

Flexible Staffing Arrangements

A Report on Temporary Help, On-Call, Direct-Hire Temporary, Leased, Contract Company, and Independent Contractor Employment in the United States

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August 1999

I am indebted to Lillian Vesic-Petrovic for outstanding research assistance, to Linda Richer and Babette Schmitt for assistance with reference materials, and to Nancy Mack and Claire Black for help in preparing the document. The research for this report was funded under purchase order contract no. 4030UQQF-99-2531-11354-000-00 from the Office of the Assistant Secretary for Policy, U.S. Department of Labor. The points of view or opinions stated in this document do not necessarily represent the official position or policy of the Department of Labor.

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Executive Summary

There is a widespread perception that employment in so-called flexible staffing arrangements, including various temporary, on-call, and contract jobs, is large and growing. Many regard such a development as troubling, pointing out that workers in these arrangements often receive low wages and few benefits. Firms, it is argued, are using these arrangements to increase workforce flexibility, and, by implication, are reducing their commitment to training workers and providing them with stable employment. Moreover, some firms allegedly use flexible staffing arrangements to circumvent employment and labor laws, raising concerns that existing laws are inadequate to protect the growing number in these arrangements.

Others, citing recent BLS statistics on “contingent” employment, counter that the phenomenon is small. Moreover, firms and workers often benefit from these arrangements. Firms often use these arrangements to increase their workforce flexibility, thereby helping them to reduce costs, remain competitive, and generate high employment growth. At the same time, workers in these arrangements may prefer flexible schedules to accommodate school or family responsibilities. Additionally, it is argued that firms increasingly use staffing companies to screen workers for permanent positions. To the extent that this practice results in better job matches, both workers and firms stand to benefit. Some even believe government should promote the use of staffing companies to place disadvantaged workers in jobs, and several states have begun referring unemployment insurance and welfare recipients to temporary agencies.

In this report, I endeavor to shed light on this debate by reviewing existing research on a wide range of flexible staffing arrangements: agency temporary, on-call, direct-hire temporary, leased, contract company, and independent contractor employment. Specifically, I discuss

1) the magnitude and trends of employment in these various arrangements; 2) the characteristics of workers in these arrangements; 3) the quality of these jobs in terms of wages, benefits, and job security; 4) the training of workers in flexible staffing arrangements; 5) why firms use, and in some cases are increasing their use of, various flexible staffing arrangements; 6) the coverage of workers in flexible staffing arrangements by employment programs and labor standards; and 7) recent initiatives by several states to place unemployment insurance and welfare recipients with temporary help agencies. I also point to the many gaps in our knowledge of flexible staffing arrangements and their implications for workers and firms.

Definitions

Agency temporaries, leased employees, contract company workers, and independent contractors usually are not regarded as employees of the organization for whom they are performing work. For the first three categories, there are no official definitions and the distinction between them is sometimes blurred. However, it is commonly understood that agency temporaries are the employees of a staffing company which places them, usually on a short-term basis, with a client firm, which usually directs their work. Leased employees are similar to agency temporaries, except that they are typically assigned to the client on a long-term basis. Contract company workers are employed by a company that contracts out their services to a client, but the contract company directs their work. Legally, independent contractors are self-employed and must direct their own work.

Direct-hire temporaries and on-call workers are employees of the organization for whom they are performing work. Direct-hire temporaries are hired on a short-term basis often to do

seasonal work or to work on a specific project. On-call workers are hired only on an as needed basis. Thus, while their job may not be temporary, their hours of work typically vary.

I avoid the popular term "contingent" employment in this report. The term, coined by Audrey Freedman in 1985 to refer to conditional and transitory employment arrangements, has been used in various ways. To counter what it regarded as overly broad estimates of contingent employment by some researchers, the Bureau of Labor Statistics sought to more precisely measure the concept in special supplements to the CPS beginning in 1995. However, the concept of contingent employment measured by BLS is much narrower than that commonly used in the academic and policy literature. To avoid confusion, I use the term flexible staffing arrangements when referring collectively to the set of arrangements covered in this report.

The Number of Workers in Flexible Staffing Arrangements

The February 1995 Supplement to the Current Population Survey (CPS) represented the first attempt in government statistics to count the number of workers in a wide range of alternative or flexible staffing arrangements. This supplement on Contingent and Alternative Work Arrangements was repeated in 1997 and 1999. According to the CPS data, in 1997 1.0 percent of workers were agency temporaries, 1.6 percent were on-call or day laborers, 0.6 percent were contract company workers, and 6.7 percent were independent contractors. Many on-call and contract company workers are also hired on a temporary basis. Direct-hire temporaries who were not classified in another flexible staffing arrangement accounted for an additional 2.6 percent of employment. Together these five arrangements accounted for 12.5 percent of total employment in 1997.

It should be noted that the number of agency temporaries counted in the CPS, which is a household survey, is about half that counted in the CES, which is an establishment survey. It is generally believed that the CPS understates temporary help employment, at least somewhat. In addition, there are no statistics on the number of leased employees. A question concerning leased employment was dropped from the February CPS Supplements because respondents were often confused about the meaning of the term. The BLS has an ongoing project to provide estimates on leased employment.

Trends

Very little is known about trends in flexible staffing arrangements. According to data from the Current Employment Statistics (CES), employment in the help supply services industry, which is comprised primarily of temporary help agency workers, has grown dramatically in the 1980s and 1990s. From 1982 to 1998, the share of non-farm payroll employment in help supply services increased from 0.5 percent in to 2.3 percent. Time series data on employment in the other flexible staffing arrangements simply do not exist.

On the grounds that many contract company workers are classified in business services, some researchers have cited the rapid growth in this sector as evidence of growth in this arrangement. The share of non-farm payroll employment in business services, which includes help supply services, increased from 3.0 percent to 6.8 percent between 1982 and 1998. While help supply services was the fastest growing industry within business services, all other components grew faster than aggregate employment over the period.

Results from several employer surveys provide indirect evidence that other types of flexible staffing arrangements have experienced significant growth in recent years.

Characteristics of Workers and Jobs

The distribution of demographic characteristics varies considerably across flexible staffing arrangements. Agency temporaries, on-call workers, and direct-hire temporaries are disproportionately female and young. A disproportionate number of agency temporaries are black or Hispanic and a large percentage of on-call workers are high school drop-outs. In contrast, independent contractors and contract company workers are disproportionately male, older, more educated, and, in the case of independent contractors, white.

The level of satisfaction with their work arrangement also varies considerably by arrangement. In the February 1997 CPS Supplement, 70 percent of agency temporaries and over half of on-call workers and direct-hire temporaries indicated that they would prefer a permanent arrangement or an arrangement with regularly scheduled hours. In contrast, only 10 percent of independent contractors expressed dissatisfaction with their arrangement.

Several interesting patterns are evident in the occupational and industrial distribution of employment within flexible staffing arrangements. While it is not surprising that a disproportionate number of agency temporaries work in administrative support occupations, a large share also work as operators and in the manufacturing sector. On-call workers and independent contractors are disproportionately represented in the construction industry and in services. A large share of contract company workers are found in services and precision production occupations. Over a quarter of direct-hire temporaries are in professional occupations, over half work in service industries, and over 30 percent are employed in the public sector.

The Quality of Flexible Staffing Jobs

Low wages are primarily a problem for agency temporaries, on-call workers, and direct-hire temporaries. Workers in these arrangements are much more likely to earn wages that are at or near the minimum wage and to earn significantly less than regular workers, even after controlling for worker and job characteristics. Moreover, workers in these three arrangements are much more likely to come from families living below or near the poverty line. In contrast, independent contractors and contract company workers do not earn lower wages, on average, than regular employees.

Lack of benefits, however, is a problem for workers in all flexible staffing arrangements. Workers in flexible staffing arrangements are much less likely than regular full-time workers to participate or to be eligible to participate in a health insurance or retirement plan offered by their employer, even after controlling for worker and job characteristics. Although some of these workers are covered by health insurance from another source or set up their own tax deferred retirement account, workers in all flexible staffing arrangements are much less likely than regular employees to have health insurance or to have a pension or retirement account.

Evidence also suggests that workers in most flexible staffing arrangements have less job security than those in regular full-time positions. In particular, agency temporaries, on-call workers, direct-hire temporaries, contract company workers, as well as regular part-time employees have less job stability in the sense that they are more likely to switch employers, become unemployed, or involuntarily drop out of the labor force within a one-year period. Independent contractors, however, do not have less job security, on average, than regular full-time workers.

Training

Related to concerns over wages, benefits, and job security is concern that, without strong attachments with firms, workers in flexible staffing arrangements will not receive training they need to keep abreast of technological developments and to secure good jobs in the future. At the time of this writing, however, there was very little evidence available on this issue. One on-going study should provide valuable evidence on the extent of training provided by temporary help agencies.

Why Firms Use Flexible Staffing Arrangements

Several surveys of employers on their use of flexible staffing arrangements have been conducted. These surveys have identified key reasons why firms use flexible staffing arrangements and why they may have been increasing their use of these arrangements in recent years.

Firms have traditionally used all types of flexible staffing arrangements to accommodate fluctuations in their workload or to fill in for absences or vacancies in their regular staff. Some evidence also suggests that firms are increasing their use of temporary help and other staffing arrangements in order to increase their workforce flexibility. Arguably, firms have come under greater competitive pressure to reduce labor costs and, in response, have increasingly adopted a “just-in-time” workforce staffing strategy. Instead of overstaffing to accommodate employee absences or fluctuations in product demand, firms use agency temporaries, direct-hire temporaries, on-call workers, contract company workers, and independent contractors to meet changes in their day-to-day staffing needs.

Evidence also suggests that some firms use flexible staffing strategies to reduce wage and particularly benefit costs. Flexible staffing arrangements may be used to segment the workforce, enabling companies to offer expensive benefits to certain groups of workers but not to others. The increase in benefit costs may be one factor motivating firms to increase their use of flexible staffing arrangements.

Firms also use flexible staffing arrangements, particularly temporary help agencies, to screen workers for regular positions. Evidence indicates that screening workers is an important factor motivating some firms to increase their use of temporary help workers. Staffing agencies may have a comparative advantage in screening certain types of workers. In addition, firms may save on record keeping costs if they choose not to hire a particular worker, because the staffing agency is the employer during the period of probation. Companies may also reduce their exposure to lawsuits from dismissed employees if they instead screen workers through an employment intermediary.

Finally, employers use flexible staffing arrangements to access workers with special skills. As technology has become more complex, it is believed that firms will increasingly tap workers outside their regular workforce for their specialized knowledge.

Coverage of Workers in Flexible Staffing Arrangements by Labor Standards

Most statutes establishing benefits or standards for workers were written with the traditional employee—a full-time, permanent worker—in mind. The large and growing number in flexible staffing arrangements, however, has sparked concern that existing law is inadequate to protect these workers. A related concern is that, although businesses have many legitimate

reasons for using flexible staffing arrangements, legal loopholes provide an added incentive to use these arrangements to circumvent employment and labor laws.

Whether and how workers in flexible arrangements are covered by various labor standards turns on whether they are defined as covered employees and exactly who their employer is under a particular law. For instance, independent contractors are legally self-employed; because they are not employees they are not covered by unemployment insurance, workers' compensation, ERISA, anti-discrimination laws, and other employment and labor laws. There is considerable evidence that many employers misclassify employees as independent contractors, although the IRS has sought to crack down on such misclassification in recent years. Moreover, the criteria used to determine independent contractor status are confusing and differ from statute to statute. In the absence of a single clear standard, disputes over independent contractor status are often resolved by the courts, which have ruled in conflicting ways. The Commission on the Future of Worker-Management Relations recommended simplifying and standardizing the definition of an employee in employment, labor, and related tax law to reduce confusion and stem the abuse of misclassifying workers as independent contractors.

In addition, companies allegedly have sought to circumvent employment and labor laws by hiring workers through employment intermediaries, such as temporary help agencies, contract companies, and leasing agencies. The Congress, some states, and the courts have sought to stem such abuses by making the client company the legal employer or a “joint employer” in certain circumstances. However, considerable ambiguity concerning businesses’ legal obligations to workers when they are hired through employment intermediaries remains. Responding to this

ambiguity, the Commission on the Future of Worker-Management Relations also recommended that a standardized definition of employer be adopted.

The use of flexible staffing arrangements also has created some problems with the enforcement of employment and labor laws. For instance, in the area of workers' compensation, reportedly many companies, especially in the construction industry, misclassify workers as independent contractors until they become injured and many temporary help and leasing agencies misclassify workers to obtain lower rates. A related problem is that some staffing agencies allegedly set up operations with a minimal number of employees for a period of time to establish low workers' compensation and unemployment insurance rates and then move large numbers of temporary or leased employees into such an operation. When the rate increases, the "company" is closed and workers are moved into another such operation.

The growing number of agency temporaries also raises important questions about the adequacy of unemployment insurance for these workers. Many temporary agency workers do not qualify to receive unemployment insurance because they have not met minimum earnings or hours thresholds. They may also be disqualified for failing to report to the temporary help agency when an assignment ends or for refusing a new assignment. Temporary help agencies are understandably concerned about stemming abuse by those who work only long enough to qualify for unemployment insurance and then file for benefits. Others, however, counter that stringent benefits requirements will trap temporary agency workers into low paying, unstable jobs.

Placing Disadvantaged Workers with Temporary Help Agencies

Some states have begun using temporary help agencies to place UI recipients, welfare recipients, and other disadvantaged workers in jobs. Whether this practice is a desirable strategy for government agencies to pursue depends on whether disadvantaged workers are more likely to find good, stable jobs by using temporary help agencies than they are by using alternative services. The research needed to answer this question—which ideally would involve conducting a random assignment controlled experiment—has not been done.

Conclusion

The circumstances facing workers in flexible staffing arrangements vary substantially by type of arrangement. Agency temporaries, on-call workers, and direct-hire temporaries are disproportionately young and female; they tend to be unhappy with their work arrangement and want a permanent job with regularly scheduled hours; and they are likely to earn low wages and come from poor families. Along with contract company workers, they experience less job stability compared to regular, full-time workers. Consistent with this finding, the major reason firms give for using these types of arrangements is to accommodate fluctuations in their workload or absences in their regular staff. In addition, firms appear to be increasing their use of these types of arrangements, in part, to increase their workforce flexibility. A trend towards a "just-in-time" workforce raises concerns about the future job stability and training of workers. It also raises policy issues about the adequacy of unemployment insurance coverage for these workers under current state laws.

Another reason that firms appear to be increasing their use of these workers, particularly agency temporaries, is to screen workers for regular jobs. This motivation for using agency

temporaries carries quite different implications for workers and for policy. Policy makers are less likely to be concerned with poor compensation associated with temporary jobs if they are avenues for securing good, permanent positions. Similarly, the use of temporary help agencies to help place disadvantaged workers becomes more attractive if these positions help workers find permanent jobs. The extent to which workers, particularly disadvantaged workers, are able to secure stable employment through temporary jobs is not known and needs to be studied.

In contrast to agency temporaries, on-call workers, and direct-hire temporaries, independent contractors are disproportionately older, male, white, and more educated. They tend to be quite happy with their employment arrangement and do not, on average, earn lower wages or experience less job stability than regular full-time employees.

One issue that cuts across all flexible staffing arrangements, including independent contractors, is lack of health insurance and pension coverage. Workers in flexible staffing arrangements who are employees are much less likely to be eligible participate in an employer sponsored health insurance or retirement plan compared to regular full-time employees. Workers in all flexible staffing arrangements are also much less likely than regular full-time employees to have health insurance or a retirement plan from any source. Survey evidence suggests that savings on benefit costs is one important reason firms use flexible staffing arrangements. ERISA and anti-discrimination clauses in the IRS tax code make it difficult for firms to offer benefits to a subset of their full-time workforce. Firms may side-step these regulations by hiring more temporary and part-time (including on-call) workers directly or by hiring independent contractors, agency temporaries, and contract company workers, who are either self-employed or employees of another firm.

While some steps have been taken to curb obvious abuses involving misclassification of employees as independent contractors and use of leased employees to avoid pension benefits, there remains considerable confusion over when a worker may be legitimately classified as an independent contractor and over the responsibilities client firms have as "joint employers" of leased employees, agency temporaries, and contract company workers. These issues affect not only benefits for workers in flexible arrangements, but also their coverage under a host of other employment programs and labor standards, including workers' compensation, unemployment insurance, various anti-discrimination laws, The Family and Medical Leave Act, the Workers' Adjustment and Retraining Act, the Fair Labor Standards Act, and the National Labor Relations Act.

1. Introduction

There is a widespread perception that employment in so-called flexible staffing arrangements, including various temporary, on-call, and contract jobs, is large and growing. Many regard such a development as troubling, pointing out that workers in these arrangements often receive low wages and few benefits. Firms, it is argued, are using these arrangements to increase workforce flexibility, and, by implication, are reducing their commitment to training workers and providing them with stable employment. Moreover, some firms allegedly use flexible staffing arrangements to circumvent employment and labor laws, raising concerns that existing laws are inadequate to protect the growing number in these arrangements.

Others, citing recent BLS statistics on “contingent” employment, counter that the phenomenon is small. Moreover, firms and workers often benefit from these arrangements. Firms often use these arrangements to increase their workforce flexibility, thereby helping them to reduce costs, remain competitive, and generate high employment growth. At the same time, workers in these arrangements may prefer flexible schedules to accommodate school or family responsibilities. Additionally, it is argued that firms increasingly use staffing companies to screen workers for permanent positions. To the extent that this practice results in better job matches, both workers and firms stand to benefit. Some even believe the government should promote the use of staffing companies to place disadvantaged workers in jobs, and several states have begun referring unemployment insurance and welfare recipients to temporary agencies.

In this report, I endeavor to shed light on this debate by reviewing existing research on a wide range of flexible staffing arrangements: agency temporary, on-call, direct-hire temporary, leased, contract company, and independent contractor employment. Specifically, I discuss 1) the

magnitude and trends of employment in these various arrangements; 2) the characteristics of workers in these arrangements; 3) the quality of these jobs in terms of wages, benefits, and job security; 4) the training workers in flexible staffing arrangements receive; 5) why firms use, and in some cases are increasing their use of, various flexible staffing arrangements; 6) the coverage of workers in flexible staffing arrangements by employment programs and labor standards; and 7) recent initiatives by several states to place unemployment insurance and welfare recipients with temporary help agencies. I also point to the many gaps in our knowledge of flexible staffing arrangements and their implications for workers and firms.

2. Definitions

This report covers workers in a variety of so-called flexible staffing arrangements: agency temporaries, leased employees, contract company workers, independent contractors, direct-hire temporaries, and on-call workers. In the first four categories of employment, the workers usually are not regarded as legal employees of the establishment for whom they are performing work.¹ Agency temporaries work for a staffing agency which places the workers with a client company. The agency temporary generally works at the client's worksite, and typically, though not always, the assignment is for a short period of time (less than a year). The work the agency temporary performs is usually directed by the client, though temporary help agencies increasingly are sending a supervisor to monitor their workers at the clients' site (Peck and Theodore 1998). In the case of employee leasing, a company leases all or a portion of its workforce on a fairly permanent basis from a leasing or staffing company. The workers are on the payroll of a leasing company (or PEO, Professional Employment Organization) but their

¹A discussion of legal issues related to who is the employer and who is the employee under various employment and labor laws is provided below.

work is typically directed by the client company. Often temporary help agencies also lease workers.

Contract company workers work for a company that contracts out their services to a client company. In the definition used by the Bureau of Labor Statistics (BLS) and in the data reported below, contract company workers also perform their work at the client's worksite and usually work for just one client at a time. Typically, their work is supervised by the contract company, not the client.

It should be noted that the distinction between agency temporary, leased employee, and contract company worker is often blurred, and no official definitions exist. For instance, widely cited statistics on employment in the temporary help industry from the CES actually cover help supply services, which incorporates many leased employees. In the February Supplements to the Current Population Survey on Contingent and Alternative Work Arrangements, workers were simply asked to identify themselves as employed or paid by a temporary help agency, by a leasing company, or by a company that contracts out their services, and the meaning of these terms was left to the interpretation of the respondent.² The lack of a single definition of leasing companies and leased workers was cited in a recent DOL report (KRA Corporation 1996). The Bureau of Labor Statistics currently is working on creating separate statistics for leased and temporary help agency workers.

²In fact, due to confusion over terminology, the question on employee leasing was dropped from the 1997 and 1999 CPS Supplements. Contrast the way information is collected on these flexible staffing arrangements with the way information is collected on part-time workers. Instead of being asked if they work part-time, workers are asked if they usually work fewer than 35 hours per week. Based on this response, they are classified as part-time or full-time.

Legally, independent contractors are self-employed. The only statistics on the number of independent contractors come from the CPS Supplements on Contingent and Alternative Work Arrangements. In that survey, workers who stated that they worked as independent contractors, independent consultants, or free lance workers were classified as independent contractors.³ In the BLS data, independent contractors may or may not perform their services at the client's worksite.

In contrast to the other flexible staffing arrangements, direct-hire temporaries and on-call workers are employees of the company where they work. Direct-hire temporaries are hired for a limited period of time, for instance for seasonal work or for a special project. On-call workers may be hired for an indefinite duration, but they do not have regularly scheduled hours. Instead they are called in to work on an as-needed basis, often to fill in for an absent employee or to help with an increased workload. Substitute teachers and many hospital employees are on-call workers.

2.1 Contingent Workers

The term “contingent work” was coined by Audrey Freedman (1985, p. 35) to describe “conditional and transitory employment arrangements as initiated by a need for labor—usually because a company has an increased demand for a particular service or a product or technology, at a particular place, at a particular time.” Since then the term has been used in various ways. Barker and Christensen (1998, p. 1) note that the term contingent employment is “generally thought to include those jobs that are done on temporary, self-employed contract, or involuntary part-time bases.” The types of employment arrangements covered in this report would certainly

³In these surveys about 12 percent of those who call themselves independent contractors also say they are employees, not self-employed. Legally, however, independent contractors must be self-employed.

fall under the rubric of contingent employment, as commonly understood in much of the academic and policy literature.

However, beginning with the February 1995 Supplement to the CPS, BLS sought to collect data on the number of “contingent” workers, and, by implication, provide a more precise definition for the term. In an article published prior to the design of the February 1995 Supplement, BLS economists Anne Polivka and Thomas Nardone sharply criticized the common usage of the term contingent worker and discussed how it should be defined and measured (Polivka and Nardone, 1989). In that article, they correctly pointed out that some had expanded the notion of contingent employment to include all part-time and self-employed workers and yet these arrangements often involve long-term and stable employment.⁴ They proposed that, based on Freedman’s original concept of contingent employment, two key criteria be used in classifying a worker as contingent: 1) a low degree of job security, in particular the amount of job security embodied in the employment arrangement and 2) variability in hours worked. However, in designing the Contingent and Alternative Worker Supplement, BLS only incorporated the first criterion into its definition of contingent workers. In addition, the classification is based on workers’ perceptions of job security, rather than on the actual contractual nature of the employment relationship. Specifically, in the BLS data, only workers who do not expect their jobs to last for economic reasons are classified as contingent workers.⁵

⁴Belous’s (1989) widely cited estimate that 26 percent of the workforce is contingent was derived by including all part-time and self-employed workers.

⁵For a detailed discussion of the definition of contingent worker in the Contingent and Alternative Employment Arrangement CPS Supplements, see Bureau of Labor Statistics (1995).

Using Freedman's original concept of contingent worker, it is clear that while some researchers have over counted the number of contingent workers, the BLS definition undercounts them. For instance, on-call workers are intrinsically contingent, because their hours of work vary. In fact, Polivka and Nardone (1989) cited on-call workers like substitute teachers as examples of workers who should be classified as contingent. However, this aspect of contingency—hours variability—is not measured in the BLS concept. In 1997, only 28 percent of on-call workers were classified as contingent under the broadest BLS definition of contingency. The problem is not limited to on-call workers. For instance, temporary help agency workers are also intrinsically contingent. While agency temporaries may establish a long term relationship with the staffing agency, their employment, hours, and pay will vary with the availability of assignments. However, only 57 percent of agency temporaries are classified as contingent in the 1997 BLS survey. The surprisingly low percentage of agency temporaries who are classified as contingent in the BLS survey suggests a problem with the way the concept of temporary is being measured in the survey or with respondents' understanding of the questions being asked.

To avoid confusion over the various definitions used for contingent work, I use the term flexible staffing arrangements when referring collectively to the set of employment arrangements covered in this report. Generally, however, I discuss the various employment arrangements separately. As will be shown below, the characteristics of workers in flexible staffing arrangements and the quality of the jobs, as measured by average wages, benefits, and job security, vary considerably by arrangement. Additionally, when considering policy issues, the

contractual nature of the employment relationship—not workers’ perceptions about their job security—is what is relevant for employment statutes and regulations.

3. The Number of Workers in Flexible Staffing Arrangements

The February 1995 Supplement to the CPS represented the first attempt in government statistics to count the number of workers in a wide variety of alternative or flexible staffing arrangements. The Supplement on Contingent and Alternative Work Arrangements was repeated in February 1997 and February 1999. Table 1 presents the distribution of the workforce by staffing arrangement in 1997.⁶

In the survey, individuals were directly asked whether they were paid by a temporary help agency, whether they were an on-call or day laborer, or whether they were an independent contractor, independent consultant, or free lance worker. Those answering in the affirmative were classified as agency temporaries, on-call or day laborers, and independent contractors, respectively. The category agency temporaries includes the permanent staff of these agencies, though they represent a small percentage of those employed in that industry.⁷ As noted above, under the legal definition, independent contractors are self-employed. However, about 12 percent of those calling themselves independent contractors, independent consultants, or free lancers, also stated that they were wage and salary workers. Workers were classified as contract company workers if they responded that they worked for a company that contracted out their services, that they worked at the client’s site, and that they primarily worked for one client.

⁶The 1999 data were not publicly available at the time of this writing.

⁷A 1989 Industry Wage Survey indicated that permanent full-time staff constituted just 3.2 percent of employment in the industry Help Supply Services, which is primarily made up of temporary help agencies.

Although the CPS does not include a specific question classifying individuals as direct-hire temporaries, I constructed this category from questions in the February Supplement.

Table 1. Distribution of Employment by Work Arrangement, 1997

Employment Arrangement	As a Percent of Workforce	Percent Who are Direct Hire Temporaries	Percent Working Part-time
Agency Temporaries	1.0	NA	21.2
On-call or Day Laborers	1.6	26.7	54.1
Independent Contractors	6.7	1.6	28.1
Contract Company Workers	0.6	12.7	18.1
Other Direct-hire Temporaries	2.6	100.0	49.2
Other Self-employed	5.1	NA	22.8
Regular Employees	82.4	NA	17.4

Source: Author's tabulations from the February 1997 CPS Supplement on Contingent and Alternative Work Arrangements.

Specifically, individuals were classified as direct-hire temporaries if they indicated that their job was temporary or they could not stay in their job as long as they wish for any of the following reasons: they were working only until a specific project was completed, they were temporarily replacing another worker, they were hired for a fixed period of time, their job was seasonal, or they expected to work for less than a year because their job was temporary.

To avoid double counting, the categories of employment in Table 1 are constructed to be mutually exclusive. The main overlap across categories occurs with direct-hire temporaries; a number of on-call workers, wage and salary independent contractor workers, and contract company workers are hired on a short-term basis. The proportion of workers in these categories who are also direct-hire temporaries is indicated in Table 1. The category "other direct-hire temporaries" are those short-term hires not classified in another flexible staffing arrangement. Including the on-call, independent contract, and contract company workers who are also direct-hire temporaries, 3.2 percent of the workforce are direct-hire temporaries. In addition, a small

number of workers work on an on-call basis or for a contract company. They are classified as on-call workers in the table.⁸

Independent contractors comprise the largest category of flexible staffing arrangements. In fact, over half of all the self-employed call themselves independent contractors, independent consultants, or free lancers. Collectively, agency temporaries, on-call workers, independent contractors, contract company workers, and direct-hire temporaries comprise 12.5 percent of the workforce.

It is noteworthy that agency temporaries account for only one percent of total employment in the CPS Supplement, whereas they account for about 2 percent of employment in the Current Employment Statistics (CES), the Bureau of Labor Statistics' establishment survey. Data from the National Association of Temporary Services Staffing suggests employment in temporary services is slightly less than that reported in the CES, but is much higher than that reported in the CPS, and it is generally presumed that the CPS understates employment in temporary help agencies.⁹

⁸The classification scheme used in this table follows that used in Houseman and Polivka (1999).

⁹Some of the difference in the CPS and CES figures on temporary agency employment stems from differences in the type of data collected in the two surveys. Specifically, the CES counts jobs in the temporary help services industry, while the CPS counts workers whose main jobs are in this industry. Consequently, individuals registered with more than one temporary agency would show up once in the CPS, but would show up more than once in the CES, if they worked two or more jobs for two or more temporary help agencies during the survey week. Also, multiple job holders with secondary jobs in the temporary help industry would not be counted in the CPS as agency temporaries, whereas those workers' secondary jobs would be counted in the CES. Another possible explanation for the differences is that, in spite of questions in the CPS designed to avoid this problem, some respondents may still view the client to whom they are assigned as their employer and thus fail to report that they are paid by a temporary help service. The widespread confusion over who is their employer is evidenced by the fact that among those identified as agency temporaries in the CPS, over half at first incorrectly named their client, rather than the temporary help agency, as their employer. Finally, many establishments classified as temporary help agencies in the CES may also provide contract company workers or leased employees (Polivka 1996).

Table 1 also shows that those in flexible staffing arrangements are more likely to work part time than workers in regular wage and salary positions. This is particularly true for on-call workers and direct-hire temporaries.

Data on the number of workers hired by employee leasing companies are not currently available. In the February 1995 CPS Supplement, respondents were asked if they were paid by an employee leasing agency. A very small percentage (0.3 percent) responded in the affirmative. Subsequent field tests by BLS showed considerable confusion among respondents over that question and so it was omitted from the 1997 and 1999 Contingent and Alternative Work Arrangement Supplements. A report on employee leasing prepared for the Department of Labor estimated there were 608,198 leased employees in 24 states in 1993. At the time, other states collected no data on the number of leased employees, and the report cast doubt on the accuracy of the figures from many of the states that did report data (KRA Corporation 1996). It is believed that many leased employees are classified in the help supply services sector along with temporary help agency workers in the CES. In an ongoing project, the BLS is attempting to provide separate estimates for leased employees and agency temporaries.

4. Trends

Very little is known about trends in flexible staffing arrangements. Agency temporary employment is the only flexible staffing category for which a relatively long time series exists. As noted above, the CES provides information on employment in the help supply services industry, SIC 7363, which is comprised primarily of temporary help agencies. According to this source, employment in the temporary help industry grew dramatically in the 1980s and 1990s.

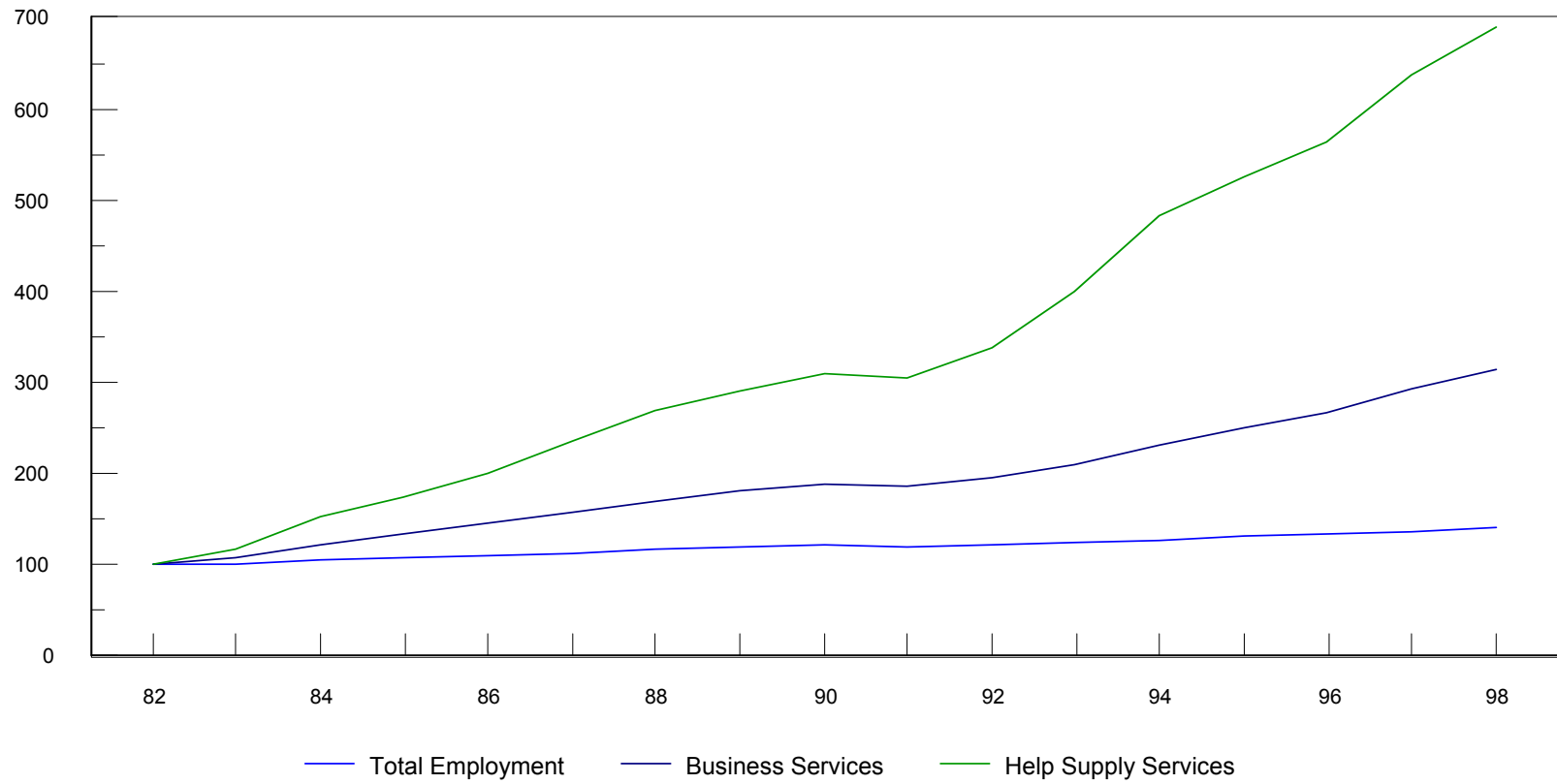
From 1982 (the first year for which data on this industry are available) to 1997, the share of non-farm payroll employment in help supply services grew from 0.5 percent to 2.3 percent.

Statistics for on-call, independent contractor, contract company, and direct-hire temporary workers were first collected in the February 1995 Supplement to the CPS. Between 1995 and 1997, the percent of employment in these categories was stable, but this two year time period, during which the economy was in rapid expansion, is too short to determine any trend. Future CPS Supplements on Contingent and Alternative Work Arrangements will provide valuable evidence on trends in these work arrangements.

In the absence of employment data on specific flexible staffing arrangements, some researchers have looked at the growth in business services employment (e.g. Abraham 1990). In addition to including agency temporaries within help supply services, business services is thought to include many employed as contract company workers. Figure 1 plots indexes of employment in help supply services, business services, and the aggregate non-farm payroll sector over the 1982-98 period. Help supply services grew more rapidly than aggregate business services, which, in turn, grew more rapidly than aggregate employment over the period. Within the business services sector, help supply services was the fastest growing component. However, each component of the business services sector also increased faster than aggregate employment over the period.

Evidence from various employer surveys points to growth in other types of flexible staffing arrangements. For instance, in The Conference Board (1995) survey of members, 34 percent of companies reported sizable growth in their use of direct-hire temporaries in the

Figure 1. Employment Indexes
(1982=100)



Source: U.S. Bureau of Labor Statistics, Employment and Earnings
D:\Bls\fig4\page1

preceding five years and 24 percent expected sizable growth in the coming five years. Thirty-one percent reported sizable growth in their use of independent contractors and 28 percent expected sizable growth in their use of independent contractors in the next 5 years. Data from BLS Industry Wage Surveys in 1986 and 1987 show growth in contracting out of services in thirteen manufacturing industries between 1979 and 1986/1987 (Abraham and Taylor 1996). In a survey of members of the Bureau of National Affairs, a larger percentage of employers reported an increase than reported a decrease between 1980 and 1985 in their use of direct-hire temporaries, on-call workers, administrative or business support contracts, and production subcontracting relative to regular workers (Abraham 1990). In the Upjohn Institute employer survey on flexible staffing arrangements, a much larger percentage reported contracting out work previously done in house than reported bringing work back in house since 1990. Moreover, two-thirds of respondents to the Upjohn Institute survey predicted that organizations in their industry would increase their use of flexible staffing arrangements in the coming five years (Houseman 1997). Thus, it is reasonable to assume that there has been some growth recently in other types of flexible staffing arrangements, though the amount they have grown is unknown.

5. Characteristics of Workers in Flexible Staffing Arrangements

Table 2 provides data on the characteristics of workers in flexible staffing positions. As is evident from these figures, the distribution of worker characteristics varies considerably across arrangements. Agency temporaries, on-call workers, and direct hire temporaries are disproportionately female and young. A disproportionate number of agency temporaries are black or Hispanic while a large percentage of on-call workers are high-school drop-outs. In

Table 2. Characteristics of Workers by Working Arrangement (in percent)

	Agency Temporaries	On-call or Day Laborers	Independent Contractors	Contract Company Workers	Other Direct-Hire Temporaries	Other Self Employed	Regular Employees
Gender							
Male	44.7	49.6	66.6	70.0	48.1	61.6	52.3
Female	55.3	50.4	33.4	30.1	51.9	38.4	47.7
Age							
16-19	6.1	9.5	0.8	2.0	16.0	0.5	4.9
20-24	16.5	12.0	2.4	8.6	20.6	2.4	10.0
25-34	30.3	22.6	18.3	34.7	23.5	15.7	26.1
34-44	21.5	25.5	31.1	30.1	17.7	28.2	28.0
45-54	16.2	14.3	26.5	14.6	12.4	26.1	20.3
55-64	6.7	9.7	13.9	7.8	6.7	17.2	8.8
65+	2.8	6.4	7.0	2.2	3.2	9.9	2.0
Race/Ethnicity							
White	63.3	75.9	83.5	74.1	70.3	88.4	75.1
Black	20.8	7.5	5.3	13.7	9.6	3.2	11.1
Hispanic	12.3	13.6	7.3	6.7	11.4	4.2	9.9
Other	3.6	3.1	4.0	5.5	8.6	4.2	3.9
Education							
<High School	13.3	20.2	9.4	8.8	15.8	10.2	12.5
High School	31.7	27.4	29.8	36.7	20.6	30.7	32.9
Some College	36.5	30.3	26.7	24.4	32.3	24.9	28.9
College+	18.5	22.0	34.1	30.1	31.3	34.2	25.6

Source: Author's tabulations from February 1997 CPS Supplement on Contingent and Alternative Work Arrangements.

contrast, independent contractors and contract company workers are disproportionately male, older, more educated, and, in the case of independent contractors, white.

Workers in most flexible staffing arrangements were asked about their satisfaction with the type of arrangement. Figure 2 plots the percentage of workers indicating that they preferred a different arrangement, by staffing arrangement. Agency temporaries and direct-hire temporaries were asked if they would prefer a job that is permanent or that would last for more than a year. On-call and day laborers were asked if they preferred a job with regularly scheduled hours. Independent contractors were asked if they would prefer to work for someone else. Contract company workers were not specifically asked if they preferred a different arrangement, but they were asked if they had searched for a job as something other than a contract worker and the percentage responding affirmatively to this question is reported in Figure 2. However, the percentage of contract company workers actively looking for another type job likely understates the percentage that would prefer a job as something other than a contract company worker.¹⁰ Seventy percent of agency temporaries and over half of on-call workers and direct-hire temporaries indicated that they were dissatisfied with their work arrangement. In contrast, only 10 percent of independent contractors indicated that they were dissatisfied with their arrangement. Table 3 shows the occupational and industrial distribution of employment by work arrangement. Several interesting patterns emerge from these data. While it is not surprising that a disproportionate work as operators and in the manufacturing sector.

¹⁰Workers in other flexible staffing arrangements were also asked if they had actively searched for a job in a different arrangement. The number actively searching for a job in a different arrangement tended to be much smaller than the number stating that they would prefer work in a different arrangement.

Figure 2. Percent Preferring a Regular Work Arrangement

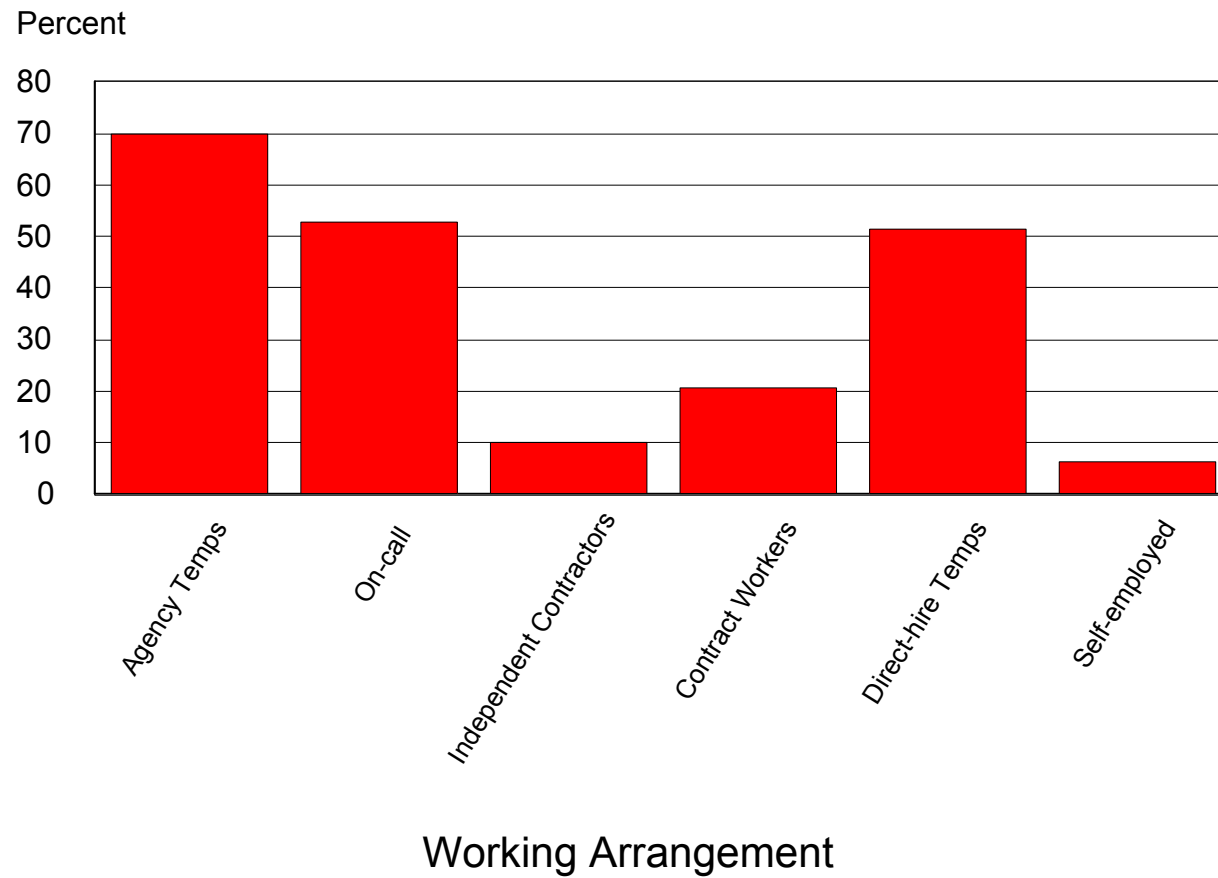


Table 3. Occupation and Industry Distribution of Employment by Work Arrangement (in percent)

	Agency Temporaries	On-call or Day Laborers	Independent Contractors	Contract Company Workers	Other Direct Hire Temporaries	Other Self- Employed	Regular Employees
Occupation							
Executive, Adm.	6.9	2.7	20.7	8.6	7.6	24.1	13.7
Professional	6.6	20.9	17.9	20.3	26.5	13.0	15.1
Technical	5.8	4.0	0.8	6.8	3.2	0.7	3.6
Sales	1.7	6.6	17.9	3.0	5.3	20.7	11.3
Administrative Support Services	34.1	8.6	3.9	5.5	20.2	5.4	15.8
Precision Production Operators	9.0	20.2	9.1	28.4	15.2	10.0	13.6
Transportation Occupations	5.2	15.0	17.9	19.7	8.6	7.5	10.5
Laborers	17.1	2.2	1.6	1.8	4.0	1.7	7.0
Farming & Forestry	3.5	8.5	4.4	2.5	1.6	1.6	4.3
	8.6	8.6	0.8	3.3	4.8	0.6	3.8
	1.6	2.8	5.1	0.2	2.9	14.7	1.4
Industry							
Agriculture	0.0	3.3	5.7	0.0	2.3	15.3	1.3
Mining & Construction	4.0	16.3	20.9	6.0	9.1	5.8	5.3
Manufacturing	33.8	5.3	4.8	19.3	7.2	6.3	18.6
Transportation, Communication, Utilities	7.3	8.1	5.1	14.0	3.5	3.7	7.4
Trade	21.7	14.1	13.6	12.7	11.5	26.2	21.1
Finance Insurance & Real Estate	7.8	1.6	8.4	7.6	2.6	5.4	6.6
Services	25.5	47.5	41.1	24.6	57.5	37.1	34.6
Public Administration	0.0	3.8	0.2	13.8	6.2	0.0	5.1

Source: Author's tabulations from February 1997 CPS Supplement on Contingent and Alternative Work Arrangements.

On-call workers, independent contractors, and direct-hire temporaries are disproportionately represented in the construction and services industries. A large share of contract company workers are found in services and precision production occupations. Over a quarter of direct-hire temporaries are in professional occupations and over half are in services industries.

The government is a major employer of workers in several flexible staffing arrangements. As shown in Table 4, over 20 percent of on-call and day laborers and of contract company workers work in the government sector and over 30 percent of direct-hire temporaries work for federal, state, or local government.¹¹

Table 4. Government and Private Sector Employment by Work Arrangement (in percent)

	Government				Private	
	Total	Federal	State	Local	Profit	Non-profit
Agency temporaries	3.5	--	--	--	94.0	2.6
On-call or Day laborers	23.2	1.7	3.5	18.0	72.8	4.1
Contract company workers	21.8	--	--	--	73.2	5.1
Other direct-hire temporaries	31.9	5.0	15.9	10.9	56.6	11.6
Regular employees	16.2	3.0	4.3	9.0	78.1	5.7

Source: Author’s tabulations from the February 1997 CPS.

6. The Quality of Flexible Staffing Jobs

The large and growing number of workers in temporary and contract arrangements has raised concern primarily because these jobs are perceived as being “bad” jobs. Here I review evidence on the wages, benefits, and job security of workers in various flexible staffing arrangements compared with those in regular positions.

¹¹In Table 3, the industry public administration captures some, but not all of public sector employees. Many public sector employees work in the services sector, for example, for public hospitals and public schools.

6.1 Wages

The stereotype that workers in flexible staffing arrangements earn less than comparable workers in regular positions is only partly true. Using data from the February 1997 Supplement to the CPS, Table 5 shows the percentage of workers in each work arrangement earning “low” wages, which are defined as between \$4.25 and \$5.15 per hour. In February 1997 the federal minimum wage had recently risen from \$4.25 to \$4.75 per hour and was scheduled to be increased again to \$5.15 later that year. Many individuals in the February 1997 reported hourly wages of \$4.25 per hour, perhaps because they were reporting their old wage, their employer had not complied with the new minimum, or they were exempted from minimum wage laws. The \$4.25-\$5.15 range is designed to capture the fraction of workers in each category who were working at or near the minimum wage.¹² Compared with regular full-time workers, a larger fraction of agency temporaries, on-call workers, and direct-hire temporaries earn low wages.

Low wages are strongly associated with part-time employment and the relatively large fraction of agency temporaries, on-call workers, and direct-hire temporaries earning lower wages stems partly from the fact that a large fraction of these workers work part-time hours. (See Table 1.) However, even among those working full-time hours, a much higher fraction of workers in these three flexible staffing arrangements earn low wages compared to regular full-time employees. While just 3.6 percent of regular full-time employees earn low wages, 7.3 percent of full-time agency temporaries, 6.3 percent of full-time on-call workers, and 8.6 percent of full-time direct-hire temporaries earn at or near the minimum wage.

¹²I excluded those who reported hourly earnings less than \$4.25. In some cases they are valid wages, but they probably reflect inaccurate reporting in many instances. The basic pattern of wages by employment arrangement is not changed when I include those earning below \$4.25.

Table 5. Percent of Workers with Low Wages and Incomes by Work Arrangement

Working Arrangement	Hourly Wage \$4.25-\$5.15 ^(a)	Percent Below Poverty ^(b)	Near Poverty (100%-125% of Poverty Line) ^(b)
Agency Temporaries	9.3	14.2	7.5
On-call or Day Laborers	13.9	12.0	4.2
Independent Contractors	4.3	7.7	3.1
Contract Company Workers	5.5	6.7	4.8
Other Direct Hire Temporaries	17.9	10.9	4.2
Other Self-Employed	6.0	7.5	2.3
Regular Employees	7.0	4.8	2.7

^(a) Source: Author's tabulations from the February 1997 CPS Supplement on Contingent and Alternative Work Arrangement.

^(b) Source: Author's tabulations from matched data from the February 1995 and March 1995 CPS.

Although a higher fraction of temporary and on-call jobs are low-wage, this result may stem from the fact that workers in these jobs have less human capital, on average, than those in regular, full-time positions and not from the jobs themselves. Using data on earnings from the February 1995 CPS Supplement, I showed that men and women working as agency temporaries, on-call workers, and direct-hire temporaries earn significantly less than regular full-time workers, even controlling for key worker and job characteristics.¹³ For instance, among men, agencies temporaries earn about 18.8 percent less, on-call workers earn 5.0 percent less, and direct-hire temporaries earn 10.3 percent less than regular full-time men. Among women, agency temporaries earn 15.8 percent less, on-call workers earn 9.9 percent less, and direct-hire temporaries earn 15.7 percent less. Regular part-time workers also earn significantly less than regular full-time workers after controlling for worker and job characteristics.

¹³See Houseman (1997). Control variables included age, education, race geographic region, industry, union status, and occupation.

Arguably, there are worker characteristics affecting productivity that are not measured in the CPS and that are correlated with the work arrangements. For instance, actual job experience is not measured in the CPS and those with little experience are likely to be disproportionately represented in certain flexible staffing arrangements. Similarly, those with poor work habits and social skills may be disproportionately represented in certain flexible staffing arrangements and this fact may help account for the lower average wages of workers in these arrangements. Segal and Sullivan (1997b, 1998) attempted to address this issue using two longitudinal data sets on workers in the temporary help industry. In the first paper, Segal and Sullivan (1997b) constructed a longitudinal data set from the CPS; workers reporting the temporary help industry as their industry of employment were classified as agency temporaries. Controlling for individual fixed effects and part-time status, along with worker characteristics and occupation, they found that the agency temporaries earn only 3.1 percent less, on average, than other workers.¹⁴ One problem with these estimates is that they depend on identifying changes into and out of temporary help employment. Classification of workers in the temporary help industry comes from responses to questions concerning the worker's employer in the basic CPS. Yet, the recent February Supplements to the CPS reveal that over half of all those classified as agency temporaries in the Supplements listed the client firm as their employer in the basic CPS question. Thus, the data on which Segal and Sullivan's analysis are based contain a gross amount of reporting error.

¹⁴The estimates cited above from Houseman (1997), which did not control for individual fixed effects, revealed that while agency temporaries earned much less than regular full-time workers, on average, the wage differential between agency temporaries and regular part-time workers was small. Given that the estimates in Segal and Sullivan (1997) control for working part-time, and that a high proportion agency temporaries work part-time, Segal and Sullivan's estimates may be broadly consistent with the estimates presented in Houseman (1997).

In an alternative approach, Segal and Sullivan (1998) constructed a longitudinal file using administrative data from the State of Washington to study the magnitude of the wage differential between workers in the temporary help industry and others. In this paper, they estimated the wage differential between agency temporaries and other workers to be between 10 and 20 percent.

Concern over the low wages that workers in temporary and on-call arrangements receive arises primarily to the extent that these wages contribute to poverty. Low wages in these jobs would be of less concern if the workers primarily came from middle income and wealthy families. Table 5 shows the percentage of workers by work arrangement who were living in families below the poverty line and near the poverty line (100-125 percent of the poverty line).¹⁵ This table shows that poverty is a problem for workers in flexible staffing arrangements, particularly agency temporaries, on-call workers, and direct-hire temporaries. Whereas just 6 percent of regular full-time workers come from poor or near-poor families, 22 percent of agency temporaries, 16 percent of on-call workers, and 17 percent of direct-hire temporaries are living below or near the poverty line.

6.2 Benefits

Workers in flexible staffing arrangements are also far less likely to receive benefits such as health insurance or a retirement plan from their employers than are regular workers. Table 6 shows the incidence of health insurance and retirement benefits by work arrangement. Because many employees who are eligible to participate in an employer provided health insurance or

¹⁵Data on poverty status come from the March 1995 Supplement to the CPS and refer to poverty status in 1994. Observations from the February 1995 CPS were matched to the March 1995 CPS to construct figures on poverty status by work arrangement.

Table 6. Percent of Workers with Health Insurance and Retirement Plan, by Work Arrangement

Health Insurance			
	Health Insurance	Health Insurance through Employer	Eligible for Health Insurance from Employer
Agency Temporaries	48.1	7.3	23.8
On-call or Day Laborers	68.5	20.0	29.6
Independent Contractors	74.6	NA	NA
Contract Company Workers	83.1	51.3	68.8
Other Direct-hire Temporaries	74.1	27.1	35.9
Other Self-employed	82.3	NA	NA
Regular Employees	85.9	63.9	75.0
Retirement Plan			
	Covered by Employer Pension Plan or has Tax Deferred Retirement Account	Participates in Employer Pension Plan	Eligible to Participate in Employer Pension Plan
Agency Temporaries	18.3	4.3	9.5
On-call or Day Laborers	37.0	22.2	25.9
Independent Contractors	39.8	NA	NA
Contract Company Workers	50.7	39.2	46.3
Other Direct-hire Temporaries	30.4	19.8	23.3
Other Self-employed	44.9	NA	NA
Regular Employees	62.8	56.1	60.7

Source: Author's tabulations from the February 1997 Supplement on Contingent and Alternative Work Arrangements.

retirement plan decline to do so, it is interesting to look not only at the fraction of workers who receive these benefits from their employer, but also the fraction that are eligible to receive them. Among wage and salary employees—which include agency temporaries, on-call workers, contract-company workers, direct-hire temporaries, and regular workers—those in flexible staffing arrangements are much less likely than regular workers to participate in and be eligible

to participate in a health insurance and retirement benefit plan. The incidence of these benefits is particularly low among agency temporaries. Whereas 64 percent of regular workers receive health insurance through their employer and 75 percent are eligible to participate in an employer health insurance plan, just 7 percent of agency temporaries receive health insurance through their employer and only 24 percent are eligible to participate in an employer health insurance plan. Only 4 percent of agency temporaries participate in an employer retirement plan and only 10 percent are eligible to do so, compared to 56 percent and 61 percent of regular employees who participate or are eligible to participate, respectively, in an employer retirement plan.

One might be less concerned about the absence of benefits if workers in flexible staffing arrangements generally had health insurance from other sources or saved for retirement through a tax deferred retirement account. However, agency temporaries, on-call workers, independent contractors, and direct-hire temporaries are much less likely to have health insurance coverage from any source compared to regular employees. Over half of agency temporaries have no health insurance from any source. Similarly, workers in all types of flexible staffing arrangements are much less likely than regular employees to have some type of retirement plan.

Using data from the February 1995 Supplement to the CPS, I have estimated models of the probability a worker is eligible to participate in an employer-sponsored health insurance plan, has health insurance from any source, or is eligible to participate in an employer-sponsored retirement plan (Houseman 1997). The results show that even controlling for age, education, race, geographic region, union status, industry and occupation, workers in all flexible staffing arrangements are significantly less likely to be eligible to participate in an employer-sponsored health insurance or pension plan or to have health insurance from any source. These estimates

are consistent with evidence from the Upjohn Institute employer survey showing that while employers typically offer benefits like paid vacations and holidays, paid sick leave, health insurance and a retirement plan to their full-time regular employees, they rarely offer these benefits to employees who are on-call workers or temporaries.

6.3 Job Stability

It is generally presumed that workers in flexible staffing arrangements have less job security than those in regular full-time arrangements, but relatively little research has investigated this issue. Based on administrative data from the state of Washington, Segal and Sullivan (1997a) find that the average duration of temporary employment jobs is about two quarters and that three quarters of temporary employment jobs are accounted for by spells of four quarters or less. Not surprisingly, these figures are much lower than those for workers in other industries.

Anne Polivka and I matched individual records from the February 1995 CPS Supplement to records in March 1995 and February 1996 to examine labor market transitions of workers in a wide range of flexible staffing arrangements compared to those in regular arrangements (Houseman and Polivka 1999). We found that agency temporaries, on-call workers, direct-hire temporaries, contract company workers, and regular part-time workers exhibited significantly less job stability than regular full-time workers in the sense that they were more likely to be with a different employer, be unemployed, or be involuntarily out of the labor force one month and one year later. Interestingly, independent contractors did not experience less job stability than regular full-time workers. We also found that a substantial share of the modest decline in job

stability over the last decade could be accounted for by the growth in temporary help agency employment.¹⁶

7. Training

Related to concerns over wages, benefits, and job security is concern that, without strong attachments with firms, workers in flexible staffing arrangements will not receive training they need to keep abreast of technological developments and to secure good jobs in the future. However, there is little evidence available on the training of workers in flexible staffing arrangements and most of it pertains to the temporary help industry. NATSS reported that temporary help agencies spent \$260 million to provide skills training for 2 million workers and another \$75 million for workplace orientation and other “soft” subjects. About half of these expenditures are computer related (Stamps 1997). While no historical data exists against which to measure these expenditures, some large temporary staffing firms such as Manpower and Kelly Girls have reported large growth in their training expenditures in the area of information technology. A survey of training by temporary help agencies has recently been completed by David Autor, Frank Levy, and Richard Murnane. However, the results of that survey were not available at the time of this writing.

There is also concern that contract company workers are less well trained than regular employees and thus more prone to accident. In a study of the petrochemical industry, Rebitzer (1998) found that low-tenure contract company workers were more likely to be injured than low-tenure regular employees. Rebitzer blamed this fact on liability laws which encouraged the

¹⁶Some research has also investigated the psychological impact of being in a flexible staffing arrangement. For references to this literature, see Beard and Edwards (1995).

petrochemical firms to make the contract companies responsible for providing safety training of their workers, even though the petrochemical firms were better qualified to provide this training.

8. Why Firms Use Flexible Staffing Arrangements

Several employer surveys have been conducted on the use of flexible staffing arrangements. These surveys provide evidence on why firms use flexible staffing arrangements and why firms have been increasing their use of certain types of staffing arrangements in recent years. One of the earliest such surveys, conducted in 1981, investigated firms' use of agency temporaries, direct-hire temporaries, and on-call workers in six broad sectors (Mangum, Mayall, and Nelson 1985). The Conference Board and the Bureau of National Affairs have conducted surveys of their members, who are generally large and sometimes foreign-based companies, on their use of flexible staffing arrangements (Abraham 1988, 1990, Bureau of National Affairs 1994 and Conference Board 1995). Small-scale surveys of large corporations have been conducted by Christensen (1995) and Kahn (1996). Recently, two large-scale surveys have been conducted on nationally representative samples of employers on their use of flexible staffing arrangements: a survey of 550 employers sponsored by the Upjohn Institute for Employment Research in 1996 (Houseman 1997) and a survey of 1000 employers sponsored by the National Science Foundation (Kalleberg, Reynolds, and Marsden 1999). In addition to employer surveys, several researchers have conducted firm or industry case studies, which shed light on employers' motivations for using flexible staffing arrangements.

Collectively, this research has identified several key factors behind employers' use of flexible staffing arrangements, including fluctuations in their staffing needs, savings on wage and benefit costs, screening workers for permanent positions, and accessing special skills.

8.1 Fluctuations in Staffing Needs

Traditionally, firms have used flexible staffing arrangements to accommodate fluctuations in their workload or to fill in for absences or vacancies in their regular staff. In the Upjohn Institute survey, employers were asked which among a series of factors were important in their organizations' use of agency temporaries, on-call workers, and direct-hire temporaries. The percent of employers responding that a particular factor was important in their use of each arrangement is reported in Table 7.¹⁷ These traditional reasons were the most frequently cited for using each type of flexible staffing arrangement in the survey. For instance, the three most common reasons employers gave for using agency temporaries were 1) providing needed assistance at times of unexpected increases in business, cited by 52 percent; 2) filling a vacancy until a regular employee is hired, cited by 47 percent; and 3) filling in for an absent regular employee who is sick, on vacation, or on family medical leave, cited by 47 percent. Seasonal needs, cited by 55 percent of employers using direct-hire temporaries, appear particularly important in the use of that type of staffing arrangement. Among employers using on-call workers, 69 percent use them to cover for absent regular employees and 51 percent use them to provide needed assistance at times of unexpected increases in business.

Statistical analysis on the data from the Upjohn survey confirms the importance of firms' use of flexible staffing arrangements to accommodate fluctuations in product demand. The degree of seasonal fluctuation was an important determinant of whether an organization used agency temporaries, direct-hire temporaries, and on-call workers and the extent of their use of

¹⁷Employers were also asked why they used regular part-time workers, but these responses are not reported here. Employers indicating they used contract workers were not asked why they used this type of arrangement.

these arrangements. Similarly, the degree of cyclical fluctuation in their industry is an important determinant of an organization's use of agency temporaries.¹⁸

The importance of the use of various types of flexible staffing arrangements in order to accommodate staff absences or vacancies and fluctuations in product demand has been a finding in virtually all other employer surveys. (See Abraham 1988, The Conference Board 1995, Christensen 1995, and Kalleberg, Reynolds, and Marsden 1999.) Moreover, some believe that these factors have been important for the growth in flexible staffing arrangements. Here the argument is that firms have come under greater competitive pressure to reduce labor costs and, in response, have increasingly adopted a "just-in-time" workforce staffing strategy. Instead of overstaffing to accommodate employee absences or fluctuations in product demand, firms use agency temporaries, direct-hire temporaries, on-call workers, contract company workers, and independent contractors to meet changes in their day-to-day staffing needs. In fact, it was precisely this phenomenon that Audrey Freedman was referring to when she coined the term "contingent workers." Although hard data on the importance of this phenomenon in the growth of temporary help and other types of flexible staffing arrangements is scarce, available evidence provides support for the contention that this has been one factor driving the increase in firms' use of flexible staffing arrangements. The Conference Board (1995) found that "eight out of ten council members surveyed say that a just-in-time work force gives them the ability to add and subtract workers with little notice, a strategy that has become more urgent because of unpredictable conditions in the global marketplace." In the Upjohn Institute survey, employers who stated that they had increased their use of a particular flexible staffing arrangement relative

¹⁸These results are unpublished and are available from the author.

to their regular workforce since 1990 were asked why. One of the most frequently given responses was a “need to increase workforce flexibility to better accommodate fluctuations in workload.” This answer was cited by 37 percent of business increasing their relative use of agency temporaries, 40 percent of businesses increasing their relative use of direct-hire temporaries, and 58 percent of businesses increasing their relative use of on-call workers.

Table 7. Reasons for Using Flexible Work Arrangements^(a)

	Agency Temporaries	Direct-hire Temporaries	On-call Workers
<u>Reasons Concerning Staffing Levels</u>			
Fill vacancy until regular employee is hired	46.6	20.5	26.0
Fill in for absent regular employee who is sick, on vacation, or on family medical leave	47.0	30.0	69.3
Seasonal needs	28.1	54.8	29.3
Provide needed assistance during peak-time hours of the day or week	14.2	--	37.3
Provide needed assistance at time of unexpected increases in business	52.2	31.0	50.7
Special projects	36.0	37.6	26.0
<u>Other Reasons</u>			
Screen job candidates for regular jobs	21.3	9.0	8.0
Save on wage and/or benefit costs	11.5	8.1	6.0
Provide needed assistance during company restructuring or merger	7.5	6.2	6.0
Fill positions with temporary agency workers for more than one year	5.1	--	--
Save on training costs	5.1	--	--
Special expertise possessed by this type of worker	10.3	15.7	16.0
Sample size	253	210	150

^(a)Percent responding a particular factor important.

Source: Upjohn Institute survey on Flexible Staffing Arrangements.

8.2 Savings on Wages and Benefits

As noted above, except for independent contractors and contract company workers, workers in flexible staffing arrangements earn lower wages than those in regular full-time positions, even after controlling for worker and job characteristics. Moreover, controlling for worker and job characteristics, workers in all flexible staffing arrangements are much less likely than regular full-time workers to receive health and pension benefits from their employer.

Many have hypothesized that employers use various flexible staffing arrangements in order to reduce wage and fringe benefits costs of their workforce and that this practice has become more important with the growth of fringe benefits costs. To reduce wage costs, a company may find it easier to hire low-paid workers in flexible staffing arrangements than to reduce wages of its existing regular workforce, particularly if the employer is unionized. Moreover, restrictions in ERISA and non-discrimination clauses in the IRS tax code make it legally difficult to restrict fringe benefits to certain groups of workers. For example, under ERISA, employers must cover 70 percent of their non-highly compensated workforce in any pension plan they offer in order for that plan to receive favorable tax treatment. However, employers may circumvent ERISA, which applies only to employees working 1000 hours per year or more, by hiring on-call or temporary workers. In addition, ERISA restrictions do not apply to independent contractors, who are self-employed, and to agency temporaries and contract company workers, who are deemed another company's employees.

Although the IRS has cracked down on the misclassification of employees as independent contractors and Congress passed legislation to limit companies' ability to avoid pension obligations by "leasing" its workers from another company, some evidence suggests that

the use of flexible staffing arrangements to lower wage and benefits costs is still an important motivation for using many types of flexible staffing arrangements. For instance, in her survey of 21 large companies, Christensen (1995) found that 52 percent using direct-hire temporaries, 48 percent using agency temporaries, and 43 percent using independent contractors did so, in part, to cut direct labor costs, while 38 percent using direct-hire temporaries, 19 percent using agency temporaries, and 29 percent using independent contractors did so, in part, to reduce health care costs. Kalleberg, Reynolds, and Marsden (1999) report that 16 percent of businesses in their survey say that avoiding fringe benefits costs is a very important reason they use agency temporaries or contract company workers and another 22 percent say this factor is moderately important. In contrast, only 12 percent in a Conference Board survey stated that they used “contingent” workers to control benefit costs (The Conference Board 1995). Similarly, less than 12 percent of employers in the Upjohn Institute survey stated they used various flexible staffing arrangements to save on wage and benefits costs (Table 7).

Although few employers in the Upjohn Institute survey stated that savings on wage and benefits costs were important in their use of flexible staffing arrangements, they nevertheless indicated that they often save on hourly wage and benefit costs by using these arrangements. Savings on benefits costs appeared to be particularly important. Among employers using agency temporaries, only 19 percent stated that the billed hourly rate is higher than the hourly wage and benefit cost of regular workers in similar positions and 38 percent indicated that it is lower. A negligible percent of employers reported that the hourly wage and benefit cost of direct-hire temporaries and on-call workers is higher than that of regular workers in similar positions, while 59 percent of those using direct-hire temporaries and 73 percent using on-call workers indicated

that it is lower. In addition, while employers in the Upjohn Institute survey typically offered paid vacation and holidays, paid sick leave, pension benefits, and health insurance benefits to their regular full-time workers, such benefits were much less frequently extended to their regular part-time workforce and rarely provided to direct-hire temporaries and on-call workers (Houseman 1997).

Statistical analysis of the Upjohn survey data also showed that employers who offered both pension and health insurance to their regular, full-time workforce were more likely to use agency temporaries, direct-hire temporaries, and on-call workers and/or to use them more intensively than were employers providing less generous benefits. Similarly, Mangum, Mayall, and Nelson (1985) found that the higher the level of fringe benefits, the more likely the firm was to use agency temporaries or on-call workers. These findings provide indirect evidence that employers are motivated to use flexible staffing arrangements to avoid benefit costs.

Nollen and Axel (1996) make the important point that firms may not be saving on labor costs by using flexible staffing arrangements even if the wages and benefits of these workers is less than those of regular employees. They performed detailed cost benefit analyses for several firms on their use of “contingent” workers and found in some cases the higher costs associated with turnover, training, and lower productivity of contingent workers outweighed the savings from lower wage and benefit costs. Thus, while firms may be motivated to use flexible staffing arrangements in order to save on wage and benefit costs, Nollen and Axel’s work suggests that firms sometimes incur higher overall labor costs by using these arrangements.

8.3 Screening Workers for Regular Positions

Another reason employers may use flexible staffing arrangements, particularly agency temporaries, is to screen workers for regular, permanent positions. There are several reasons why firms may choose to screen workers through temporary help and other staffing agencies. First, these agencies may have a comparative advantage owing to economies of scale in finding and screening workers with particular types of skills. Second, the firm will save on record keeping costs if it chooses not to hire an employee. An employer who directly hires an employee on probation and chooses not to keep him will still have to maintain tax records on that employee for a long time. However, if the firm uses a staffing agency, the worker is the staffing agency's employee during the probationary period and, should the client firm choose not to hire the individual, the staffing agency will have to maintain those tax records. Finally, employers may seek to limit their exposure to law suits brought by disgruntled, dismissed employees by hiring through a staffing agency. Some speculate that the rise in employment litigation has spurred employers to rely more on staffing agencies to screen workers for regular positions (Lee 1996).

In the Upjohn Institute survey, about 21 percent of employers using agency temporaries cited screening workers for permanent positions as important (Table 7). The Conference Board (1995,) Abraham (1988), and Kalleberg, Reynolds, and Marsden (1999) report similar findings. A survey of agency temporaries conducted by the National Association of Temporary Staffing Services (NATSS) found that a substantial minority, 29 percent, found jobs with a customer: in 16 percent of the cases it was arranged by the temporary help agency and in 13 percent of the cases it was not arranged in advance (Lenz 1996).

The Upjohn Institute survey also provides some evidence that screening workers for regular positions is an important factor underlying the *growth* in temporary help employment. Among employers increasing their use of agency temporaries relative to regular employees, about half cited greater use of agency temporaries to screen workers for regular positions or difficulty finding qualified workers on their own as reasons for the increase.

8.4 Accessing Special Skills

Sometimes employers use flexible staffing arrangements to access workers with special skills. As technology has become more complex, it is believed that firms increasingly will tap workers outside their regular workforce for their specialized knowledge. Evidence on the importance of this factor from employer surveys is mixed. In the Upjohn Institute survey only 10 percent of those using agency temporaries and 16 percent using direct-hire temporaries and on-call workers cited this factor as important. The figures reported in Abraham (1988) from a survey of BNA members, are similar, except a higher percentage of employers using on-call workers (34 percent) cited special expertise as a reason for using this type of worker. In contrast, in her survey of 21 very large firms, Christensen (1995) reports that 67 percent of those using agency temporaries and 76 percent using direct-hire temporaries cited specialized skills. In addition, 67 percent of the firms cited specialized skills as a reason for using independent contractors. Acquiring specific expertise was the second most commonly cited reason for using “contingent” workers in the Conference Board member survey (48 percent); contingent workers were defined quite broadly to include direct-hire temporaries, on-call and hourly part-time workers, independent contractors, agency temporaries, and leased employees in that survey. In their survey of 1,000 employers, Kalleberg, Reynolds, and Marsden (1999) report that 46 percent

of those using agency temporaries or contract company workers cited special skills as a very important reason for using these arrangements, and another 17 percent cited special skills as a moderately important reason for using these arrangements.

8.5 Other Reasons

Anecdotal evidence suggests that many managers turn to flexible staffing arrangements during periods of downsizing, in part to avoid head count limits imposed by their corporate office. The Upjohn Institute survey, which was representative of private sector employment in the country, found little evidence to support this hypothesis. This phenomenon may be more important in very large, bureaucratic organizations. Christensen reports that 81 percent of the companies using direct-hire temporaries, 62 percent using agency temporaries, and 38 percent using independent contractors cited the need to avoid head count limits as a reason for using these staffing arrangements. Twenty-six percent of respondents in the Conference Board survey cited avoiding head count limits as a reason for using contingent workers.

Despite reports of increased training of workers by temporary help agencies (Stamps 1997), evidence from the Upjohn Institute survey suggests that such training plays only a minor role in firms' decisions to use temporary help workers. In that survey just 5 percent of employers using agency temporaries stated that savings on training costs were an important factor in their decision to use these workers.

9. Coverage of Workers in Flexible Staffing Arrangements by Labor Standards

Most statutes establishing benefits or standards for workers were written with the traditional employee—a full-time, permanent worker—in mind. The large and growing number in flexible staffing arrangements, however, has sparked concern that existing law is inadequate

to protect these workers. A related concern is that, although businesses have many legitimate reasons for using alternative arrangements, legal loopholes provide an added incentive to use these arrangements in order to circumvent certain labor standards.

The current situation does not entirely favor business, however. Whether workers in flexible staffing arrangements are covered under various laws is often ill-defined. In the absence of clear legal language, employee coverage and employer liability is being determined by the courts, which often apply different standards to different laws and sometimes even different standards to the same law. Such ambiguity causes considerable confusion and legal expense for businesses.

Whether and how workers in flexible arrangements are covered by various labor standards turns on whether they are defined as covered employees and exactly who their employer is under a particular law. For this reason, I begin by providing some background on the legal issues concerning the definition of employees and employers when flexible staffing arrangements are used. Next, I discuss policy issues raised by flexible staffing arrangements within the major employment program areas and areas of employment law.

9.1 Who Is an Employee? Determining Independent Contractor Status

Independent contractors, by definition, are self-employed and because they are not employees, independent contractors are not covered by employment, labor, and related tax laws. Employers may be tempted to reclassify employees as independent contractors in order to avoid taxes, benefits, and other liability. Whether or not a worker is covered by a particular employment, labor, or tax law hinges on the definition of an employee. Yet, statutes usually fail

to clearly define the term “employee,” and no single standard to distinguish between employee and independent contractor has emerged.

For example, the IRS uses the so-called “20-factor test,” in which it assesses the degree of control the company exercises over the way the work is performed by the independent contractor. If the company exercises too much control, the worker is deemed to be an employee. Employers do not have to pay FICA (social security and Medicare) and FUTA (federal unemployment insurance) taxes on independent contractors, nor do they have to withhold federal income taxes for these individuals. The IRS, which estimates that it loses billions in tax revenue each year due to misclassification of employees as independent contractors, has cracked down on the problem in recent years.

The IRS 20-factor, right-to-control test is used to assess an employers’ tax liability. A similar test is used in most states to determine status under workers’ compensation laws. The so-called “economic realities test” or a hybrid of the right-to-control and economic realities test often is used by courts to determine independent contractor status in other circumstances. In essence, the economic realities test makes it harder to classify a worker as an independent contractor, because, in addition to considering the degree of control the employer exercises, it takes into account the degree to which the workers are economically dependent on the business. The economic realities test is used to determine employee status under the Family and Medical Leave Act (entitling workers to unpaid leave under certain circumstances), the Fair Labor Standards Act (establishing a minimum wage), and the Worker Adjustment and Retraining Act (providing for advance notice in event of plant closings and mass layoffs). Additionally, it is

often applied by courts in determining independent contractor status in civil rights cases under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. States use a variety of other tests to determine independent contractor status for unemployment insurance purposes.¹⁹

The plethora of tests defining independent contractor status applied across federal and state laws makes it possible for a worker to be classified as an independent contractor under one law, but as an employee under another. The Commission on the Future of Worker-Management Relations (1996) recommended simplifying and standardizing the definition of an employee in employment, labor, and tax law to reduce confusion and stem the abuse of misclassification of workers as independent contractors. The Commission recommended that a standardized test be based on the more restrictive concept of economic realities.

9.2 Who Is the Employer? Determining Joint-Employer Status

Besides not defining the term “employee,” most statutes fail to spell out who the employer is. There is potential ambiguity on this issue when businesses use temporary agency, leased, or contract workers. Although the primary employer is generally the temporary help, leasing, or contract company, the client may be regarded as a “joint employer” under some laws.

The Family and Medical Leave Act, perhaps by virtue of the fact that it is a recent statute, is one of the few laws to explicitly address possible joint employer relationships, such as may exist for leased employees or agency temporaries. While the leasing or temporary help agency is the primary employer, the client company may be required to place the individual in the same or comparable position upon his or her return from FMLA leave. Additionally, leased

¹⁹Joerg (1996, chapters 3 and 7) contains a detailed discussion of the IRS 20-factor test, the economic realities test, and various other tests.

and temporary workers will count as employees of the client company for the purposes of determining employment levels for FMLA. Thus, even if the number of regular workers is fewer than 50, an employer may have to provide FMLA benefits to all workers if the number of regular plus temporary and leased employees is 50 or more (Pivec and Massen, 1996).

In recent years, Congress has tried to clear up the ambiguity—and stem abuses—regarding benefits provision to leased employees. Allegedly, businesses were “firing” their non-highly compensated staff and leasing them back through leasing agencies to avoid providing benefits to these employees. Under section 414(n) in the Tax Equity and Fiscal Responsibility Act of 1982, leased and temporary help workers must be counted by the client firm as employees for the purposes of qualifying retirement plans and certain other fringe benefits (such as life insurance and cafeteria plans) if the workers have provided these services “on a substantially full-time basis for at least a year” and the client primarily controls or directs the work of the leased or temporary employees. The rule does not apply to health insurance plans.

Several states have passed legislation clarifying joint employer liability in workers’ compensation cases. New York state has actually ruled that the client is the common law employer of leased employees and is primarily responsible for providing workers’ compensation benefits. However, most states have not clarified joint employer status in workers’ compensation cases, leaving the courts to resolve these issues where there is some dispute. Court rulings on the issue, in turn, have been inconsistent (Bowker 1997). Similarly, no guidelines have been drawn up clarifying joint employer status under OSHA or other health and safety regulations.

Another area of ambiguity is in the coverage of temporary, leased, and contract workers under the National Labor Relations Act. Several cases pending before the National Labor Relations Board (NLRB) concern whether workers in these arrangements must be included in collective agreements covering the client's regular employees. If the NLRB determines that a joint employer relationship exists, both the client and the staffing company may be required to bargain with the employees' collective bargaining representative (Giddens 1997).

Responding to the ambiguity surrounding joint employer status, the Commission on the Future of Worker-Management Relations recommended that a standardized definition of employer be adopted. As for the definition of an employee, the Commission recommended that the employer be determined based on the economic realities of the relationship, and not simply on the notion of control. So doing, it asserted, "would remove the incentives that now exist for firms to use variations in corporate form to avoid responsibility for the people who do their work" (Commission on the Future of Worker-Management Relations, 1996, p. 36).

9.3 Workers' Compensation

Each state requires that employers purchase workers' compensation insurance, which provides benefits to employees in the event of an occupational injury. Coverage of workers tends to be fairly comprehensive, although state workers' compensation laws often exempt domestic, farm, and other "casual" workers. Moreover, independent contractors, being self-employed, are not covered by these laws. One problem, particularly prevalent in the construction industry, is that companies reportedly will require workers to be "independent contractors" to avoid workers' compensation costs. When these workers become injured, they

are reclassified as employees and file for workers compensation (see Montana Legislative Council, 1994).

A key issue in workers' compensation is the misclassification of workers, particularly by temporary help and leasing agencies, which usually are responsible for purchasing workers' compensation insurance for the temporary or leased employees. The insurance rate depends partly on the occupation in which the worker is classified. Some agencies allegedly misclassify workers in order to obtain lower rates. Although several states have taken steps to crack down on misclassification by leasing companies, little has been done to cut such abuse by temporary help agencies (Klein 1996).

A related problem is that typically the workers' compensation rate is based on experience rating of the leasing or temporary help agency. Allegedly, some leasing or temporary help agencies hire a minimal number of people for some period of time to establish a low rate and then move large numbers of leased or temporary employees into this operation. When the rate increases they close this "company" and move the employees into another such operation. Some have recommended that the workers' compensation rate be tied to the client company.²⁰

9.4 Unemployment Insurance

All states also have unemployment insurance programs financed through a payroll tax on employers. Many in flexible staffing arrangements are ineligible to receive unemployment insurance because of the qualifying requirements, which specify that an employee work a minimum number of weeks and/or earn a certain minimum amount within a base period. The purpose of these requirements is to prevent those with insufficient attachment to the workforce

²⁰See KRA Corporation (1996), Clark (1997), and Montana Legislative Council (1994) for a discussion of these issues.

from receiving benefits. Effectively, the requirements preclude many in temporary positions from being covered.

Even if temporary workers fulfill the minimum earnings or work time requirements to qualify for unemployment compensation, they may be disqualified on other grounds. For instance, if workers separate from a temporary job with a predetermined expiration date, they might be disqualified from UI on the grounds that they voluntarily accepted a job with an ending date, and so the unemployment is voluntary. Several states have passed laws precluding disqualification for this reason. Workers employed through a temporary help agency also might be disqualified from receiving UI benefits if they fail to report to the temporary help agency for a new assignment when their current assignment ends. From the temporary help agency's perspective, it does not want to raise its UI tax rate, which is experienced-rated, by covering workers whom it could place in other assignments. From the temporary workers' perspective, they may need time off with UI coverage to look for permanent employment and not covering these workers may relegate them to a cycle of short-term, dead-end jobs. Ambiguity also exists as to whether an agency temporary who quits in the middle of an assignment for "good cause," such as hazardous working conditions, must accept another offer of employment through the same temporary help agency (National Employment Law Project 1997).

A related issue is whether temporary agency workers can refuse an assignment without jeopardizing their UI benefits. This issue is particularly pertinent when state employment agencies refer UI recipients to temporary services. In the absence of state requirements, federal law stipulates that if an assignment offers "wages or other conditions of employment [that] are substantially less favorable than those prevailing for similar work in the locality, or are such as

tend to depress wages or working conditions,” the assignment is unsuitable. However, specific factors vary from state to state and may be decided on a case by case basis (National Law Project 1997).

Independent contractors are not covered by unemployment insurance. As was the case with workers’ compensation, it is believed that many businesses avoid paying unemployment insurance or pay rates that are too low by misclassifying workers as independent contractors or by establishing low experience rates in shell companies before transferring leased or temporary agency employees to their payrolls. One study found substantial evidence of UI rate manipulation among leasing companies (KRA Corporation 1996).

9.5 Family and Medical Leave Act

Under the Family and Medical Leave Act of 1993, employers must provide employees with up to 12 weeks of job-protected, unpaid leave during any 12-month period to care for a new born or adopted child, recuperate from a serious health condition, or care for an immediate family member who has a serious health condition. Employers with fewer than 50 employees during the preceding 20 calendar weeks are exempt. To qualify for FMLA leave, an employee must have worked at least 1200 hours during the 12 months immediately preceding the date the leave commences. Thus, many part-time and temporary workers are not eligible for FMLA leave. Independent contractors are not protected by FMLA.

9.6 Regulation of Employee Benefits

In addition to mandating that employers provide benefits to employees, federal employment and tax law regulates the provision of benefits such as pensions and health insurance. No law requires an employer to provide such benefits to employees, and an employer

is free to provide these benefits to a select group of workers. However, the benefit plan must meet certain conditions specified in the Employee Retirement Income and Security Act (ERISA) and IRS tax code in order to receive favorable tax treatment. The purpose of these requirements is to ensure that the beneficiaries of such in-kind, tax-free or tax-deferred income are not primarily highly compensated employees. Under ERISA, a tax-qualified pension plan must cover at least 70 percent of all non-highly compensated employees who worked 1000 hours or more over the last 12 months. However, even with these restrictions, many on-call, seasonal, and other workers in flexible staffing arrangements may be excluded from pension plans. The requirements for a health insurance plan to qualify for tax-exempt status are less stringent than for a pension plan. In particular, companies are free to exclude any part-time worker from a health insurance plan.²¹

Independent contractors are not employees of the client company and thus are not eligible to receive tax-free benefits from the company. If the company chooses to include an independent contractor in its health insurance plan, the contractor must pay income taxes on the value of the benefit. If the company includes an independent contractor in its pension plan, it risks losing the tax exempt status of the plan.

Many are concerned that employers use independent contractors, agency temporaries, contract workers, and leased employees, in part, to avoid classifying certain groups of workers as employees and thus to circumvent ERISA and IRS rules governing benefits. This problem has

²¹Section 89 of the Tax Reform Act of 1986 required that those working 17.5 hours per week be included in a company's health insurance plan to qualify for tax preference status. However, Congress repealed this provision in 1989. For a discussion of this issue, see Schwab (1995).

spurred much litigation in recent years over employee and joint-employer status. As discussed above, these issues have not been fully resolved.

9.7 Anti-discrimination Laws

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, sex, or ethnic origin; the Age Discrimination in Employment Act (ADEA) prohibits discrimination against employees 40 years and older; and the Americans with Disabilities Act (ADA) prohibits discrimination in employment on the basis of disabilities and requires that employers reasonably accommodate individuals with disabilities who can otherwise perform a job. As with other labor standards, independent contractors generally would not be covered by anti-discrimination laws.

It is often alleged that companies can avoid liability for discriminatory behavior by using agency temporaries, leased employees, or contract company workers in lieu of their own staff. While the staffing firm clearly is liable for discriminatory behavior, the client firm may also bear some liability. For instance, the ADA specifically prohibits a business from participating in an arrangement that results in the discrimination against a disabled applicant or worker; thus, both the client and the staffing firm are legally liable for discrimination under ADA.²² The other anti-discrimination statutes do not specifically deal with joint liability, and the issue has been left for the courts to resolve. Title VII and ADEA may protect those who are not legally employees or applicants for a job in a client company if the client company controls access to employment or the conditions of employment (Pranschke 1996).

²²Klein (1996) points out, however, that the law does not specify who—client or staffing firm—is liable to bear the cost of accommodating a worker's disability.

In sum, employment, labor, and related tax laws often set hours or earnings thresholds that exclude many part-time, on-call, and temporary workers from coverage. Such thresholds are usually justified on the grounds that the excluded workers demonstrate insufficient attachment to the workforce or that without such exclusions the law would impose undue costs on businesses. However, the widespread and growing use of workers in flexible staffing arrangements raises questions about whether current thresholds are set too high and whether protection of these workers is adequate.

Moreover, coverage of workers in flexible staffing arrangements is simply unclear in many areas of the law. Concern that some employers use independent contractors or staffing firms to circumvent labor standards has prompted Congress, the IRS, and a few states to clarify laws and curb such abuse. However many issues related to who is an employee and who is the employer-which get to the core of which workers are covered by these laws and which employers are liable for their coverage-are being decided by the courts and remained unresolved.

10. Placing Disadvantaged Workers with Temporary Help Agencies

Some states have begun using temporary help agencies to place UI recipients, welfare recipients, and other disadvantaged workers in jobs. This practice has been controversial. Opponents fear that disadvantaged workers placed with temporary help agencies will be likely to fall into a trap of dead-end, low wage, temporary employment. Proponents counter that as a practical matter, with the sheer volume of welfare recipients who must be placed in jobs, state agencies cannot do it on their own. Moreover, they argue that it makes sense to use businesses like temporary help agencies, which know the market for low skill workers and have established credibility with employers. In addition, business surveys show that employers are primarily

looking for workers with some on-the-job experience. Even if placements are temporary, workers may gain valuable experience that will help them find permanent jobs in the future (Jobs for the Future 1997 and Bugarin 1998).

Temporary help agencies are no panacea for the problems facing disadvantaged workers, as is illustrated by the following anecdote. The temporary services company Manpower recently held a job workshop attended by 600 welfare recipients in the San Diego area. Of the 600 attending, Manpower asked 158 for follow-up interviews; only 43 showed up for their interview. Of these 43, Manpower placed 23 in jobs, but 3 never showed up for work, and 12 quit or were fired before the assignment ended. Thus, from the original job workshop of 600 attendees, only 8 were successfully placed (Bugarin 1998, p. 10). The problem in many cases is that the clients lack basic “soft” skills necessary to find and retain jobs: they are not punctual, have poor attitudes, lack basic job skills, and have problems with alcohol and drug abuse.

Whether using temporary help agencies—perhaps in combination with soft skill training—to place welfare recipients and other disadvantaged workers is a desirable strategy for government agencies to pursue depends on whether disadvantaged workers are more likely to find good, stable jobs by using temporary help agencies than they are by using alternative services. The research needed to answer this question—which ideally would involve conducting a random assignment controlled experiment—has not been done.

11. Conclusion

The circumstances facing workers in flexible staffing arrangements vary substantially by type of arrangement. Agency temporaries, on-call workers, and direct-hire temporaries are disproportionately young and female; they tend to be unhappy with their work arrangement and

want a permanent job with regularly scheduled hours; and they are likely to earn low wages and come from poor families. Along with contract company workers, they experience less job stability compared to regular, full-time workers. Consistent with this finding, the major reason firms give for using these types of arrangements is to accommodate fluctuations in their workload or absences in their regular staff. In addition, firms appear to be increasing their use of these types of arrangements, in part, to increase their workforce flexibility. A trend towards a “just-in-time” workforce raises concerns about the future job stability and training of workers. It also raises policy issues about the adequacy of unemployment insurance coverage for these workers under current state laws.

Another reason that firms appear to be increasing their use of these workers, particularly agency temporaries, is to screen workers for regular jobs. This motivation for using agency temporaries carries quite different implications for workers and for policy. Policy makers are less likely to be concerned with poor compensation associated with temporary jobs if they are avenues for securing good, permanent positions. Similarly, the use of temporary help agencies to help place disadvantaged workers becomes more attractive if these positions help workers find permanent jobs. The extent to which workers, particularly disadvantaged workers, are able to secure stable employment through temporary jobs is not known and needs to be studied.

In contrast to agency temporaries, on-call workers, and direct-hire temporaries, independent contractors are disproportionately older, male, white, and more educated. They tend to be quite happy with their employment arrangement and do not, on average, earn lower wages or experience less job stability than regular full-time employees.

One issue that cuts across all flexible staffing arrangements, including independent contractors, is lack of health insurance and pension coverage. Workers in flexible staffing arrangements who are employees are much less likely to be eligible participate in an employer sponsored health insurance or retirement plan compared to regular full-time employees. Workers in all flexible staffing arrangements are also much less likely than regular full-time employees to have health insurance or a retirement plan from any source. Survey evidence suggests that savings on benefit costs is one important reason firms use flexible staffing arrangements. ERISA and anti-discrimination clauses in the IRS tax code make it difficult for firms to offer benefits to a subset of their full-time workforce. Firms may side-step these regulations by hiring more temporary and part-time (including on-call) workers directly or by hiring independent contractors, agency temporaries, and contract company workers, who are either self-employed or employees of another firm.

While some steps have been taken to curb obvious abuses involving misclassification of employees as independent contractors and use of leased employees to avoid pension benefits, there remains considerable confusion over when a worker may be legitimately classified as an independent contractor and over the responsibilities client firms have as “joint employers” of leased employees, agency temporaries, and contract company workers. These issues affect not only benefits for workers in flexible arrangements, but also their coverage under a host of other employment programs and labor standards, including workers' compensation, unemployment insurance, various anti-discrimination laws, The Family and Medical Leave Act, the Workers’ Adjustment and Retraining Act, the Fair Labor Standards Act, and the National Labor Relations Act.

References

- Abraham, Katharine G. 1988. "Flexible Staffing Arrangements and Employers' Short-term Adjustment Strategies." In Robert A. Hart, ed., *Employment, Unemployment, and Labor Utilization*. Boston: Unwin Hyman.
- _____. 1990. "Restructuring the Employment Relationship: The Growth of Market-Mediated Work Arrangements." In Katherine Abraham and Robert McKersie, eds., *New Developments in the Labor Market: Toward a New Institutional Paradigm*. 85-120. Cambridge, MA: MIT Press.
- Abraham, Katharine G. and Susan K. Taylor. 1996. "Firms' Use of Outside Contractors: Theory and Evidence." *Journal of Labor Economics*, 14(3): 394-424.
- Barker, Kathleen and Kathleen Christensen. 1998. *Contingent Work: American Employment Relations in Transition*. Ithaca, NY: ILR Press.
- Beard, Kathy M. and Jeffrey R. Edwards. 1995. "Employees at Risk: Contingent Work and the Psychological Experience of Contingent Workers," in *Trends in Organizational Behavior*, Vol. 2, Edited by Cary L. Cooper and Denise M. Rousseau, New York: John Wiley & Sons.
- Belous, Richard. 1989. *The Contingent Economy: The Growth of the Temporary, Part-time, and Subcontracted Workforce*. Washington, DC: National Planning Association.
- Bowker, Lindsay Newland. 1997. "Employee Leasing: Liability in Limbo?" *Risk Management*, 44, (6): (June), 37-47.
- Bugarin, Alicia. 1998. "Linking Welfare Recipients to Jobs: The Role of Temporary Help Agencies," California Research Bureau, CRB-98-017, (November).
- Bureau of Labor Statistics, U.S. Department of Labor. 1995. "New Data on Contingent and Alternative Employment Examined by BLS." USDL 95-318, (August 17).
- Bureau of National Affairs, Inc. 1994. "Staffing and Scheduling Strategies." Personal Policies Forum Survey No.152, (June).
- Christensen, Kathleen. 1995. *Contingent Work Arrangements in Family-Sensitive Corporations*. Boston: Center on Work and Family, Boston University.
- Clark, Charles S. 1997. "Contingent Work Force." *CQ Researcher*, 7, (40): (October, 24).

- Commission on the Future of Worker-Management Relations. 1996. Report and Recommendations of the Commission on the Future of Worker-Management Relations Issued January 9, 1995. Report DLR, No. 6, Special Supplement. Washington, DC: Bureau of National Affairs, Inc.
- Conference Board. 1995. "Contingent Employment." *HR Executive Review*, 3, (2).
- Freedman, Audrey. 1985. "The New Look in Wage Policy and Employee Relations." Conference Board Report No. 865. New York: The Conference Board.
- Giddens, Brent M. 1997. "Employment Law." *The National Law Journal*, (January 13), B6-7.
- Houseman, Susan N. 1997. "Temporary, Part-Time, and Contract Employment in the United States: A Report on the W.E. Upjohn Institute's Employer Survey on Flexible Staffing Policies." Report to the U.S. Department of Labor, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.
- Houseman, Susan N. and Anne E. Polivka. 1999. "The Implications of Flexible Staffing Arrangements for Job Stability." Upjohn Institute for Employment Research Working Paper.
- Jobs for the Future. 1997. "Skills Assessment, Job Placement, and Training: What Can Be Learned from the Temporary Help/Staffing Industry? An Overview of the Industry and a Case Study of Manpower Inc." Boston.
- Joerg, Nancy E. 1996. *Welcome to the World of Independent Contractors and Other Contingent Workers*. Chicago: CCH, Inc.
- Kahn, Shulamit. 1996. "The Impact of Large Companies' Increased Use of Temporary Workers on Financial Measures of Performance." Presented at the Changes in Working Time in Canada and the United States Conference, June 13-15, 1996 in Ottawa, Canada.
- Kalleberg, Arne L., Jeremy Reynolds, and Peter V. Marsden. 1999. "Externalizing Employment: Flexible Staffing Arrangements in U.S. Organizations." Unpublished paper, University of North Carolina at Chapel Hill.
- Klein, Jeffrey S. 1996. "Weighing the Legal Considerations." In Stanley Nollen and Helen Axel, ed., *Managing Contingent Workers: How to Reap the Benefits and Reduce the Risks*. New York: American Management Association, 183-208.
- KRA Corporation. 1996. *Employee Leasing: Implications for State Unemployment Insurance Programs*. Final Report, submitted to Unemployment Insurance Service, U.S. Department of Labor, contract no. K-4280-3-00-80-30.

- Lee, Dwight R. 1996. "Why is Flexible Employment Increasing?" *Journal of Labor Research*, XVII, (4): (Fall), 543-554.
- Lenz, Edward A. 1996. "Flexible Employment: Positive Work Strategies for the 21st Century," *Journal of Labor Research*, XVII, (4): (Fall), 555-566.
- Mangum, Garth, Donald Mayall, and Kristen Nelson. 1985. "The Temporary Help Industry: A Response to the Dual Internal Labor Market." *Industrial and Labor Relations Review*, 38 (4): 599-611.
- Montana Legislative Council. 1994. "Workers' Compensation Emerging Issues: Independent Contractors, Contractor Licensing, and Employee Leasing: A Report to the Governor and 54th Legislature" November.
- National Employment Law Project. 1997. *Mending the Unemployment Compensation Safety Net for Contingent Workers*, New York: National Employment Law Project, October.
- Nollen, Stanley D. and Helen A. Axel. 1996. *Managing Contingent Workers*. New York: AMACOM.
- Peck, Jamie and Nikolas Theodore. 1998. "The Business of Contingent Work: Growth and Restructuring in Chicago's Temporary Employment Industry," *Work, Employment, and Society*, 12, (4).
- Pivec, Mary E. and Nina Massen. 1996. "FMLA's Reach Extends to Contingent Work Force." *The National Law Journal*, 18, (6): (February 26), C12-C13.
- Polivka, Anne E. and Thomas Nardone. 1989. "On the Definition of 'Contingent Work.'" *Monthly Labor Review*. (December), 9-16.
- Polivka, Anne E. 1996. "Contingent and Alternative Work Arrangements, Defined." *Monthly Labor Review* 119 (10), (October): 3-9.
- Pranschke, Sibyl C. 1996. "Contingent Workers." *Employee Benefit Journal*, (September), 7-14.
- Rebitzer, James B. 1998. "Contract Workers in the Petrochemical Industry," *Contingent Work: American Employment Relations in Transition*, edited by Kathleen Barker and Kathleen Christensen, Ithaca, NY: ILR Press.
- Schwab, Stewart J. 1995. "The Diversity of Contingent Workers and the Need for Nuanced Policy." *Washington and Lee Law Review*, 52, (3): 915-933.

Segal, Lewis M. and Daniel G. Sullivan. 1997a. "Temporary Services Employment Durations: Evidence from State UI Data," Federal Reserve Bank of Chicago Working Paper, WP-97-23.

Segal, Lewis M. and Daniel G. Sullivan. 1997b. "The Growth of Temporary Services Work." *Journal of Economic Perspectives*. Vol.11, 2, (Spring). 117-36.

Segal, Lewis M. and Daniel G. Sullivan. 1998. "Wage Differentials for Temporary Services Work: Evidence from Administrative Data." Federal Reserve Bank of Chicago Working Paper, WP-98-23.

Stamps, David. 1997. "Look Who's Joined the Training Game." *Training*, 34, (March): 32+.