

CHANGE to WIN

The Changing Structure of Work And Employment Relationships: US Trade Union Responses

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Scope of contingent worker crisis

Three elements of the crisis

Regulatory/political implications

[See US Topic paper and references]

Scope of the Contingent Worker crisis



Contingent Workforce

Background

Comprehensive, nationally representative data on contingent workers have not been collected since 2005. Such data were first collected in 1995 when the Bureau of Labor Statistics (BLS) introduced the Contingent Work Supplement (CWS) to the Current Population Survey (CPS), which is a monthly survey of about 60,000 households that, in part, collects data on the U.S. labor force. The CWS asked a series of additional questions about workers' employment, including whether their jobs were contingent.

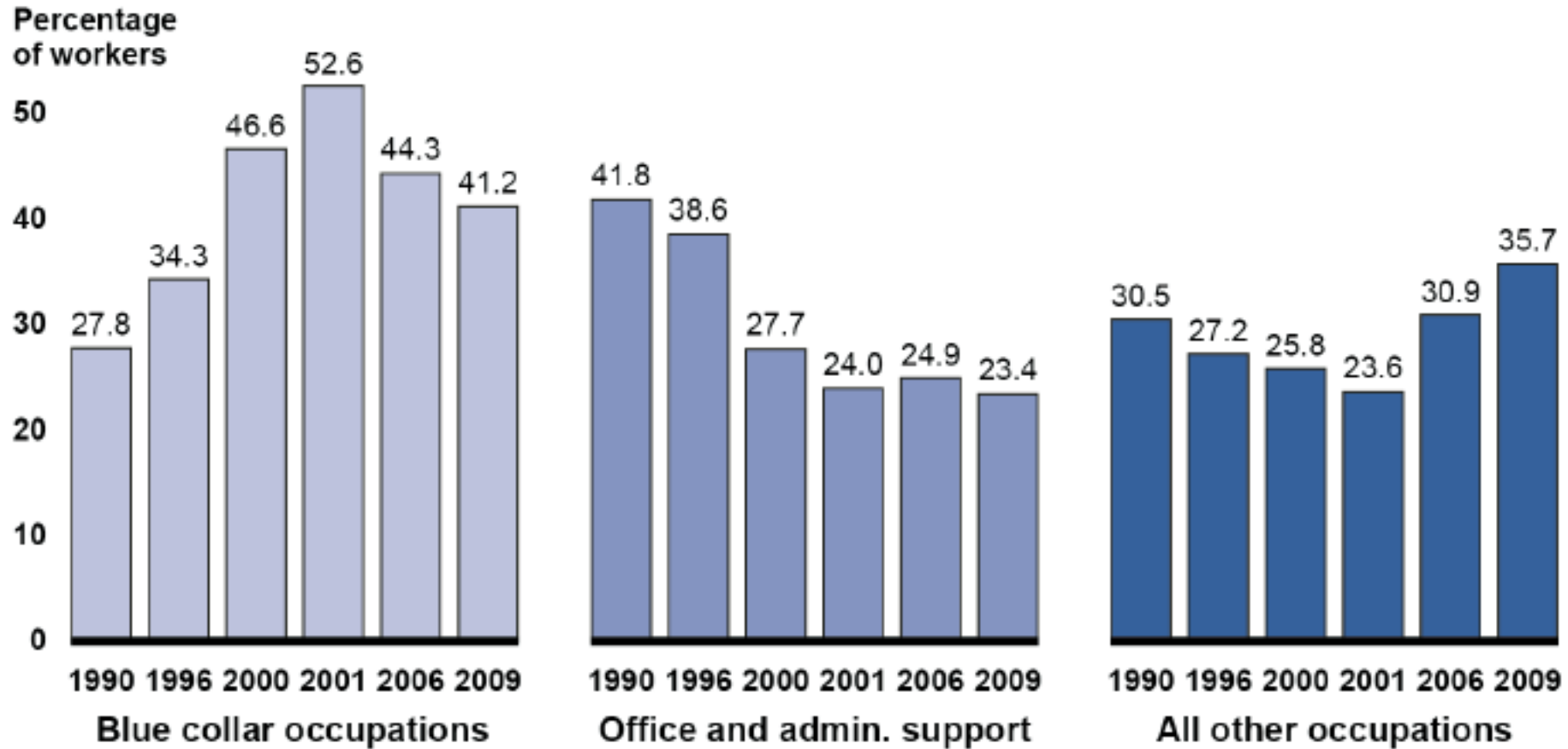


**Contingent Workforce
Background**

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

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

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



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

Changing Structure of Employment: Key Issues in the Crisis

- Misclassification of employees as “independent contractors”
- Host employer abuse of the staffing agency relationship
- Franchisor abuse of Franchisee as “veil” for direct employment

Misclassification of employees as
“independent contractors”

Retail Supply Chain/Truck Transportation: Port Truck Drivers

30,000 drivers nationally -- So. California focus.

Critical choke point in global logistics

Global suppliers/clients: Maersk; Walmart; etc.

Misclassification of “independent contractors”

Port Truck Drivers – Toll Group of Australia

ITF, 2012: At present in America, Toll Port drivers are experiencing sweatshop conditions and despicable economic hardship.... They receive a fraction of the workplace rights and respect issued to their Australian workmates.... US Toll drivers have been intimidated for organizing and subjected to repeated harassment from management and hired union busters because they lack the fair employment conditions and recourse to workers’ rights [They] are performing a dangerous task ... under third world conditions. They do not have access to adequate, affordable health care coverage and have previously been denied the use of the most basic facilities including sanitary indoor toilets and clean drinking water.

Misclassification of “independent contractors”

Port Truck Drivers – Maersk/Shippers’ Express, 2012

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HILDA L. SOLIS, Secretary of Labor,)
United States Department of Labor,)
Plaintiff,)
v.)
SHIPPERS TRANSPORT EXPRESS,)
INC., a California corporation,)
Defendant.)

Case No: **CV 12 4249**
COMPLAINT FOR VIOLATIONS OF
THE FAIR LABOR STANDARDS
ACT

NC

Misclassification of “independent contractors”

Port Truck Drivers – Maersk/Shippers’ Express, 2012

4 11. Shippers Transport employs and has employed drivers to transport
5 containers, each of whom is required to enter into a standardized contract with
6 Shippers Transport that purportedly designates them as independent contractors.

7 12. The drivers who work for Shippers Transport are integral and
8 indispensable to Shippers Transport’s transportation business.

9 13. As a matter of economic reality, the drivers are economically
10 dependent on Shippers Transport.

Employer abuse of 3rd-party/staffing agency relationship

WalMart/ Schneiders' Logistics/ Rogers-Premier/ Impact Logistics
So. California "Inland Empire" Warehouses

- 800 Million Sq. Ft. warehouse space
- 114,000 workers – 53,000 from staffing agencies (2007)
 - 50% Immigrants
 - 80% Latino
 - 40% Women
 - 40% earn less than \$10.50/hr (2009), vs \$17.50 for a “living wage”
 - Logistics workers earn 20% less than same workers in Los Angeles (2007)
- Fastest-growing counties in the US, and Highest unemployment rates
- 50% of workers have not graduated from high school

Employer abuse of 3rd-party/staffing agency relationship

Walmart sets the terms of employment

Assignment Goals Per Hour Safely

Loading Conveyable Goal	300	cases per hour
Loading Non- Conveyable Goal	150	cases per hour
Unloading Goal	450	cases per hour

Employer abuse of 3rd-party staffing agency relationship

Massive retaliation in response to worker protests on wage theft, including mass layoff by “termination” of Staffing Agency contract.

6 that Schneider has failed to offer a legitimate reason for its refusal to maintain the
7 workers after February 24, 2012, despite considerable evidence demonstrating that the
8 work those employees are now performing will still need to be done after that date, and
9 that hiring an entirely new workforce to replace plaintiffs appears contrary to
10 Schneider’s economic self-interest.⁷ Furthermore, the Court does not believe Schneider
11 has adequately explained its departure from past practices in this case. That is, while
12 Scott Larson testified that it was his general practice, as Schneider’s purchasing agent
13 and chief contract negotiator, to respond to all notices of contract termination, in this
14 case, Schneider accepted the October 21 termination letter without attempting
15 negotiation.⁸ In any event, even if Schneider continues to subcontract loading work to
16 another company such as RoadLink, Schneider has not offered a logical explanation for
17 its failure to retain the experienced workers that have already been trained and vetted by

Employer abuse of 3rd-party staffing agency relationship

Judge stops mass retaliatory termination; orders warehouse operator to retain all staffing agency employees – despite traditional prohibition in US law against judicial interference in routine terminations:

17 | conduct”). Similarly, the Lochner-era cases upon which defendants rely do not
18 | preclude the Court from determining that a contract otherwise terminable for a lawful
19 | reason cannot be terminated for on the basis of unlawful retaliation.⁴ See Lochner v.

* * *

4 | Court’s authority to grant the type of relief that plaintiffs request. Regardless of a
5 | court’s power to enjoin an employee’s termination as it existed at common law at the
6 | turn of the nineteenth century, this case involves a claim for wrongful statutory
7 | retaliation under the FLSA and the California Labor Code, which explicitly authorize
8 | the grant of injunctive relief for the wrongful conduct plaintiffs allege here. As

Employer abuse of 3rd-party/staffing agency relationship

Later developments:

- Court finds illegal retaliation/harassment of workers by lawyers for warehouse operator – prohibits lawyers from talking to workers
- Court orders Walmart added to the case as a potential employer
- Settlement: \$1.7M from staffing agencies
\$21M from Schneiders' Logistics
Walmart claims it did not contribute to the costs of settlement.
- Significant OSH violations and CalOSHA enforcement at comparable warehouses by 3rd-party operators/staffing agencies running logistics for Walmart

Employer abuse of Franchisee as “veil”: The Fight for “\$15 and a Union”

Storyline · The way we work

Labor board takes big step toward helping all McDonald’s employees unionize

The National Labor Relations Board filed complaints against the company itself – not just its franchisees – for labor violations. That makes all workers its employees.

By [Lydia DePillis](#) December 19, 2014

Over the last few years of the union-backed drive for higher wages at fast-food restaurants, many [commentators](#) have [noted](#) the [protests](#)’ impact on public perception: The idea of paying \$15 an hour no longer seems quite so outlandish as it used to.

But it became apparent Friday that the campaign had been working toward a subtler victory — and one that’s potentially far more important.

Employer abuse of Franchisee as “veil”: The Global Campaign for Worker Rights – Including Safer Working Conditions



McJobs

Low Wages and Low Standards around the World

Employer abuse of Franchisee as “veil”: The Global Campaign for Worker Rights – Including Safer Working Conditions

CONTRACT TERMS: DENMARK⁹⁵

Wages:

Workers 18 years of age or older receive a **base hourly wage of €15.43** (kr.115,26), which is higher than the country's average negotiated minimum rate.

Hours worked on evenings, weekends, and holidays are subject to higher rates of pay.

Workers also receive **overtime pay** after the first 148 hours worked in any four week period.

Benefits:

Workers receive **full sick pay** for up to four weeks and 90 percent of full pay thereafter after four months on the job.

Workers receive 18 and 14 weeks of **paid maternity and paternity leave**, respectively, in addition to 13 weeks of paid leave thereafter that are shared between two parents.

Workers with more than 20 years tenure receive 12 percent of their salary in a **pension plan**, two-thirds of which is funded directly by the employer.

Workers receive an extra week of **fully paid vacation** in addition to the five weeks of holiday pay required under national law.

Scheduling:

All McDonald's workers in Denmark have **guaranteed minimum hours**.

McDonald's is required to publish a schedule covering at least four weeks at a time and to coordinate with workers and their union when schedule conflicts arise.

Employer abuse of Franchisee as “veil”

Labor Secretary Tom Perez To Join The Fight For \$15

"People are increasingly understanding that they're taking it on the chin at work."



Dave Jamieson
Labor Reporter, The Huffington Post

Posted: 08/24/2015 10:06 AM EDT



Recommendations for OSHA enforcement

- Improve use of existing enforcement policies to better cover contingent workers
- Enhance the skills of OSHA Inspectors and supervisors for investigating Joint and Multi-employer arrangements
- Create improved foundation of employer data
 - OSHA Modernization” rule
 - Federal contractor registry of labor law violations

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What's next?

Implications for:

- Employer power?
- Trade Union power?
- Worker power?
- OSH?
- Economic Growth?
- Equity?