

Lasting Solutions for America's Temporary Workers

Last year, temporary jobs supplied by temp agencies reached a new high of 3.2 million in the U.S.¹

According to the American Staffing Association, during the course of a year, staffing companies in the United States hire more than 15 million temporary and contract employees, who are then placed into jobs at other employers.² Since the end of the Great Recession in June 2009, temporary agency work—as measured by the aggregate number of hours and total number of jobs (part-time and full-time)—has grown faster than work overall (Table 1). Temporary agency work hours have grown 3.88 times faster than overall work hours (Figure 1), and temp agency jobs have grown 4.35 times faster.³

Figure 1. Growth of Temporary Agency Work Hours, 2009 to 2018

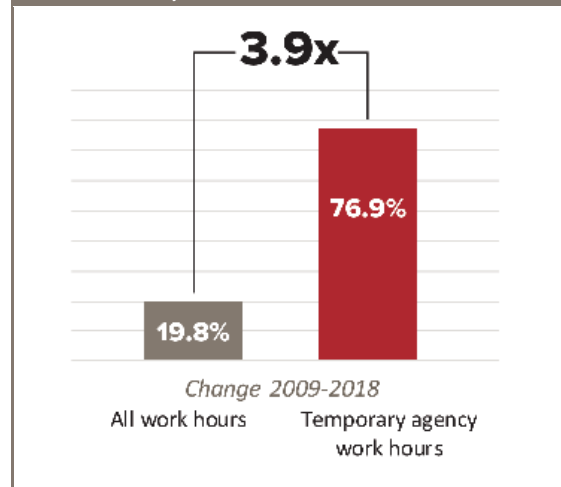


Table 1. Temp Share of All Hours and Jobs, 2009 v. 2019

		2009	2019	Change June 2009 to June 2018
Hours	All	3,654,630,000	4,379,737,000	19.80%
	Temporary agency	58,332,000	103,193,000	76.90%
	Temp share of all	1.60%	2.36%	
Jobs	All	108,446,000	126,582,000	16.70%
	Temporary agency	1,751,700	3,026,200	72.80%
	Temp share of all	1.62%	2.39%	

Full-time temporary workers earn 41 percent less than workers in standard work arrangements.

The competition between staffing agencies to undercut rivals' bids places downward pressure on wages and working conditions across a wide variety of industries. Raising standards for temporary work is urgent and necessary.

This brief explores how the business model for the temporary staffing industry makes its workforce uniquely susceptible to illegal conduct and abuse. The brief presents policy solutions that rein in the temporary staffing industry, provide temporary workers with protections from exploitation, and create a level playing field for temporary workers.

Temporary Staffing Business Model Exacerbates Poor Conditions in the Most Hazardous Industries

Temporary staffing workers are often characterized as the employees only of the staffing company that arranges their assignments, even though the host companies generally control the nature of these assignments, including the type of work and working conditions. This system, which “insulates the host companies from workers’ compensation claims, unemployment taxes, union drives, and the duty to ensure that their workers are citizens or legal immigrants,” allows host companies to control many working conditions without being responsible for them.⁴ The result is that temporary staffing agencies and host companies can more easily exploit temporary workers.

Wage and Benefit Penalties

Workers employed through temporary staffing agencies face wage and benefits penalties relative to permanent, direct hires. As a group, full-time temporary staffing workers earn 41 percent less than do workers in standard work arrangements.⁵ And within occupations, as shown in **Table 2** below, temporary agency workers experience wage penalties compared to permanent, direct-hire workers. They also experience large benefit penalties relative to their counterparts in standard work arrangements. Over 50 percent of workers in standard arrangements receive an employer-provided health insurance benefit, compared to only 12.8 percent of temporary staffing workers. And while 46 percent of workers in standard arrangements are covered by an employer-provided pension plan, only 6.6 percent of temporary staffing workers are.⁶

Temporary Help Service Industry Employment: Number and Percentage of All Employees		Median Wage	
		Temp Workers	All Employees
Industry Total	3,001,660	\$14.12	\$18.58
Material Moving Workers	749,580 (24.97%)	\$11.95	\$13.74
Other Production Occupations	297,350 (9.91%)	\$12.60	\$16.35
Assemblers and Fabricators	234,780 (7.82%)	\$12.59	\$15.78
Other Office and Administrative Support Workers	164,950 (5.5%)	\$14.49	\$16.16
Information and Record Clerks	140,980 (4.7%)	\$15.14	\$15.91
Computer Occupations	107,940 (3.6%)	\$39.58	\$41.50
Business Operations Specialists	105,070 (3.5%)	\$27.84	\$32.27
Construction Trades Workers	90,540 (3.02%)	\$16.61	\$21.54
Material Recording, Scheduling, Dispatching, and Distributing Workers	89,780 (2.99%)	\$13.17	\$15.45
Metal Workers and Plastic Workers	82,000 (2.73%)	\$14.62	\$18.70

Note: Occupations shaded in blue are blue-collar, more physically taxing occupations

Source: Occupational Employment Statistics Survey, Bureau of Labor Statistics⁷

High Rates of Wage Theft

In addition to substandard wages and benefits, temporary workers face higher rates of wage theft than permanent workers. Temporary staffing agencies consistently rank among the worst large industries for the rate of wage-and-hour violations, according to a *ProPublica* analysis of federal enforcement data.⁸ Competition among temporary agencies is fierce, and so these agencies—many of which are thinly capitalized—often illegally cut labor costs to keep their contracts.⁹ And host companies can look the other way because they are not the direct employer of their temporary workers and so are rarely held liable for wage-and-hour violations.

A common form of wage theft is unpaid wait time. Temporary workers are often required to check in with their staffing agency in person in the morning and wait for an assignment. But often they do not start getting paid until they arrive at a jobsite, which could be hours later, if they get an assignment at all.¹⁰

Another type of wage theft endemic in the temp and staffing industry is unauthorized deductions for various expenses, such as transportation to a jobsite and background and credit checks. According to *ProPublica*, prior to the passage of Illinois' Responsible Job Creation Act (discussed below), many staffing agencies in Chicago's immigrant neighborhoods collaborated with labor brokers, known as *raiteros*, who recruited and transported temporary workers and distributed their paychecks while deducting fees that frequently pushed the workers' wages below the minimum wage.¹¹ Some *raiteros* even arranged a deal with a check-cashing business through which it received and cashed the temporary workers' checks for an additional fee.¹² The *raiteros* system benefited both temp agencies—who rely on *raiteros* to get the right number of workers to their client companies—and the host companies, who could limit the number of permanent employees they hired and the attendant benefits and other costs, such as overtime pay, of full-time employees.

The *raiteros* system also illustrates how layers of middlemen, including temporary staffing agencies and labor brokers, extract rents from workers. Because each level of a subcontracted structure requires a financial return for its work, the further down the subcontracted entity is, the slimmer the remaining profit margins. At the same time, the further down on a subcontracted structure an entity is, the larger the share of costs represented by labor, which is one of the only costs in direct control by those entities. This places downward pressure on wages and creates incentives to cut corners, including violations of wage-and-hour laws.

Increased Risk of Health and Safety Violations

Temporary staffing workers also face a significantly greater risk of getting injured on the job than permanent employees, according to an analysis of millions of workers' compensation claims filed in five states representing more than one-fifth of the U.S. population.¹³ In Florida, for example, the analysis found that temporary workers were twice as likely as permanent employees to suffer crushing injuries, dislocations, lacerations, fractures, and punctures. The disparity was even worse in dangerous occupations, such as manufacturing, construction,

and warehousing. In Florida, temporary workers in these workplaces were about six times as likely to be injured as permanent employees doing similar jobs.

In 2013, the U.S. Occupational Safety and Health Administration (OSHA) launched the Temporary Worker Initiative in recognition of temporary workers' increased risk of work-related injury and illness.¹⁴ The agency noted that it had received and investigated many reports of temporary workers suffering serious or fatal injuries, sometimes in their first day at a new assignment. In 2012, for example, a temporary worker on his first day of an assignment at a Bacardi packaging plant was crushed to death while cleaning broken glass under a platform because the platform machine had not been properly shut down.¹⁵

Temporary workers often get placed into the most hazardous jobs without adequate safety training.

OSHA expressed concern that host employers use temporary workers to avoid meeting their health and safety compliance requirements; that temporary workers get placed into the most hazardous jobs; that temporary workers are not given adequate safety and health training by either the host employer or the agency; and that temporary workers are more vulnerable to retaliation for reporting unsafe conditions than workers in traditional employment relationships.

Temporary workers' increased risk of injury is due in part to the fact that host companies can more easily evade health and safety responsibilities for their temporary workers. Host companies are usually not responsible for providing workers' compensation to their temporary workforce and so have less incentive to minimize the health and safety risks for these workers. "When a company contracts a temp firm, the agency picks up those costs for the workers it assigns even though it has little or no control over jobsites. . . . If a temp gets injured, the host company doesn't pay the medical bills or increased premiums—the temp agency does."¹⁶

Hiring workers through temporary staffing agencies allows companies to obtain a reliable workforce without the responsibilities and liabilities of traditional employers.

The workers' compensation insurance premium paid by the temporary staffing agency is usually based on its own experience rating—which depends on the number of other workers' compensation claims filed by the agency's other employees in recent years—not the experience rating of the client employer. Because host companies are not responsible for providing workers' compensation coverage to temporary workers and those workers' injuries do not negatively affect the host companies' insurance premiums, this system creates an incentive for host companies to place temporary workers in the most dangerous positions and do little to minimize the safety risks facing those workers.

This system also explains why hiring workers through temporary staffing agencies is so alluring. The host company obtains a reliable workforce without the responsibilities and liabilities of a traditional employer. And temporary staffing agencies, which typically have low profit margins, are incentivized to take advantage of special treatment under social insurance programs like workers' compensation in order to continue their business.

Temporary Staffing Business Model Exploits Vulnerable Workers in Hazardous Low-Wage Industries

Unsurprisingly, the staffing industry’s exploitative business model prevails in low-paid, hazardous jobs and among the most vulnerable workers.

Occupational Employment

In the past few decades, temporary staffing work has increased in low-wage, “blue-collar” occupations, reflecting a shift in corporate use of temporary staffing agency placements from clerical work to more hazardous industries, such as construction, manufacturing, and logistics. **Table 3** below shows the 10 detailed occupations that added the most temp jobs between 2014 and 2017, along with their median hourly wages in 2017 and the wage penalty for temporary workers in 2017. Between 2014 and 2017, of the 10 detailed occupations that added the most temporary staffing workers, nine have a median hourly wage below \$15 per hour. Several of these occupations entail physically demanding work with higher-than-average rates of workplace injuries.¹⁷ For example, the “Laborers and Freight, Stock, and Material Movers” occupation, which is comprised of workers who manually move freight and stock, and whose injury rate is 3.4 times the average rate, saw an increase of more than 61,000 temporary workers between 2014 and 2017.

Table 3. Number of Temp Jobs in Detailed Occupations and Median Hourly Wage and Wage Penalty for Temp Workers

	Detailed Occupations	Temp Jobs Added 2014 to 2017	Median Hourly Wage, 2017	Wage Penalty/Premium, 2017
1	Laborers and Freight, Stock, and Material Movers, Hand	61,430	\$11.45	-2.50%
2	Substitute Teachers	29,340	\$12.41	-1.50%
3	Productions Workers, All Other	20,110	\$11.77	-13.40%
4	Helpers--Production Workers	17,100	\$11.42	0.60%
5	Inspectors, Testers, Sorters, Samplers, and Weighers	10,590	\$13.43	-21.00%
6	Human Resources Specialists	7,870	\$24.53	-11.10%
7	Janitors and Cleaners, Except Maids and Housekeeping Cleaners	6,750	\$10.96	-0.20%
8	Packers and Packagers, Hand	6,550	\$10.43	6.80%
9	Stock Clerks and Order Fillers	6,550	\$11.45	4.20%
10	Retail Salespersons	6,470	\$11.06	7.50%

Workforce Demographics

Black and Latinx workers are overrepresented in temporary staffing work. While Black workers constitute 12.1 percent of the overall workforce, they make up 25.9 percent of temporary help agency workers; Latinx workers are 16.6 percent of all workers, but 25.4 percent of temporary help agency workers. In fact, many “temp towns”—areas inundated

with temporary staffing agencies—are located in immigrant communities, such as cities and towns in New Jersey or outside of Chicago, where these agencies can exploit undocumented workers.¹⁸

The Precariousness

The extreme instability and precariousness of temporary work exacerbate illegal and abusive practices. A common industry practice is for host companies to write “DNR”—short for “Do Not Return”—on the back of a temporary worker’s work slip at the end of the day, which instructs the temporary staffing agency not to assign the worker to this jobsite again.¹⁹ Temporary workers who complain about any aspect of an assignment face the threat of being “DNR’d.”

Temporary workers can languish in the same “perma-temp” position for years without ever being offered a permanent position.

But there is one abusive condition above all that keeps temporary workers in a cycle of dead-end, second-tier jobs, and that is the prevalence of “perma-temping.” Temporary workers can languish in the same position for several months and even years—working side-by-side with permanent employees—without ever being offered a permanent position. This division in the workforce hurts both temporary workers, who are afraid to advocate for themselves for fear of jeopardizing their chance at a permanent position, and permanent workers, who see the temporary workers as a threat to their job security and higher wages and benefits.

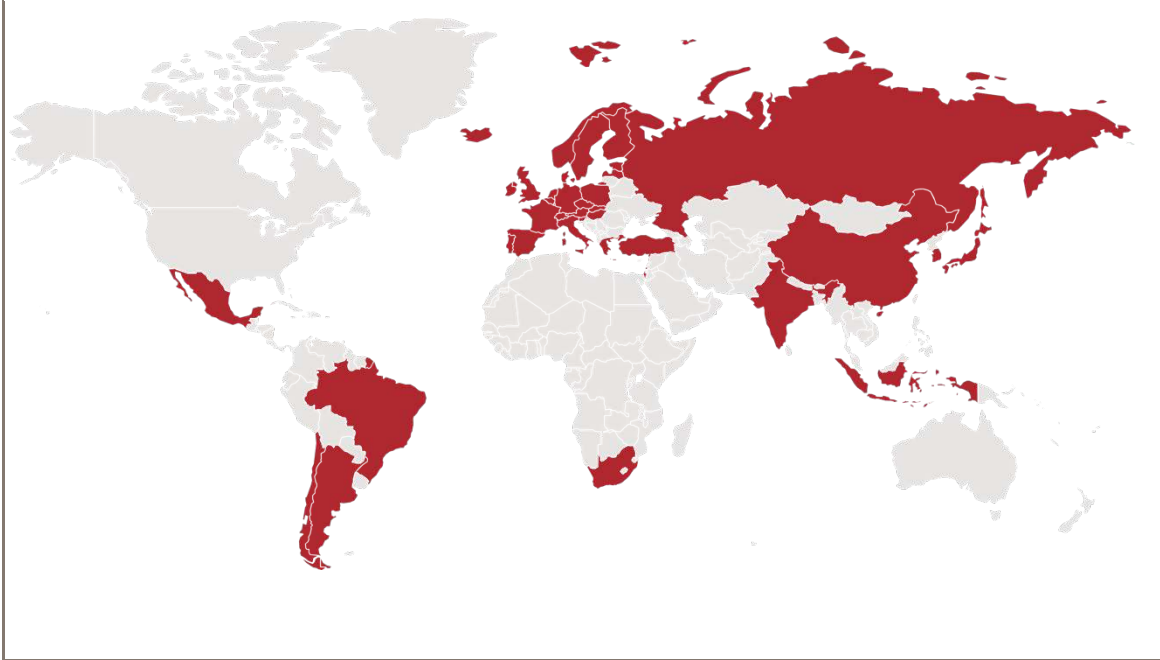
The agreements between temporary staffing agencies and host employers perpetuate perma-temping. Their contracts usually contain conversion fee provisions, which require the host company to pay the staffing agency a fee if it hires a temporary worker permanently within a certain time frame. The irony here is obvious: temporary staffing agencies market themselves to prospective temporary workers as a stepping stone to permanent employment, yet, at the same time, these agencies impose barriers on obtaining permanent employment.

The Urgent Need for Temporary Worker Labor Protections

Among developed nations, the United States has some of the weakest labor protections for temporary workers.²⁰ The Organisation for Economic Co-operation and Development (OECD) scores countries on the strength of their employment protections, from 1 (weak) to 5 (strong). With respect to the regulation of temporary work, the United States scored 0.3, tied for last place with Malaysia.²¹

Several countries provide more robust protections for temporary workers than anywhere in the United States. This section discusses the most common temporary worker protections internationally and the countries that have adopted them. It then discusses three states—California, Illinois, and Massachusetts—that have recently passed legislation that targets the temp and staffing industry and provides temporary workers with baseline protections.

Figure 2: Countries with at Least One of Four Temporary Worker Protections



International Laws

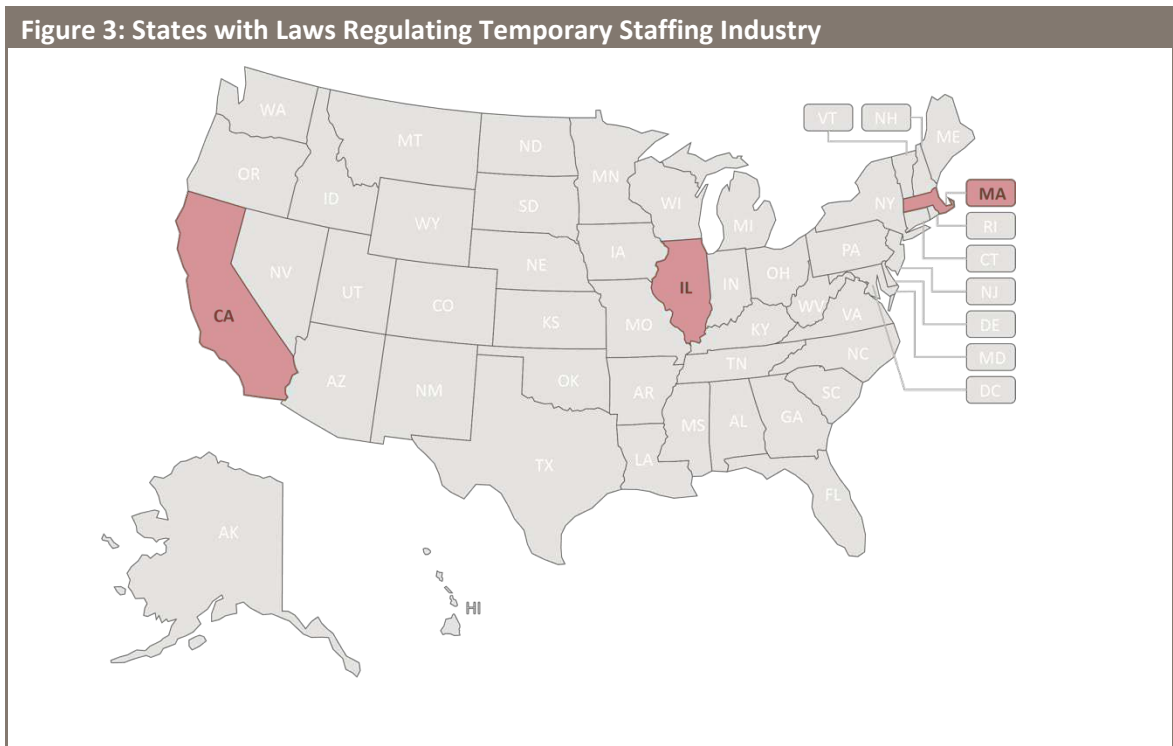
Several countries have passed laws that provide protections to temporary workers and regulate the temporary staffing industry. The most common provisions fall into four buckets: (1) requiring pay and benefits to temporary workers that are equal to that of permanent employees; (2) requiring staffing agencies to register with or obtain a special license from the government; (3) limiting the duration of temporary assignments; and (4) limiting the types of work that can be performed by temporary workers.

The following is a list of the countries that have adopted these provisions (**Figure 2**):²²

- **Requiring wage parity and equal benefits for temporary workers and permanent employees:** Argentina, Austria, Belgium, Brazil, China, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Latvia, Luxembourg, Mexico, Netherlands (with some exceptions), Norway, Poland, Portugal, Russia, Slovakia, Slovenia, Spain, South Korea, Sweden, and United Kingdom (after a 12-week period)
- **Requiring special licensing or registration for temporary staffing agencies:** Argentina, Austria, Belgium, Brazil, Chile, China, Czech Republic, Estonia, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Portugal, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, and Switzerland
- **Limiting the duration of temporary assignments:**
 - Belgium: 3 to 18 months, depending on the reason
 - Brazil: 3 months, unless authorized by the government

- Chile: 3 to 6 months, depending on the circumstances
 - Czech Republic: 1 year
 - France: 18 months with some exceptions
 - Israel: 9 months, or 15 months with the government's approval
 - Poland: 18 months to 4 years, depending on the circumstances
 - Portugal: 6 months to 2 years, depending on the circumstances
 - Spain: 6 months to 4 years, depending on the circumstances
 - South Korea: 3 months to 2 years, depending on the circumstances
- **Restricting the types of work performed by temporary workers:**
 - Argentina: only for temporary replacement of a permanent employee and increase in workload; prohibited for strike-breaking and certain industries, such as construction, agriculture and the public sector; proportion of temp workers in a company must be reasonable
 - Belgium: only for temporary replacement of a permanent employee, increase in workload, or extraordinary circumstances
 - Brazil: only for increase in workload and seasonal jobs
 - Chile: only for temporary replacement of workers on leave, increase in workload, urgent work, extraordinary events (such as exhibitions, new projects or expansion), or starting a new business; prohibited to employ temp workers as strike breakers or as managers
 - France: only for temporary replacement of permanent employee, increase in workload or seasonal employment
 - Germany: prohibited in the construction industry unless there is a collective bargaining agreement
 - Greece: only for temporary, seasonal or extra needs; prohibited for strike-breaking, replacing permanent workers who were recently laid off, or jobs that pose health and safety risks
 - Hungary: prohibited for strike-breaking or replacing permanent workers who were recently laid off
 - Iceland: prohibition on converting a permanent employee into a temp worker
 - India: only for non-core activities of the company
 - Italy: prohibited for strike-breaking or replacing permanent workers who were recently laid off
 - Japan: prohibited in the construction and seafaring industries, when working with dust, and for other harmful or dangerous work
 - Luxembourg: only for temporary replacement of permanent employee, seasonal jobs, and urgent work
 - Mexico: requires justification for temporary characteristics of the work; prohibited from performing same work as a permanent employee
 - Netherlands: prohibited for seamen
 - Norway: only for temporary replacement of permanent employee, work as a trainee, sports, and work that differs from that which is ordinarily performed
 - Poland: only for temporary replacement of permanent employee, seasonal jobs and urgent work

- Slovenia: prohibited for strike-breaking, replacing permanent workers who were recently laid off, and hazardous work; temporary workers cannot exceed 25 percent of a company’s workforce
- Spain: only for temporary replacement of permanent employee, extraordinary work, changes in market conditions, training, or to hire workers with disabilities; prohibited in the construction industry
- South Korea: prohibited in the construction and seafaring industries, when working with dust, and for other harmful or dangerous work
- Turkey: only for agricultural work



Domestic Laws

Only three states—California, Illinois, and Massachusetts—have passed laws that target the temporary staffing industry in order to limit the abuse and exploitation of temporary workers (**Figure 3**). These states represent a starting point for regulating the temporary staffing industry, but as other countries have shown, more can be done to protect the temporary workforce from abusive practices.

1. Massachusetts

In 2012, Massachusetts passed the Temporary Workers Right to Know Act, the first state law aimed at raising labor standards specifically for temporary staffing employees. Under the law, staffing agencies must give certain information in writing to each temporary employee before each new assignment, including the name and contact information for the staffing agency, the name and contact information for the agency’s workers’ compensation carrier,

the name and contact information for the company where the employee will be working, a description of the job that the employee will be performing, and work hours and pay.²³

Although these “right to know” provisions appear basic, they represent a seminal change for temporary staffing workers, who often have no notice of the terms and conditions of their employment with the staffing agency or their assignments with a third-party client. According to Massachusetts Coalition for Occupational Safety and Health Director Marcy Goldstein-Gelb, prior to the law’s enactment, it was not unusual for a temporary worker not to know the name of the temporary agency that employs him or her and “to be picked up in a van by someone who all they knew was their first name.”²⁴ This obfuscation worked to staffing agencies’ advantage—temporary workers would not know who was responsible if they were injured on the job, were owed wages, or faced other unfair or illegal conduct at work.

In addition, the Massachusetts law prohibits staffing agencies from charging their employees for certain expenses, such as criminal background checks and transportation that the agency requires its employees to use, and limits the cost of any transportation that staffing agencies offer to their workers.²⁵

In Massachusetts, staffing agencies must give certain information—including work hours and pay—in writing to every temporary employee before a new assignment.

Passing the Temporary Workers Right to Know Act in Massachusetts

In the years following the Great Recession, Massachusetts saw an increase in demand for temporary workers. These workers frequently reported to the Massachusetts Coalition for Occupational Safety and Health (“MassCOSH”) that they were not given basic information about their work, including the name of the temp agency that employed them, the on-site company’s name and location, their wage rate, and the nature of the assignment. According to then MassCOSH Director Marcy Goldstein-Gelb, it was not unusual for a temporary worker “to be picked up in a van by someone who all they knew was their first name.” Many of these drivers appeared to be one-person or underground temporary staffing operations that arranged with on-site companies to find and transport temporary workers to their facilities. This obfuscation worked to both the temporary staffing agencies’ and the on-site companies’ advantage—temporary workers would not know who was responsible if they were injured on the job, were owed wages, or faced other unfair or illegal conduct at work.

As the prevalence of these arrangements became apparent, MassCOSH supported temporary staffing workers in documenting the problems they faced and participating in focus groups to identify needed changes. MassCOSH and the workers joined with Greater Boston Legal Services; local worker centers, in particular Chelsea Collaborative, Centro Comunitario de Trabajadores, and MetroWest Worker Center; faith groups; and unions to create a coalition they called the “REAL” Coalition: Reform Employment Agency Law. The coalition identified two main objectives for legislation: requiring temporary staffing agencies to register with the state and requiring them to provide each temporary worker with certain information in writing about the nature of each assignment.

The coalition worked with Massachusetts Senator Linda Dorcea Fory to introduce the bill in 2011 and built momentum for passage by organizing protests and other actions to call

attention to abuses in the temporary staffing industry. Workers shared powerful stories with legislators and organized against particularly low-road temp agencies. The coalition partnered with George Gonos and Harris Freeman, two professors with expertise on the temporary staffing industry, to document evidence of abuse in the temporary staffing industry and develop a report on temporary low-wage work in Massachusetts, which was released at a State House briefing event to put pressure on the legislature to pass the bill.

The report found that one-third of temporary workers in Massachusetts toiled in low-wage industrial and service sector jobs and that these workers were disproportionately likely to be young, less educated, and people of color. The report also found that temporary staffing agencies frequently operated in the underground economy and that exploitation of temporary workers, including wage theft and health and safety violations, was rampant. It concluded that the “triangular employment relationship” and “blurred lines of employer responsibility” allowed low-road temp agencies and their client businesses to exploit workers and presented unique challenges to the enforcement of labor and employment law. The bill passed in 2012.

2. Illinois

In 2017, Illinois passed the Responsible Job Creation Act, which amended the state’s Day and Temporary Labor Services Act to strengthen protections for temporary staffing employees and day laborers.

Like the Massachusetts law, the Illinois law requires staffing agencies to provide temporary workers with information about each assignment, including the nature of the work to be performed; the type of equipment, protective clothing, and training required for the job; the wages; the name and address of the company where the worker will be working; the terms of any transportation offered; and whether a meal or equipment or both are provided and the cost, if any.²⁶ It also requires staffing agencies to provide their temporary workers with an itemized statement of their wages at the time of payment that details the number of hours worked each day for each client and all deductions.²⁷ These simple disclosures allow temporary workers to determine whether their workplace rights—such as the right to a safe work environment and to be paid for all hours worked—are being violated and who should be held accountable for such violations.

The Illinois law also has specific recordkeeping requirements, which can provide evidence of unfair and illegal practices by staffing agencies. The required records—which must be retained and made available for inspection by the state department of labor for three years—include the name and contact information for each client; each worksite to which temporary workers were assigned and the dates of assignment; copies of all contracts with and invoices sent to clients; for each temporary worker, the name and location of each temporary assignment, the type of work performed, the hourly rate of pay, and the dates of the assignment; any specific qualifications or attributes of temporary workers requested by a client; and the race and gender of every temporary worker sent to an assignment. Temp agencies must also file a report annually with the state department of labor containing statistics on the race and gender of the temporary workers they have hired.

In Illinois, recordkeeping requirements in the law can provide evidence of unfair and illegal practices by staffing agencies.

These recordkeeping and filing requirements could shine a light on discriminatory treatment of temporary workers, both by the staffing agency and by third-party clients. According to a 2016 news report on the staffing industry, some staffing agencies and their clients use code words to signal their preference for or disfavor of workers of a certain race or gender, such as “blue eyes” or “vanilla cupcake” for white workers, “Code 3” for Latinx workers, and “number 2s” for Black workers.²⁸ Clients often express a preference for white or Latinx workers over Black workers, which results in Black workers getting assigned to the least desirable positions, if they get an assignment at all.²⁹ The news report found accounts of systemic discrimination at more than two dozen staffing agencies across the country, based on government and whistleblower lawsuits and interviews with recruiters and managers of agencies.³⁰ By requiring staffing agencies to document the race and gender of every temporary worker sent to each assignment, the law increases the likelihood that agencies’ own records will reveal discriminatory patterns or practices.

In addition, the law prohibits common, exploitative practices, such as not compensating temporary workers who show up at an assignment but are not given work, charging fees for cashing workers’ checks or running credit or criminal background checks,³¹ or preventing temporary workers from obtaining a permanent position with a third-party client. The law requires a temporary worker who is assigned to a worksite but not utilized by the host company to be paid for four hours of work.³² It also requires temporary agencies to attempt to place their workers into permanent positions with clients when those positions arise³³ and limits the fees agencies can charge their clients for these placements.³⁴

Finally, the law requires all staffing agencies to register with the state department of labor and provide proof of an employer account number for payment of unemployment insurance contributions and workers’ compensation insurance.³⁵ It authorizes the state labor department to enforce the law as well as revoke the registration of any agency in violation of the law.³⁶ And it provides a private right of action and strong penalties for violations.³⁷

Passing the Responsible Job Creation Act in Illinois

In 2015 and 2016, the National Staffing Workers Alliance and the National Economic and Social Rights Initiative conducted surveys and focus groups with 86 temporary workers employed in factories and warehouses in four regions: the Chicago and Boston metro areas and around major New Jersey and southern California ports. The survey results revealed rampant abuse of and insecurity for temporary workers, including that the average length of a typical “temporary” assignment for the surveyed workers was about three years, and that four out of five workers never had a temp job lead to permanent employment. In addition, the average hourly wage was just over \$9 per hour, and only 10 percent of the workers had paid sick days. Seventy-four percent of workers surveyed had experienced wage theft, and 84 percent had experienced a health and safety violation.

Around the same time, an expose by *Reveal News* uncovered rampant race and gender discrimination in the hiring and placement of temporary workers. Staffing agencies and their clients used code words to signal their preference for or disfavor of workers of a certain race or gender, such as “blue eyes” or “vanilla cupcake” for white workers, “Code 3” for Latinx workers, and “number 2s” for Black workers.

In response, Chicago-based worker centers, including the Chicago Workers’ Collaborative and Warehouse Workers for Justice, worked with Representative Carol Ammons to introduce the Responsible Job Creation Act in January 2017, which focused on several protections for temporary workers, including equal pay for equal work; limiting barriers to permanent employment; transparency and reporting requirements, particularly regarding the race and gender of temp workers and the number of temporary assignments that lead to permanent employment; joint responsibility of client companies; and increased penalties for noncompliance. Tim Bell, the director of the Chicago Workers’ Collaborative, said that a main goal of the bill was “to increase the incentive for workers to be hired directly by companies.”

Host companies control most temp workers’ working conditions without being responsible for them.

The final version of the bill, which passed later that year, did not include the provisions requiring wage parity, reporting on temporary assignments that lead to permanent employment, and joint responsibility of client companies. Nevertheless, the law—which imposes strict recordkeeping and reporting requirements on temp agencies, limits the fees that can be charged to temporary workers, and limits the fees that temp agencies can charge client companies for permanent placements, among other provisions—represents the strongest and most comprehensive regulation of the temp and staffing industry in the United States to date.

3. California

In 2014, California passed AB 1897. The law provides that any business that contracts with a staffing agency or other labor contractor shall be jointly liable for any failure on the part of the labor contractor to pay wages owed or to secure workers’ compensation insurance for any workers supplied to the business.³⁸ This joint liability is imposed regardless of whether the host company had knowledge of its labor contractor’s violations or whether it is considered a joint employer under state law. The new law, although encompassing the temporary staffing industry, applies more broadly to many types of labor contracting relationships. In response to the law’s passage, Teamsters President Jim Hoffa stated: “No longer can employers hide behind unscrupulous labor contractors. Workers, no matter if they are temporary or permanent, can hold companies who profit from their labor accountable for violations in the workplace.”³⁹

By holding businesses that engage labor contractors jointly liable for certain workplace violations, the law incentivizes these host companies to be cautious in selecting their labor contractors and to scrutinize the contractors’ reputations and records for any red flags concerning workplace violations. It also ensures that temporary workers of thinly capitalized staffing agencies can recover damages for wage violations even if their direct

employer goes out of business—a common occurrence for staffing companies hit with significant civil judgments—or otherwise does not have the funds to pay them. And, by holding host companies jointly responsible for temporary workers’ compensation benefits, it provides an incentive for these companies to minimize the health and safety risks facing their temporary workforce and ensures that these workers receive compensation for their injuries on the job.

Recommendations

The structure of the temporary staffing industry makes temporary workers uniquely vulnerable to abuse. The industry’s business model—namely, that host employers control most of temporary workers’ working conditions without being responsible for them—and the inherent precariousness of the work mean that both temporary staffing agencies and host employers can get away with imposing substandard wages and working conditions on their temporary workers.

While temporary workers bear the brunt of this exploitation, the abuses in the temporary staffing industry erode standards for all workers. The constant threat of replacement by a temporary workforce degrades wages and working conditions for permanent employees as well.

Setting basic standards for temporary workers will improve conditions for all workers.

The particular problems facing temporary workers demand particular solutions. Using the laws in Massachusetts, Illinois, California, and other countries as models, states should pass temporary worker bill of rights legislation that enshrines rights for temporary workers—as well as strict penalties for violations of those rights—into the law. **Table 5**, below, summarizes some of the most common abusive practices in the staffing industry discussed in this paper and lists possible legislative solutions. By setting basic standards for temporary workers, these legislative solutions will improve conditions for all workers.

Table 5: Common Abusive Practices in the Temporary Staffing Industry and Possible Solutions

Abusive Practice	Possible Solutions
 <p>Perma-temping</p>	<p>Require reporting on the number of temporary assignments that lead to permanent employment; impose time limits on temporary assignments; limit the number of temporary workers to a certain percentage of an employer’s entire workforce; ban host companies from using temporary workers for core activities; ban or limit conversion fees; require that host employers give priority to temporary workers when filling permanent positions.</p>
 <p>Reliance on temporary workers for dangerous work</p>	<p>Ban temporary workers in hazardous industries; change workers’ compensation programs so that the host employer is responsible for insuring temporary workers and/or temporary worker injuries affect the host employer’s experience rating.</p>
 <p>Increased health and safety risks for temporary workers</p>	<p>Change workers’ compensation programs so that the host employer is responsible for insuring temporary workers and/or temporary worker injuries affect the host employer’s experience rating.</p>
 <p>Substandard wages and benefits</p>	<p>Require wage parity and benefits between temporary workers and permanent employees in similar positions; prohibit charging temporary workers for certain expenses, such as background and credit checks and transportation to and from worksite.</p>
 <p>Inadequate notice of the terms and conditions of each assignment</p>	<p>Require staffing agencies to give each temporary employee certain information in writing in the employee’s primary language about each new assignment, including the name and contact information for the agency’s workers’ compensation carrier, the name and contact information for the company where the employee will be working, a description of the job that the employee will be performing, and work hours and pay.</p>
 <p>Wage theft, including unpaid wait time and unlawful deductions</p>	<p>Hold host employers jointly liable for violations of all labor and employment laws; impose strict penalties (double or treble damages) for wage theft.</p>
 <p>Retaliation against temporary workers who complain about exploitative work conditions</p>	<p>Ban retaliation against temporary workers and include a presumption of retaliation in cases where a negative action has been taken against a temporary worker following his or her complaint about working conditions.</p>
 <p>Discrimination in hiring or assigning temporary workers</p>	<p>Require detailed recordkeeping for each temporary worker and assignment—including the worksite to which each temporary worker is assigned, the temporary worker’s race and gender, the dates of assignment, the type of work performed, the hourly rate of pay, and any specific qualifications or attributes of temporary workers requested by a client—and allow inspection of records by a state agency.</p>

Endnotes

- ¹ Current Employment Statistics, NAICS 561320, December 2018, available at <https://www.bls.gov/ces/data.htm>.
- ² American Staffing Association, Staffing Industry Statistics, available at <https://americanstaffing.net/staffing-research-data/fact-sheets-analysis-staffing-industry-trends/staffing-industry-statistics/>.
- ³ NELP analysis of Current Employment Statistics, NAICS 561320, June 2009 to September 2018, available at <https://www.bls.gov/ces/data.htm>.
- ⁴ Michael Grabell, *The Expendables: How Temps Who Power Corporate Giants are Getting Crushed*, PRO PUBLICA, June 27, 2013, <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>.
- ⁵ Michael Grabell, *The Expendables: How Temps Who Power Corporate Giants are Getting Crushed*, PRO PUBLICA, June 27, 2013, <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>.
- ⁶ National Employment Law Project, *America's Nonstandard Workforce Faces Wage, Benefit Penalties, According to U.S. Data*, June 7, 2018, available at <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefit-penalties-according-us-data/>.
- ⁷ Median wage of all employees is extracted from the Bureau of Labor Statistics website on Occupational Employment Statistics (https://www.bls.gov/oes/current/oes_nat.htm). Median wage of the temporary help services workforce is extracted based on NAICS 561320 from the Bureau of Labor Statistics website on Occupational Employment Statistics (https://www.bls.gov/oes/2018/may/naics5_561320.htm).
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- ¹⁰ Michael Grabell, *The Expendables: How Temps Who Power Corporate Giants are Getting Crushed*, PRO PUBLICA, June 27, 2013, <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>.
- ¹¹ Michael Grabell, *Taken for a Ride: Temp Agencies and 'Raiteros' in Immigrant Chicago*, PRO PUBLICA, Apr. 29, 2013, <https://www.propublica.org/article/taken-for-a-ride-temp-agencies-and-raiteros-in-immigrant-chicago>.
- ¹² Michael Grabell, *Illinois Revokes License of Temp Agency Check Cashing Store*, PRO PUBLICA, Jan. 6, 2015, <https://www.propublica.org/article/illinois-revokes-license-of-temp-agency-check-cashing-store>.
- ¹³ Michael Grabell, Jeff Larson & Olga Pierce, *Temporary Work, Lasting Harm*, PRO PUBLICA, Dec. 13, 2013, <https://www.propublica.org/article/temporary-work-lasting-harm>.
- ¹⁴ United States Dep't of Labor, Occupational Safety and Health Administration, *Policy Background on the Temporary Worker Initiative*, July 15, 2014, https://www.osha.gov/temp_workers/Policy_Background_on_the_Temporary_Worker_Initiative.html.
- ¹⁵ Michael Grabell, Jeff Larson & Olga Pierce, *Temporary Work, Lasting Harm*, PRO PUBLICA, Dec. 13, 2013, <https://www.propublica.org/article/temporary-work-lasting-harm>.
- ¹⁶ Michael Grabell, *How To Improve Temp Worker Safety*, PRO PUBLICA, Dec. 13, 2013, <https://www.propublica.org/article/how-to-improve-temp-worker-safety>.
- ¹⁷ For example, the "Laborers and Freight, Stock, and Material Movers" occupation, which is comprised of workers who manually move freight and stock, and whose injury rate is 3.4 times the average rate, saw an increase of over 61,000 temporary workers between 2014 and 2017. Temporary workers in this occupation have a median hourly wage of \$11.45, representing a 2.5 percent wage penalty relative to permanent, direct-hire workers. NELP analysis of Occupational Employment Statistics, NAICS 561320, available at <https://www.bls.gov/oes/tables.htm>.
For example, the "Transportation and Material Moving Occupations" group includes warehouse workers and other types of laborers who manually move freight and stock. See U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2017, 53-0000 Transportation and Material Moving Occupations (Major Group)*, <https://www.bls.gov/oes/current/oes530000.htm>. OSHA identifies its "public warehousing and storage" industry group, which includes establishments engaged in the warehousing and storage of general goods, as one of the industries with a high injury/illness rate and a high proportion of severe injuries/illnesses. Occupational Safety and Health Administration, *Target Industry Profiles*, https://www.osha.gov/dep/industry_profiles/index.html.

- ¹⁸ Michael Grabell, *The Expendables: How Temps Who Power Corporate Giants are Getting Crushed*, PRO PUBLICA, June 27, 2013, <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>.
- ¹⁹ Michael Grabell, Jeff Larson & Olga Pierce, *Temporary Work, Lasting Harm*, PRO PUBLICA, Dec. 13, 2013, <https://www.propublica.org/article/temporary-work-lasting-harm>.
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- ²³ MA. ST. 149 § 159(b).
- ²⁴ Jane Slaughter, *Massachusetts Temp Workers Win Right to Know Their Employer*, LABOR NOTES, Aug 30, 2012, <https://labornotes.org/2012/08/massachusetts-temp-workers-win-right-know-their-employer>.
- ²⁵ MA. ST. 149 § 159(c).
- ²⁶ 820 ILCS/10.
- ²⁷ 820 ILCS 175/30.
- ²⁸ Will Evans, *When Companies Hire Temp Workers by Race, Black Applicants Lost Out*, REVEAL, Jan. 6, 2016, <https://www.revealnews.org/article/when-companies-hire-temp-workers-by-race-black-applicants-lose-out/>.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ 820 ILCS 175/30 (d).
- ³² 820 ILCS 175/30 (g).
- ³³ 820 ILCS 175/33
- ³⁴ 820 ILCS 175/40.
- ³⁵ 820 ILCS 175/45(a).
- ³⁶ 820 ILCS/50-55
- ³⁷ 820 ILCS 175/70; 175/95.
- ³⁸ Ca. Labor Code § 2810.3(b).
- ³⁹ Michael Grabell, *California Governor Signs Bill to Protect Temp Workers*, PRO PUBLICA, Sept. 29, 2014, <https://www.propublica.org/article/california-governor-signs-bill-to-protect-temp-workers>.