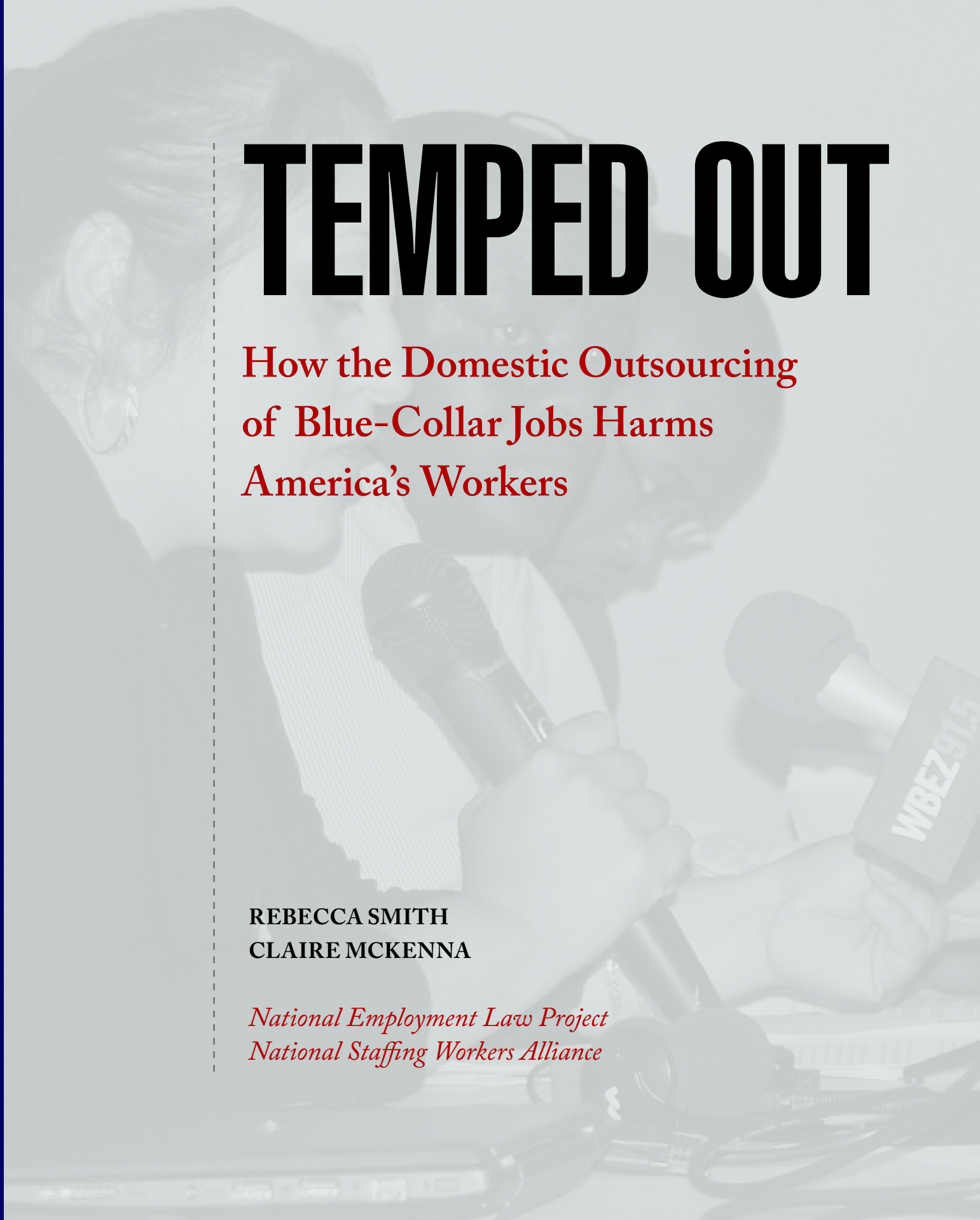

TEMPED OUT

How the Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers

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CLAIRE MCKENNA

National Employment Law Project
National Staffing Workers Alliance

Acknowledgements

Rebecca Cassler, Peggy Browning Fund Fellow, for her skillful research, writing, and editing. Michael Muñoz, National Coordinator of the National Staffing Workers Alliance, and the Alliance's Steering committee members, including: Tim Bell of the Chicago Workers' Collaborative, Louis Kimmel of New Labor, Elvis Mendez of the Immigrant Worker Center Collaborative, Sheheryar Kaoosji of Warehouse Worker Resource Center, and Sean Fulkerson and Mark Meinster of Warehouse Workers for Justice.

NELP also thanks the following for their generous support of the work that went into this report: W.K. Kellogg Foundation, Ford Foundation, Public Welfare Foundation, Moriah Fund, Surdna Foundation, General Service Foundation, and Panta Rhea Foundation. Finally, we thank the workers for sharing their stories.

About NELP

For more than 40 years, the National Employment Law Project has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing.

About NSWA

National Staffing Workers Alliance (NSWA) seeks to unite worker organizations with bases of temporary staffing workers to build a movement in favor of direct-hire and dignified work that can support communities and families, and help rebuild our economy.

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I. EXECUTIVE SUMMARY

The employment services industry, which includes both temporary staffing agencies and more permanent employee leasing firms, is expected to rank among the fastest-growing sectors in the country in the next decade.

Staffing work is one part of a larger story about the declining middle class in our country. More and more, major corporations are separating themselves from the workers who make their products and supply their shelves by inserting labor intermediaries who are nominally the "employers" of these workers.

The competition between staffing agencies to undercut rivals' bids places downward pressure on wages and working conditions. Staffing agencies may take over all of the former employer's responsibilities for wages, health and safety, compliance with discrimination laws, and provision of workplace benefits. But they still need to make a profit. This means that working conditions almost necessarily must degrade when a host company turns to a staffing agency. Intense competition produces intense pressure to cut costs by whatever means necessary, leading some to seek out the most vulnerable workers, cut corners, and cheat.

This report finds:

The number of U.S. workers in temporary help jobs has reached an all-time high. Fully 2.8 million Americans are currently employed in temporary help services, which constitute the majority of staffing industry jobs.

The industry has shifted from largely clerical to largely industrial. In 2013, production and material moving jobs made up 42 percent of the industry, while office and administrative jobs made up just 21 percent.

Major corporations now use staffing as a permanent feature of their business model. Seventy-seven percent of Fortune 500 firms now use third-party logistics firms, who may then contract out to an army of smaller firms to move their goods.

Staffing agencies often hire the most vulnerable. Latinos make up 16 percent of employed workers, and African Americans, 11 percent, but each group accounts for 20 percent of the staffing industry. Research shows that up to 40 percent of former welfare recipients who became employed after 1996 reform legislation obtained jobs in temporary help services.

Staffing work has serious impacts on workers' health. A 2010 analysis of Washington State data found that workers employed by temporary help agencies reported higher rates of injury than workers in standard employment arrangements.

Staffing work means a pay cut for workers. The median worker in the staffing industry earns $12.40 an hour, compared to an hourly wage of $15.84 earned by all private-sector workers, regardless of industry—a whopping 22 percent wage penalty.

The pressure to deliver more for less leads some staffing agencies to break the law. In a recent Massachusetts case for unpaid overtime, the staffing agency defendant claimed it was unable to pay overtime because of the low rates paid to it by the host company.

Staffing workers are effectively excluded from the right to organize and bargain with their employers under the National Labor Relations Act (NLRA). Where working conditions and wages are poor, workers can normally come together to negotiate with their employers and try to improve them. This is not true for staffing agency workers. A 2004 National Labor Relations Board decision requiring consent from the staffing agency and host employer makes it next to impossible for staffing workers to take advantage of their rights under the NLRA.

Despite these barriers, however, staffing workers are coming together and developing new forms of organizing. They have won raises, ended discrimination, and increased their health and safety protections in a Walmart consolidation center in Indiana. They have won a $21 million judgment for wage and hour violations in California. They have stood up to the practice of transporting workers in overcrowded vans to an overheated warehouse in New Jersey. And in Massachusetts and Illinois, they have won changes to state law that establish reasonable regulation of staffing agencies and the companies that use them.

This report concludes with recommendations to restore good jobs to staffing workers. If increased use of labor intermediaries, including in growing sectors of our economy, is in our future, decent jobs and the restoration of the right to organize must also be part of that future. National laws passed in the 1930s, 1960s, and 1970s have not kept up with the changing forms of work in our economy. The companies at the top of the contracting chain must take responsibility for the workers at the bottom whose lives and livelihoods are in their hands.

II. INTRODUCTION

Shipping goods to Walmart stores. Sorting recyclables for Waste Management. Making frozen pizzas for Costco. Processing New England seafood. Filling orders for Nike. Bottling rum for Bacardi and tea for Arizona Iced Tea. You may think that the workers who do these jobs are employed by these multinational corporations, but increasingly, that's not the case. Our country is in the midst of a seismic change in how businesses organize the way that work central to their success is carried out. It's a change that can have dire consequences for workers. In recent decades, major employers across the economy have restructured, franchising their businesses, outsourcing, and using staffing agencies to take over core operations. While these practices sometimes may yield greater efficiencies, too often they reflect explicit employer strategies to evade labor laws and worker benefits. And even when not implemented with such intentions, the effect can be the same, as "lead" companies for which workers are producing goods or providing services disclaim any employment relationship with them. Thus, at the same time that major corporations continue to closely direct the provision of their services and the manufacture of their products, they attempt to shed responsibility for compliance with core labor standards.

"In response to the increased staffing out of once-permanent jobs, workers are pushing back against a business model that obfuscates responsibility for compliance with labor laws."

This report focuses on one aspect of subcontracting—the use of temporary workers or staffing companies—that many businesses have institutionalized as a component of their basic business model. Just as in the other forms of contracting out, a host employer retains a high degree of control over the work performed on premises it owns or operates, while at the same time, it attempts to pass off the responsibilities of being an "employer" to a first- or second-tier set of staffing agencies. These practices can have a multitude of bad effects on workers, as detailed in this report.

Staffing companies range from national and multinational firms that contract with hundreds of host employers to smaller, often undercapitalized, local firms. Of course, the use of staffing agencies has been a feature of work in the United States for decades. One thing that

has changed, however, is the regularization of temporary and staffing employment as a core business strategy for many companies. Another change is the shifting nature of services provided by staffing companies. While the term "temporary agency" conjures up images of the Kelly girl, filling in for clerical and administrative staff shortages, today the industry has shifted to "blue collar" jobs in manufacturing and logistics. In fact, industrial and factory staffing form the single largest source of revenue in the industry today.[1] The companies that own the warehouses and production facilities where these staffing agency employees work are frequently major, profitable brands.

Building a cadre of "temped out" blue-collar jobs can have severe effects on workers, threatening a further rise in inequality and more shrinking of the middle class. On the whole, staffing agency workers earn less than their counterparts who are hired directly by their employers and are less likely to have health and retirement benefits. While many of the jobs held by blue-collar temps are among the most dangerous our economy has to offer, when a temp worker is injured on the job, it can be hard to determine who is responsible, as the staffing agency and worksite employer point fingers at each other. Finally, it is next to impossible for staffing workers to join together and bargain for better wages and working conditions.

In response to the increased staffing out of once-permanent jobs, workers are pushing back against a business model that obfuscates responsibility for compliance with labor laws. Around the country, workers are challenging the ill effects of these structures and placing responsibility for labor law violations where it belongs—with the staffing firms *and* the companies using them to get their work done. Workers are organizing and winning raises and safer working conditions and creating new ways to bargain directly with the host companies that control the staffing agencies and dictate working conditions and wages in their plants. This report showcases the National Staffing Workers Alliance and campaigns of five of its member groups: The Chicago Workers' Collaborative, Warehouse Workers for Justice (IL), Warehouse Worker Resource Center (CA), New Labor (NJ), and Immigrant Worker Center Collaborative (New England).

These groups are demanding that the companies that call the shots in their own industries and in their own workplaces be responsible for the treatment of individuals performing the work in these workplaces—whether or not the companies call these workers "employees." And these groups are winning policies that recognize and respond to this new structure of work.

The report ends with policy recommendations meant to ensure that workers employed in a staffing agency structure can depend on the law being enforced, and that key workplace rights and benefits are available to them, with the companies at the top held accountable for their treatment.

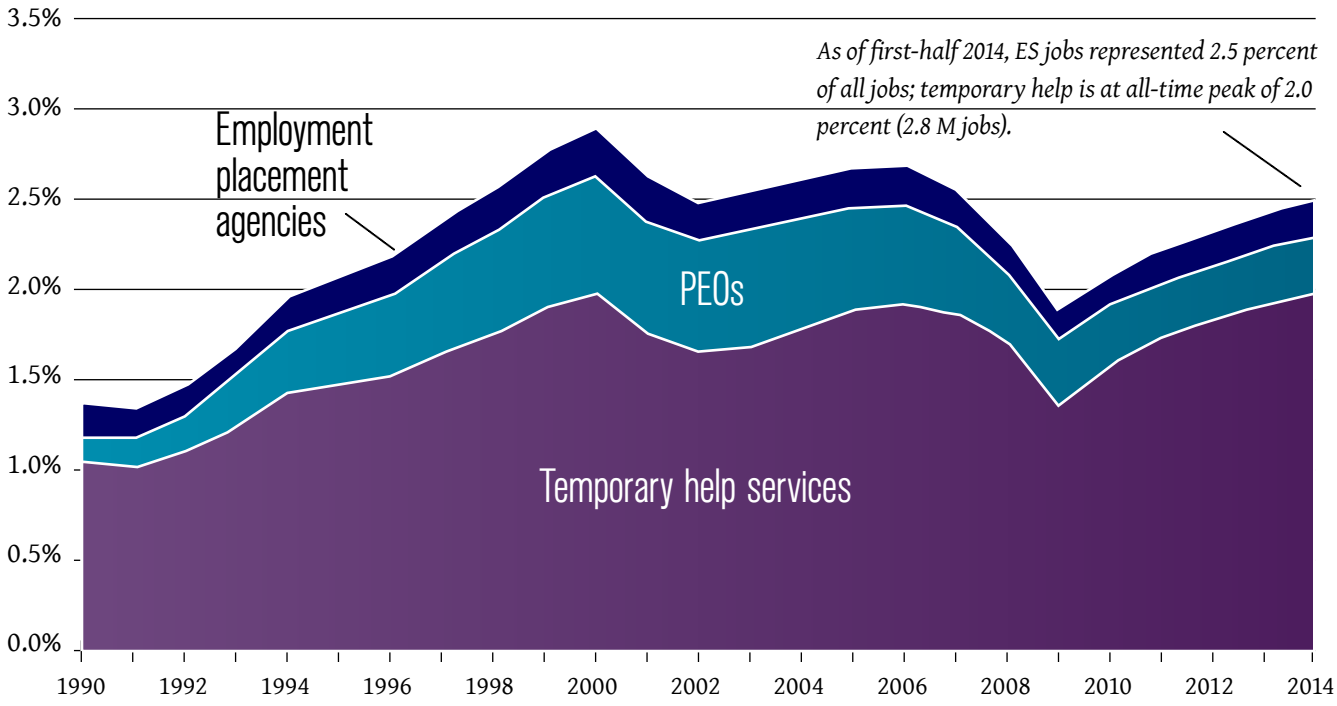
III. BACKGROUND: THE STAFFING INDUSTRY IN THE UNITED STATES

Temporary work largely refers to arrangements in which workers are placed with an employer by an agency and are paid by the agency, but generally are not directly supervised by the agency at the worksite.[2] The Bureau of Labor Statistics classifies the industry encompassing temporary work as "Employment Services," which includes temporary help services, professional employer organizations (PEOs), and employment placement agencies.[3] PEOs, also referred to here as employee leasing companies, perform a variety of human resources and administrative infrastructure functions, such as payroll and benefits administration, for another firm.[4] Employment placement agencies match workers with employers.

Employment Services grew sharply over the 1990s, more than doubling as a share of all jobs by 2000 (Figure 1). Today, the industry constitutes 2.5 percent of total employment, or 3.5 million jobs. The number of temporary help services jobs, by far the largest share of Employment Services (80 percent), equals 2.8 million, representing 2.0 percent of total jobs, both the highest on record. Factoring in the high rate of worker-turnover in the industry, the American Staffing Association reports that more than 12 million people worked at a staffing agency in 2013.[5]

During recessions, staffing employment fluctuates more sharply than total employment. Temporary workers are easily fired when demand for a business's goods or services begins to flag and easily hired when it recovers.[6] During the Great Recession, when total employment declined from peak to trough

Figure 1: *Employment Services Industry as a Share of Total U.S. Employment*



Source: NELP analysis of Current Employment Statistics; figures are through June 2014

by 6 percent, staffing employment dropped by 36 percent. But in the four years from when staffing employment hit bottom in August 2009, the sector grew by 41 percent, compared with only 6 percent overall.[7] Yet, even as the recessionary effects fade, Employment Services is projected to be one of the fastest-growing industries in terms of employment by 2022, due in large part to growth in the temporary help services segment.[8]

While the recent rate of growth of the industry is noteworthy, the shift to low-wage industrial occupations that are, by their very nature, riskier for workers is greater cause for alarm. In 1990, workers in office and administrative support occupations made up 42 percent of the employment services industry, while workers in "blue collar" occupations—production; transportation and material moving; and helpers, laborers, and hand material movers, among others—accounted for only 28 percent.[9] By 2000, the make-up had reversed, so that blue-collar workers then represented nearly half, or 47 percent, of the industry, while office and administrative workers accounted for 28 percent. In 2013, production and material moving jobs made up 42 percent of the industry, and office and administrative jobs, just 21 percent.[10] The three occupations that make up the largest shares of staffing industry employment are all low-wage, industrial jobs: material movers, other production jobs, and assemblers and fabricators (Table 1). These findings are consistent with earlier work showing that in 2012, these same three occupations had the greatest shares of workers in Employment Services.[11]

If staffing workers, who usually work alongside and under the same supervision as direct-hire employees, were accounted for in official measures of the manufacturing industry, employment would have increased by 1.3 percent between 1989 and 2000, rather than declined by over 4 percent.[12] Staffing jobs added an estimated 9.2 percent to industry employment in 2006, compared with just 2.3 percent in 1989.[13] Indeed, the arrested growth of the staffing industry in the early-2000s, as shown in Figure 1, can be explained in large part by the offshoring of manufacturing jobs over the same period.[14]

Table 1: *Top 10 Occupations in the Employment Services Industry in 2013*

Occupation	As % of ES Employment	As % of Total Employment
Material Moving Workers	19.9%	3.2%
Other Production Occupations	9.3%	1.8%
Assemblers and Fabricators	8.8%	1.3%
Other Office and Administrative Support Workers	7.6%	2.9%
Information and Record Clerks	5.4%	4.0%
Business Operations Specialists	3.8%	3.1%
Secretaries and Administrative Assistants	3.2%	2.8%
Computer Occupations	3.1%	2.7%
Construction Trades Workers	3.1%	2.8%
Material Recording, Scheduling, Dispatching, and Distributing Workers	2.9%	2.9%

Notes: Total Employment includes the public and private sectors.

Source: NELP analysis of minor occupational groups in Occupational Employment Statistics, May 2013.

In addition to the shift to low-wage industrial jobs, the heretofore highly fragmented staffing industry is undergoing rapid consolidation.[15] This trend is especially evident among companies providing blue-collar workers. The largest industrial staffing firm in the United States—Tacoma, Washington–based TrueBlue, Inc.[16]—sees "strategic acquisitions" as a "key growth strategy."[17] TrueBlue's numerous recent acquisitions include the February 2013 acquisition of MDT, the then-third-largest general labor staffing provider in the country,[18] and the June 2014 acquisition of competitor Seaton Corp, the nation's 27th-largest staffing firm.[19]

Other examples of industry consolidation in blue-collar staffing include The Select Family of Staffing Companies (Select Family)[20] and Corporate

Resource Services (CRS).[21] Between 2005 and 2010, Select Family completed more than 40 acquisitions in the staffing industry; by 2013, it had become the fourth-largest industrial staffing firm in the United States.[22] CRS provides both white- and blue-collar workers in industries such as retail, light industrial, administrative services, healthcare, and hospitality, and through an array of brands.[23]

At the same time that consolidation is occurring at the top of the industry, thousands of small, local, undercapitalized staffing firms are engaged in intense competition for clients with each other and with larger firms.[24] This pressure can drive firms to pay poverty wages and skirt compliance with laws put in place to protect workers' lives and livelihoods. One staffing firm's 2014 evaluation of the industry affirms this sentiment: "smaller to midsize firms often struggle in securing workers' compensation insurance, capital to secure such insurance coverage, administrative capabilities to manage unemployment claims, and sources of funding accounts receivable."[25]

Firms That Use Staffing Agencies

The expansion of the staffing industry in the United States has been driven in large part by the demands of employers, as concerns over foreign competition and labor costs intensify. Studies also note the significance of promotional efforts by the temporary industry itself.[26]

Increasingly, employers are incorporating the use of staffing agencies into their permanent business models, outsourcing entire segments of their business.[27] Employers may seek temporary work arrangements for their flexibility, which can be useful in an uncertain economy.[28] Employers also report using staffing arrangements to fill permanent staff shortages or to screen workers for potential hires.[29]

In cities and towns across the country, workers nominally employed by staffing companies move goods for Walmart, Target, Macy's, Marshalls, and other brands. In fact, a reported 77 percent of Fortune 500 companies use third-party logistics firms.[30] These third-party logistics (3PL) companies, in turn, contract with staffing agencies, which hire temporary workers to unpack, load, and ship goods to retail facilities across the country.[31]

Other "temps" (a misnomer, because many are employed for the same host business for significant periods of time),[32] are employed in construction, light manufacturing, waste removal, recycling, and other industries, for giants such as Waste Management, Inc. Staffing workers package razors for Philips Norelco, make frozen pizzas sold at Walmart, and package toys for Ty, Inc.[33] They manufacture hummus for Tribe.[34] They fill orders for Dunkin' Donuts and Pizza Hut and clean hotels at the Doubletree Inn.[35] They are hired by paper mills[36] and sugar processing plants.[37]

Staffing agencies vary in size, sector focus, and reach. Some are brands that are at least as well-known as the client companies. As noted, TrueBlue (including subsidiary Labor Ready) is the largest industrial staffing provider in the country. Other well-known major agencies include Manpower and Adecco.[38]

Along with the name-brand staffing agencies, an army of small subcontractors competes for business at a particular worksite. It is not uncommon for a lead company to employ a number of temp agencies at the same worksite under the direction of a 3PL. According to a recent Occupational Safety and Health Administration (OSHA) citation, Amazon contracted one company to direct employees from four other staffing agencies at the same Amazon-owned location.[39] Three of the four staffing agencies are divisions of some of the largest industrial staffing firms in the country, yet OSHA found that the staffing agencies had failed to conduct a basic hazard assessment of the facility before sending workers there.[40] In Illinois, a pending discrimination lawsuit names three agencies and the candy factory that used all three, Ferrara Candy Company[41] (maker of Lemonheads, Jujyfruits and Red Hots).[42]

In still other circumstances, host companies have created sham staffing agencies on-site—independent

entities in name only. These agencies may have only one customer and operate entirely under the thumb of a single worksite employer. For example, in one case pending in Massachusetts, an order-processing firm called Fulfillment America worked with a former employee to set up a staffing agency whose sole client was Fulfillment America. When workers pursued claims for unpaid overtime wages, the staffing agency said that it was unable to pay overtime because of the low rates paid to it, in turn, by Fulfillment America.[43]

THREE STATE SNAPSHOTS OF THE STAFFING INDUSTRY IN LOGISTICS

In addition to consolidation of the staffing industry itself, the industry is concentrated in certain regions of the country. There are especially high concentrations of staffing industry employment in New Jersey, Illinois, and California.

New Jersey

Staffing agencies in northern and central New Jersey place workers in light industrial and manufacturing jobs at warehouses along the New Jersey Turnpike. While the products moving through New Jersey warehouses and distribution centers are generally destined for leading retail corporations, such as Walmart, Target, Macy's, Marshalls, and others, more often than not, the warehouses and distribution centers are operated and managed by third-party logistics firms. By assigning management to another entity, retailers with wholly owned distribution centers assert they are not the employers of the workers who labor in their warehouses.

Staffing agencies are the gatekeepers of warehouse work and have set up operations in largely Latino immigrant neighborhoods.[44] Generally, some 10 to 15 agencies exist in each of these towns, though some come and go by simply changing their names, due to violations of wage and hour laws, according to advocates.[45] The maps on pages 9 to 10 of this report show the concentration of staffing firms in majority Latino communities in three New Jersey cities.

Illinois

Chicago is one of the most important manufacturing, transportation, and distribution hubs in the world. The region is home to thousands of manufacturers in subsectors ranging from food and beverages, plastics, and pharmaceuticals. Adjacent to O'Hare International Airport, more than 3,600 manufacturing companies, employing approximately 100,000 workers, are located in the five-square-mile, Elk Grove Business Park, the largest industrial park in North America and the city with the second-greatest number of manufacturing jobs in Illinois.[46] More than 700 staffing agencies "service" the labor needs of this and other large industrial parks located throughout the six-county metropolitan area.[47]

Such a concentration of industry is due to the fact that Chicago is the only place in the world where six Class 1 railroads meet. More than $1 trillion worth of goods moves through the area on an annual basis.[48] Chicago is a day's haul by truck from 60 percent of the U.S. market, with seven interstate highways

crisscrossing the region. At the core of this global hub are 150,000 warehouse workers who move consumer goods on behalf of the nation's largest retailers.[49] In Chicago, temporary workers make up 63 percent of the warehouse workforce.[50]

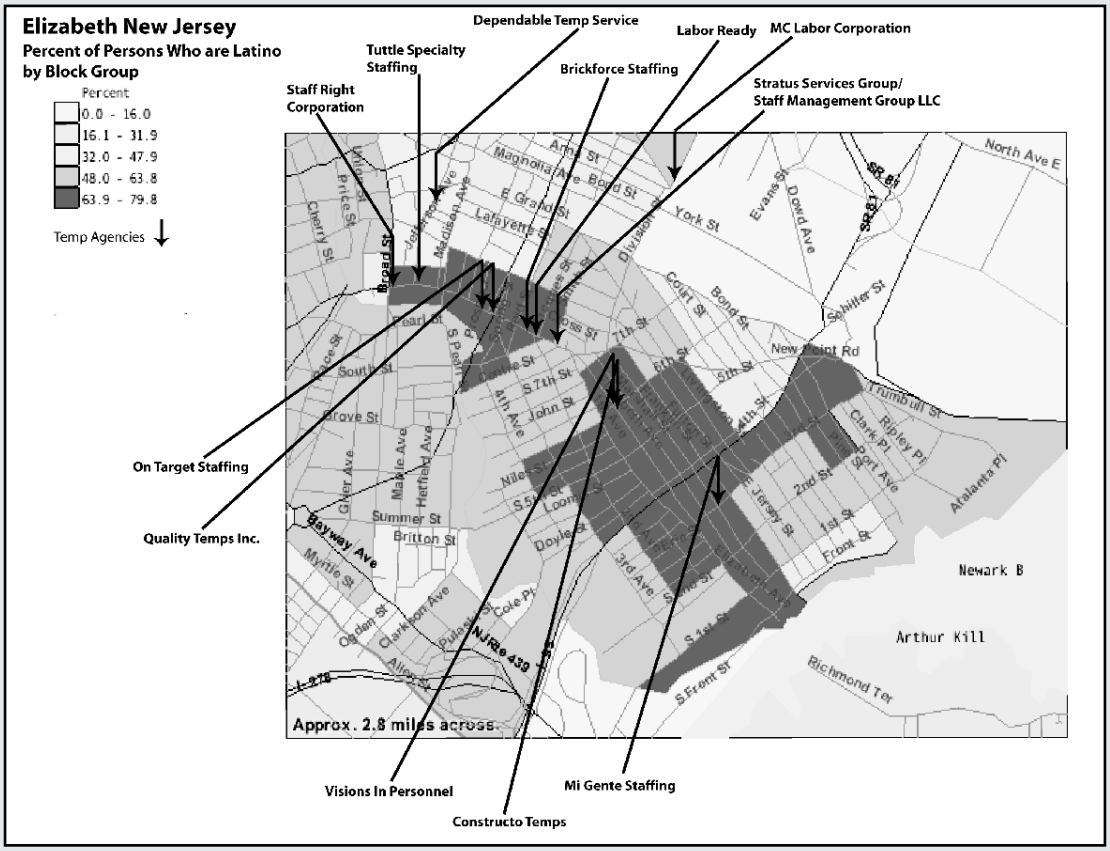
The heart of the warehouse industry is in Will County, just southwest of Chicago. As of 2010, Will County was home to 30,000 warehouse workers and more than 500 distribution centers that move products on behalf of large retailers. Typically, a warehouse will retain a rotating group of two to eight staffing companies at a time on yearly contracts, but the workers will remain the same, often staying at the same host facility for years.[51]

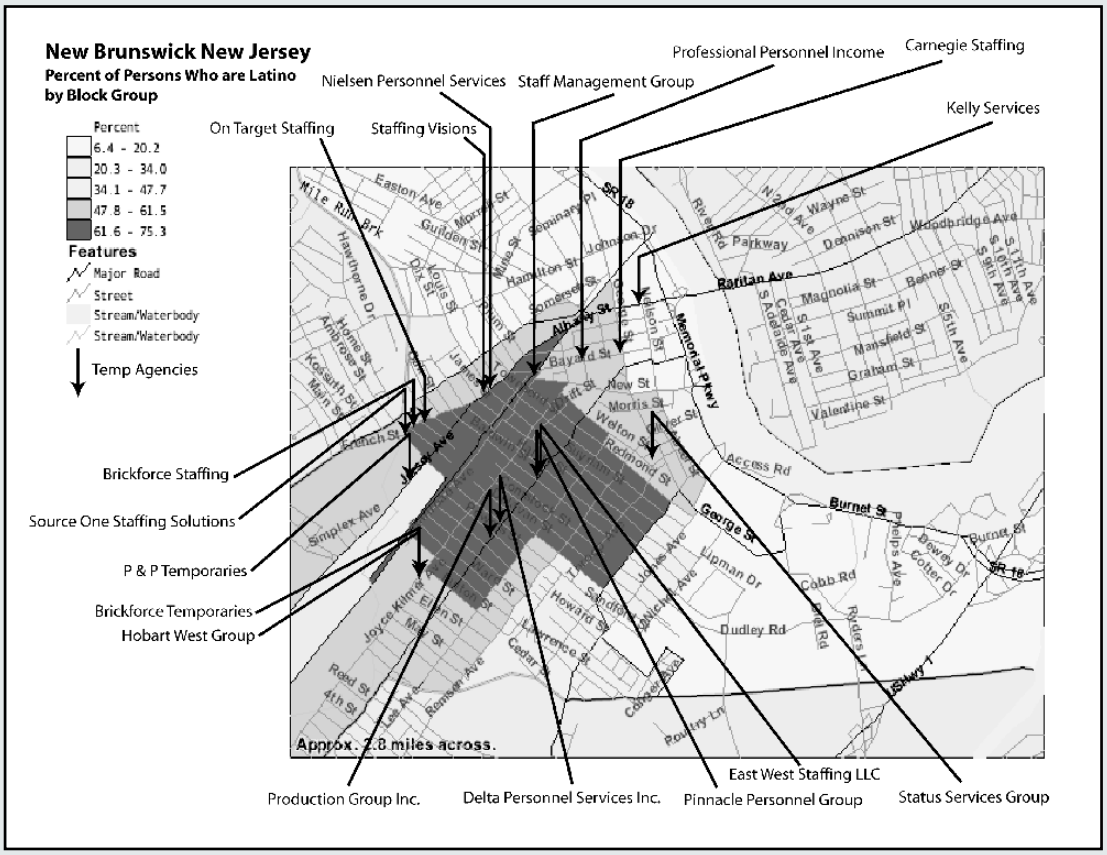
According to research by EMSI, a private labor market research firm, Chicago gained more than 45,000 temporary jobs between 2009 and 2013, some 40 percent of total jobs added to its economy.[52] Hundreds of staffing agencies are registered with the Illinois Department of Labor, double the number that existed a decade ago.[53]

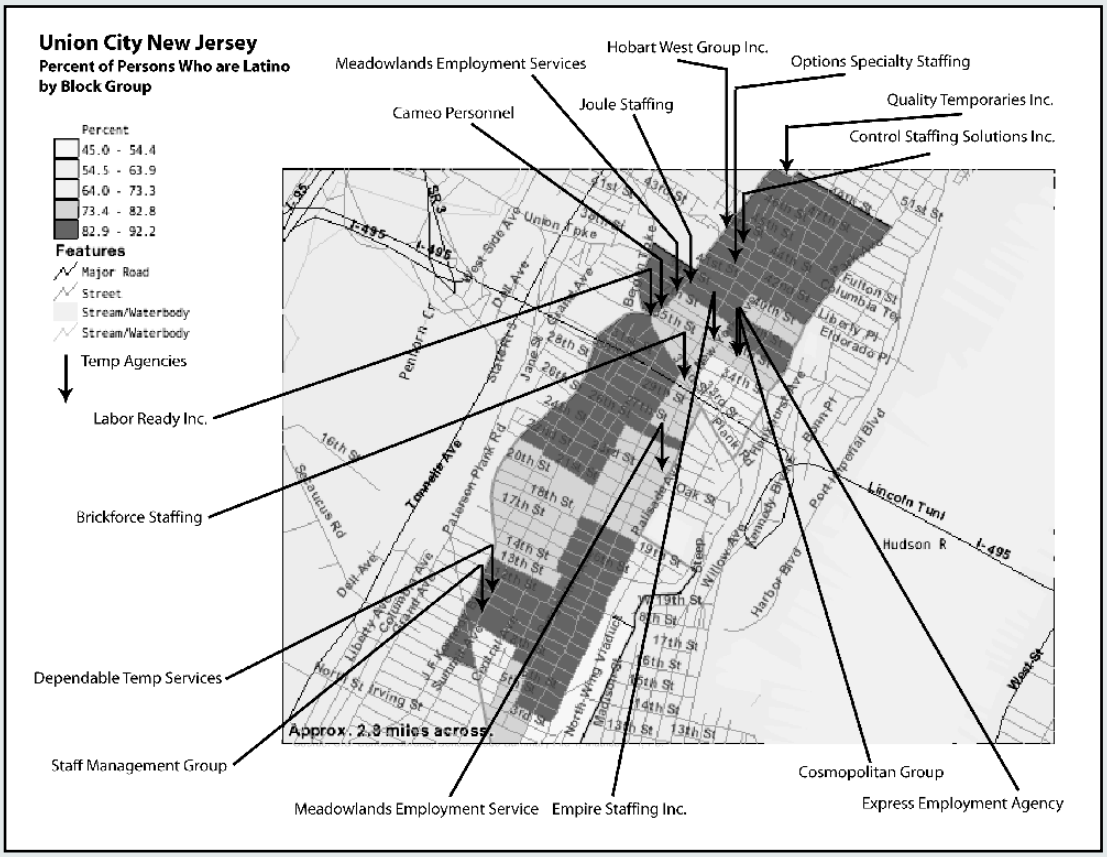
California

The same research by EMSI shows that California is home to 11.2 percent of staffing businesses, more than any state in the country, and 12 percent of the country's staffing industry workers.[54] Stockton, California ranks first in the country in temp job growth compared to growth of total jobs since 2009.[55] In 2010, more than a quarter of a million workers in California were employed by staffing agencies.[56] The Southern California Association of Governments predicts that by 2030, more than one million logistics jobs will be created in Southern California.[57]

The warehouse industry is already a major employer in California's Inland Empire, hiring about 110,000 workers in Riverside and San Bernardino counties.[58] Around half the workers in the Inland Empire warehouses are immigrants, while 80 percent are Latino.[59] Walmart operates 11 distribution centers in these counties.[60]







Source: Carmen Martino, Assistant Professor of Professional Practice, Labor Studies and Employment Relations Dept., Rutgers University

IV. WORKERS AT THE BOTTOM

The temporary help sector employs a disproportionate percentage of low-wage and minority workers.[61] Latinos make up 16 percent of employed workers, and African Americans, 11 percent, but each group accounts for 20 percent of the staffing industry.[62] They also make up relatively large shares of workers in production, transportation and material moving occupations, a significant share of sector jobs: 22 percent of these workers are Latino, and 15 percent are African American.[63]

Temporary jobs have historically functioned as a quick entry point into the labor market and immediate income, often for more vulnerable job seekers, based on the assumption that these positions will lead to permanent employment. Government workforce programs place a significant number of participants in entry-level positions using temporary staffing firms. Administrative data from multiple states indicate that between 15 and 40 percent of former welfare recipients who became employed after 1996 reform legislation obtained jobs in temporary help services.[64] However, these jobs are rarely a stepping stone to stable work and earnings.

Staffing agency employment can have a host of bad outcomes for these workers. First, staffing sows confusion among workers about who is the boss, because firms will often have assigned the staffing firm as workers' sole employer on paper, whether or not that is legally true or even appears to be true (based on control exercised by the client firm). This confusion can lead workers to forego exercising important labor protections, including the right to organize and protection from discrimination.

In addition, wages and working conditions can degrade as firms compete with each other for a share of the fragmented staffing market. Host companies may encourage bidding wars among staffing firms, placing continual pressure on contractors to provide cheaper services. Because staffing agencies' profits are based on the "markup" they charge host employers, they almost automatically must provide lower wages and fewer benefits than the lead firm. Cutthroat competition in the industry can induce companies to cut corners, by underpaying workers, exposing them to safety and health risks, committing unlawful discrimination, and defrauding state workers' compensation funds.

The institutionalization of contracted work in dangerous manufacturing and warehouse jobs, in combination with the industry's focus on profits and the difficulty in offering health and safety protection in a triangulated work arrangement, can lead to exposure to dangerous working conditions, with sometimes tragic results, as reported in the following section.

Compromised Health and Safety

Staffing workers face a perfect storm of health and safety risks. They work in some of the most dangerous jobs in our economy.[65] According to OSHA, temporary workers often receive insufficient safety training and are more vulnerable to retaliation for reporting injuries than workers in traditional employment relationships.[66]

Health and safety outcomes for staffing workers in the United States are worse than for other workers,[67] and this finding is consistent with dozens of studies of temporary workers from around the world.[68] A 2010 analysis of Washington State data found that workers employed by temporary help agencies work in more hazardous industries than workers in standard employment arrangements,[69] namely construction, manufacturing, and transportation and warehousing. The study also found that staffing agency workers file workers' compensation claims at a higher rate than directly hired workers. Similarly, a 2001 analysis of workers' compensation data from Minnesota found that claim frequency for leased workers was four to seven times greater than for regular workers.[70]

A ProPublica analysis of worker's compensation claims in California, Florida, Massachusetts, Minnesota, and Oregon found that the incidence of temporary worker workplace injuries was between 36 to 72 percent higher than for non-temporary workers.[71] Perceived job insecurity can also have negative physical and mental health consequences,[72] so that temporary workers may experience increased levels of depression and anxiety because of their contingent status.

Concern about temporary staffing worker vulnerability and incidences of worker deaths, especially deaths occurring on the first day of work,[73] has led OSHA to ramp up data collection and enforcement activities in the staffing industry through its Temporary Worker Initiative (TWI).[74] OSHA has expressed concern that employers may use temporary workers in order to avoid meeting all of their compliance obligations under worker protection laws.[75] Substantive elements of TWI include new data collection procedures and assessments for inspections at worksites where there are temporary workers[76] and development of best practices for these worksites.[77] OSHA frequently holds staffing agencies and host employers (but not the brands at the top) jointly responsible for ensuring a safe workplace for temporary workers, emphasizing that "[h]ost employers *must treat temporary workers like any other workers* in terms of training and safety and health protections."[78]

Waste Management Industry and Labor Ready

The waste management industry relies extensively on staffing industry workers.[79] Waste management and remediation services is an especially dangerous industry, with a fatality rate estimated at 3.9 times greater than all industries in 2012.[80] There have been a startling number of deaths among staffing agency sanitation workers in recent years, and a number of the affected workers were provided by staffing agency Labor Ready (a brand of TrueBlue). At least two Labor Ready sanitation workers at national garbage and recycling giant Waste Management, Inc. (WM) have died on the job since 2010 alone: Mark Jefferson died while working in the heat collecting trash for WM in New Jersey in 2012,[81] while two years earlier, a Labor Ready worker at WM in Pueblo, Colorado, was riding on the back of a garbage truck when crushed between the truck and a utility pole. OSHA cited Labor Ready for a serious violation in connection with the Colorado incident, noting that Labor Ready had failed to ensure that its workers received proper training from WM.[82] Two additional Labor Ready sanitation workers died in Florida in the first half of 2014,[83] and another, Douglas E. Bell, died in August 2011 after falling from the back of a trash truck near Harrisburg, Pennsylvania. Labor Ready was aware that Bell had never worked as a trash collector on the rear of a truck before.[84] There have also been recent deaths in Texas[85] and North Carolina in this industry.[86]

Select Staffing

The Select Family of Staffing Companies, one of the largest industrial staffing providers in the United States, has been the subject of dozens of federal and state OSHA enforcement actions in the last few years. In October 2012, Select Staffing employee Terry Palmer died after he was caught in a conveyor belt while working at a food processing plant in Yadkinville, North Carolina.[87] The North Carolina Department of Labor had uncovered a serious violation of a machinery safety standard at the plant just a year earlier.[88] Two months earlier, in August 2012, 21-year-old Remedy Intelligent Staffing (a Select Family subsidiary) worker Lawrence Daquan "Day" Davis was crushed to death during his first day on the job at a Bacardi Bottling Corp. facility in Florida. OSHA found that temporary workers there had not received proper training about working safely with machines.[89]

Cal/OSHA has alleged dozens of safety and health violations at Select Family companies in California in recent years. Between July 2011 and May 2014, 24 Cal/OSHA inspections of facilities with Select Family company workers uncovered alleged exposure of more than 3,400 workers to at least 41 safety and health violations. Cal/OSHA considered nine of the violations it uncovered to be serious.[90] As of July 1, 2014, 14 of these 24 cases were still pending, and Select has directly challenged a number of them.[91] In the last three years, Select Family companies have also been cited for health and safety violations in a number of other states,[92] including Mississippi,[93] Washington,[94] Georgia,[95] Texas,[96] and Oregon.[97]

Lower Wages and Wage Theft

Temporary staffing workers frequently earn less than regular workers. One study using unemployment insurance wage records from Washington State estimated a 10 percent wage penalty associated with temporary work.[98] Another study of welfare-to-work participants in Detroit showed that while temporary workers earned similar hourly wages as direct-hire employees in comparable positions, they experienced lower earnings over the long run because the positions were short-lived by their very nature; placement in temporary positions may have even caused *net reductions* in earnings because of the lapses in employment.[99] A comparison of median hourly wages in the occupations reported in Table 1 in the Employment Services industry with hourly wages in all industries provides more evidence of a temporary work "wage penalty," showing that staffing workers earn less across the board than all workers in the same job (Table 2). Further compromising their long-run economic security, staffing workers are also less likely to earn health or retirement benefits.[100]

Other evidence from New Jersey, Illinois, and California, reported in the following, documents disparities in earnings and receipt of benefits between temporary workers and direct hires.

Table 2: *Median Hourly Wages for Top 10 Occupations in Employment Services and All Industries*

Occupation	Employment Services	All Industries (Private)
All Occupations	$12.40	$15.84
Material Moving Workers	$9.52	$11.66
Other Production Occupations	$10.40	$14.30
Assemblers and Fabricators	$10.55	$13.93
Other Office and Administrative Support Workers	$12.74	$13.79
Information and Record Clerks	$13.15	$14.23
Business Operations Specialists	$25.81	$29.89
Secretaries and Administrative Assistants	$16.13	$16.97
Computer Occupations	$35.12	$38.24
Construction Trades Workers	$14.02	$18.88
Material Recording, Scheduling, Dispatching, and Distributing Workers	$11.06	$12.50

Notes: The first column ("Employment Services") accounts for wages of workers employed in privately owned establishments in the Employment Services industry. The second column similarly accounts for workers employed in privately owned establishments, but in all industries.

Source: NELP analysis of minor occupational groups in Occupational Employment Statistics, May 2013.

WORKER PROFILE: MARCELA GALLEGOS

Marcela Gallegos lives in Chicago's Little Village neighborhood. A single mother with two children, Marcela worked at a frozen-pizza factory in Romeoville, Illinois called Great Kitchens, Inc. through an agency named Staffing Network. Her job was to assemble the boxes for Costco's frozen pizzas. She had to assemble about 77 boxes per minute, all day, often seven days a week. Within six months of working at Great Kitchens, she developed a painful ganglion cyst on her wrist. When she told her supervisors and coworkers about the pain, they said that it happens to everyone and that she should ice it and gave her an Ace bandage for the wrist. Seven months passed before Staffing Network sent Marcela to their doctor, whose restrictions on her work were ignored by the agency. When she later required carpal tunnel surgery, Staffing Network sent her back to work with one arm just days after the operation.

Marcela and her coworker, Dora, requested OSHA injury logs from Great Kitchens and found that dozens of injuries were listed over the last 18 months, including amputations. Staffing Network refused to provide its injury logs.

Dora and Marcela filed a complaint with OSHA listing the amputations, ergonomic hazards, broken and unstable equipment, and retaliation against workers who complained, including the firing of Marcela and other workers. Pictured above, Marcela speaks out about how Staffing Network retaliates against Latino workers who assert their rights at a July 2014 policy forum hosted by Illinois State Rep. La Shawn K. Ford titled, "The Truth About Temporary Labor in Illinois."

- In New Jersey, workers report wages below $10 per hour and non-existent benefits. In a survey of more than 250 workers conducted in 2011 to 2012, more than one-third of New Jersey staffing workers surveyed made the then–minimum wage of $7.25 per hour.[101] They report riding to work in overcrowded vans for daily fees above $7.00.[102] More than one-third of survey respondents (36.1 percent) reported that they did not receive money that they fairly earned while working in the logistics sector.[103]
- A survey of 319 warehouse workers in Will County, Illinois, from more than 150 different warehouses, found that temp workers are dramatically worse off than direct hires performing the same work: temps earned an average of $9 per hour, $3.48 less than direct hires; only 5 percent of them had paid sick leave, compared to 48 percent of direct hires; and only 4 percent had health insurance, compared to 80 percent of direct hires. Sixty-two percent of the workers fell below the federal poverty line.[104]
- A 2012 UC Berkeley Labor Center study concluded that temporary workers in California are twice as likely as non-temps to live in poverty, face lower wages, and have less job security. Median hourly wages for temp workers were $13.72 as compared to $19.13 for non-temps. Temp workers were twice as likely to receive food stamps and be on Medicaid. The study concluded that temporary and subcontracted arrangements erode wages and working conditions.[105]

Exacerbating these poor conditions, staffing agencies and host companies frequently engage in theft of workers' wages. Enforcement data from the Department of Labor show that the Wage and Hour Division (WHD) has uncovered 293 wage and hour violations[106] at TrueBlue companies[107] nationally[108] since April 2008.[109] A total of 207 employees were affected by these violations.[110] In a recent Massachusetts case, workers were not paid overtime wages for overtime hours. The staffing agency responded to the suit, claiming that it was unable to pay overtime because of the low rates paid to it, in turn, by the host company.[111] In 2011, a class of workers in Chicago settled a wage and hour class action against Real Time Staffing Services for $400,000.[112] In 2006, Labor Ready paid $250,000 in back wages to settle a claim filed by workers who had been required to cash their paychecks at the company's cash machines, at a cost of up to two dollars per check.[113]

A judge in a wage and hour class action suit against Walmart, Schneider Logistics, and several staffing firms involving working conditions in California warehouses has found that Walmart and Schneider jointly employed warehouse workers under federal and state wage and hour laws, along with the direct lower-level subcontractors.[114] The case recently settled for $21 million.[115]

Like OSHA, and in response to wage and hour violations in those sectors that increasingly rely on organizational methods that "alter who is the employer of record or make the worker-employer relationship tenuous," the Department of Labor's Strategic Plan for Fiscal Years 2014-2018 includes a WHD focus on "fissured" industries.[116] WHD personnel have spoken publicly about the fact that temporary workers are often less protected at work than conventional employees.[117]

Gender and Race Discrimination

In addition to low pay and high risk of injury, staffing workers report extreme cases of discrimination. For women, this takes the form of sexual harassment, with severe consequences for refusing to accede to a supervisor's advances.[118] Research shows women workers also commonly hold the lowest-paying jobs.[119]

For others, jobs may be unavailable because of race discrimination. As has been noted, staffing agencies are concentrated in immigrant communities around the country. At least one lawsuit is pending that addresses the siting of staffing firms, alleging that lead firms contract with staffing agencies located in these communities and that African American

WORKER PROFILE: DAVID FIELDS

David Fields is a 45-year-old warehouse worker from Gary, Indiana. He has worked at numerous warehouses throughout the Chicago and Northwest Indiana area in order to provide for his wife and three children. This past year, David was employed by Malace Staffing as a forklift operator at the Walmart Consolidation Center in Hammond, Indiana, a warehouse owned and operated by LINC Logistics Inc.

Workers at LINC are responsible for unloading thousands of dollars' worth of freight from supply trucks, moving it through the warehouse on forklifts, and reloading it by hand onto Walmart trucks for shipment. Like David, 90 percent of the workers at LINC are employed as "permatemp" employees—they might work at the warehouse for years but through various staffing agencies.

David joined with other workers to protest poor wages and dangerous working conditions on the job, as members of the Warehouse Worker Organizing Committee (WWOC). In particular, the workers were working on the open dock in -15 degree weather. David and his coworkers served Walmart, LINC, and the temporary staffing agencies with a petition demanding heat on the dock and an end to retaliation against workers reporting frostbite and other work related injuries. They won. Now there is a turbine heater on the dock and management allows workers to take "warm up" breaks every hour when it is cold. In addition, David and the WWOC have won 3 percent raises for workers and six paid days off. David and the workers continue to fight for permanent jobs, respect, and dignity on the job at LINC.

workers are almost wholly locked out of the jobs, even when the business is located in the heart of African American neighborhoods.[120]

The EEOC's FY 2013-2016 Strategic Enforcement Plan includes six national priorities, the first of which is "eliminating barriers in recruitment and hiring," with a focus on "class-based" discriminatory practices.[121] Employment lawyers and staffing firms have speculated that the EEOC's focus on discriminatory recruitment and hiring could signal increased enforcement activities aimed at discriminatory practices at staffing firms.[122] A review of EEOC cases shows that the agency in recent years has settled a long list of cases with staffing agencies and their clients, related to a variety of discriminatory practices by both. Some of these are highlighted below.

Gender-Based Discrimination Against Staffing Workers

- In April 2014, EEOC settled an EEOC pregnancy discrimination lawsuit with Manhattan office furniture store Benhar Office Interiors for $90,000. Benhar had offered a position to a candidate through a staffing agency, but when the staffing company told Benhar that the worker was pregnant, Benhar rescinded its offer and refused to hire her.[123]
- In July 2013, prefabricated concrete manufacturer Illini Precast entered a consent decree with the EEOC over allegations of sex discrimination in hiring. Illini argued that because a temp agency did its hiring, the fact that female temp workers were not sent to Illini was not the company's fault, but the EEOC and the courts disagreed.[124]
- In May 2013, a jury in Tennessee ordered third-party logistics firm New Breed to pay more than $1.5 million to resolve an EEOC sexual harassment and retaliation lawsuit. The four victims worked at a warehouse in Memphis that New Breed operated on behalf of Avaya, a telecommunications equipment provider that works with over 95 percent of Fortune 500 companies,[125] and giant Select Staffing provided at least one of the victims working at the facility.[126]
- Blockbuster settled an EEOC case for more than $2 million in December 2011 based on complaints of extensive sexual harassment toward Hispanic female workers at a Blockbuster distribution center in Maryland. The victims were temporary workers provided through a staffing agency.[127]
- In September 2011, the EEOC sued Source One Staffing of Illinois, alleging that Source One had "assigned female employees to a known hostile work environment and retaliated against two female employees who reported that their supervisor was making sexual advances toward them," as well as assigning work based on an applicant's sex.[128]
- In June 2010, Adecco, one of the largest staffing firms in the world, settled a sexual harassment and retaliation lawsuit based on discriminatory treatment that female Adecco workers experienced working for Adecco's client, Pittsburgh Plastics Manufacturing. The EEOC argued that Adecco knew about the sexual harassment its workers faced but continued to send female workers to work under the alleged harasser's supervision, as well as firing one worker who complained about the harassment. The EEOC also won $79,500 from Pittsburgh Plastics in a related action.[129]

Racial Discrimination Against Staffing Workers

- After the EEOC filed six discrimination charges between 2007 and 2009, San Diego staffing firm Hyussen (doing business as Sedona Staffing) and the Sedona Group agreed to pay $920,000 to resolve the claims. The EEOC alleged that "the staffing firm engaged in a pattern and practice of classifying and failing to refer job applicants in San Diego based on their race, color, sex, national origin, age or disability."[130]

- Paramount Staffing, headquartered in Illinois, settled a race and national origin discrimination lawsuit with the EEOC in August 2010 for $585,000. The EEOC found that Paramount systematically preferred to hire Latino rather than African American workers in warehouse positions in Tennessee, and when a former employee complained about the discrimination, she was fired.[131]
- In July 2010, Ohio staffing firm Area Temps paid $650,000 and entered a consent decree to put an end to a class discrimination lawsuit after the EEOC alleged that Area Temps profiled job applicants based on race, sex, national origin, and age. The EEOC also claimed that when clients made discriminatory requests based on race, sex, national origin or age, Area Temps complied.[132]

Workers' Compensation: Vulnerable to Manipulation by Staffing Firms

Workers' compensation systems base the amount of an employer's payroll contributions on the industrial classification of the workforce and on the employer's accident rate—also known as experience rating. If rates do not reflect an entity's true accident rate or the industry its workers are actually placed in, direct-hire employers in the same industry are disadvantaged.

State workers' compensation programs can also lose out, as companies take advantage of loopholes in workers' compensation systems in order to gain a tax advantage over employers that directly hire their employees.

Given the hyper-competitive nature of the staffing industry and the intense pressure to lower costs,[133] it is little wonder that recent news is also replete with high-profile workers' compensation fraud cases against the agencies themselves.

- In August 2011, a jury in California found Select Staffing guilty of workers' compensation fraud by underreporting its payroll to the state and paying artificially low premiums by "piggybacking," or gaining a lower experience modification by making its workers employees of a separate company with a lower experience rating.[134] Select Staffing appealed the $50 million judgment, after which the parties reached a settlement.[135]
- In January 2010, Staffing Services Inc., based in Bellflower, California, entered a plea deal with the California Department of Insurance to pay restitution and penalties of $20 million after allegedly "purposely misrepresent[ing] the types and number of employees to pay a smaller amount in [workers' compensation] premiums" between 2002 and 2005.[136]
- In November 2011, the former owner of an employment agency in Stoughton, Massachusetts, was convicted of insurance and tax fraud after the company paid more than $30 million in payroll in cash, under the table, to avoid employment taxes and pay illegally low insurance premiums.[137]
- In 2009, the New York State Insurance Fund announced the conviction of a New York City accountant for her involvement in workers' compensation fraud. Sun "Sunny" H. Park, accountant for a staffing company that provided asbestos workers, was found to have assisted in setting up a shell staffing company to employ the asbestos workers but to report them as "clerical workers" for workers' compensation insurance, resulting in lower premiums.[138]
- In 2012, a Texas court affirmed a jury finding of fraud against staffing agency Business Staffing, Inc. (BSI) after a worker at Jackson Brothers Hot Oil Service was severely burned in an oil field explosion and BSI's purported insurer, Transglobal Indemnity Ltd., failed to pay the worker's $1 million in medical bills. Two BSI executives had set up the fraudulent insurer, headquartered in the West Indies and without a license to operate in Texas. The case revealed that a court issued a similar decision against BSI for fraud in 1995, after BSI insured its leased employees through a different overseas business ordered not to engage in insurance activities in Texas.[139]

- Eric Goldstein, owner of Manhattan staffing firm GT Systems, was indicted in 2010 based on allegations that he orchestrated a workers' compensation fraud scheme that allowed for GT Systems to underpay the New York State Insurance Fund by more than $25 million insurance premiums over several years. The Manhattan District Attorney's office alleged that the company "established one insurance policy after another under different pseudonyms, allowed policies to cancel for non-payment, misclassified workers and avoided paying premium on more than $400 million in payroll" in the largest premium fraud case the office had seen to date.[140] GT Systems was involved in the operation of 50 temporary placement agencies, a number of which were involved in the allegations against Goldstein, according to court documents.[141]

Unemployment Insurance: Impacts on Employer Taxation and Worker Eligibility

Employer Experience Rating

Another significant concern regarding staffing industry practices is the role of temporary help agencies and professional employer organizations (PEOs), or employee leasing firms, in lowering overall employer payroll taxes required to finance unemployment insurance (UI) programs. This reduction can shift costs to employers not involved with staffing firms and undermine the vitality of state UI programs. While there are statutory and administrative tools available for states to minimize the impact of staffing firms on UI financing, few states have adopted a fully satisfactory approach.

As with workers' compensation, all states experience-rate employer UI payroll taxes, meaning that UI tax rates increase when claims are filed by a firm's laid-off employees. This feature is designed to promote stability of employment and to fairly allocate the costs of the program among employers. To reduce their tax obligations, some employers with higher tax rates caused by heavy layoffs will manipulate their payroll levels to lower their UI tax rate, a practice known as SUTA dumping.[142] Most commonly, a company with a high tax rate will transfer workers to another entity with a lower UI tax rate, following an acquisition, merger, or restructuring.[143] By this definition, the very practice of an employer outsourcing high-turnover segments of its workforce to a temporary help agency or PEO may be a form of tax avoidance.

In 2004, Congress passed the SUTA Dumping Prevention Act (P.L. 108-295), requiring states to enact laws against SUTA dumping and to implement detection measures by 2006. The Act requires a transfer of experience between employers when there is "substantial commonality, management, or control" at the time of the transfer; second, transfers are prohibited when the "acquiring" entity is not an employer at the time of the transfer and the state agency determines that the acquisition was done to obtain a lower tax rate.[144] Unfortunately, the federal law did not deal directly with the relationship between temporary help agencies or PEOs and the companies they contract with and the impact this relationship has on UI taxes.

In general, liability for UI contributions and the appropriate tax rate is based on whether states consider the staffing firm or the client to be the employer. Complicating this picture, many states' laws distinguish between temporary help agencies and PEO's/employee leasing firms, based upon the characterization of the underlying assignment as temporary.[145] This distinction is important because whether an agency is treated as a temporary help agency or PEO/leasing company can affect UI tax obligations. Specifically, most states, including those represented by the groups highlighted in this report, treat temporary help agencies, which commonly handle the hiring and firing of workers, as the employer for UI purposes, allowing them to use a single experience rate based on the temporary firm's own layoff history.[146]

The treatment of temporary help firms as

employers, however, relies upon the entities involved to characterize the work performed as temporary without any effective limitations on the duration of the underlying assignment.[147] With respect to the so-called temporary nature of these arrangements, advocates report that workers are spending extended periods with one client company, even though, technically, they are employees of a rotating cast of agencies. As a result, the self-designation of the nature of the assignment offers temporary firms an opportunity to decide to step into the employer's shoes when doing so is mutually advantageous to the firms and the clients, or to report employees under the account of clients when that approach is cheaper.

State treatment of PEOs is varied under experience rating rules. Currently, more than half of states, including nine of the largest UI programs in terms of taxable employers, allow PEOs to become the employer of record for leased employees for UI purposes.[148] Treating the PEO as the employer usually means that the client company is liable for UI contributions based on the blended experience of the PEO's clients, rather than each client's *individual* experience.[149] Thus, a high-layoff construction company's rate is shared with a more stable employer's rate, and the construction company's rate is effectively lowered while the stable employer's obligation rises. A solution is offered in a minority of states that treat the client company as the employer for UI purposes, in which case the PEO must pay contributions on behalf of clients based on each company's individual experience.[150]

Because the experience of individual clients is often not accounted for under these arrangements, clients using staffing firms can effectively buy a lower UI tax rate by entering a contract with a temporary agency or PEO.[151] Although temp firms and PEOs are most often treated as employers and are taxed at the UI rate they have earned under a state's UI experience rating mechanisms, this does not mean that the impact of the staffing industry upon overall UI financing is benign. While some payroll taxes are being paid under both arrangements, the entities involved can manipulate their arrangements to reduce UI taxes without sufficient controls by state taxing authorities. In addition, these arrangements shift UI payroll costs to employers using the traditional employment model and paying payroll taxes without using these tax reduction options.[152]

Staffing Workers' Eligibility

Intense competition for clients not only depresses wages paid to workers, but it compels staffing agencies to contest unemployment insurance (UI) claims against them in order to keep their experience rates from rising. In general, most workers who are laid off for lack of work qualify for unemployment insurance as long as they earned enough in their last job and search for new work. However, 31 states either adopted legislation or regulations, or have agency interpretations, that require temporary workers to repeatedly report back to the agency that laid them off for a new assignment.[153] If they fail to do so, or if they refuse another placement—for example, if the pay or the schedule is unsatisfactory, or if they would prefer to focus on searching for full-time, permanent work—they are deemed to have voluntarily quit without good cause or refused suitable work and are disqualified.

One study estimates that adult temporary workers are 28 percent less likely than all other workers to receive unemployment insurance.[154] While the stated purpose of unemployment insurance is to help workers transition from job loss to reemployment with minimal harm to their economic well-being, more than half of states are relegating temp workers to a cycle of short-term work with few opportunities for mobility and impeding their search for new, steady employment. Furthermore, state agencies are wasting limited administrative resources on confirming that workers complied with the reporting requirements. This policy serves more to insulate the temp industry from excessive UI charges than to reemploy workers.

Effective Exclusion from the National Labor Relations Act

For decades, many U.S. workers have relied on union representation as a way to resolve disputes at the worksite over pay rates, health and safety, and discrimination on the job. In jobs characterized by the presence of a staffing firm, this right has virtually disappeared.

Given the precarious nature of staffing work and the degradation of wages, working conditions, and workers' rights that is part and parcel of the work, the industry and its host employers should be targets for workers organizing campaigns under the National Labor Relations Act (NLRA). After all, many blue-collar jobs that abound in the industry, like construction and manufacturing, were once good union jobs. But outdated case law under the NLRA has made it nearly impossible for staffing agency workers to organize under that model.

Collective bargaining works when workers can bargain with the employer or employers that have the ability to control working conditions. But a National Labor Relations Board decision makes it impossible for workers in these situations to bargain with either employer. In *Oakwood Care Center,* the Board held that unions had to win the consent of both the supplier and user employers to force multi-employer bargaining. That ruling effectively killed organizing at job sites that have a mix of staffing and direct-hire employees.[155] As member Wilma Liebman said in dissent, "The Board now effectively bars yet another group of employees . . . from organizing labor unions, by making them get their employers' permission first."

More recently, the Board has invited comment, in the context of a case involving staffing firm employees who worked alongside direct employees doing the same job, on whether the host employer and staffing agency are joint employers under current law, and whether it should revisit its policies on joint employment.[156] More than a dozen briefs were filed in the case from a broad range of employer and worker advocates.[157]

V. STAFFING WORKERS ORGANIZING FOR CHANGE

With the ability to join together and bargain for better working conditions under the NLRA foreclosed, staffing workers are developing new forms of organizing and bargaining particular to this industry structure.

Chicago Warehouse Workers Organizing Committee's Walmart Campaign

The Warehouse Worker Organizing Committee (WWOC) is working to win adoption of a Responsible Contractor Policy (RCP) by Walmart in Illinois. The RCP would provide for living wages, worker safety committees, and respect for worker freedom of association in Walmart's U.S. contracted warehouses.

In Chicago, Walmart operates several contracted distribution centers. Walmart's massive 3.5 million square foot Import Distribution Center in Elwood, Illinois is one of five facilities across the country that distributes imported goods to the retailer's 42 regional distribution centers, and then to its 4,000 stores. When WWOC started its campaign, there were 11 staffing agencies supplying workers to the warehouse, many compensating workers through a "piece rate" system that paid them less than minimum wage. Through a combination of worker mobilization, pressure from community leaders (including an 800-person civil disobedience action that shut down the warehouse), innovative legal tactics, and a 21-day strike of staffing workers in 2012, WWOC won over $4 million in wage increases and over $1 million in recovered stolen wages. Staffing work has been largely converted to direct-hire work, safety conditions have improved dramatically, and the piece-rate system has been eliminated.

In the past year, WWOC has expanded this successful model to retail distribution centers in Northwest Indiana. At the Walmart Consolidation Center in Hammond, Indiana, WWOC supported workers in eliminating the employer's racially discriminatory criminal background check fees and winning a 3 percent raise for the 200 mostly Black and Latino workers. Through leadership development, worker mobilization, a series of delegations by faith and community leaders, innovative enforcement strategies and online campaigning, WWOC helped workers win a heating system in the warehouse, relieving workers laboring under ice, snow, and freezing rain inside the warehouse during the polar vortex. Shortly afterward, WWOC helped workers win six paid days they can use for holidays, personal, or sick days. These are the first temp workers in the region to win paid days off.

New Jersey New Labor On-Target Staffing Campaign

New Labor has been confronting the staffing agency/warehouse structure in central New Jersey for more than a decade. Together with worker-members, who have formed "Consejos" (work councils), New Labor has developed Responsible Employer Pacts, or REPs, which are written agreements signed by warehouses and agencies to guarantee basic conditions. These are respect, a living wage, formation of workplace health and safety committees, and recognition of New Labor safety liaisons as part of these committees; conflict resolution processes; and workplace training and education programs led by worker representatives elected by the workers.

WORKER PROFILE: KATHERINE

Katherine (a pseudonym) has worked for many years at the same location as a so-called "temp" for On-Target Staffing in New Jersey. She and her coworkers move brands like Levi's and Nike, in supply chains that are controlled by multinational corporations like Walmart. Although she has been at the same location for years, Katherine seldom gets raises. To get to her warehouse, Katherine takes an overcrowded agency bus or van. In the summer the warehouse gets extremely hot, and in the winter it gets extremely cold.

Katherine presented this problem to New Labor's Consejo, and together they made a plan. With the support of the Consejo, Katherine refused to get into an overcrowded van. As a result of her action, the agency began sending more than one van to transport workers. After that victory, Katherine requested more fans in the warehouse during a 90-degree heat wave. When this was initially denied, Katherine reminded her agency supervisor that she was part of New Labor. The information was relayed to the warehouse supervisor and the next day Katherine's section of the warehouse had 10 fans, not just the two it had had the day before. Katherine continues to be active in the Consejo meetings to support workers facing similar problems at other local agencies.

Massachusetts' Fulfillment America Campaign

Fulfillment America is a Billerica, Massachusetts supply chain management company that supplies marketing material, displays, and menus to some of the most popular food chains like Dunkin' Donuts and Subway. Many of the several hundred workers were employed through a temp agency, Job Done, created by a former employee of Fulfillment America contracted to work exclusively at Fulfillment America. Working through Job Done for Fulfillment America, the workers were subject to unsafe working conditions, wage theft, and violations of their rights under the Temporary Workers Right to Know law.

Job Done told the workers that it did not pay them overtime because Fulfillment America did not pay it enough to cover overtime. Additionally, most of the workers, living in East Boston and Chelsea, were charged $4 per day for transportation, while they made around the state minimum wage of $8 per hour. The workers were also subject to verbal abuse from a supervisor while working in unsafe conditions. Abuse and intimidation were common until the workers started organizing with Masscosh, a member of the Massachusetts Immigrant Worker Center Collaborative.

Masscosh had been approached by a group of workers working at the Fulfillment America factory. Organizers soon discovered the litany of violations and abuses, and so they began to take action.

Workers filed suit against the company, packing the courtroom to demonstrate their commitment and solidarity. The agency had also violated a new Massachusetts law requiring registration and notice of working conditions. The workers filed a complaint with the state's Department of Labor Standards as well. The combination of direct action, legal pressure, and state enforcement forced the transportation charges to be reduced by half, an abusive supervisor who worked at the Fulfillment America factory to be fired, and a worker activist who had been retaliated against to be re-offered employment. The campaign showed that workers could bypass labor intermediaries and hold a host company responsible for violations at its workplace, and that the new Massachusetts Temporary Workers Right to Know law can successfully rein in staffing agencies.

VI. RECOMMENDATIONS AND CONCLUSION

The shift in the organization of work in our economy has huge implications for individual workers, state tax systems, and a shrinking middle class. The use of staffing firms is a key element of that shift. By inserting labor brokers like staffing agencies between themselves and workers, host companies can more successfully avoid liability for violations of workplace laws that apply only to the companies' "employees," even as they benefit from and have the right to control the work being performed. Like many described here, host companies often own or control the places where work is performed and have enormous economic power over what goes on in those worksites. They are in a strong position to retain authority over workers and to retain control over every aspect of the work they perform. Likewise, they retain authority over the staffing firms that often can only pay the workers after receiving payment from the company. If host companies are to continue to expand the use of staffing agencies, we need to ensure that these jobs can deliver both core labor rights and a sustainable income, with the same legal protections, wages, and safety net that is enjoyed by workers who are directly employed by a firm. To do that, policies affecting both entities must be updated.

1. Staffing agencies should be re-regulated.

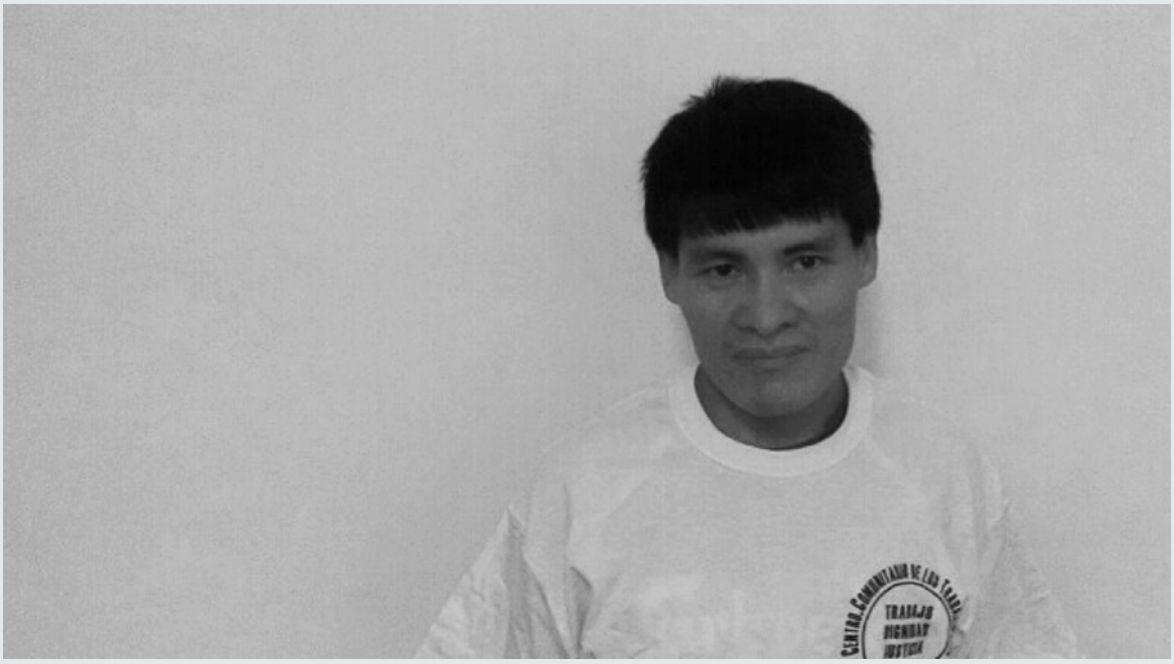
Staffing agencies have a long history of abuse of workers, beginning in the days when so-called "labor sharks" recruited immigrant workers for mines, logging, railroad and agricultural work, charging them exorbitant fees. In response, by 1929, 39 states had laws on the books regulating temp agencies, including such features as licensing, bonding, and limits on fees that they could charge to workers searching for employment.[158]

In the mid-1950s, temp agencies restructured themselves as "employers" of workers, rather than "recruiters." The industry waged a campaign between 1963 and 1971 to avoid regulation by charging fees to client companies rather than directly to workers. This meant that while temporary agencies continued to charge fees to workers in the form of lower wages and lack of benefits, the employment agency laws no longer applied.[159] While laws remain on the books in several states, most offer little or no protection to workers.

A number of more recently enacted state laws continue to focus on "labor only" middlepersons: entities whose job is to furnish workers to an end-user employer. These are most prevalent in state laws regulating temporary services agencies or particular industries with longstanding subcontracted structures, like garment, day labor, or agriculture.[160]

Illinois has the strongest and most comprehensive law regulating temporary agencies. The Illinois Day and Temporary Labor Services Act requires registration of staffing agencies (broadly defined to include labor intermediaries in all labor and employment except professional and clerical work), disclosure to workers, and recordkeeping, and it regulates the provision of meals and transportation to temporary workers.

A recent Massachusetts law takes a slightly different approach. In 2012, Massachusetts passed the Temporary Workers Right to Know Act, which focuses on disclosures by staffing agencies that must be made no later than the workers' first pay date. These include the staffing agency's name, address and phone number; job pay rate and pay date; job start date and the expected job duration; if there is a strike or lockout; whether any meals or transportation will be provided by the staffing agency or worksite employer; whether the position requires special clothing, tools, licenses, or training; and name, address, and phone number of the worksite.[161]



WORKER PROFILE: JUAN SAM

Juan Sam is a worker-leader at Centro Comunitario de Trabajadores (CCT, or Workers Community Center) in New Bedford, Massachusetts. Juan has lived in New Bedford for more than 10 years and in that time has worked for staffing agencies in recycling, cranberry picking, and New Bedford's large fishing industry.

Juan Sam was very involved in the passing of the Temporary Workers Right to Know law in Massachusetts, an effort that involved many unions and worker center partners. Juan was passionate about this fight because of what he observed as agencies withholding information from workers in order to keep them marginalized. "Temps would never tell us our hours or, many times, even what we were going to do for work that day. They'd tell my coworker to just drive to the address and fit people in his car, and we would have no clue how much work we'd have. Maybe one day of work a week, maybe more? Many times, we would not even know when we would get paid." Passing the Temporary Workers Right to Know law was an important step in ensuring that workers have much-needed information regarding their work, and are thus on better footing to organize and improve working conditions. As the president of CCT's member committee, Juan plans on continuing to help lead CCT in organizing staffing workers and in the implementation of the Right to Know law. "We keep fighting for workers to know their rights, and when we are united and fight, we win."

2. Policies should assign responsibility for workers to the host/lead companies.

History with other labor intermediaries—farm labor contractors, garment jobbers and others—has shown that the best way to ensure that labor intermediaries comply with the law is to enlist the firms that hire them in policing compliance. In the case of some of the laws on the books, most notably the Fair Labor Standards Act, user firms are often considered "joint employers" with the staffing agencies. But that legal construct has been applied unevenly and often does not reach the lead companies that have enormous control over the operations of the staffing firms with whom they contract. New constructs are needed that ensure that host employers take responsibility for the workers who often labor on their premises in positions central to their business.

Several models that impose responsibility on the users of their services already exist:

In California, AB 1897, as originally written, provided that a client employer shall share with a labor contractor (defined broadly to include staffing agencies) civil liability for payment of wages, provision of a safe workplace, employer contributions, and withholding for payroll taxes. It outlawed the shifting of these responsibilities from the client company to the labor contractor.[162] As of this writing, the bill has passed the California Assembly and the Senate, although some amendments have weakened its coverage.

The Illinois law referenced above provides that users of a staffing agency's services are strictly liable for wage violations by the agency. "If a third party client leases or contracts with a day and temporary service agency for the services of a day or temporary laborer, the third party client shall share all legal responsibility and liability for the payment of wages under the Illinois Wage Payment and Collection Act and the Minimum Wage Law."[163] The section has been interpreted by Illinois DOL regulation, 56 Ill. Admin. Code Tit. 260.500, and by the court in *Arrez v. Kelly Services,* 522 F. Supp. 2d 997, 1007 (N.D. Ill. 2007), to incorporate all of Illinois' wage and hour statutes.

These policies extend to the direct "users" or "clients" of a staffing agency. They are likely not adequate to extend to other entities that control what happens to workers at the worksite. Modern structures may include a lead company that contracts with a staffing firm to manage operations at a site owned by that lead company, in work that is integral to its business. The law needs to be able to reach these situations, since by controlling the content of the contract, the lead company controls the terms of workers' employment.

States should consider additional regulation of temporary agencies, such as those that exist in many other countries. In Europe, a European Parliament directive requires that temporary workers receive the same working conditions as those offered to direct employees. Many member countries of the Organisation for Economic Co-operation and Development (OECD) regulate how temporary agencies can operate as well as how host employers can use temp agencies.[164] These include limiting temp work to meet extraordinary needs, limiting temp assignments to a short time frame, prohibiting temps to work in ultra-hazardous employment or employment that is central to a business' operations, and requiring notification to workers of permanent openings at the host firm.

3. State and federal labor agencies should revisit their policies on "joint employment" and share best practices on enforcement.

As noted, the National Labor Relations Board has recently sought comment on whether it should revisit its decisions on "joint employment." OSHA is focusing enforcement on temporary and staffing agencies. The Wage and Hour Division of the U.S. Department of Labor is also targeting "fissured"

industries in its enforcement plans. The agencies should collaborate on enforcement strategies that ensure each is using the broadest interpretation of "joint employment" consistent with the underlying law it enforces.

Each agency should look closely at the lead companies that use staffing agencies, and consider whether there are policy changes that can ensure that companies at the top are responsible for compliance with labor laws for all workers who produce and move goods for them, whether or not these companies directly control the wages and working conditions of the workers.

4. State workers' compensation administrators should audit staffing agencies and host companies, and examine their tax structures to eliminate the potential for gaming.

Incidences of workers' compensation fraud among staffing industries should be cause for concern for state administrators. Administrators should be equally concerned about the potential for gaming of their tax systems created by these work structures. States should target staffing agencies and users of staffing agencies for audits, to ensure that the companies and their workers are properly classified and taxes properly assessed. If changes are needed in state workers' compensation laws, states should enact them.

5. State agencies administering unemployment insurance should adopt tools ensuring that unemployment insurance payroll taxes are paid by firms for whom services are performed.

To a greater or lesser extent, the business model for staffing firms of all sorts involves assisting client companies in reducing their unemployment insurance (UI) payroll costs by lowering payroll tax rates that client firms would pay if they were fully subjected to experience rating at the individual firm level. This reduces revenue to state UI trust funds and shifts payroll tax burdens to employers that operate as individual firms, compromising the integrity of experience rating systems.

Fortunately, certain states have attempted to address the impact of staffing agencies on UI financing and experience rating. For example, Washington State passed a bill in 2007 that requires professional employer organizations (PEOs) to register with the Employment Security Department, produce a list of their clients, to be updated each time a client enters or exits a contract with the PEO, and pay UI taxes at the rate of each underlying employer.[165] The law does not cover "temporary help agencies," defined as those that both recruit and hire employees, seek out host employers with which to contract, and supplement a regular workforce for special projects or during staff shortages.

More robust models are found in California and Iowa. Under the stronger version, the California UI Code considers the temp agency and the PEO the employer only if either meets seven criteria, including that the firm negotiates rates with the employer, determines workers' assignments, sets the rate of pay and pays the workers, and retains the right to hire and fire the workers.[166] This type of arrangement is rare in practice and means that the parties would have to substantially alter the typical realities of these contracts in order to game UI experience rating rules.

Iowa regulations offer a similar approach to maintaining the integrity of experience rating, requiring that employers report wages on the reports of the employing unit "for which services are performed," regardless of which employing unit issues the paycheck. Furthermore, in the case of employee leasing, a worker is considered an employee of the client, and, hence, the client must account for the experience of that employee unless there is proof that the employee is performing services for the leasing firm, he or she is subject to the direction and control of the leasing firm, and the leasing firm can hire and fire the individual.[167]

Unlike California, these Iowa regulations only apply to employee leasing firms and not to temp agencies. In any case, these approaches limit the potential undermining of experience rating that is represented by staffing agencies in other states and offer models that go beyond those steps required to comply with the federal SUTA dumping legislation.

6. States should eliminate unfair treatment of staffing workers in their unemployment insurance programs.

States should repeal the temporary worker disqualification. Last year, state lawmakers in Massachusetts proposed repealing the restriction as part of a bill addressing UI trust fund solvency.[168] Unfortunately, the language was stripped from an updated version of the bill filed earlier this year; otherwise, states have not acted to remove this measure. Advocates in states contemplating trust fund solvency legislation that currently do not require workers to contact the agency between jobs should watch out for this proposal, along with other benefit restrictions put forward by employer representatives.

ENDNOTES

1 Jeremy Edwards, IBISWorld Industry Report 56132, Office Staffing & Temp Agencies in the US (2014).

2 Annette Bernhardt, Labor Standards and the Reorganization of Work: Gaps in Data and Research (Univ. of Cal. Berkeley Inst. for Research on Labor & Employment, Working Paper No. 100-14, 2014), available at http://www.irle.berkeley.edu/workingpapers/100-14.pdf.

3 In this report, we use the terms "employee leasing firm" and "professional employer organization" (PEO) interchangeably. These refer to circumstances in which a company leases all or a portion of its workforce on a fairly permanent basis from a PEO/leasing company. The workers are on the payroll of a leasing company, but their work is typically directed by the client company. See Susan Houseman, A Report on Temporary Help, On-Call, Direct-Hire Temporary, Leased, Contract Company, and Independent Contractor Employment in the United States, U.S. Dep't Lab. (Aug. 1999), http://www.dol.gov/dol/aboutdol/history/herman/reports/futurework/conference/staffing/2_definitions.htm. The terms "temporary help agency" and "staffing agency" are often used as synonyms in the literature, and the BLS uses "temporary help agency" to mean an entity that supplies workers, on request, to employers looking to fill a temporary full- or part-time staffing need. Id. "Staffing" often refers to a longer-term arrangement but is generally understood as a situation in which the supplier of workers is also their recruiter. As new variations on these structures have arisen, the lines between leasing companies and staffing companies have blurred, with agencies calling themselves "staffing" accepting referrals from worksite employers both off- and on-site. Here we use the term "staffing agency" throughout, since many of the workers in this industry are employed long term for the same underlying host company. We use the term "temporary help agency" when that term is used in the document that we are citing.

4 One generally-understood difference between temporary or staffing agencies on the one hand, and PEOs/employee leasing firms on the other hand is that frequently under a leasing arrangement, an employer contracts with a PEO and dismisses some portion of its workers. These workers are then hired by the PEO and leased back to the original employer on a long-term basis and for a fee. The PEO then pays the employees' wages and benefits. By contrast, a temporary or staffing agency often refers to a situation in which the agency does the recruitment and hiring. KRA Corporation for U.S. Dep't of Labor, Unemployment Ins. Occasional Paper 97-1, Employee Leasing: Implications for State Unemployment Insurance Programs (1996), available at http://workforcesecurity.doleta.gov/dmstree/op/op97/op_01-97.pdf.

5 Brief for Labor Relations and Research Center, University of Massachusetts, Amherst as Amicus Curiae Supporting Petitioner, Sanitary Drivers & Helpers, Local 350, Int'l Bhd. of Teamsters, Browning-Ferris Indus. of Ca., Inc., N.L.R.B. Case 32-RC-109684 (filed June 26, 2014).

6 Susan Houseman et al., The Role of Temporary Agency Employment in Tight Labor Markets, 57 Indus. & Lab. Rel. Rev. 105 (2003); Tian Luo et al., The Expanding Role of Temporary Help Services From 1990 to 2008, Monthly Lab. Rev., Aug. 2010, available at http://www.bls.gov/opub/mlr/2010/08/art1full.pdf.

7 NELP analysis of Current Employment Statistics.

8 Richard Henderson, Industry Employment and Output Projections to 2022, Monthly Lab. Rev., Dec. 2013, available at http://www.bls.gov/opub/mlr/2013/article/industry-employment-and-output-projections-to-2022.htm.

9 Matthew Dey et al., Manufacturers' Outsourcing to Staffing Services, 65 Indus. & Lab. Rel. Rev. 533 (2012), available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2126&context=ilrreview. The authors define the following occupations as "blue collar": 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.

10 NELP analysis of Occupational Employment Statistics, May 2013. The Occupational Employment Statistics reports employment and wage estimates for workers in occupational categories of varying detail, including major, minor, broad, and detailed. This figure represents the share of the Employment Services industry represented by major occupational groups Transportation and Material Moving Occupations (21.3 percent), and Production Occupations (21.2 percent). Table 1 reports the top 10 minor occupations in the Employment Services industry.

11 Bernhardt, supra note 2.

12 Dey et al., supra note 9.

13 Id.

14 Susan Houseman, Contracting Out in the United States: Prevalence and Implications, Presentation at NELP Conference: Outsourced Work: Insourcing Responsibility (May 12, 2014).

15 Edwards, supra note 1; Staffing Industry M&A Landscape, Duff & Phelps (Apr. 2014), http://www.duffandphelps.com/SiteCollectionDocuments/Newsletters/Staffing_Report_Q1_2014.pdf.

16 TrueBlue provides blue-collar workers in construction, manufacturing, waste, wholesale, retail, transportation, aviation, hospitality, energy and other sectors throughout the U.S. Trueblue, Inc., Annual Report (Form 10-K) (Feb. 20, 2014). TrueBlue brands include Labor Ready, Spartan Staffing, CLP, PlaneTechs, Centerline Drivers, TrueBlue Energy and Industrial, and TrueBlue Hospitality. Our Specialties, Trueblue.com, http://www.trueblue.com/Our-Specialties+1 (last visited July 7, 2014).

17 Trueblue, Inc., Annual Report (Form 10-K) (Feb. 20, 2014).

18 Trueblue, Inc., Quarterly Report (Form 10-Q) (Apr. 28, 2014).

19 C.R. Roberts, TrueBlue of Tacoma Finalizes Acquisition of Seaton, Becomes Largest Industrial Staffing Provider in U.S., The News Trib. (June 30, 2014), http://www.thenewstribune.com/2014/06/30/3268725/trueblue-of-tacoma-finalizes-acquisition.html?sp=/99/261/. Seaton Corp operates the staffing firm Staff Management – SMX. Before the acquisition, Staffing Industry Analysts ranked TrueBlue as the fifth-largest industrial staffing firm in 2013. US – Largest Industrial Staffing Firms Listed, Staffing Industry Analysts (July 17, 2013), http://www.staffingindustry.com/site/Research-Publications/Daily-News/US-Largest-industrial-staffing-firms-listed-26512.

20 Koosharem, LLC does business as The Select Family of Staffing Companies. Select Family companies send workers to blue-collar jobs, like warehousing, food service, and construction, as well as administrative and professional assignments. See, e.g., Get a Job, Select Staffing, http://selectfamily.com/SelectStaffing/main.cfm?nlvl1=2&nlvl2=68 (last visited July 14, 2014). Based in Santa Barbara, the company operates under a number of brands nationally, including Select Staffing, SelectRemedy, Westaff, RemX, Real Time Staffing Services, and Remedy Intelligent Staffing. Disclosure Statement for Debtors at 18, In re Ablest, Inc., No. 14-10717-KJC, 2014 WL 1404757 (Bkrtcy. D. Del. Apr. 1, 2014).

21 CRS's brands include Accountabilities, Inc., Diamond Staffing, Insurance Overload Services, Integrated Consulting Group, and TS Staffing. CRS's principal stockholder, Robert Cassera, controls a group of affiliated entities called Tri-State, and in recent years CRS has acquired several subsidiaries from Tri-State which are now integrated into CRS's business, including Tri-Diamond (now Diamond Staffing Services) and TS Staffing. Id. at 7. John Messina, Tri-State's President, CEO and Chairman of the Board, is also a Tri-State employee. Id. For the purposes of this report, CRS and Tri-State companies (Tri-State PEO, Tri-State Employment Services, etc.) are all considered 'CRS-affiliated companies,' given these companies' close operating relationship and common ownership.

22 Corporate Resource Services Acquires Staff Management Group, Corporate Resource Services (Feb. 3, 2013), http://www.crsco.com/2014/02/corporate-resource-services-acquires-staff-management-group/; Corporate Resource Services Announces the Second Acquisition of 2014 (Feb. 13, 2013), http://www.crsco.com/2014/02/corporate-resource-services-announces-the-second-acquisition-of-2014/; Corporate Resource Services Buys California Staffing Firm, N.Y. Bus. J. (Oct. 18, 2013), http://www.bizjournals.com/newyork/news/2013/10/18/corporate-resource-services-buys.html; Staffing 360 Names Former Command Center, Select Exec as CFO, Staffing Industry Analysts (Mar. 28, 2014), http://www.staffingindustry.

com/Research-Publications/Daily-News/Staffing-360-names-former-Command-Center-Select-exec-as-CFO-29515; US – Largest Industrial Staffing Firms Listed, supra note 19.

23 Corporate Res. Sevs., Inc., Annual Report (Form 10-K) (June 30, 2014).

24 Edwards, supra note 1.

25 Corporate Res. Sevs., Inc., Annual Report (Form 10-K) (June 30, 2014).

26 Arne L. Kalleberg, Nonstandard Employment Relations: Part-time, Temporary and Contract Work, 26 Ann. Rev. Soc. 341 (2000); Cynthia M. Ofstead, Temporary Help Firms as Entrepreneurial Actors, 14 Soc. F. 273 (1999).

27 Jamie Peck & Nikolas Theodore, The Business of Contingent Work: Growth and Restructuring in Chicago's Temporary Employment Industry, 12 Work Emp. & Soc'y 655 (1998).

28 Susan N. Houseman, Why Employers Use Flexible Staffing Arrangements: Evidence from an Establishment Survey (W.E. Upjohn Inst., Working Paper No. 01-67, 2000).

29 Id.

30 Tom Gorman, How to Manage an Outsourced Workforce, Material Handling Mgmt. (May 13, 2009), http://mhlnews.com/labor-management/how-manage-outsourced-workforce.

31 Jason Struna et al., Unsafe and Unfair: Labor Conditions in the Warehouse Industry, Pol'y Matters, Summer 2012, at 1, available at http://www.policymatters.ucr.edu/pmatters-vol5-2-warehouse.pdf; Jason Rowe, New Labor, New Jersey's Supply Chain Pain: Warehouse and Logistics Work Under Wal-Mart & Other Big Box Retailers (2012), available at http://newlabor.org/wp-content/uploads/2012/05/white-paper-V-FINAL.pdf.

32 In one pilot survey of temp warehouse workers, 69 percent reported being sent by agencies to warehouse or distribution centers "everyday", and another 20 percent reported being sent 3–4 times a week. The vast majority (88 percent) reported that their "most recent warehouse job" lasted more than a month. More than a third of the temporary workers had been at the same agency for over a year and 17 percent for longer than two years. George Gonos & Carmen Martino, Temp Agency Workers in New Jerseys' Logistics Hub: The Case for a Union Hiring Hall, 14 J. Lab & Soc'y 499 (2011), available at https://www.academia.edu/6353296/Temp_Agency_Workers_in_New_Jerseys_Logistics_Hub_The_Case_for_a_Union_Hiring_Hall.

33 Michael Grabell, The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed, ProPublica (June 27, 2013), http://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushe.

34 Megan Woolhouse & Michael Grabell, Hummus Maker Warned of 'Extreme Safety Risk' Before Temp Worker's Death, ProPublica (May 21, 2014), http://www.propublica.org/article/hummus-maker-warned-of-extreme-safety-risk-before-temp-workers-death.

35 Michael Grabell, California Considers Bill to Protect Temp Workers, ProPublica (Mar. 14, 2014), http://www.propublica.org/article/california-considers-bill-to-protect-temp-workers; Temp Workers, Allies, Demand Billerica Employer Restore Fired Workers, End Wage Theft, MassCOSH (Feb. 19, 2014), http://www.masscosh.org/publications/featured-articles/temp-workers-allies-demand-billerica-employer-restore-fired-workers.

36 Kristy Etheridge, Widow Makes Serious Allegations Against Paper Plant After Contractor's Death, WBTV (Feb. 28, 2013), http://www.wbtv.com/story/20763076/samir-storey-death-resolute-forest-products-wife-bowater.

37 Michael Grabell, Senator Asks OSHA About Temp Worker Buried Alive in Sugar, ProPublica (July 10, 2014), http://www.propublica.org/article/senator-asks-osha-about-temp-worker-buried-alive-in-sugar.

38 Staffing Industry Analysts ranks Adecco as the largest staffing firm in the world and the second-largest in the U.S., with Manpower ranked as the fourth-largest in the U.S. Timothy Landhuis, 2013 List of Largest U.S. Staffing Firms and Market Share Analysis, Staffing Industry Analysts (June 13, 2013), http://www.addisongroup.com/_media/files/downloads/US_Largest_20131.pdf. Adecco boasts that the Industry segment accounted for 50% of its revenues in 2013 in Automotive, Manufacturing and Heavy Industry, Construction, Hospitality, Transportation and Logistics. Our Business Lines and Brands, Adecco Group, http://annualreport2013.adecco.com/en/ar2013/services/business-lines-and-brands.html (last visited Aug. 7, 2014).

39 Press Release, Occupational Safety & Health Admin., 14-1125-NEW (osha 14-042), US Department of Labor's OSHA Cites 5 Companies Following December 2013 Fatality of Temporary Worker at Amazon Fulfillment Center in Avenel, NJ (June 24, 2014), available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26208.

40 Id.

41 Plaintiffs' Response to Defendants' Consolidated Motion to Dismiss Plaintiffs' First Amended Complaint, Lucas v. Ferrara Candy Co., No. 13-C-1525, (N.D. Ill.) (filed Dec. 10, 2013).

42 For a list of Ferrara Candy Company's brands, see Brands, Ferrara Candy Co., http://www.ferrarausa.com/brands/ (last visited Aug. 7, 2014).

43 Plaintiff's Emergency Motion for Protective Order and Other Relief, Mendez v. Job Done LLC, No. 12-4992 (Mass. Super.) (filed Feb. 21, 2014).

44 Rowe, supra note 31.

45 Gonos & Martino, supra note 32.

46 The Elk Grove Book Online, http://www.theelkgrovebook.com/chapter-index.php?id=16 (last visited August 20, 2014).

47 IL Department of Labor 2013 Registered Day and Temporary Labor Agencies, under the IL Day and Temporary Labor Services Act, 820 ILCS 175, https://data.

illinois.gov/Reference/IDOL-2013-Registered-Day-and-Temporary-Labor-Agenc/ei8t-ptaz.

48 Warehouse Workers for Justice, Bad Jobs in Goods Movement: Warehouse Work in Will County, Illinois, available at http://www.warehouseworker.org/badjobsgoodsmovement.pdf (last visited June 24, 2014) (surveying 150 warehouse workers in Will County, Illinois).

49 Id.

50 Id.

51 Telephone Interview with Tim Bell, Org. Dir., Chi. Workers' Collaborative (Aug. 8, 2014).

52 Joshua Wright, Temp Employment Is Dominating Job Growth in the Largest Cities, Econ. Modeling Specialists, Inc. (June 21, 2013), http://www.economicmodeling.com/2013/06/21/temp-employment-is-dominating-job-growth-in-the-largest-cities-is-that-a-good-thing/#comment-2432.

53 2014 Registered Day/Temporary Agencies, Ill. Dep't Lab., http://www.illinois.gov/idol/employerinformation/pages/approveddtlsa.aspx (last visited Aug. 7, 2014).

54 Edwards, supra note 1.

55 Wright, supra note 52.

56 Miranda Dietz, Univ. Cal. Labor Ctr., Temporary Workers in California Are Twice as Likely as Non-Temps to Live in Poverty: The Problems with Temporary and Subcontracted Work in California (2012), available at http://laborcenter.berkeley.edu/pdf/2012/temp_workers.pdf.

57 Edna Bonacich & Juan D. De Lara, Economic Crisis and the Logistics Industry: Financial Insecurity for Warehouse Workers in the Inland Empire (Univ. Cal. L.A. Inst. for Research on Labor & Employment, Working Paper No. 2009-13, 2009), available at http://escholarship.org/uc/item/8rn2h9ch#page-1.

58 Struna et al., supra note 31.

59 Id.

60 Juan D. De Lara, Univ. S. Cal. Program for Envtl. & Reg'l Equity, Warehouse Work: Path to the Middle Class or Road to Economic Insecurity? (2013), available at https://dornsifecms.usc.edu/assets/sites/242/docs/WarehouseWorkerPay_3_web.pdf.

61 David H. Autor & Susan N. Houseman, Do Temporary-Help Jobs Improve Labor Market Outcomes for Low-Skilled Workers? Evidence from "Work First," 2 Am. Econ. J.: Applied Econ. 96 (2010).

62 NELP analysis of Current Population Survey Outgoing Rotation Group file, 2013. These breakdowns are based on self-reports of industry and occupation. Because of the complexity of some of these work arrangements, it's possible that some workers may incorrectly report the industry they work in.

63 See id.

64 Autor & Houseman, supra note 61. The authors cite earlier state-level studies documenting the funneling of recipients of TANF and of public employment services provided under the Workforce Investment Act and Wagner-Peyser, and tracking their wage and employment outcomes.

65 See, e.g. Caroline K. Smith et al., Temporary Workers in Washington State, 53 Am. J. Indus. Med. 135 (2010).

66 Protecting Temporary Workers, Occupational Safety & Health Admin., https://www.osha.gov/temp_workers/index.html (last visited July 16, 2014).

67 Michael Foley et al., Contingent Workers: Workers' Compensation Data Analysis Strategies and Limitations, 57 Am. J. Indus. Med. 764 (2014); Thomas A. Kochan et al., Human Resource Strategies and Contingent Workers: The Case of Safety and Health in the Petrochemical Industry, 33 Hum. Resource Mgmt. 55 (1994); Smith et al., supra note 65.

68 See, e.g., Alice Sanwald & Engelbert Theurl, Atypical Employment and Health: A Meta-Analysis (Univ. of Innsbruck Working Papers in Econ. & Statistics, Paper No. 2014-15, 2014); Elsa Underhill & Michael Quinlan, How Precarious Employment Affects Health and Safety at Work: The Case of Temporary Agency Workers, 66 Indus. Rel. 397 (2011); Marianna Virtanen et al., Temporary Employment and Health: A Review, 34 Int'l J. Epidemiology 610 (2005).

69 Smith et al., supra note 65.

70 Yong-Seong Park & Richard J. Butler, The Safety Costs of Contingent Work: Evidence from Minnesota, 22 J. Lab. Res. 831 (2001). The authors hypothesized that the higher rate of workers' compensation claims among leased workers could be attributed to both increased hazards associated with temporary work (less training, riskier occupations, less-experienced workers) as well as increased incentives for filing claims for leased compared to direct-hire workers (leased employees less likely to have employer-provided health insurance, less monitoring by party paying workers' compensation premiums compared to regular workers, less job stability than regular workers). Id.

71 Olga Pierce et al., How We Calculated Injury Rates for Temp and Non-Temp Workers, ProPublica (Dec. 18, 2013), http://www.propublica.org/nerds/item/how-we-calculated-injury-rates-for-temp-and-non-temp-workers.

72 Sarah A. Burgard et al., Perceived Job Insecurity and Health: The Michigan Recession and Recovery Study, 54 J. Occupational & Envtl. Med. 1101 (2012).

73 David Michaels, Assistant Sec'y of Labor for Occupational Safety & Health, Remarks to the Nat'l Advisory Comm. on Occupational Safety & Health (June 11, 2013), available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=SPEECHES&p_id=2965.

74 Press Release, Occupational Safety & Health Admin., 13-800-NAT, OSHA Launches Initiative to Protect Temporary Workers (Aug. 29, 2013), available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23994.

75 Protecting Temporary Workers, supra note 6.

76 Memorandum from Thomas Galassi, Dir., Directorate of Enforcement Programs, Occupational Safety & Health Admin., to Regional Adm'rs (Sept. 5, 2013), available at

https://www.osha.gov/temp_workers/temp_works_ois_coding.html.

77 OSHA Launches Initiative to Protect Temporary Workers, supra note 74.

78 Protecting Temporary Workers, supra note 6.

79 See, e.g., Phil Hagan, Temporary Workers Need Training to Reduce Risk of Injury–Especially in the Heath, Waste360 (June 19, 2014), http://waste360.com/blog/temporary-workers-need-training-reduce-risk-injury-especially-heat; Waster Services Provider: Staffing Case Study, EliteStaffing, http://www.elitestaffinginc.com/waste-services-case-study.php (last visited Aug. 7, 2014).

80 Census of Fatal Occupational Injuries, U.S. Bureau of Labor Statistics, Fatal Occupational Injuries, Total Hours Worked, and Rates of Fatal Occupational Injuries by Selected Worker Characteristics, Occupations, and Industries, Civilian Workers, 2012 (2014), available at http://www.bls.gov/iif/oshwc/cfoi/cfoi_rates_2012hb.pdf. The BLS estimates a fatality rate in this industry of 13.2 fatalities per 100,000 workers.

81 Press Release, Occupational Safety & Health Admin., 12-1685-NEW (osha 12-101), US Labor Department's OSHA Cites Waste Management and Labor Ready Northeast After June Heat Fatality in New Jersey (Aug. 22, 2012), available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=22872; see also Brendan McGrath, Waste Management to Pay Fine, Teach Workers to Stay Cool After Heat-Related Death in Hopewell, The Times of Trenton (Aug. 28, 2013), http://www.nj.com/mercer/index.ssf/2013/08/waste_management_to_pay_fine_teach_workers_to_stay_cool_after_heat-related_death_in_hopewell_borough.html; Inspection: 469439.015 – Labor Ready Northeast Inc., Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=469439.015 (last visited July 7, 2014) (click link for ID # 01001 at the bottom of the page for a description of the incident).

82 Inspection: 315017350 – Labor Ready Central, Inc., Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315017350 (last visited July 7, 2014).

83 On April 17, a worker employed by Labor Ready Southeast in Saint Augustine, Florida, died after a fall from a sanitation truck. FY14 Fatalities and Catastrophes to Date, Occupational Safety & Health Admin. (June 25, 2014), https://www.osha.gov/dep/fatcat/fy14_federal-state_summaries.pdf. Two weeks later, on May 2, Brandon Bristol, 26, a Labor Ready worker in Orlando, was run over by a garbage truck after collecting trash in a church parking lot. Desiree Stennett & Amy Pavuk, Orlando Garbage Truck Runs Over, Kills Worker, Orlando Sentinel (May 2, 2014), http://articles.orlandosentinel.com/2014-05-02/news/os-orlando-garbage-truck-kills-worker-20140502_1_truck-parking-lot-city-records.

84 Nagle v. Trueblue, Inc., No. 1369 C.D.2013, 2014 WL 1327611, at *1 (Pa. Commw. Ct. Apr. 2, 2014).

85 Press Release, Occupational Safety & Health Admin., 13-1826-DAL, Houston, Texas, Waste Services Employer and Temporary Labor Provider Cited by US Labor Department's OSHA for Worker's Death from Excessive Heat Exposure (Sept. 16, 2013), available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=24810.

86 Amy Dunn, Contract Worker Dies in Accident at Recycling Facility, News & Observer (Nov. 5, 2010), http://www.newsobserver.com/2010/11/05/783259/contract-worker-dies-in-accident.html; Jessica Pickens, Family of Man Killed in 2010 Truck Accident May Receive Settlement, Shelby Star (Jan. 15, 2013), http://www.shelbystar.com/news/local/landfill-death-ruling-reversed-1.79262.

87 FY13 Fatalities and Catastrophes, Occupational Safety & Health Admin., https://www.osha.gov/dep/fatcat/FatalitiesFY13.csv (last visited July 7, 2014).

88 Fallen Workers: Terry Palmer, North Carolina, Nat'l Council for Occupational Safety & Health, http://www.coshnetwork.org/fallen-workers-terry-palmer-north-carolina (last visited July 7, 2014).

89 Press Release, Occupational Safety & Health Admin., 13-149-ATL, US Labor Department's OSHA Cites Jacksonville, Fla.-based Bacardi Bottling Following Death of Temporary Worker on 1st Day (Feb. 11, 2013), available at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23640.

90 Any inspections resulting in citations during this time period that were then deleted as a result of the appeals process are not included in this analysis.

91 Inspection: 126198670 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=126198670 (last visited July 7, 2014); Inspection: 300875366 – Koosharem Corporation Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=300875366 (last visited July 7, 2014); Inspection: 312665805 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=312665805 (last visited July 7, 2014); Inspection: 312667967 – New Koosharem Corp Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=312667967 (last visited July 7, 2014); Inspection: 313387912 – Select Specialized Staffing Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=313387912 (last visited July 7, 2014); Inspection: 314757634 – Koosharem Llc Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314757634 (last visited July 7, 2014); Inspection: 314760737 – Koosharem Llc Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314760737 (last

visited July 7, 2014); Inspection: 314758087 – Koosharem Llc Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314758087 (last visited July 7, 2014); Inspection: 314759275 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314759275 (last visited July 7, 2014); Inspection: 314830852 – Real Time Staffing Svcs Inc., Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314830852 (last visited July 7, 2014); Inspection: 314863382 – Select Staffing Llc, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314863382 (last visited July 7, 2014); Inspection: 314863671 – Koosherm Inc Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314863671 (last visited July 7, 2014); Inspection: 315073114 – New Koosharem Corporation Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315073114 (last visited July 7, 2014); Inspection: 315313759 – Real Time Staffing, Inc. Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315313759 (last visited July 7, 2014); Inspection: 315317529 – Real Time Staffing Services, Inc. Dba Select Staff, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315317529 (last visited July 7, 2014); Inspection: 315343608 – Select Staffing , Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315343608 (last visited July 7, 2014); Inspection: 315532663 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315532663 (last visited July 7, 2014); Inspection: 316210434 – New Koosharem Inc Dba Select Staffing Branch # 24, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316210434 (last visited July 7, 2014); Inspection: 316347764 – Select Staffing Companies, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316347764 (last visited July 7, 2014); Inspection: 316519784 – Select Specialized Staffing, Inc, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316519784 (last visited July 7, 2014); Inspection: 316519867 – Select Specialized Staffing, Inc., Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316519867 (last visited July 7, 2014); Inspection: 316622453 – Koosharem Llc Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316722453 (last visited July 7, 2014); Inspection: 316727791 – Koosharem Llc Dba Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316727791 (last visited July 7, 2014); Inspection: 317143030 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=317143030 (last visited July 7, 2014).

92 Any inspections resulting in citations during this time period that were then deleted as a result of the appeals process are not included in this analysis.

93 Inspection: 945869.015 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=945869.015 (last visited July 7, 2014).

94 Inspection: 316854215 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=316854215 (last visited July 7, 2014).

95 Inspection: 951007.015 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=951007.015 (last visited July 7, 2014).

96 Inspection: 315724633 – Select Staffing, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=315724633 (last visited July 7, 2014).

97 Inspection: 314973728 – Remedy Intelligent Staffing Inc, Occupational Safety & Health Admin., https://www.osha.gov/pls/imis/establishment.inspection_detail?id=314973728 (last visited July 7, 2014).

98 Lewis M. Segal & Daniel G. Sullivan, Wage Differentials for Temporary Services Work: Evidence from Administrative Data (Fed. Reserve Bank of Chi., Working Paper No. WP-98-23, 1998), available at http://www.chicagofed.org/digital_assets/publications/working_papers/1998/wp98_23.pdf.

99 Autor & Houseman, supra note61.

100 Houseman, supra note 3; Arne L. Kalleberg et al., Bad Jobs in America: Standard and Nonstandard Employment Relations and Job Quality in the United States, 65 Am. Soc. Rev. 256 (2000).

101 Rowe, supra note 31.

102 Id.

103 Id.

104 Warehouse Workers for Justice, supra note 48.

105 Dietz, supra note 56.

106 The laws violated include the Fair Labor Standards Act, the Service Contract Act, the Family and Medical Leave Act, Davis Bacon and Related Acts, and the Contract Work Hours and Safety Standards Act.

107 The companies included in the search for this data were: Labor Ready (and regional subsidiaries under that name), TrueBlue, PlaneTechs, and CLP Resources, Inc.

108 States where violations were found are: Colorado (24 violations in 1 case), Florida (112 violations in 3 cases), Iowa (45 violations in 1 case), Illinois (3 violations in 1 case), Louisiana (1 violation in 1 case), Nevada (2 violations in 1 case), Ohio (32 violations in 1 case), Utah (6 violations in 1 case), Washington (28 violations in 2 cases)

and Wisconsin (40 violations in 1 case).

109 Three of the enforcement cases in this analysis cover findings that were discovered over a period of time ending starting before 2008 and in April 2008 or later: case ID 1498697 in Tampa, Florida, with 105 violations and a findings start date of 5/1/2006; case ID 1532753 in Dayton, Ohio, with 32 violations and a findings start date of 1/1/2007; and case ID 1458976 in Lake City, Florida, with 1 violation and a findings start date of 12/3/2007.

110 U.S. Dep't of Labor Enforcement Data, Wage and Hour Compliance Action Data (Apr. 21, 2014), available at http://ogesdw.dol.gov/views/data_catalogs.php (follow "Wage and Hour Compliance Action Data" hyperlink; then download "whd_whisard" csv file).

111 Plaintiff's Emergency Motion for Protective Order and Other Relief, Mendez v. Job Done LLC, No. 12-4992 (Mass. Super.) (filed Feb. 21, 2014).

112 Stipulation of Settlement, Bautista v. Real Time Staffing Servs., Inc., No. C 0644 (N.D. Ill.) (filed Oct. 14, 2011).

113 Chris Reidy, Temp Agency Agrees to Pay $250,000 in Back Wages, Bos. Globe, Jan. 13, 2006, at F2.

114 Carrillo v. Schneider Logistics, Inc., 823 F. Supp.2d 1040 (C.D. Cal. 2011).

115 Ricardo Lopez, Workers Reach $21-million Settlement Against Wal-Mart, Warehouses, L.A. Times (May 14, 2014), http://www.latimes.com/business/la-fi-wal-mart-warehouse-workers-20140515-story.html.

116 U.S. Dep't of Labor, Strategic Plan, Fiscal Years 2014-2018 (2014), available at http://www.dol.gov/_sec/stratplan/FY2014-2018StrategicPlan.pdf.

117 See, e.g., Press Release, Wage & Hour Div., U.S. Dep't of Labor, 13-618-DAL, Major Staffing Agency Hutco to Pay Nearly $2 Million in Overtime Back Wages to Workers Following US Labor Department Investigation (May 6, 2013), available at http://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Southwest/20130506.xml; Press Release, Wage & Hour Div., U.S. Dep't of Labor, 13-1465-CHI, Midwest Lodging Agrees to Pay More than $47,000 in Back Wages to 67 Workers Following Labor Department Investigation of Hotel Group and Its Staffing Agencies (Aug. 15, 2013), available at http://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Midwest/20130815.xml.

118 Struna et al., supra note 31.

119 Rowe, supra note 31.

120 Plaintiffs' Response to Defendants' Consolidated Motion to Dismiss Plaintiffs' First Amended Complaint, Lucas v. Ferrara Candy Co., No. 13-C-1525, (N.D. Ill.) (filed Dec. 10, 2013).

121 U.S. Equal Emp't Opportunity Comm'n, Strategic Enforcement Plan FY 2013-2016 (2013), available at http://www.eeoc.gov/eeoc/plan/sep.cfm.

122 See Attention Staffing Firms: EEOC to Focus on Eliminating Hiring Barriers, DePaul Industries Blog (Oct. 29, 2013), http://depaulindustries.com/blog/2013/10/29/attention-staffing-firms-eeoc-to-focus-on-eliminating-hiring-barriers/; Erin C. Horton, EEOC Priorities May Place Staffing Firms Under Greater Scrutiny, Emp. Matters (Oct. 24, 2014), http://www.employmentmattersblog.com/2013/10/eeoc-priorities-may-place-staffing-firms-under-greater-scrutiny/. Press releases announcing settlements with staffing firms often include reference to the Strategic Enforcement Plan's targeting of discriminatory recruitment and hiring practices. See, e.g., Press Release, U.S. Equal Emp't Opportunity Comm'n, Benhar Office Interiors to Pay $90,000 to Settle EEOC Pregnancy Discrimination Suit (Apr. 17, 2014), available at http://www1.eeoc.gov/eeoc/newsroom/release/4-17-14.cfm.

123 Benhar Office Interiors to Pay $90,000 to Settle EEOC Pregnancy Discrimination Suit, supra note 2.

124 Press Release, U.S. Equal Emp't Opportunity Comm'n, Illini Precast Agrees to Consent Decree in Sex Discrimination Case Brought by EEOC (July 3, 2013), available at http://www.eeoc.gov/eeoc/newsroom/release/7-3-13.cfm.

125 Why Avaya?, Avaya, http://www.avaya.com/usa/partners/connect/why-avaya/ (last visited Aug. 7, 2014).

126 EEOC v. New Breed Logistics, 962 F.Supp. 2d 1001 (W.D. Tenn. 2013).

127 Press Release, U.S. Equal Emp't Opportunity Comm'n, Federal Court Signs Order for Blockbuster Inc. To Pay Over $2m to Settle EEOC Suit for Sex, Race and National Origin Discrimination, Retaliation (Dec. 14, 2011), available at http://www.eeoc.gov/eeoc/newsroom/release/12-14-11b.cfm.

128 Press Release, U.S. Equal Emp't Opportunity Comm'n, EEOC Sues Staffing Agency for Sex Harassment, Retaliation, and Assigning Workers Based on Sex (Sept. 27, 2011), available at http://www.eeoc.gov/eeoc/newsroom/release/9-27-11b.cfm.

129 Press Release, U.S. Equal Emp't Opportunity Comm'n, Temp Agency ADECCO USA Settles EEOC Sexual Harassment and Retaliation Lawsuit (June 3, 2010), available at http://www.eeoc.gov/eeoc/newsroom/release/6-3-10b.cfm.

130 Press Release, U.S. Equal Emp't Opportunity Comm'n, EEOC, Huyssen, Inc., Licensed to Use the Registered Service Mark Sedona Staffing, and Sedona Group Reach Agreement on Discrimination Case Involving Recruitment and Hiring (Oct. 22, 2013), available at http://www.eeoc.gov/eeoc/newsroom/release/10-22-13.cfm.

131 Press Release, U.S. Equal Emp't Opportunity Comm'n, Paramount Staffing To Pay $585,000 To Settle EEOC Lawsuit (Aug. 23, 2010), available at http://www.eeoc.gov/eeoc/newsroom/release/8-23-10.cfm.

132 Press Release, U.S. Equal Emp't Opportunity Comm'n, Area Temps Agrees to Pay $650,000 for Profiling Applicants by Race, Sex, National Origin and Age (July 27, 2010), available at http://www.eeoc.gov/eeoc/newsroom/release/7-27-10.cfm.

133 See David Weil, Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour

Division (2010), available at http://www.dol.gov/whd/resources/strategicEnforcement.pdf.

134 Roberto Ceniceros, State Workers Comp Insurer Seeks $50M from Staffing Firm Following Fraud Verdict, Bus. Ins. (Aug. 26, 2011), http://www.businessinsurance.com/article/20110826/NEWS08/110829915; see also State Fund Sues Select Citing Rico, Staffing Industry Analysts (Nov. 22, 2011), http://www.staffingindustry.com/Research-Publications/Daily-News/State-Fund-Sues-Select-Citing-RICO.

135 Select Remedy Statement: Answer of Real Time Staffing Services, Inc., Part 2, ProPublica (Apr. 26, 2013), http://www.propublica.org/documents/item/693913-select-remedy-statement.

136 Staffing Services Inc. Reaches Plea Bargain in Workers' Comp Insurance Fraud Case, Claims J. (Jan. 26, 2010), http://www.claimsjournal.com/news/west/2010/01/26/106849.htm.

137 Press Release, U.S. Fed. Bureau of Investigation, Bos. Div., Former Owner of Stoughton Temporary Employment Agency Sentenced for Under-the-Table Scheme (Nov. 3, 2011), available at http://www.fbi.gov/boston/press-releases/2011/former-owner-of-stoughton-temporary-employment-agency-sentenced-for-under-the-table-scheme.

138 Park Avenue Accountant Guilty in Million Dollar Comp Fraud, WorkersCompensation.com (Oct. 30, 2009), http://www.workerscompensation.com/compnewsnetwork/news/5811-parkave.html.

139 Jury Returns Verdict for Plaintiffs Totalling $4.7 Million, The Law Office of Tim P. Smith http://www.timsmithlaw.com/jury-returns-verdict-for-plaintiffs-totalling-47-million.html (last visited Aug. 7, 2014).

140 NY: Owner of Manhattan Temp Agency Hit With $25M Comp Fraud, LexisNexis Legal Newsroom (May 18, 2010), http://www.lexisnexis.com/legalnewsroom/workers-compensation/b/newsheadlines/archive/2010/05/18/ny-owner-of-manhattan-temp-agency-hit-with-25m-comp-fraud.aspx.

141 Id.

142 SUTA stands for State Unemployment Tax Act.

143 Lester Coffey et al., Coffey Communications & Urban Institute, Evaluation of State Implementation of Section 303(K), SSA, Chp. 1, p. 3-4, available at http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20State%20Implementation%20of%20Section%20303(K)%20SSA--Final%20Report.pdf.

144 In that case, the new employer rate is assigned. Emp't & Training Admin., U.S. Dep't of Labor, Comparison of State Unemployment Insurance Laws, ch. 2: Financing (Jan. 1, 2014), available at http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2014/financing.pdf; see also Cheryl Atkinson, Emp't & Training Admin., U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 30-04, SUTA Dumping—Amendments to Federal Law Affecting the Federal-State Unemployment Compensation Program, Attachment 1—Detailed Explanation of Section 303(k), SSA—Questions and Answers, available at http://workforcesecurity.doleta.gov/dmstree/uipl/uipl2k4/uipl_3004a1.htm.

145 KRA Corporation, supra note 4, at Appendix C.

146 NELP, Temp Work and Unemployment Insurance—Helping Employees at Temporary Staffing and Employee Leasing Agencies: When May an Employee Be Denied Unemployment Benefits Between Jobs?, (2001), available at http://nelp.3cdn.net/e66944ab3a4644d338_8gm6bx9ji.pdf; see also KRA Corporation, supra note 4.

147 KRA Corporation, supra note 4, at Appendix C.

148 Coffey et al., supra note 141 at Appendix E, p. 62.

149 KRA Corporation, supra note 4.

150 Coffey et al., supra note 143 at Appendix E, p. 62.

151 KRA Corporation, supra note 4.

152 Andrew Stettner et al., NELP, Changing Workforce, Changing Economy: State Unemployment Insurance Reforms for the 21st Century (2004), available at http://nelp.3cdn.net/31c9039786a84cdc52_h5m6y1dsp.pdf.

153 Emp't & Training Admin., U.S. Dep't of Labor, Comparison of State Unemployment Insurance Laws, ch. 5: Nonmonetary Eligibility (Jan. 1, 2014), available at http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2014/nonmonetary.pdf. Puerto Rico's UI program also has the temporary worker provision. For more information, see NELP, Watch Out For: Eligibility Rules that Discriminate Against Workers Employed in Temporary Help Industry, available at http://nelp.bluestatedigital.com/page/-/UI/cwce_book/EligibilityRules.pdf (last visited Aug. 8, 2014).

154 Wayne Vroman, Labor Market Changes and Unemployment Insurance Benefit Availability, (1998), available at http://workforcesecurity.doleta.gov/dmstree/op/op98/op_03-98.pdf.

155 A 2004 order by the National Labor Relations Board barred temp workers from joining with permanent workers for collective bargaining unless both the temp agency and the host company agree to the arrangement. Oakwood operated a 152-bed residential care facility. Oakwood hired and employed 55% of the workforce. The remainder of the workers were employed by a personnel staffing agency. Oakwood Care Ctr., 343 N.L.R.B. 659 (2004).

156 Notice and Invitation to File Briefs, Browning-Ferris Indus. of Ca., Inc., N.L.R.B. Case 32-RC-109684 (filed May 12, 2014), available at http://www.vorysonlabor.com/uploads/file/BFI%20Joint%20Employer%20Invitation.pdf.

157 Browning-Ferris Industries of California, Inc., d/b/a Newby Island Recyclery & FRP-II, LLC. d/b/a/ Leadpoint Business Services, Nat. Lab. Rel. Board, https://www.nlrb.gov/case/32-RC-109684 (last updated July 10, 2014).

158 Harris Freeman & George Gonos, Taming the Employment Sharks: The Case for Regulating Profit-Driven Labor Market Intermediaries in High Mobility Labor Markets, 13 Emp. Rts. & Emp. Pol'y J. 101 (2009); George Gonos, Fee-Splitting Revisited: Concealing Surplus Value in the

Temporary Employment Relationship, 29 Pol'y & Soc'y 589 (2001), available at https://www.academia.edu/3382497/Free-Splitting_Revisited_Concealing_Surplus_Value_in_the_Temporary_Employment_Relationship.

159 Id. There are some exceptions, such as in New Jersey, where the law defines "fee" both as a charge to a worker and as the amount the agency charges the employer for its services. N.J. Stat. Ann. § 34:8-68a(8).

160 See, e.g., Cal. Lab. Code § 1682 et seq.; Florida Labor Pool Act, Fla. Stat. § 448.20 et seq.; Ga. Code Ann. § 34-10-1 et seq.; Idaho Farm Labor Contractor Licensing Act, Idaho Code Ann. § 44-1601 et seq.; Illinois Day and Temporary Labor Services Act, 820 Ill. Comp. Stat. 175/1 et seq.; Md. Code Ann., Lab. & Empl. § 7-101 et seq.; Nebraska Farm Labor Contractors Act, Neb. Rev. Stat. §48-1701 et seq.; New Mexico Day Laborer Act, N.M. Stat. Ann. § 50-15-1 et seq.; Or. Rev. Stat § 658.005; Wash. Rev. Code § 19.30.010 et seq.

161 Mass. Gen. Laws ch. 149, § 159C.

162 AB-1897, 2013–14, Reg. Sess. (Ca. 2014) (as amended by Senate August 22, 2014), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1897.

163 820 Ill. Comp. Stat. 175/85(b).

164 For more information on international practices, see NELP, Contracted Work Policy Options (May 2014), available at http://nelp.3cdn.net/2fedb5ac7a394d7abf_vfm6bexbt.pdf.

165 See Wash. Emp't Sec. Dep't, Engrossed Substitute Senate Bill 5373: Professional Employers Organizations (2010), available at http://www.esd.wa.gov/uitax/peo/PEO-report-2010.pdf#zoom=100; 07-23-130 Wash. Reg. (Nov. 21, 2007), available at http://apps.leg.wa.gov/documents/laws/wsr/2007/23/07-23-130.htm (implementing the statute).

166 Cal. Unemp. Ins. § 606.5.

167 Iowa Admin. Code Sec. 871-22.3(5).

168 See S.B. 901, 188th Leg., 1st Ann. Sess. (Mass. 2013), available at https://malegislature.gov/Bills/188/Senate/S901.

NELP
National Employment Law Project

IWCC
Immigrant Worker Center Collaborative

new labor

Chicago Workers Collaborative

Warehouse Workers for Justice
WWJ

Warehouse Worker Resource Center