of all temps), as well as the share of temps within the category (i.e., only 0.5 percent of all workers in management occupations were temps). Finally, I show the percent wage differentials within each occupation category, controlling for both personal characteristics (age, age-squared, sex, race categories, Hispanic origin, educational attainment categories, and English proficiency categories) and for specific occupation (i.e., lawyers and paralegals are in the same 2-digit occupational *category* but have different 4-digit *specific occupations*; their specific occupation likely explains some of the difference in salary and so that is accounted for).

Finally I examine average wage differences and percent wage differentials controlling for personal characteristics within certain occupations that are well represented in the employment services industry (see Table A5, page 31).

In addition to information on wages, the American Community Survey provides information on worker health insurance and the source of that

health insurance coverage. Respondents were asked whether they had insurance at the time from their own or a family member’s current employer, former employer, or union. Those in the Employment Services industry were much less likely to be covered by an employer than those not in the Employment Services industry (see Table A6, below).

Table A6. Share of workers with health insurance through an employer or union is higher for non-temps, 2008-2010

Have health insurance through an employer or union	Temps	Non-Temps
All (n=3,343)	38.3 %	64.9 %
Restricted to those currently in the labor force (n=2,921)	40.1 %	66.1 %
Restricted to those currently in the labor force working 48 or more weeks in the last year (n=1,454)	54.7 %	71.5 %

Source: Author’s calculations from ACS 2008–2010

As with wages, personal characteristics and occupational category likely explain some of the difference between temp and non temp workers. By controlling for these variables I can better isolate the relationship between temporary employment and the likelihood of having health insurance. Controlling for occupational category, age, age-squared, sex, race categories, Hispanic origin, educational attainment categories, and English proficiency categories, I find that the remaining effect of the “employment services” categorization: an odds ratio of 0.284, with a 95 percent confidence interval of .281–.288. An odds ratio compares the odds of having employer or union provided health insurance for two similar workers, one temp and one non-temp. The odds of a temp having employer or union provided health insurance are only a fraction—less than a third—of the odds for non-temps.

Table A4. The employment services wage differential differs by occupational category, controlling for worker characteristics and specific occupation

(Highlighting indicates significance of coefficient at $p \leq .05$)

Occupational category	Non-temp	Temp	Share of all temps	Temp % of occupation category	Temp hourly wage difference, controlling for worker characteristics	
					Coefficient	95 percent confidence interval
Management, Business, Science & Arts	1,621,250	8,861	7%	0.5%	-9.2%*	[-17.4%, -1.0%]
Business Operations & Financial Specialists	782,791	5,002	4%	0.6%	-24.0%***	[-34.2%, -13.8%]
Computer & Mathematical	467,834	3,664	3%	0.8%	-11.1%*	[-21.3%, -1.0%]
Architecture & Engineering	375,341	1,315	1%	0.3%	-15.0%	[-30.8%, 0.7%]
Life, Physical & Social Science	186,728	935	1%	0.5%	-16.6%	[-39.7%, 6.6%]
Community & Social Services	260,414	841	1%	0.3%	-12.8%	[-36.3%, 10.7%]
Legal	190,573	658	1%	0.3%	-15.2%	[-48.6%, 18.2%]
Education, Training & Library	1,020,719	677	1%	0.1%	13.0%	[-13.9%, 39.9%]
Arts, Design, Entertainment, Sports & Media	396,802	2,073	2%	0.5%	-36.2%***	[-58.1%, -14.4%]
Health Care Practitioners & Technical	739,439	8,152	6%	1.1%	-9.3%*	[-17.3%, -1.4%]
Health Care Support	333,463	2,268	2%	0.7%	-9.7%	[-24.5%, 5.2%]
Protective Service	406,167	1,152	1%	0.3%	-25.6%*	[-47.7%, -3.5%]
Food Preparation & Serving	989,758	921	1%	0.1%	-11.4%	[-35.9%, 13.1%]
Building & Grounds Cleaning & Maintenance	651,105	4,459	4%	0.7%	-22.0%***	[-33.4%, -10.7%]
Personal Care & Service	640,328	2,989	2%	0.5%	10.4%	[-5.1%, 25.9%]
Sales & Related	1,948,103	3,514	3%	0.2%	-0.7%	[-15.0%, 13.6%]
Office & Administrative Support	2,493,087	35,651	28%	1.4%	-15.2%***	[-18.9%, -11.5%]
Farming, Fishing & Forestry	326,576	1,154	1%	0.4%	-8.9%	[-29.2%, 11.4%]
Construction & Extraction	860,145	4,047	3%	0.5%	-34.6%***	[-47.3%, -21.8%]
Installation, Maintenance & Repair	507,061	1,573	1%	0.3%	-31.9%***	[-49.5%, -14.3%]
Production	948,989	9,723	8%	1.0%	-29.5%***	[-36.4%, -22.5%]
Transportation & Material Moving	997,254	26,443	21%	2.6%	-25.0%***	[-29.9%, -20.1%]
Total	17,143,927	126,072	100%	0.7%		

Source: Author's calculations from ACS 2008–2010. * $p \leq .05$, ** $p \leq .01$, *** $p \leq .001$

Table A5. Average hourly wages and wage differences within the 20 most common employment services occupations

Occupation (and occupational code)	Number of temps unweighted	Non-temp wages	Temp wages	Difference in mean wages	Temp hourly wage difference, controlling for worker characteristics	
					Coefficient	95 percent confidence interval
Blue Collar Occupations						
Laborers and Freight, Stock, and Material Movers, Hand (9620)	358	\$15.71	\$13.58	\$2.13*	-18.8% ***	[-25.6, -11.9%]
Packers and Packagers, Hand (9640)	137	\$12.50	\$9.05	\$3.45*	-21.3% ***	[-32.0%, -10.5%]
Production Workers, All Other (8960 or 8965)	74	\$16.76	\$13.18	\$3.57*	-33.9% ***	[-47.6%, -20.2%]
Industrial Truck and Tractor Operators (9600)	71	\$16.08	\$11.53	\$4.54**	-32.8% ***	[-45.6%, -19.9%]
Miscellaneous Assemblers and Fabricators (7750)	60	\$15.82	\$11.88	\$3.94, not significant	-21.8% **	[-35.5%, -8.1%]
Construction Laborers (6260)	58	\$19.57	\$13.31	\$6.27*	-49.2% ***	[-68.1%, -30.2%]
Inspectors, Testers, Sorters, Samplers, & Weighers (8740)	53	\$22.18	\$13.74	\$8.43, not significant	-32.5% ***	[-47.6%, -17.3%]
Janitors and Building Cleaners (4220)	53	\$15.23	\$9.71	\$5.52*	-40.2% ***	[-57.0%, -23.4%]
Office / Clerical Occupations						
Office Clerks, General (5860)	133	\$18.66	\$15.36	\$3.29, not significant	-11.0% *	[-21.1%, -0.8%]
Secretaries and Administrative Assistants (5700)	126	\$21.43	\$18.69	\$2.74, not significant	-20.5% ***	[-30.1%, -10.9%]
Miscellaneous Managers (430)	121	\$47.37	\$37.14	\$10.23, not significant	-14.6% *	[-26.3%, -2.9%]
Customer Service Representatives (5240)	92	\$17.68	\$16.76	\$0.92, not significant	not significant	
Receptionists and Information Clerks (5400)	86	\$16.47	\$14.55	\$1.92, not significant	-14.1% *	[-27.6%, -0.6%]
Sales Representatives, Services, All Other (4840)	74	\$35.89	\$34.29	\$1.60, not significant	not significant	
Bookkeeping, Accounting, and Auditing Clerks (5120)	74	\$23.54	\$17.37	\$6.17, not significant	-16.7% *	[-30.1%, -3.3%]
Data Entry Keyers (5810)	71	\$17.20	\$21.26	\$4.06, not significant	not significant	
First-Line Supervisors of Office and Administrative Support Workers (5000)	53	\$28.37	\$24.32	\$4.04, not significant	-27.8% ***	[-43.5%, -12.1%]
File Clerks (5260)	50	\$20.14	\$16.35	\$3.80, not significant	-29.5% **	[-50.4%, -8.7%]
White Collar/Professional Occupations						
Registered Nurses (3130 & 3255)	153	\$43.65	\$43.59	\$0.06, not significant	-9.9% *	[-18.7%, -1.1%]
Accountants and Auditors (800)	89	\$36.79	\$29.07	\$7.72, not significant	-23.5% ***	[-35.8%, -11.2%]

Source: Author's calculations from ACS 2008–2010. * p<.05, ** p<.01, *** p<.001

Appendix B: Sectoral analysis of contingent work

David Weil notes four types of dynamics at play in sectors that tend to involve contingent workers, and suggests ways in which existing efforts to reduce the vulnerability of workers have taken advantage of these dynamics:¹²

1. Strong buyers, competitive supply chains

Major buyers like Wal-Mart and Home Depot have significant pricing power in the market. The supply chains for these large retailers are low-margin and highly competitive, exerting significant downward pressure on wages and working conditions within supplier firms.

Other examples include the agricultural sectors driven by major food processors, and food retailers.

Time and the “hot goods” provision

Time is an increasingly important factor given just-in-time production demanded by these powerful retailers. Federal Wage and Hour Division enforcers have used this to their advantage in the garment industry by seizing goods using the “hot goods” provision of the Fair Labor Standards Act (FLSA). Disruptions in the supply chain can cost much more than the threat of repaying lost wages and so provide a stronger incentive for compliance. Regulators have used this to get manufacturers in the garment industry to agree to monitor compliance among their subcontractors.

2. Small franchised workplaces, national brands

Workplaces are small and dispersed, as in food services or hotels, but linked to national brands. Other examples include auto rental companies and other service industries. Local owners control the employment relationship and they face different pressures and incentives than the branded franchisors, which can

result in worse workplace conditions and fewer safeguards.

Brand and visibility of violations

Franchisors have more incentive to maintain their brand’s image than do franchisees, as evidenced by the lower incidence of health code and labor standards violations at company-owned (as opposed to franchised) stores. If previous labor standards violations were more visible to the public (as health code violations are) this would incentivize franchisors to implement more effective private monitoring systems.

3. Large companies coordinate contracting networks

A few major companies, like homebuilders in the U.S., dominate the market and coordinate production but have very few people working directly for them. These large companies coordinate the overall plans, and set prices and performance standards, while smaller contractors set the terms of employment.

Other examples include transportation and logistics and the entertainment industry.

Connect the coordinator to employment

The idea is to find ways to re-connect the project coordinator to employment issues. Examples of this include prevailing wage requirements in public construction projects as well as encouragement of Project Labor Agreements, agreements that set wages and benefits for all contractors and sub-contractors on a construction project.

Sufficient contracting legislation in California also works to connect construction contractors to worker conditions. This legislation currently covers the construction, garment, agricultural, janitorial, and security guard industries. AB 1855, currently under considera-

¹² Adapted from Weil, 2009 (pp. 417-424)

tion by the Assembly Labor Committee, would extend this to the warehousing industry as well.

4. **Small contractors, common purchaser**

The common purchaser or payer, for example a commercial building owner or manager, purchases services from many small, competitive contractors, e.g. janitors and landscapers. The purchaser does not coordinate production or sales, and is not a well-known brand, unlike in the examples above.

Another version of this form of organization is when a public agency pays for home health

services or child care which is provided by many small contractors.

Organize around the purchaser

Workers can be more effectively organized by focusing on the common purchaser, not the small individual contractors. This has been done in the case of the Justice for Janitors campaign by organizing workers at large institutions such as universities. Some states including California organized independent contractors through legislation that made a government entity the employer of record for home care workers.

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