



# Chain of Greed

How Walmart's Domestic Outsourcing Produces  
Everyday Low Wages and Poor Working Conditions  
for Warehouse Workers

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National Employment Law Project

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# About the National Employment Law Project

*NELP is a national non-profit organization that engages in research, education and advocacy to improve economic opportunities and strengthen economic security for working families.*

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# Executive Summary

Few U.S. corporations have attracted more intense scrutiny of their business and labor practices than Walmart. However, while poor working conditions and wage violations among the company's retail employees have been documented<sup>1</sup> and worker rights violations attributed to Walmart's international suppliers well publicized,<sup>2</sup> far less understood are the pervasive labor abuses that take place outside of Walmart's stores but in its domestic supply chain, in service of its bottom line here in the U.S. These worker rights violations are largely the product of Walmart's signature and aggressive practice of "outsourcing" elements of its warehousing, transportation, and goods-delivery systems to companies that, in turn, often further subcontract the work to still other entities or individuals.

These outsourced workers laboring on Walmart's behalf toil at the bottom of a complex hierarchy of intermediaries and in alternative employment schemes that leave them vulnerable to significant worker rights abuses and unsure where to seek redress. Walmart sets the parameters for the working conditions in these facilities, sometimes directly by having managers onsite, and sometimes indirectly through monitoring suppliers' operating costs and setting ever more stringent price demands. But when things go wrong, it's the contractors that are blamed, while Walmart skirts responsibility for its actions and accountability for its influence over those engaged in its massive supply chain.

This report seeks to shed light on this shady side of outsourcing by profitable corporations like Walmart, and the devastating impact of the practice on U.S. workers. It is a case study of how domestic outsourcing, when not properly regulated by robust laws, and when used by aggressive cost-cutting corporate giants, squeezes all the players in the supply chain beyond their limits, ultimately inflicting severe pain on the subcontracted workforce. In the case of Walmart's logistics systems, it is a story of low-paid and extremely dangerous warehouse work, with workers unloading and loading boxes, up to 200-pounds, from shipping containers on a piece rate system for days and hours on end.

But it is also an inspiring story of a diverse and talented workforce that is bravely organizing and risking retaliation by taking on Walmart and its contractors to fight for fair working conditions, and of determined state officials seeking to ensure that the labor and employment laws are strongly enforced to level the playing field for law-abiding employers. Focusing on the warehouse workers employed in Southern California and elsewhere who move Walmart goods across the U.S., this report seeks to promote a broader discussion about corporations' decisions to contract-out dangerous, labor-intensive parts of their businesses to the lowest bidder, and the ill effects this can have on workers, their families, and communities.

As described below, greater transparency and accountability within these multi-layered hydra-like logistics chains are urgently needed. At a time when U.S. economic growth skews so heavily toward low-wage industries and jobs, it is crucial that the public and policymakers alike better understand and respond to the practices and strategies that are propelling this lopsided change. We hope that this report and the case study it highlights will contribute to this broader understanding.

Of special significance, the report details the following findings and conclusions:

**Domestic outsourcing is on the rise across key U.S. industries:** Contracting out is becoming increasingly common in many of the nation's largest and fastest-growing industries, including construction, day labor, janitorial and building services, home health care, warehousing and retail, agriculture, poultry and meat processing, high-tech, delivery, trucking, home-based work, and the public sectors. Even hotels have begun to outsource traditional functions, including cleaning services. Often relying on the use of temporary and staffing agencies, outsourcing in these industries has also resulted in comparatively lower wages for work similar to the jobs previously performed in-house.

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**Walmart squeezes supply-chain contractors and U.S. workers:** Walmart’s policy of enforcing ever-lower prices has serious implications for the working conditions throughout Walmart’s supply chain. Even manufacturing behemoths are not immune from the pressures Walmart can impose on their profit margins, and by extension, their employment practices. Walmart’s stated “Plus One” bargaining strategy, which requires that all suppliers and contractors reduce their price of goods, increase quality or increase speed of delivery every year, vividly exemplifies the pressure that squeezes contractors’ margins and encourages low-road employment behavior like cutting corners on safety and violating wage and hour laws.

**Walmart’s outsourced logistics operations raise critical labor concerns:** As Walmart’s leadership once explained to Wall Street analysts, “The misconception is that we’re in the retail business, we’re in the distribution business.”<sup>3</sup> While Walmart maintains a vast and sophisticated distribution system operated in-house, it also relies on some of the nation’s largest third-party providers to ship and store its goods, including Schneider National and Swift Transportation, which in turn contract with a complex web of temporary agencies to supply the warehouse workforce. In major logistics hubs around the U.S., from Southern California to Chicago to New Jersey, workers employed by outsourced Walmart logistics operations have raised allegations of unpaid wages, health and safety and other serious labor violations.

**Labor violations are rampant in Southern California’s Inland Empire, which is a warehouse nerve center for Walmart goods.** Under the watchful eye of Walmart managers, the outsourced warehouse operations of Schneider Logistics and its temporary staffing firms (Rogers Premier and Impact Logistics) have produced rampant wage and overtime and health and safety violations that are the subject of a class action lawsuit. Indeed, evidence produced as a result of the lawsuit makes clear that Walmart is intimately involved in the daily operations of the Schneider operations, which solely move Walmart goods. This report, court documents and recent investigations by the California Labor Commissioner and the California Division of Occupational Safety and Health (Cal/OSHA) reveal the breadth of labor abuses taking place in these warehouses. They include confusing “piece rate” pay schemes where workers are only paid for unloading and loading containers, not for other work performed, for working lengthy hours with no overtime pay, for illegal and falsified pay records, and for hazardous workplace conditions (especially excessive heat, pressure for speed, and unstable storage stacking). These conditions have also created a climate of fear among a largely Latino workforce that claimed labor violations and were subsequently threatened with termination, and a federal court ruling vindicating the workers who alleged retaliation.

**Domestic outsourcing imposes an especially severe toll on Latino workers in Southern California and around the U.S.:** Latinos often represent a large segment of those industries where domestic outsourcing by major corporations is most prevalent. In addition, the same industries that implement contracting-out and employ vulnerable, often Latino, workers frequently also have the highest rates of workplace violations of core labor standards. A 2009 study of over 1800 low-wage workers in Los Angeles – nearly 1300 of them Latino – found that minimum wage violations affected 38.3 percent of the workers, and that an astounding 79.6 percent of Latino workers had suffered violation of their overtime pay rights in the week prior to the survey. Logistics companies are no exception. In the production, packaging and warehousing occupations reported in the Los Angeles survey, overtime violation rates reached 37.3 percent of workers, with meal break violations affecting 83.4 percent of these workers.

**We should hold major corporations accountable for worker rights abuses that result from unfettered domestic outsourcing.** The challenge for policy makers and enforcement agencies is to use existing enforcement tools effectively to protect workers’ interests, while developing new models to hold these corporate entities accountable for the conditions they engender within the production and logistics pyramids they command. The report offers a combination of strategies that go a long way to: (1) enforce existing labor standards laws that hold multiple entities jointly responsible for any work performed in the business; (2) promote innovative state and federal laws and enforcement strategies to target contracting abuses; (3) secure agreement from Walmart and other supply chain controllers to adopt strong codes of conduct; and (4) document the scope of contracting-out and its impact on U.S. workers.



# Domestic Outsourcing in the U.S. Economy

Among the myriad challenges to improving outsourced workers' jobs, the difficulty of even identifying how many workers labor under these employment models looms large. Earlier government-commissioned studies during more robust economic periods concluded that as much as 30 percent of the workforce was in some sort of "contingent," or non-standard, employment relationship.<sup>4</sup> Some estimate that in the future, as much as 50 percent of the new jobs created will be nonstandard ones, and will comprise more than one-third of the workforce.<sup>5</sup>

The terminology used to characterize alternative work arrangements varies

widely: "precarious," "nonstandard," "flexible," "market-mediated," "contingent," and "vulnerable" are all terms that researchers have used to describe this population, and their categories may include not just contracted workers but also temporary workers, employees misclassified as independent contractors, part-time workers and even all low-wage workers.<sup>6</sup> These imprecise definitions are both a result and a cause of a dearth of official data on these work arrangements.

Although there are numerous government surveys on occupations and industries, there is no precise measure of the number of workers in the United States who are contracted out, and calculating that number with any degree of certainty poses huge difficul-



ties. We do know that contracting out is becoming increasingly common in many of our largest—and some of our fastest-growing—industries, including construction,<sup>7</sup> day labor,<sup>8</sup> janitorial and building services<sup>9</sup>, home health care,<sup>10</sup> warehousing and retail,<sup>11</sup> agriculture,<sup>12</sup> poultry and meat processing,<sup>13</sup> high-tech,<sup>14</sup> delivery,<sup>15</sup> trucking,<sup>16</sup> home-based work,<sup>17</sup> and the public sectors.<sup>18</sup> Even hotels have recently outsourced traditional functions, including cleaning services.<sup>19</sup>

Despite the challenge official data poses to ascribing the nature of employment relationships to workers, we can begin to discern the quality of these jobs by looking at one type of domestic outsourcing in which researchers have been able to isolate data: the employment services

industry, which includes temporary agencies. In recent decades, employers have moved away from the traditional use of temporary firms for clerical and administrative work and increasingly relied on temporary staffing agencies for a wider range of jobs; assembly, packing, manufacturing, building services, and food services are only a few of the kinds of work performed by temp agency employees. Many of these outsourced jobs come with a significant wage penalty. For example, in 2004, construction workers employed by temporary agencies made 49.5 percent less than their in-house counterparts, temporary assemblers and fabricators made 49.2 percent less, and all other production workers supplied by temp agencies suffered a 39.4 percent wage penalty.<sup>20</sup>

As the economy struggles to recover from the Great Recession, temporary agencies are growing significantly. During the third quarter of 2010, the staffing industry estimated 2.6 million workers a day worked as temps.<sup>21</sup> Preliminary data from the Bureau of Labor Statistics (BLS) for April 2012 shows almost 2.5 million people working as temps, a 13 percent increase over their figures for 2010.<sup>22</sup> While these temporary employment figures cover only a small portion of contracted-out workers in our economy, they offer a glimpse of why it is so critical to gain a better understanding of these nonstandard employment arrangements and address the challenges to holding corporations all along the contracting chain responsible for adhering to labor laws and upholding worker standards.

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# The Walmart Regime Squeezes Its Suppliers and the U.S. Workforce

Walmart has long been reputed to pay its direct employees poverty wages. A 2011 study found that Walmart employees earn approximately 12 percent less than retail workers overall, and more than 14 percent less than workers in other large retail establishments.<sup>23</sup> In numerous states, Walmart tops the list of companies with employees on public assistance, even after the company rolled out its much-publicized (if largely unaffordable) health care plan.<sup>24</sup>

Walmart's model of consistent low prices and rigorous tracking of sales data enable the retail giant to avoid what one Walmart CEO called the "peaks and valleys in volumes that drive labor costs through the roof."<sup>25</sup> Furthermore, studies show that when a new Walmart store opens, overall retail employment levels—including the new Walmart jobs—in the surrounding area decrease; according to these researchers, Walmart expansions exercise a kind of reverse ripple effect on the local economy.<sup>26</sup>

These practices force competitors to scramble to match Walmart's labor costs. By 2005, Walmart's move into the grocery business had increased to a 20 percent market share nationally,<sup>27</sup> compelling competitors to push back against long-standing wage floors for their own employees.<sup>28</sup> Chains like Albertson's, Kroger, and Safeway have abandoned some mar-

kets,<sup>29</sup> and in others have themselves adopted low-price strategies triggering massive strikes by unionized grocery workers seeking to protect their workplace standards. A five-month strike by tens of thousands of California grocery workers in 2004 resulted in a two-tiered wage system and the loss of some health care benefits.<sup>30</sup>

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*“Walmart has sufficient market share to set the overall terms of economic relationships throughout its supply chain.”*

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Walmart has also faced charges of liability for worker safety hazards related to its construction contractors.<sup>31</sup> A lawsuit was recently filed against Walmart in Massachusetts on behalf of a worker who was electrocuted to death while performing demolition work at a Walmart store. The suit alleges that the Walmart contractor hired unlicensed electrical firms and that similar charges were brought against the same contractor in Louisiana. Another Walmart contractor was sanctioned in Indiana as a result of a massive explosion on Walmart premises that killed another worker and injured two others.<sup>32</sup>

Walmart's policy of enforcing ever-lower prices implicates wages and working conditions throughout

Walmart's supply chain as well. Walton family heir and Walmart chair Rob Walton once wrote, “The manufacturer's price is something that's determined largely by the negotiating power of the retailers that carry his merchandise.”<sup>33</sup> And Walmart has a great deal of that negotiating power. Whereas observers of the market once worried that an over-large manufacturer could boost its own profits by squeezing retailers, the opposite caution now prevails.

While Walmart does not technically hold a monopoly—it is not the only buyer in the market—it has sufficient market share to set the overall terms of economic relationships throughout its supply chain.<sup>34</sup> As Walmart and its big-box retail peers have grown, they have achieved a level of dominance that affects – indeed, sometimes dictates—their suppliers' own pricing, profit margins, and operational decisions. Even manufacturing behemoths are not immune to the pressures Walmart can impose on their profit margins, and by extension, their employment practices. Walmart's stated “Plus One” bargaining strategy, which requires that all suppliers and contractors reduce their price of goods, increase quality or increase speed of delivery every year, vividly exemplifies the pressure that squeezes contractors' margins and incents low-road employment behavior like cutting corners on



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safety and violating wage and hour laws.<sup>35</sup>

Even casual followers of the business pages can recall stories like that of Carolina Mills, a North Carolina company that had to shut down more than half its mills and lay off thousands of workers to compete for Walmart business. Perhaps the most famous example of the business cost of supplying to Walmart is the story of Vlastic pickles. Once Walmart insisted upon selling only gallon-sized jars of uncut pickles at its stores, Vlastic began to lose sales on its more profitable processed food products. Walmart came to account for 30 percent of Vlastic's business, but the producer's profits dropped by 25 percent.<sup>36</sup> Finally, Vlastic had to file for bankruptcy.

Other companies struggle to stay afloat as Walmart engages in business practices that lower its own bottom line, but don't fit into standard supplier-retailer relationships. In its final year of business, shoe maker Big Smith Brands revealed to investors that Walmart took between 15 and 25 days longer to pay for merchandise than did other customers.<sup>37</sup> Some lawyers also note that provisions in the company's boilerplate vendor agreement make suppliers liable for chargebacks if a product doesn't move off Walmart's shelves.<sup>38</sup> According to one report, Walmart de-

mands specialized products from its suppliers, including unique packaging and computer tracking systems, and the company may demand to examine suppliers' financial records and insist on cutting margins the retail giant perceives to be too high.<sup>39</sup> All these demands put pressure on suppliers to eat away at their own operating costs, and encourage them to emulate Walmart's low-quality worker standards to meet an ever-diminishing bottom line. Indeed, for labor-intensive industries like warehousing, cutting costs at workers' expense may seem the only viable means to meet the demands driven from the top down.



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# The Distribution Operations: Walmart's Crown Jewel

It comes as little surprise that a company that dominates the retail landscape would also dominate the business of moving goods from one location to another. Logistics has long been a focus of Walmart management; as company leadership once explained to Wall Street analysts, “The misconception is that we’re in the retail business, we’re in the distribution business.”<sup>40</sup> Walmart’s early focus on rural locations meant challenges for getting goods to stores, and the company’s first public offering was to finance development of a private distribution system.<sup>41</sup> The company ships approximately 80 percent of its merchandise through 133 distribution centers, 105 of which it owns and operates, one it owns but operates through another entity, and 27 that are owned and operated by other companies.<sup>42</sup>

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*“The misconception is that we’re in the retail business, we’re in the distribution business.”*

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Many of these third-party providers are themselves enormous companies with tens of thousands of employees, but questionable employment practices. Among them is Schneider National, with 210 facilities world-wide totaling 10 million square feet, revenues of \$3.7 billion, and more than 18,000 employees supplemented by nearly 2,000 so-called “independent contractor” drivers.<sup>43</sup> Drivers and mechanics employed by Schneider have filed suits alleging illegally withheld wages, failure to provide mandated meal and rest breaks, and withholding accrued vacation pay upon termination.<sup>44</sup> Schneider also operates several distribution centers handling Walmart’s goods across the country, including one in Mira Loma, California, which is solely dedicated to moving Walmart merchandise.<sup>45</sup> Workers in multiple Schneider-operated warehouses fulfilling Walmart orders have described a system where a piece-rate calling for pay per trailer led to constant speed-ups in the work, where bathroom breaks were insufficient, and never-ending physical labor resulted in lasting injuries.<sup>46</sup>

Nine other Walmart centers located throughout the Southeast are managed by Swift Transportation.<sup>47</sup> Swift,

which has been the subject of lawsuits alleging unfair pay practices,<sup>48</sup> was also recently compelled to pay a \$4 million settlement to the Port of Los Angeles for failing to live up to the requirements of the Port’s Clean Trucks Program.<sup>49</sup>

Analysis of the government’s 2005 Contingent Work Survey (CWS) indicates that of those who self-reported working as temporary helpers, laborers and hand material movers, one third were assigned to trade/transportation clients.<sup>50</sup> These workers perform an enormous amount of physical labor very quickly, and the centers function non-stop. One third-party warehouse manager, ASW Global, estimates that in its two Walmart facilities, workers move nearly 1,000 truckloads a week, shifting 22,000 pallets out of the warehouses at “a high velocity.”<sup>51</sup>

In its annual “Global Responsibility Report,” Walmart’s President and CEO Michael Duke promises, “[W]e are strengthening our commitment to transparency and holding ourselves accountable for what we do within our company and for our communities.”<sup>52</sup> In choosing unscrupulous contractors to perform such a core part of its business, Walmart is belying those promises by pretending it has no role in determining the conditions under which they work.

Just as Walmart’s employment practices toward its direct employees undercut fairer working conditions in other retail outlets, its logistics model has shaped the entire industry, compelling shippers to adopt strategies to constantly cut prices as Walmart competitors demand the same efficiencies the retail giant enjoys. Indeed, its grocery carriers confirm that they operate equipment specifically designed to Walmart’s specifications; according to industry sources this fleet may be as large as 5,000 refrigerated trailers.<sup>53</sup> At the same time, Walmart increasingly demands its shippers do tasks that were once considered a retailer’s responsibility, including placing price stickers on goods or packaging them so that they can go directly onto the salesroom floor.<sup>54</sup> Outsourcing and other contingent work models like “permatemping” have become increasingly standard in the industry. Just as Walmart contracts with companies like Schneider and Swift,<sup>55</sup> other companies too are turning to third-party logistics

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*Jesus Saucedo works at Schneider Logistics, unloading Walmart products, so his two boys will have a better life. He says it is the hardest job he has ever had, and he has serious concerns about his health and safety. The products he unloads from the steel shipping containers from China are padded with fiberglass. “When you are in the container, dust and fiberglass used to wrap the boxes flies all over and you inhale it. It gets in your eyes and you know it’s bad for you.” When Jesus told his supervisor about his concerns, the response was “that’s how the work is. If you don’t like it, go do something else.”*



*For more than six years, Jose Garza has worked a double shift, 362 days a year, moving Walmart goods for Impact Logistics at Schneider’s Mira Loma warehouse. His standard work day has been 16 hours with no overtime, no time for lunch and no breaks except to go to the bathroom. For years, Jose was paid piece rate, which meant he was paid by the number of containers he unloaded. Whether it took two hours or eight hours, he was paid the same amount per container, meaning his pay often dipped below the minimum wage and he was not paid overtime. If he split the work with a co-worker, they split the money. Jose and his co-workers spent long, hard hours working in these warehouses, and struggled under the unfair piece rate scheme to make enough money to survive.*

providers (known as 3PLs).

According to industry reports, a typical shipping customer spends 12 percent of sales revenues on logistics, and of these funds, 42 percent are spent on outsourcing.<sup>56</sup> While 3PLs market their services as a tool for smaller businesses to start up their own supply chain operations, they also relieve the client company from hiring or training employees, and corporations have responded enthusiastically to the shedding of these functions and the accompanying responsibility for labor standards.<sup>57</sup> The 3PLs typically provide warehouse space and workers throughout the country and provide services that the client categorizes as transactional, operational and repetitive.<sup>58</sup>

By pushing all the actors along the supply chain—from manufacturers, to shipping companies and warehouse

operators—to embrace a philosophy that puts low prices above all else and deemphasizes worker standards, Walmart and its peers have managed to induce these companies to organize their businesses in the retailers’ image. When a major customer is constantly demanding ever tighter margins and greater efficiencies, and reduces compensation when worker productivity declines, suppliers may feel they have little choice but to replicate low-wage, largely part-time, highly contingent employment practices.

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# A Case Study of Outsourced Logistics: Warehouse Workers in the Inland Empire of Southern California

# The Walmart Warehouse Contractors

Southern California's Inland Empire region, just east of Los Angeles, is home to the nation's largest distribution hub for sellers of consumer goods, including giant retailers like Walmart. Enormous warehouses, some as large as one and a half million square feet, line the region's dusty roadways.

The Inland Empire region is one the fastest growing regions in California, and is projected to grow from 3.9 million people in 2005 to 4.9 million by 2015. Latino and Asian communities contribute largely to this explosive growth, and Latinos will constitute a majority of the Inland Empire by 2015.<sup>59</sup> Families in the Inland Empire have faced significant challenges in the downturn. The unemployment rate in the region is one of the highest in the country at 10.1 percent, and the region has the third highest percentage of housing units in foreclosure among large metropolitan areas.<sup>60</sup> The economic insecurity of these families, however, is compounded by the warehouse industry's low-wage model.

Workers at these warehouses are at the nerve center of U.S. commerce: they transfer imported goods from international and domestic shipping containers into vast warehouses, and reload trucks with tons of mer-

chandise for shipment to retail stores around the country. With unemployment in the region high, these warehouse jobs are critical to the community.<sup>61</sup> But the grim reality is that the vast majority of warehouse jobs are now low-wage positions with few worker protections. Certain common features prevail for workers at these distribution centers: first, wages are low; second, labor violations are rampant; and third, pay practices are often fraudulent.

At the Schneider Logistics distribution center in Mira Loma, California, one of the largest Walmart warehousing facilities in the nation, workers unload trailer trucks filled with boxes and other cargo headed for Walmart regional distribution centers around the country. To cut costs, Walmart contracts with outfits like Schneider to handle its shipping and logistics needs. A self-described "premier provider of transportation, logistics, and intermodal services," Schneider won Walmart's 2011 General Merchandise Diamond Carrier of the Year.<sup>62</sup> Schneider cuts its own costs by contracting with temporary staffing firms to meet its labor needs at even lower rates. The result? Thousands of workers performing backbreaking and dangerous work for long hours, at low wages, under conditions that violate the workers' most fundamental labor law rights.

Despite contracting with outfits like Schneider, Walmart maintains tight control over day-to-day operations in its warehouses. As recent court filings indicate, Walmart sets productivity standards for warehouse workers, and when worker productivity has declined, Walmart has cut compensation to Schneider. Walmart also imposes numerous conditions on Schneider about the qualifications that warehouse workers must meet before being hired. Tax records also show that

Walmart owns one of the warehouses at the facility, and has part ownership share in another.<sup>63</sup> The plaintiffs are petitioning the court to compel Schneider to produce additional information on Walmart's role with regard to the Schneider warehouse operations in order to determine whether the retailer is also liable for California labor law violations.

The Schneider Logistics center in the Inland Empire is not unique. Warehouse workers in other key Walmart distribution hubs report identical structures of labor subcontracting and temporary staffing, as well as rampant labor violations. In other hub areas such as Chicago, Illinois, and New Jersey, companies handling Walmart logistics—including Schneider—similarly subcontract with temporary staffing companies to hire workers.<sup>64</sup> Not surprisingly, workers have encountered equally bad labor conditions.

Workers at Walmart warehouses in the Chicago area have faced unpaid wages, confusing piece-rate pay scales, incorrect pay stubs, failure to pay overtime, and violations of labor law involving many of the same corporate players.<sup>65</sup> A recent study reported that the majority of Chicago-area warehouse workers earned wages below the federal poverty line. Although workers hired by temporary agencies performed the same work as those directly hired, temp workers' pay was roughly \$3 less per hour on average.<sup>66</sup> Workers also reported payment systems based on a confusing "piece rate" paid for every truck loaded or unloaded, resulting in pay violations, and poorly recorded timesheets.<sup>67</sup> A study of New Jersey warehouse workers similarly revealed that warehouse workers at Walmart-affiliated facilities earn lower wages than their peers. At least a third of warehouse workers surveyed had experienced wage theft

(i.e., the denial of wages they had earned), and more than one in ten had been injured while working in a distribution facility.<sup>68</sup>

A study of warehouse work in the Inland Empire found that the concentration of logistics facilities there had nurtured a fast-growing industry of warehouse temporary agencies. In 1990 there were 119 such agencies in the Inland Empire, but by 2008, the number had grown to 424 establishments. As a result, the region has a higher concentration of temporary employment than any other in the state.<sup>68</sup>

## Holding Down Costs, Enabling Abuse: Outsourcing's Downward Pressure

In some cases, subcontracted logistics workers themselves are able to see a direct causal relationship between Walmart's ceaseless demands for lower prices and their working conditions.

Workers at the Mira Loma Schneider Logistics distribution center have no difficulty establishing a direct connection to Walmart. As recent court documents filed by plaintiffs specify, the only goods loaded and unloaded at the facility are those destined for Walmart stores. Walmart security guards maintain a constant presence at the warehouses. Walmart staff frequently communicate directly with Rogers-Premier and Impact Logistics employees, providing instruc-

tions on staffing levels, productivity, and worker misconduct. Contracts between Schneider and its subcontractors, Rogers-Premier and Impact Logistics require that workers receive orientation materials that comply with Walmart policies. Walmart has even created a multiple choice test for Rogers-Premier and Impact Logistics to administer in order to ensure that warehouse workers are properly trained. And when worker productivity has declined at the warehouse operations, Walmart has cut compensation to Schneider.<sup>70</sup>

Workers at Schneider Logistics have reported extensive workplace abuses resulting from cost-cutting. In October 2011, warehouse workers at the Mira Loma Schneider Logistics distribution center filed suit in federal court to protest their working conditions.<sup>71</sup> Workers sued Schneider Logistics, as well as Rogers-Premier and Impact Logistics, two temporary staffing agencies Schneider subcontracts with to supply workers, alleging violations of basic labor protections.

Court documents from the case, as well as recent investigations by the California Labor Commissioner and the California Division of Occupational Safety and Health (Cal/OSHA), reveal the breadth of labor abuses taking place in these warehouses.

**Illegal Pay System.** In February 2010, Schneider Logistics and temporary staffing agencies at the Mira Loma Logistics distribution center instituted a new "piece rate" system. Under this "piece rate" system, workers received pay only for shipping containers or trailers that were completely filled or unloaded by the end of a shift, resulting in rampant minimum wage and overtime violations. Workers received no pay at all for other work performed, including sweeping floors, stacking and breaking down

pallets, unloading partial or overloaded truck containers, filling orders, attending meetings, or waiting for an assignment at the warehouse, in violation of California law.

As court documents note, the subcontracting system made it virtually impossible for temporary staffing companies like Rogers-Premier and Impact Logistics to pay workers legally-required wages for work performed. Wage statements revealed that Schneider paid temporary staffing companies approximately \$150 for every fully loaded trailer. After deducting 30% of the fee for its own use, only 70%, or about \$105 was left to pay workers their wages. Loading a trailer requires at least two workers for at least 4.5 to 7 hours per truck, leaving little money left over to pay for other work performed or for legally mandated overtime pay.

**Lengthy Hours, No Overtime Pay.** Since at least February 2010, when Schneider Logistics implemented the piece rate system, warehouse workers have endured lengthy hours for weeks upon end without overtime pay. Workers reported that they often worked shifts up to 12 hours during a day. One individual reported having worked for 28 days, each with more than eight hours a day, and sometimes more than 16 hours per day, without a single day off.

**Illegal and Falsified Records.** Before Walmart contractors instituted the "piece rate" system, workers had used a punch clock to log into work and had been paid on an hourly rate. However, after temporary staffing agencies Rogers-Premier and Impact Logistics instituted the new piece rate pay system, warehouse workers were required to sign in on a blank form, and instructed not to enter other information, such as start or end time, or any break time on the form. As Everardo Carillo, a warehouse work-

er, noted, “We were directed simply to sign our names each morning on blank forms maintained by the supervisors. We did not write in the time we arrived at work or the time we finished. The Rogers Premier supervisors or the lead workers would after write down the fake start and end times.” Lead worker Evaristo Morales reported, “I was told to write down fewer hours than any of us actually worked, and was never told to record my actual work hours or to accurately record the work hours of any of the warehouse workers.”

In late 2011, the California Labor Commissioner issued citations totaling more than \$600,000 to Premier and almost \$500,000 to Impact Logistics for wage and hour violations discovered during an inspection of the Schneider Logistics plant. Violations included employers’ failure to furnish accurate statements with paychecks that include detail on total hours worked, hourly pay, piece rates if such pay is utilized, deductions, and other wage information.<sup>72</sup>

### **Hazardous Workplace Conditions.**

Warehouse work poses several dangers to workers’ health and safety. In 2012, excessive heat, pressure for speed, unstable storage stacking, and unguarded machinery led Cal/OSHA to issue over \$250,000 in citations for safety hazards to warehouses, including NFI, another Walmart contractor.<sup>73</sup> The complexity of work performed in warehouses, fast-moving vehicles, and the pace of production has led Cal/OSHA to identify the warehouse industry as one of the state’s high hazard industries.<sup>74</sup> A recent academic survey of warehouse workers in the Inland Empire revealed that at least 63 percent had been injured on the job, 83 percent suffered from a job-related illness, and 84 percent had witnessed an injury to a coworker.<sup>75</sup>

### **Climate of Fear and Retaliation.**

Managers retaliated against workers who asked for more information about unpaid wages or about the piece rate system by denying them work, issuing disciplinary warnings or threats, sending complaining workers home, or threatening to terminate workers. Armando Esquivel, a warehouse worker, remembered asking his supervisor about an incorrect paycheck. “He always promised to look into it but my pay was never corrected, not even once. When I would repeat my complaints, he would tell me: ‘I have a pile of job applications on my desk more than a foot high, if you don’t like this job, you can go home.’”

After workers filed a lawsuit alleging violations of labor protections, managers called a mandatory meeting in the warehouse. Two employees present at that meeting recalled that their manager crumpled up flyers discussing the lawsuit and threatened to “destroy you and throw you in the trash if you get involved” in the lawsuit.<sup>76</sup>

Workers alleging unlawful labor practices at the Mira Loma warehouse facility were vindicated when a federal district court ordered that temporary staffing agencies Rogers-Premier and

Impact, and the workers’ joint employer Schneider, must immediately begin to provide the workers with correct wage statements, disclose pay rates for each truck container loaded or unloaded, and abide by federal and state recordkeeping requirements.<sup>77</sup> Instead of bringing their illegal practices into compliance with the law, Rogers-Premier and Schneider responded to the workers’ lawsuit and cooperation with state labor officials by announcing that their jointly employed workers would all be terminated within three months. The workers returned to court, and celebrated a major victory when the federal judge prohibited the companies from terminating those workers.<sup>78</sup>

The Inland Empire warehouse workers have also been organizing around a broad banner calling for fair wages and benefits, safe working conditions, and responsible contracting practices by Walmart. The campaign, formed as Warehouse Workers United ([www.warehouseworkersunited.org](http://www.warehouseworkersunited.org)), which is affiliated with the Change to Win Strategic Organizing Center comprised of four international unions, has been organizing in Southern California, in the state’s capitol, and around the U.S. to champion the cause of these struggling workers.

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Percentage of warehouse workers injured on the job:

63%

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Percentage of warehouse workers who have suffered from a job-related illness:

83%

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Percentage of warehouse workers who have witnessed an injury to a coworker:

84%

Deogracia Cornelio et al., *Shattered Dreams and Broken Bodies: A Brief Review of the Inland Empire Warehouse Industry* (Los Angeles: Warehouse Workers Accountability Commission, 2011).

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# Outsourcing Imposes a Severe Toll on Latino Workers

Latino workers are overrepresented among contingent workers. The 2005 CWS conducted by the BLS found that nearly 21 percent of contingent workers, some 2.5 million workers, were Latino.<sup>79</sup> Researchers analyzing CWS data found that first and second generation Mexican-origin workers were concentrated in non-standard jobs, including temporary and contract positions, and also the broader category of part-time employment.<sup>80</sup>

While Latino workers in the United States have the highest labor force participation rate of any racial or ethnic group,<sup>81</sup> they are also at lowest rung of the economic ladder, with two in five Latino workers not earning enough to keep their families out of poverty.<sup>82</sup> These workers, particularly the immigrant generation, suffer increased vulnerability to labor abuses and to the retaliation employed to silence those who step forward to confront labor abuse. Over half of the Latino workforce is foreign-born.<sup>83</sup>

Traditionally, industries like construction and agriculture, with workforces comprised disproportionately of Latino and immigrant workers, have used extensive contracting and subcontracting arrangements.<sup>84</sup> More industries are now following these sectors in embracing contracting-out and using temporary workers. Recent government surveys reveal a large growth in staffing and temporary agency placements in blue-collar occupations, including more subcontracting in lower-skilled and lower-paying jobs like manufacturing, transportation, janitorial, and health care.<sup>85</sup> “Blue collar” or “light industrial” temporary agencies have existed for decades and with the erosion of wages and conditions in U.S. manufacturing, combined with the increase in distribution services since the beginning of the 1990s, have been increasing in number.<sup>86</sup>



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In 1990, office and administrative support workers accounted for 42 percent of staffing services workers, with only 28 percent in blue-collar occupations. By 2000, those numbers had switched, with 46 percent of staffing services workers in blue-collar jobs.<sup>87</sup>

The nature of temporary work has changed over these decades, as well. As one researcher looking at the logistics industry notes, businesses have moved from a “reactive” use of temporary workers to fill the jobs of absent employees or to supplement permanent employees during a busy period to a “systematic” use, “in which entire job clusters and industries are staffed with agency workers indefinitely.”<sup>88</sup> Indeed, one study of temporary warehouse workers in New Jersey found that 69 percent of workers surveyed reported being sent to the same worksite “every day,” with another 20 percent being sent to the same site three or four times a week.<sup>89</sup>

Before the Great Recession, more than a million Latino workers were employed in transportation and materials moving.<sup>90</sup> Latino workers also form a majority of the Inland Empire workforce.<sup>91</sup> Case studies of logistics facilities confirm the relationship between contracting, subcontracting and a high representation of Latino workers. A study of working and living conditions for Latinos in Memphis, Tennessee, found that large corporate headquarters in the region, especially FedEx, were playing a central role in developing a work culture in the logistics industry that emphasizes corporate flexibility, contingent jobs, low wages and a largely Latino workforce. In fact, a survey of the city’s temp agencies found that 83 percent hired Latino workers and that 17 have hired bilingual staff to work with these employees. Of the agencies that provided an estimate of the proportion of their workforces that is

*David Acosta depends on warehouse work in the Inland Empire to support his wife and their three children. David has been a warehouse worker for almost 10 years, and since 2009 he has worked at the Schneider warehouse in Mira Loma, California moving merchandise destined for Walmart stores.*

*David used to work long days, often 16 hours with no breaks, no time for lunch and no overtime pay. In late 2011, David and his co-workers took action to improve their working conditions by joining a class action lawsuit and fighting against their employers’ efforts to retaliate against those efforts. The result of those struggles? Now workers are paid \$12.75 per hour with full benefits, and they’re protected from retaliatory pay cuts or termination by a federal court order.*

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Latino, the median was 25 percent, far outpacing the size of the overall Latino population in Memphis.<sup>92</sup>

Not coincidentally, the same industries that implement contracting-out and employ vulnerable workers, many of whom are Latino, frequently also have the highest rates of workplace violations of core labor standards. A 2009 study of more than 1800 low-wage workers in Los Angeles – nearly 1300 of them Latino – found that 38.3 percent of the workers had experienced minimum wage violations, and an astounding 79.6 percent of Latino workers had suffered overtime pay violations in the week preceding the survey. A large majority of Latino workers experienced meal and rest break violations as well.<sup>93</sup>

Logistics companies similarly generate high violation rates. In the production, packaging and warehousing occupations reported in the Los Angeles survey, overtime violations were experienced by 37.3 percent of workers, with meal break violations affecting 83.4 percent of these workers.<sup>94</sup> The highest work-related fatality rates are also in the construction, transport and warehousing and agricultural sectors, all sectors in which both Latino workers and contracting-out predominate.<sup>95</sup> For any worker, confronting workplace abuse can be a daunting proposition, since the power imbalance between individual workers and their employers is so great, and retaliation so commonplace. Challenges to enforcing basic labor protections are compounded for immigrant workers who may be linguistically, culturally and often geographically isolated. In the context of contracted work, even workers who are aware of their workplace rights and willing to step forward often have little knowledge of the identity of the responsible party or parties. Workers will not know, for example, that the relatively undercapitalized entity one step above them on the subcontracting ladder is not necessarily the only responsible party for labor abuses under U.S. law.

For undocumented workers, irregular immigration status can mean workplace labor violations are the order of the day, and confronting the abuse a near-impossible task. The 2009 survey of low-wage workers found that of those workers who had complained about workplace issues or attempted to form a union in the prior 12 months, 47 percent had suffered illegal retaliation, including threats to call immigration authorities.<sup>96</sup> Indeed, the spread of nonstandard employment relations across industries coincides with a greater reliance on undocumented workers.



*When Marta Medina moved to Southern California, she got a job in the warehouse industry at NFI Industries in Chino. Working for minimum wage through a staffing agency, she saw boxes of apparel coming in with tags she recognized, they read “Walmart.”*

*She also saw strict quotas and pressure to do dangerous work. “The work here is hard. When I was pregnant and asked for lighter work, they told me ‘we didn’t hire you to have children. Work faster or leave.’”*

*Marta began taking health and safety trainings at the Warehouse Worker Resource Center in 2010. She learned about her rights and that her workplace was out of compliance with Cal/OSHA regulations: Boxes were stacked 12 feet and higher without restraints; forklifts and other machines were operated dangerously because the company did not adequately train the drivers; and the employer closed doors on workers as the heat of the desert summer repeatedly topped 100 degrees.*

*In the face of this, Marta joined with her co-workers and filed a complaint with Cal/OSHA. “We didn’t know what our rights were, but we knew we weren’t safe and needed to make a change.” At first the company retaliated against vocal workers including Marta by moving her to unfamiliar assignments without training and reducing her hours. But slowly she is seeing improvements. Now the company has started training workers and purchasing new equipment.*

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# Recommendations: Strengthening Accountability for Working Conditions

As described above, Walmart’s supply chains are characterized by intense pressures to reduce costs at all levels, leaving the workers in the labor-intensive segments of the chains too often underpaid and working in dangerous and unhealthy conditions. The same dynamic at play in Walmart’s case also plagues the growing assortment of industries that now routinely rely on a complicated blend of contracting, subcontracting and temporary work to maximize profits.

Corporate giants are increasingly putting more business functions out to bid, catalyzing a scrum among contractors all seeking to submit proposals that come in just a little bit cheaper than those of their competitors. Corporations like Walmart then continue to squeeze the winning contractor to lower prices still more or lose the work, setting into motion a perpetual process of cutting corners. If we are, indeed, moving toward an economy where nearly half the jobs created will be subject to this ongoing downward pressure, we simply cannot perpetuate a system in which client companies that ultimately wield tight-fisted control can plead hands-off in the face of deteriorating labor standards and increasing workplace violations.

The challenge for policy makers and enforcement agencies is to use existing enforcement tools effectively to protect workers’ interests, while developing new models to hold these corporate entities accountable for the conditions they engender within the production and logistics pyramids they command.

Meeting the challenges posed by the ongoing expansion and evolution of production and supply chains and employment arrangements will ultimately require a policy menu broad enough to accurately identify and appropriately fix liability on actors throughout the supply chain that have caused or contributed to workplace violations. In the meantime, several important approaches—some based on existing law and some more novel—can be pursued to penetrate the multiple layers and, eventually, hold Walmart and other corporations accountable for the abysmal job conditions their practices created for contracted workers.

These approaches fall into four primary categories: (1) enforce existing labor standards that hold multiple entities jointly responsible for any work performed in the business; (2) adopt innovative state and federal laws and enforcement strategies to target contracting abuses; (3) secure agreement from Walmart and other supply chain controllers to adopt and follow strong codes of conduct; and (4) document the scope of contracting-out and its impact on U.S. workers.

Implementing these strategies consistently and aggressively will represent important steps in addressing the deterioration of wages and working conditions contracted workers are experiencing. But much more needs to be done to explore new approaches to maximize the level of transparency and accountability necessary to adequately protect workers who are on the front lines of abuses that are a byproduct, by design or effect, of contracting, subcontracting and temporary work.

## **#1: Aggressively Enforce Existing Laws Making Multiple Entities Jointly Responsible for Labor Violations**

The federal Fair Labor Standards Act (FLSA) and most state wage laws’ definition of employers that may be held

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responsible for wage violations are extremely broad. Enacted with full awareness of the subcontracted employment relationships prevalent in industries like garment manufacturing, the FLSA was intended to reach well beyond the immediate relationship between a worker and her first-line employer, to encompass other businesses whose right to control the work was sufficient to make them “joint employers” with the worksite employer.

Agencies and courts enforcing this broad language disregard employment labels and inquire, instead, into who has the right to control the work, an analysis that frequently results in holding multiple employers accountable in industries where multi-layered subcontracting is the norm, such as agriculture, garment, janitorial, and construction, among others. Strategic and concerted enforcement of these broad definitions in the industries where the problems persist is vital. One such example is the pending class action lawsuit in California that alleges wage and other violations by both the temporary employment agencies that placed workers at the Mira Loma warehouses along with Schneider Logistics, the owner of the warehouse and one of Walmart’s primary subcontractors.<sup>97</sup>

**#2: Adopt innovative laws that create greater transparency in contracting relationships and hold the controlling entities accountable for the abuses of their supply chain contractors.**

1. Establish a presumption of employer status: Include an explicit presumption in state labor standards laws that a worker is employed by a supply chain head, or more than one employer in a particular supply chain, modeled after existing similar laws in construction and trucking, for example.<sup>98</sup> Some states, including California, New York and New Jersey, hold garment and agricultural businesses with entrenched subcontracting structures accountable for any wage and hour and other workplace violations occurring in their business.<sup>99</sup>

2. Pass responsible contractor laws that apply across all industries: California Labor Code Section 2810 is designed to promote accountability at the corporate level for the labor violations of a contractor when their agreement for labor or services is insufficiently funded to ensure compliance with labor laws. The California measure covers construction, garment, farm labor, security guards, and janitorial services.<sup>100</sup> Pending legislation (AB 1855) would expand the law to cover warehousing and strengthen the law in other areas as well. Illinois regulates temporary, day labor and other intermediary agencies to curb such abuses as over-charging for transportation to work and check-cashing schemes and to promote transparency in the relationship between the corporate entity and its subcontractors.<sup>101</sup> Other provisions require temp firms to register with the state and post a bond to cover any wage abuses suffered by workers placed by the temp agency at a worksite employer. Measures like these could be adapted to reach supply chain heads like Walmart.

3. Require screening for subcontractor labor law violations when corporations compete for public contracts: The U.S. Department of Agriculture recently issued regulations, subsequently withdrawn under pressure from the business community, that would have required bidders to certify both that they and their subcontractors are complying with labor laws.<sup>102</sup> Requiring labor law compliance in federal, state and local contracting leverages public resources to promote investment in good jobs and limit subcontracting abuses.

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4. Pass “hot goods” laws that permit seizure of goods and stop-work orders in a supply chain with labor standards violations: Under federal law, the U.S. Department of Labor (DOL) can use its “hot goods” authority to seize goods from any entity if the goods were produced in violation of the FLSA. “Hot goods” authority is a powerful tool to deter unscrupulous contractors using multiple layers of under-capitalized subcontractors and engaging in unfair competition. Adoption of “hot goods” authority under state laws, enforceable both by state labor agencies and through a private right of action, would add tremendous heft to efforts to regulate unscrupulous practices driven by extensive contracting.

**#3: Walmart and other supply chain controllers should adopt and follow strong codes of conduct regulating contractors and subcontractors.**

Walmart and other major corporations have adopted “ethics” standards that purport to regulate their contractors and suppliers of goods and services.<sup>103</sup> Given the vast gaps between the goals of these policies and their enforcement, Walmart should adopt and follow a Responsible Contractor Policy, as proposed by Warehouse Workers United (the workers employed in the Inland Empire), that will specifically address abuses in the distribution warehouses it uses and promote quality jobs, with benefits and career ladders, regardless of the entity that nominally employs the workers onsite.<sup>104</sup>

A Responsible Contractor Policy would serve as a mechanism to ensure that the commitments Walmart has already made publicly do, in fact, hold its suppliers and contractors to a series of standards, including respect for all laws, sustainable wages, and guarantee of freedom of association. A meaningful policy would include transparent mechanisms for independent auditing and a system for dispute resolution, as well as concrete remedies for violations of the standards. Such a policy would have the additional virtue of applying to the entire supply chain, including overseas operations, where well-documented abuses continue to occur.

**#4: Document the Scope of Contracting-Out and Its Impact on the Labor Force and the Economy Overall:**

In recent years, more than half the states have commissioned studies and task forces to document the prevalence and impact of independent contractor misclassification, a costly subterfuge that undermines economic and employment security for misclassified workers and robs the states and the federal government of billions of dollars each year.<sup>105</sup> This research has helped to draw greater public attention to the problem and in a number of locations, built consensus for reform of labor standards and enforcement practices. Similar inter-agency task forces could study the incidence and impact of contracting and subcontracting in targeted industries (as independent contractor studies looked at construction as a starting point in some states), or across the economy.

In addition, federal and state agencies that already collect employment status data should clarify their questions about work locations and inter-industry domestic outsourcing to better highlight the variety of employment relationships between contracted workers, their direct employers and the clients for which they perform work.<sup>106</sup> The government-sponsored Contingent Worker Survey (CWS) had its challenges due to its small sample size and dependence on workers’ understanding of complicated employment structures, but it was an initial attempt to capture these changing workplace patterns. This data collection effort stopped several years ago, leaving us with no clear sense of how the country’s severe and prolonged economic contraction has affected these kinds of employment relationships. Nor can we track the number of non-standard jobs as we move through recovery, to distinguish short-term employment strategies from long-term restructuring. We must examine the strengths and shortcomings of the CWS to design data collection that will allow all stakeholders meaningful tools to study contracting, subcontracting and other non-standard employment practices.



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# Endnotes

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<sup>2</sup> For example, in 2005, the Labor Rights Fund filed suit in state court in Louisiana alleging sub minimum wages and some cases of physical abuse in Bangladesh, China, Indonesia, Nicaragua and Swaziland. Steven Greenhouse, “Wal-Mart Sued on Overseas Factories,” *New York Times*, Sept. 14, 2005, accessed May 29, 2012, <http://www.nytimes.com/2005/09/14/business/worldbusiness/14iht-walmart.html>. See also Martin Hearson, *Cashing in: Giant Retailers, Purchasing Practices, and Working Conditions in the Garment Industry* (San Francisco: Clean Clothes Campaign, 2009); Andy Kroll, “Are Walmart’s Chinese Factories as Bad as Apple’s?” *Mother Jones*, March/April 2012, accessed May 29, 2010, <http://www.motherjones.com/environment/2012/03/walmart-china-sustainability-shadow-factories-greenwash>. There is currently an online petition campaign in support of workers in Thailand who process shrimp for Walmart. “SumOfUs Petition to Walmart: Stop Human Rights Abuses in Your Factories,” May 7, 2012, <http://www.changetowin.org/news/sumofus-petition-walmart-stop-human-rights-abuses-your-factories>.

<sup>3</sup> Andrea Lillo, “Walmart Gains Strength from Distribution Chain,” *Home Textiles Today*, March 24, 2003, quoted in Nelson Lichtenstein, *The Retail Revolution: How Walmart Created a Brave New World of Business* (New York: Picador, 2009), 4.

<sup>4</sup> Economic Policy Institute, *The State of Working America 1998-99*, (Ithaca: Cornell University Press, 1999); U.S. General Accounting Office, *Contingent Workers: Income and Benefits Lag Behind Those of Rest of Workforce*, GAO/HEHS-0076 (Washington, DC: General Accounting Office, 2000), <http://www.gao.gov/new.items/he00076.pdf>.

<sup>5</sup> Eve Tahmincioglu, “Need a Job? Contract Labor Could Be New Normal,” *MSNBC.com*, May 6, 2010, accessed May 29, 2012, <http://www.msnbc.msn.com/id/36826679/ns/business-careers/t/need-job-contract-work-could-be-new-normal/#.Tt6FfbKImU8>.

<sup>6</sup> See, for example, Arne Kalleberg, “Nonstandard Employment Relations: Part-time, Temporary and Contract Work,” *Annual Review of Sociology* 26 (2000), for a literature review highlighting the range of definitions and scopes of study in this area.

<sup>7</sup> Christian Livermore, “State Fines Hospital Subcontractor in Pay Scheme,” *Times Herald-Record*, June 10, 2010; Francois Carre, J.W. McCormack, et al., “The Social and Economic Cost of Employee Misclassification in Construction,” (Labor and Worklife Program, Harvard Law School and Harvard School of Public Health: December 2004), 6.

<sup>8</sup> Abel Valenzuela and Nik Theodore, “On the Corner: Day Labor in the United States,” (2006), accessed May 29, 2012, [http://www.sscnet.ucla.edu/issr/csup/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf).

<sup>9</sup> See *Coverall N. Am., Inc. v. Comm’r of the Div. of Unemployment Assistance*, 447 Mass. 852 (2006); *Vega v. Contract Cleaning Maintenance*, No. 03-C9130 (N.D. Ill. Oct. 18, 2004).

<sup>10</sup> See *Bonnette v. Cal. Health & Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983).

<sup>11</sup> See California Labor Federation, “Confronting the Rise of Contingent Work in California,” (Jan. 2012), accessed May 29, 2012, <http://www.calaborfed.org/index.php/site/page/1408>; Edna Bonacich and Juan De Lara, “Economic Crisis and the Logistics Industry: Financial Insecurity for Warehouse Workers in the Inland Empire,” (2009), accessed May 29, 2012, <http://www.warehouseworkersunited.org/fileadmin/userfiles/2009218-WarehouseWorkersPaper.pdf>.

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<sup>14</sup> *Vizcaino v. Microsoft Corp.*, 97 F.3d 1187 (9th Cir. 1996).

<sup>15</sup> *Ansoumana v. Gristedes*, 255 F.Supp.2d 184 (S.D.N.Y. 2003).



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- <sup>29</sup> Graff, "Unequal Competition," 63.
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- <sup>33</sup> S. Robertson Walton, "Antitrust, RPM and the Big Brands: Discounting in Small-Town America," *Antitrust Law and Economic Review* 25, no. 11 (1983), quoted in Robert L. Steiner, "Vertical Competition, Horizontal Competition, and Market Power," *The Antitrust Bulletin* 53 no. 2 (2008), 252-53.
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home builders controlled more than a third of the market in cities like Las Vegas, Nevada, and Houston, and close to 50 percent in markets like Denver and Austin; segments of the transportation and logistics sectors; and “content” production in the entertainment industry. See David Weil, “Rethinking the Regulation of Vulnerable Work in the USA: A Sector-Based Approach,” *Journal of Industrial Relations* 51, no. 3 (2009).

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<sup>36</sup>Charles Fishman, “The Walmart You Don’t Know,” *Fast Company*, December 1, 2003, accessed May 29, 2012, <http://www.fastcompany.com/magazine/77/walmart.html>.

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<sup>39</sup>Fishman, “The Walmart You Don’t Know.”

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<sup>41</sup>Graff, “Unequal Competition,” 57.

<sup>42</sup>Walmart Stores, Inc., Annual Report (Form 10-K), at 7 (Jan. 31, 2012), available at: <http://sec.gov/Archives/edgar/data/104169/000119312512134679/d270972d10k.htm>. While outside the scope of this study, it is worth noting that Walmart also uses 158 distribution centers in Argentina, Brazil, Canada, Chile, China, India, Japan, Mexico, South Africa, and the United Kingdom, of which it owns and operates 39, leases and operates 68, and owns nine that are operated by third-party companies, with the remaining 42 leased and operated by third-party companies.

<sup>43</sup>Schneider National, “Schneider National Awarded Walmart’s 2011 General Merchandise Diamond Carrier of the Year,” news release, January 11, 2012; “Schneider By the Numbers,” Schneider National, accessed May 16, 2012, [http://www.schneider.com/About\\_Schneider/SchneiderByTheNumbers/index.htm](http://www.schneider.com/About_Schneider/SchneiderByTheNumbers/index.htm).

<sup>44</sup>Jim Park, “California Suit Alleges Schneider Shorted Drivers on Wages, Mileage, Benefits,” *Trucking Info*, November 11, 2010, accessed May 16, 2012, [http://www.truckinginfo.com/news/news-detail.asp?news\\_id=72193](http://www.truckinginfo.com/news/news-detail.asp?news_id=72193); *Bickley v. Schneider Nat’l Inc.*, 2011 WL 1344195, No. 08-5806 (N.D. Cal. Apr. 8, 2011); *Patton v. Schneider Nat’l Carriers, Inc.*, 2009 WL 545779, No. 09-01010 (C.D. Cal. Mar. 3, 2009).

<sup>45</sup>David Moberg, “Workers Tell Wal-Mart: You’re Responsible for Your Scofflaw Contractors,” *In These Times*, February 17, 2012, accessed May 29, 2012, [http://www.inthesetimes.com/working/entry/12766/workers\\_tell\\_wal-mart\\_youre\\_responsible\\_for\\_your\\_scofflaw\\_contractors/](http://www.inthesetimes.com/working/entry/12766/workers_tell_wal-mart_youre_responsible_for_your_scofflaw_contractors/); Jack Katzanek, “Warehouse Operators Face Labor Law Heat,” *The Press-Enterprise*, October 13, 2011, accessed May 29, 2012, <http://www.pe.com/business/business-headlines/20111013-workplace-warehouse-operators-face-labor-law-heat.ece>. ; *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. May 31, 2012) (Plaintiffs’ Notice of Motion to Compel Responses).

<sup>46</sup>Dave Jamieson, “The New Blue Collar: Temporary Work, Lasting Poverty and the American Warehouse,” *Huffington Post*, December 20, 2011, accessed May 29, 2012, [http://www.huffingtonpost.com/2011/12/20/new-blue-collar-temp-warehouses\\_n\\_1158490.html](http://www.huffingtonpost.com/2011/12/20/new-blue-collar-temp-warehouses_n_1158490.html).

<sup>47</sup>William Cassidy, “Swift Contracts More Trucks to Walmart,” *The Journal of Commerce Online*, September 13, 2011, accessed May 29, 2012, <http://www.joc.com/truckload/swift-contracts-more-trucks-wal-mart>.

<sup>48</sup>Betty Beard, “Truckers’ Lawsuit Against Swift Transportation Now Expanded,” *Arizona Republic*, November 9, 2010, accessed May 29, 2012, <http://www.azcentral.com/business/articles/2010/11/08/20101108swift-transportation-class-action-lawsuit.html>; William Cassidy, “Swift Fails to Block Class-Action Suit,” *The Journal of Commerce Online*, September 8, 2011, accessed May 29, 2012, <http://www.joc.com/labor/swift-fails-block-class-action-suit>.

<sup>49</sup>William Cassidy, “Swift to Pay Port of Los Angeles \$4 Million,” *The Journal of Commerce Online*, February 17, 2012, accessed May 29, 2012, <http://www.joc.com/truckload/swift-pay-port-los-angeles-4-million>.

<sup>50</sup>Susan Houseman, Upjohn Institute, e-mail message to author, April 6, 2012. See also Matthew Dey, Susan Houseman and Anne Povlinks, “What Do We Know About Contracting Out in the United States? Evidence from Household and Establishment Surveys,” Upjohn Institute Working Papers, Working Paper No. 09-157, 2009.

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- <sup>51</sup> David Blanchard, “Swinging for the Fences,” *Material Handling & Logistics*, November 1, 2010, accessed May 29, 2012, <http://mhlnews.com/news/swinging-for-fences-1101/>.
- <sup>52</sup> Message from Mike Duke, Walmart 2011 Global Responsibility Report, accessed May 29, 2012, [http://www.walmartstores.com/sites/ResponsibilityReport/2011/message\\_mike\\_duke.aspx](http://www.walmartstores.com/sites/ResponsibilityReport/2011/message_mike_duke.aspx).
- <sup>53</sup> Gary Macklin, “Grocers Concentrate on Sales, Purchase Distribution Expertise,” *Refrigerated Transporter*, July 1, 2004, accessed May 29, 2012, [http://refrigeratedtrans.com/mag/transportation\\_grocers\\_concentrate\\_sales/](http://refrigeratedtrans.com/mag/transportation_grocers_concentrate_sales/).
- <sup>54</sup> Edna Bonacich and Khaleelah Hardie, “Walmart and the Logistics Revolution,” in *Walmart: the Face of Twenty-First-Century Capitalism*, ed. Nelson Lichtenstein (New York: The New Press, 2006): 163-188.
- <sup>55</sup> Industry publications estimate that as of 2008, Walmart used “31 or more” 3PLs. See Perry Trunick, “The Rise of Outsourcing,” *Material Handling & Logistics*, June 1, 2008.
- <sup>56</sup> Capgemini Consulting, 2012 *Third-Party Logistics Study: The State of Logistics Outsourcing* (2012), accessed May 29, 2012, <http://www.3plstudy.com/downloads/2012-3pl-study/>.
- <sup>57</sup> See, e.g. Merrill Douglas, “SMB/3PL Partnerships: Small Fish, Big Splash,” *Inbound Logistics*, July 2009, accessed May 18, 2012, <http://www.inboundlogistics.com/cms/article/smb3pl-partnerships-small-fish-big-splash/>.
- <sup>58</sup> Capgemini Consulting, 2012 *Third-Party Logistics Study*.
- <sup>59</sup> Hans P. Johnson et al., *The Inland Empire in 2015* (San Francisco: Public Policy Institute of California, 2008) iii, available at: [http://www.ppic.org/content/pubs/report/R\\_408HJR.pdf](http://www.ppic.org/content/pubs/report/R_408HJR.pdf); Bonacich and De Lara, “Economic Crisis,” 5.
- <sup>60</sup> Johnson, *The Inland Empire*, iii.
- <sup>61</sup> Bonacich and De Lara, “Economic Crisis,” 1.
- <sup>62</sup> Schneider National, “Schneider National Awarded Walmart’s 2011 General Merchandise Diamond Carrier of the Year,” news release, January 11, 2012, accessed May 29, 2012, [http://www.schneider.com/KnowledgeHub/News/Portals/DriverPortal/PressReleasesFullList/PRD\\_005366](http://www.schneider.com/KnowledgeHub/News/Portals/DriverPortal/PressReleasesFullList/PRD_005366); “Schneider By the Numbers,” Schneider National, accessed May 16, 2012, [http://www.schneider.com/About\\_Schneider/SchneiderByTheNumbers/index.htm](http://www.schneider.com/About_Schneider/SchneiderByTheNumbers/index.htm)
- <sup>63</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. May 31, 2012) (Plaintiffs’ Notice of Motion to Compel Responses at 1-2); *Carrillo* (C.D. Cal. May 31, 2012) (Joint Stipulation Re: Plaintiffs’ Motion to Compel at 18-20).
- <sup>64</sup> Warehouse Workers for Justice, *Bad Jobs in Goods Movement: Warehouse Work in Will County, Illinois* (Chicago: Warehouse Workers for Justice, 2010), available at: <http://www.warehouseworker.org/badjobsgoodsmovement.pdf>; Jason Rowe, *New Jersey’s Supply Chain Pain: Warehouse & Logistics Work Under Walmart and Other Big Box Retailers* (2012), available at: <http://newlabor.org/wp-content/uploads/2012/05/white-paper-V-FINAL.pdf>.
- <sup>65</sup> See *Dean v. Eclipse Advantage, Inc.*, No. 11-08285 (N.D. Ill. Nov. 11, 2011) (workers brought suit for wage and hour violations against logistics and staffing agencies in Walmart warehouses); *Williamson v. Schneider Logistics, Inc.*, No. 11-01376 (N.D. Ill. Feb. 28, 2011) (warehouse workers brought suit for unpaid wages, overtime violations, misleading paystubs, and piece rate violations).
- <sup>66</sup> Warehouse Workers for Justice, *Bad Jobs in Goods Movement*, 14-15.
- <sup>67</sup> *Ibid.* The report’s findings are based on a survey of workers from over 150 warehouses in the Will County, Illinois area, which include, but are not limited to Walmart warehouses.
- <sup>68</sup> Rowe, *New Jersey’s Supply Chain Pain*.
- <sup>69</sup> Bonacich and De Lara, “Economic Crisis,” 10-11.
- <sup>70</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. May 31, 2012) (Plaintiffs’ Notice of Motion to Compel Responses at 1-2); *Carrillo* (C.D. Cal. May 31, 2012) (Joint Stipulation Re: Plaintiffs’ Motion to Compel at 18-20).
- <sup>71</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. Oct. 17, 2011).
- <sup>72</sup> “California Labor Commissioner Issues Additional \$616,250 Citation in Riverside County Warehouse Case,” PR Newswire, Nov. 17, 2011, accessed May 29, 2012, <http://www.prnewswire.com/news-releases/california-labor-commissioner-issues-additional-616250-citation-in-riverside-county-warehouse-case-134059123.html>.
- <sup>73</sup> California Department of Industrial Relations, “Cal/OSHA Issues \$256,445 in Citations to Warehouse Operators,” news release, January 18, 2012; *Worksafe, Dying at Work in California: The Hidden Story Behind the Numbers* (Oakland: Worksafe, 2012) 25, available at: [www.cal-osha.com/download.aspx?id=105366&LangType=1033](http://www.cal-osha.com/download.aspx?id=105366&LangType=1033).
- <sup>74</sup> *Confronting the Challenges of a Subcontracted Economy: The Experience of Warehouse Workers in the Logistics Industry as a Case Study*, California State Assembly Labor and Employment Committee (Feb. 15, 2012) (statement of Ellen Widess, Chief, Cal/OSHA).
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<sup>75</sup> Deogracia Cornelio et al., *Shattered Dreams and Broken Bodies: A Brief Review of the Inland Empire Warehouse Industry* (Los Angeles: Warehouse Workers Accountability Commission, 2011).

<sup>76</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal.). All quotes and data in this discussion are based in record evidence. See Plaintiffs' Memorandum of Points and Authorities at 11 (Dec. 22, 2011) (illegal pay system); Declaration of Juan Chavez at 3 (Oct. 24, 2011) (overtime violation); Declaration of Everado Carillo at 3 (Oct. 24, 2011) (falsified records); Declaration of Evaristo Morales at 1-2 (Oct. 24, 2011) (falsified records); Declaration of Armando Esquivel at 3 (Oct. 24, 2011) (climate of fear and retaliation); Declaration of Franklin Quezada at 2 (Dec. 22, 2011) (retaliation); Declaration of Victor Ramirez at 2 (Dec. 22, 2011) (retaliation).

<sup>77</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. Dec. 7, 2011) (order granting preliminary injunction).

<sup>78</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. Jan. 31, 2012) (order granting plaintiffs' motions for preliminary injunction, provisional class certification and approval of *Hoffman-La Roche* notice).

<sup>79</sup> Courtney von Hippel, et al., "Operationalizing the Shadow Workforce," in *The Shadow Workforce: Perspectives on Contingent Work in the United States, Europe, and Japan*, ed. Sandra E. Gleason (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2006).

<sup>80</sup> The Contingent Worker Supplement (CWS) conducted by the Bureau of Labor Standards was collected for only a decade. While the CWS data does not reveal employment experiences during the Great Recession or the subsequent sluggish recovery, it was collected in conjunction with the Current Population Survey (CPS), the only national data source that does not combine foreign-born and later generations of workers of Mexican origin into one flattened racial category.

<sup>81</sup> Catherine Singley, *Fractures in the Foundation: The Latino Worker's Experience in an Era of Declining Job Quality*, (Washington, D.C.: National Council of La Raza, 2009), iv-vi.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*; Carre, McCormack, et al., "The Social and Economic Cost of Employee Misclassification in Construction."

<sup>85</sup> Matthew Dey, Susan Houseman, and Anne Polivka, "What Do We Know about Contracting Out in the United States? Evidence from Household and Establishment Surveys," in *Labor in the New Economy*, eds. Katharine G. Abraham, James R. Spletzer, and Michael J. Harper. (Chicago: University of Chicago Press, 2010), 267-304.

<sup>86</sup> *Ibid.*; George Gonos and Carmen Martino, "Temp Agency Workers in New Jersey's Logistics Hub: The Case for a Union Hiring Hall," *Working USA* 14 (2011).

<sup>87</sup> Susan Houseman, Matthew Dey and Anne Polivka, "Manufacturers' Outsourcing to Staffing Services," *Industrial and Labor Relations Review* (forthcoming).

<sup>88</sup> Gonos and Martino, "Temp Agency Workers."

<sup>89</sup> *Ibid.*

<sup>90</sup> Singley, *Fractures in the Foundation*, 8.

<sup>91</sup> Bonacich and De Lara, "Economic Crisis," 2.

<sup>92</sup> David Ciscel, Barbara Elle Smith and Marcela Mendoza, "Ghosts in the Global Machine: New Immigrants and the Redefinition of Work," *Journal of Economic Issues* 37 no. 2 (2003), available at: <http://csws.uoregon.edu/wp-content/docs/InitiativeArticles/ImmigrationPDFs/GhostsLatinoWorkersTN2003.pdf>.

<sup>93</sup> Ruth Milkman, et al., "Wage Theft and Workplace Violations in Los Angeles," Institute for Research on Labor and Employment, University of California, Los Angeles, 2010, accessed May 29, 2012, <http://www.irlle.ucla.edu/events/2010/pdf/LAwagetheft.pdf>.

<sup>94</sup> *Ibid.*

<sup>95</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Economic News Release, Fatal Occupational Injuries by Selected Worker Characteristics and Selected Event or Exposure* (2009), available at: <http://www.bls.gov/news.release/cfoi.t04.htm>.

<sup>96</sup> Milkman, "Wage Theft," 3.

<sup>97</sup> *Carrillo v. Schneider Logistics, Inc.*, No. 11-08557 (C.D. Cal. Jan. 31, 2012).

<sup>98</sup> MASS. GEN. LAWS ch. 149, § 148B.

<sup>99</sup> For a listing of model state and local laws relating to subcontracted and other contingent workers, see Catherine Ruckelshaus, et al., "NELP Summary of Independent Contractor Reforms, New State and Federal Activity," (New York:

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National Employment Law Project, 2011), accessed May 29, 2012, <http://www.nelp.org/page/-/Justice/2011/2011IndependentContractorReformUpdate.pdf?nocdn=1>.

<sup>100</sup> CAL. LAB. CODE § 2810.

<sup>101</sup> Day and Temporary Labor Services Act, 820 ILL. COMP. STAT. 175.

<sup>102</sup> Office of Procurement and Property Management; Agriculture Acquisition Regulation, Labor Law Violations, 76 Fed. Reg. 74722 (Dec. 1, 2011). See also 40 U.S.C. § 3144 and 41 U.S.C. § 352 (Davis Bacon Act and Service Contract Act, respectively, that require upper-level contractors receiving public monies to pay workers).

<sup>103</sup> Walmart, *Walmart Statement of Ethics* (2008), accessed May 29, 2012, [http://www.walmartstores.com/media/cdnpull/statementofethics/pdf/U.S\\_SOE.pdf](http://www.walmartstores.com/media/cdnpull/statementofethics/pdf/U.S_SOE.pdf).

<sup>104</sup> See Warehouse Workers United, Memorandum to Mike Duke, Walmart CEO, Jan. 18, 2012, accessed May 29, 2012, <http://www.warehouseworkersunited.org/fileadmin/userfiles/Uploads/WalmartEthicsComplaint01182012.pdf>.

<sup>105</sup> See, e.g., Sarah Leberstein, "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries," National Employment Law Project, New York, 2011, accessed May 29, 2012, <http://www.nelp.org/page/-/Justice/2010/IndependentContractorCosts.pdf?nocdn=1>.

<sup>106</sup> For detailed suggestions about how the Department of Labor and the Census Bureau could better clarify even their existing data, see Matthew Dey, Susan Houseman and Anne Polivka, "Manufacturers' Outsourcing to Employment Services," Upjohn Institute Working Papers, Working Paper No. 07-132, Kalamazoo, MI, 2006.

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