

The Global Economy and Changes in the Nature of Contingent Work

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This chapter explores the continuing expansion of the "contingent" workforce in the United States in recent years. With the increasing globalization of production, the 1990s has witnessed several important developments in the use of contingent workers that characterize the global economy, the most notable of which is the sheer growth in their number.

The global expansion of capital and the transfer of production to the peripheral regions of the world economy has brought about a deindustrialization process in the United States that has shifted the employment structure from the goods-producing sector to the service sector and brought with it growth and expansion of the low-paid, part-time, contingent workforce.

While the growth in number of contingent workers has been an important development in the U.S. labor force, another important trend has been the increasing occupational diversity of these workers. When the decade began, contingent workers were typically peripheral members of the U.S. working class, disproportionately employed in clerical and industrial positions. But by the end of the 1990s, contingent workers were plainly visible in occupying a variety of temporary positions in U.S. workplaces.

Also examined in this chapter is the growing number of legal cases and government regulations involving the use of contingent workers. These legal and regulatory impediments faced by corporations using contingent workers, along with the active resistance of some workers to their underemployed status, appear to be slowing the growth of contingent work.

In recent years, temporary workers have organized to improve their conditions and several court cases involving contingent workers have arrived at decisions favorable to the fledgling resistance movement. Before any of these trends can be more fully understood, however, a brief conceptual and

historical groundwork is warranted given the differing contemporary views of what constitutes contingent work.

A CRITICAL CONCEPTUALIZATION OF CONTINGENT WORK

Although the use of a narrow official conception of the contingent workforce makes it appear that U.S. capitalism is providing an abundance of opportunities for work, it deviates sharply from the daily reality experienced by millions of underemployed workers in the United States. It is this underemployed status that truly segregates the contingent workforce from the permanent, full-time, year-round labor force. When considering the size of the contingent labor force, it is fundamental to understand that there are millions of contingent workers in the country who share more in common than simply meeting a set of convenient governmental criteria. Most important, contingent workers share a "secondary labor market" status, characterized by low wages, low skills, and few if any fringe benefits—conditions exacerbated by the accelerated globalization of capital.

Since Audrey Freedman of the Conference Board (a business research group) first coined the term in the mid-1980s, *contingent work* has evolved to mean different things to different people. The result has been a proliferation of wide-ranging estimates of the size of the U.S. contingent workforce. Most significant in terms of its social and economic implications is the definition used by the Department of Labor's Bureau of Labor Statistics (BLS). Its definition and conceptual framework is the one most frequently cited by academic and popular authors. Over time, the way the BLS has framed contingent work has gained growing uncritical acceptance. Scholars publishing in peer-reviewed journals have used BLS definitions without hesitation or scrutiny.

The Department of Labor has developed three estimates of the number of contingent workers in the U.S. labor force. In February 1995, the BLS first enumerated a survey of this population in a supplement to its monthly Current Population Survey (CPS). The three estimates begin with a minimalist inclusion of types of contingent workers that excludes many temporary workers. The broadest of the three estimates includes additional *workers who do not expect their jobs to last indefinitely*. Yet this broader conceptualization does not differ significantly from the most narrow of their definitions. The BLS's main criterion is whether a worker expects a job to last indefinitely. Although they acknowledge a host of emerging workplace arrangements including growing numbers of independent contractors, on-call workers, employees provided by contract firms, and workers supplied by temporary help agencies, they could just find 5.6 million contingent workers in their follow-up study in 1997.¹ Not only does the total number seem understated but the 1997 CPS supplement further asserted that despite corporate America's

growing use of temps, part-timers, and independent contractors, the number of "official" contingent workers declined, from 4.9 percent of the labor force to 4.4 percent.²

In short, since the mid-1990s, a very narrow view of contingent work has become the operational definition used in both popular discourse and academic research. The result is an overly sanguine assessment of the conditions faced by a growing army of workers saddled with a contingent status in the U.S. labor force. For example, in a recent summary of contingent work studies, Richard M. Devens, writing in *Monthly Labor Review* draws the conclusion that with the decline in contingent work, workers are feeling increasingly secure in their current positions.³ Devens draws this conclusion in spite of substantial public opinion polls showing that U.S. workers have never felt so insecure about their jobs as they do at the end of the twentieth century.⁴

At the outset of the 1990s, following the conventions adopted by critical scholars of the U.S. labor force, I estimated that the contingent workforce in the United States had surpassed one-quarter of the workforce and could well be as high as one-third.⁵ In late 2001, identifying one-third of all U.S. workers as contingent would appear to be a conservative estimate, rather than an alarmist exaggeration.

The government and conservative econometric estimates are not without competitors in conceptualizing contingent work. In an article in *Social Policy*, Edie Rasell and Eileen Appelbaum, following Arne Kalleberg et. al., emphasize the concept of "nonstandard" employment over contingent work and include in their estimate independent contractors, contract workers (e.g., janitors employed at a building custodial services firm who spend their working hours at other work sites), part-time workers, and on-call/day laborers.⁶ Using this framework, the authors suggest that in 1995, 29.4 percent of all U.S. workers held contingent jobs, a figure considerably greater than the government's official estimate of less than 6 percent. Without comprehensive data to precisely document trends in the contingent labor force, this definition more nearly approximates the true condition of workers in the United States as the new century begins.

Yet, even this more expansive conceptualization leads to an understatement of the number of contingent workers. In the U.S. labor force, there are subpopulations of employees that are all but neglected by labor statistics; workers whose jobs are certainly not going to last indefinitely, such as migrant farmworkers and temporary agricultural workers allowed into the United States under the H-2 visa program. Contrary to public perception, the numbers of these workers has not declined in recent years. Indeed, the number of workers with temporary work visas grew officially from 60,000 to nearly 120,000 in the late 1990s.⁷ To reiterate, to avoid the impression that absolute precision can be determined, this chapter casts an even broader net

in conceptualizing contingent work (or those in nonstandard working arrangements). It links contingent workers by highlighting that the vast majority face uncertain working tenures, lower pay, and lesser levels of fringe benefits than full-time workers performing the same tasks, and whose physical location at the workplace typically isolates them from permanent or full-time workers. Additionally, this chapter stresses that the contingent workforce is a demographically distinctive one—disproportionately composed of nonwhites, women, youth, and the elderly.

TYPES OF CONTINGENT WORKERS

The expression *contingent work* does not refer to a single monolithic type of employee–employer arrangement and is not restricted to any specific economic sector. Instead, contingent workers are found throughout the economy, and include employees of the temporary help industry, part-time workers, day laborers, and others outside of the permanent workforce.⁸ Although some workers choose a contingent working status (often for family or other personal reasons), a large and growing percentage of these workers are finding contingent positions their only option as U.S. corporations continue to restructure their operations on a global basis.

Employers have increasingly turned to contingent workers to cut labor costs, gain greater control over the labor process, and increase their profits. This strategy can also thwart unionization efforts, because contingent workers are inherently more difficult to organize. Together, these factors have led to the creation of a more transient and contingent workforce.⁹

As noted, virtually all the workers considered share several important characteristics: Most are paid less for working at part-time jobs than full-time employees earn on standard schedules. The majority are excluded from receiving any type of fringe benefits, except those mandated by federal law. Except for a section of the working class that can afford intermittent employment, contingent workers face a future of limited upward occupational mobility and very few have opportunities to exercise discretion over how their work is performed, or to upgrade their existing skill levels.

The corporate search for a cheap, docile, and flexible workforce in the global economy is closely related to the process of control and exploitation of labor, and the movement toward a contingent workforce is the result of changes in the capitalist labor process now taking place on a global scale—changes that have an enormous impact on the working class as a whole.

The transition to an increasingly contingent workforce provides U.S. businesses with greater flexibility and higher rates of profit, but it means lower wages, reduced health care protection, and the loss of pension and retirement benefits for workers.¹⁰

Temporary Workers

Like others among the contingent labor force, temporary workers are largely made up of full-time job seekers. And like independent contractors and involuntary part-time workers, temporary workers are an underemployed segment of the labor force, enduring uncertain hours, inadequate income, and a profound mismatch between their existing skill levels and the working opportunities offered by the temporary help industry. According to BLS data, the number of workers in the help supply services industry (the vast majority of whom are “temps”) grew by an annual rate of 17 percent between 1992 and 1995, and has since slowed to a yearly growth rate of 9 percent.¹¹ The BLS also reveals that of the more than 18 million nonfarm jobs created between 1992 and 1998, 1.4 million were in the help supply services sector of the labor force.¹² In the final quarter of 1998, the average number of individuals employed daily in temporary help jobs “officially” peaked at an estimated 2.9 million workers.¹³ Because temporary jobs are supposed to last indefinitely, logic would suggest that all those working on such a schedule would be a part of the BLS’s “contingent workforce.” But, as noted above, a significant number of temps are not counted as contingent workers.

In terms of industrial distribution, the six major sectors within the staffing services industry include office/clerical, industrial, technical, professional, health care, and marketing. The office/clerical sector of the industry continues to dominate as it has for decades. In 1998, wages paid to such workers reached \$17.6 billion, or slightly more than 40 percent of all staffing services’ payroll. It is, however, a declining sector of this increasingly diversified industry. In 1991, clerical workers made up nearly 48 percent of industry payroll. The technical sector of the industry held its own during the 1990s, with wages paid to workers in the industrial sector reaching \$15 billion in 1998. Another area to show increased growth in the past decade has been the independent professional. Experts in areas such as law, sales, marketing, and management have steadily grown in prominence among the ranks of temporary workers. Between 1991 and 1998, the number of such professional workers in the industry grew eight-fold, with payroll reaching nearly \$3 billion.¹⁴ Technical workers, including computer programmers, designers, and engineers are another rapidly growing sector, doubling in payroll during the 1990s.

One area that has declined in significance has been in health care, where payroll has dropped from 8.4 percent of the total in 1991 to 2.2 percent in 1998. According to the National Association of Temporary and Staffing Services (NATSS), the decline is attributable to the rise of managed health care. Finally, marketing workers have emerged as a distinct niche in the temporary labor force as the demand for telemarketers and product demonstrators has increased.

As a group, temps are similar to other segments of the U.S. working class. Indeed, many have had experience working full-time in the U.S. economy. But despite the BLS's reassurances that job displacement is on the decline in the United States, the fact remains that nearly 700,000 permanent jobs were cut by U.S. corporations in 1998, the most of any year in the decade. Corporate America, in spite of the steady drumbeat about U.S. prosperity and the stock market's dizzying performance, continues to downsize and outsource its personnel as a quick and ostensibly painless way to cut costs, increase profits, and heighten productivity. In short, as corporations continue to pursue a lean-and-mean profile, it should come as little surprise that an industry founded on the notion of worker interchangeability, and jobs that by definition have short tenures is growing as rapidly as the temporary help sector of the economy. It is an industry that neatly complements American business practices as the new century unfolds.

Taken together, the temporary help services industry is a financially formidable and steadily advancing one, with 1998 being the seventh consecutive year of double-digit growth (as measured by receipts collected). In 1990, the industry collected roughly \$20 billion for its services, with the total reaching nearly \$60 billion in 1998. Manpower Inc. and Kelly Services are the industry's giants in terms of payroll, employees, and number of offices. It is truly a sign of the times that Manpower is not just the industry's leader, but also the United States's single largest private employer.

Part-Time Workers

Part-time work has constituted a major portion of the contingent workforce for decades. Like other underemployed workers, part-timers generally endure low wages, poor, if any fringe benefits, and uncertain working futures. And as with other segments of the contingent labor force, the high proportion of part-timers in the economy largely reflects corporate America's desire to minimize workers' wages and benefits. For conceptual purposes, the part-time workforce in the United States can be broken down into two categories—those who work part-time because they prefer that type of schedule and those who are known as "involuntary part-time workers." The latter are made up of workers who ordinarily work full-time but who are temporarily on a reduced schedule as well as those who accept part-time employment because it is the only work they can find.

Since the late 1960s, the number of part-time workers and their percentage of the U.S. labor force as a whole has increased substantially. During the Reagan administration in the 1980s, part-time work grew particularly rapidly. Between 1980 and 1988, the number of part-time workers increased by 21 percent (from 16.3 million to 19.8 million) at a time when the total U.S. labor force grew by only 14 percent. As Susan McHenry and Linda Lee Small have

observed, more than 25 percent of the "much heralded 10 million jobs created during the Reagan era were part-time."¹⁵ By the end of the 1980s, the part-time workforce had expanded to roughly one-fifth of the entire U.S. labor force. Involuntary part-time workers figured prominently in the uptick during this period. For example, between 1972 and 1982, when voluntary part-time employment was advancing by 33 percent, the growth in involuntary part-time work increased by 166 percent, from 2.19 million to 5.8 million.¹⁶ During the 1980s, growth in the involuntary part-time workforce slowed significantly, but there were still some 5 million officially recorded involuntary part-time workers in 1990. During the early part of the 1990s, the number of part-time and involuntary part-time workers continued to rise. In 1994, however, the BLS redesigned its traditional survey of the labor force, adding a question that resulted in a higher percentage of part-timers being categorized as voluntary and a smaller percentage as involuntary. Since that time, both types of part-time workers have shown a downward trend as a percentage of the labor force.

It is noteworthy that the conceptual change attenuated the number of part-time workers for the BLS, but it could have just as easily implemented changes that would have officially increased the number and percentage of part-time positions. For example, if the BLS enumerated part-time jobs, rather than the number of part-time workers, they would have arrived at a larger number. Many part-time workers are, in fact, multiple job holders, officially counted as full-time workers because they work more than 35 hours per week, but who are really patching together two or more part-time jobs to produce a living wage for their households. In short, the Department of Labor has made a number of conceptual changes in the 1990s that have consistently resulted in an understatement of the number of workers who are officially identified as contingent. In this instance, the number of part-time workers who endure low wages, substandard fringe benefits, and uncertain working futures are increasingly being counted as voluntary members of the part-time workforce. In contrast to the BLS's figures, consider the findings of a CBS–New York Times poll in 1995 that asked part-time workers if they prefer part-time or full-time schedules. Whereas the BLS survey concluded that only 20 percent of part-timers would prefer to be on a full-time schedule, this poll found that 47 percent of all part-timers would prefer full-time schedules.

In 1998, despite a growing number of conceptual criteria that effectively limits the number of part-time workers identified as involuntary, 3.6 million workers still reported being employed on a part-time basis because of "economic reasons," including "slack work," and part-time work being the only type of employment available. In addition to these, the bureau identified 23 million workers who were employed on a part-time shift voluntarily. In both cases, the numbers, even given the BLS's caveats, seem sizable given the steady economic expansion that has characterized the 1990s. One could

reasonably ask: How many years into a recovery does it take to provide full employment for all of those who want it? After years of economic expansion, tens of millions of U.S. workers, disproportionately female and nonwhite, still cannot find full-time, year-round, permanent jobs. Even those who say their schedule is voluntary are not necessarily saying their lower wages and lessened benefits are accepted on a voluntary basis.

Clearly, the BLS has adopted a very narrow view of what constitutes contingent employment. Instead of focusing on a fragment of the working class that shares low wages for performing the same work as permanent employees, who have little in the way of health insurance and other fringe benefits, and who share an uncertain working future, the BLS had constructed a view of contingent work that fits neatly into their existing methodological procedures. Arriving at a seemingly precise official count of the contingent workforce has taken priority over understanding the fundamentally underemployed character of contingent employment.

Day Laborers

In virtually every medium to large U.S. city, there are specific sites (typically streets where homeless shelters are located) where workers gather daily to try to secure work as landscapers, construction workers, or manual laborers. Many citizens in these areas have witnessed men trying their luck at flagging down construction or landscaping contractors to find day work.¹⁷ Generally, day laborers are lesser skilled, less educated, and are therefore more vulnerable to the vagaries of the local labor market and to arbitrary and capricious treatment by employers. Compared with other members of the growing army of contingent workers, day laborers are also more susceptible to the possibility of on-the-job injuries by more frequently exposing themselves to truly hazardous working conditions. Construction contractors pursuing cheap labor for manual jobs routinely use day laborers to fill their needs. According to Arne Kalleberg, et. al., there were nearly two million day laborers employed in the U.S. labor force in 1995.¹⁸

In Atlanta, which has seen its day-labor population balloon in the past two decades from roughly a thousand to tens of thousands, race has become a salient issue for local residents and authorities. As is true in most other U.S. cities, the day-labor population is disproportionately nonwhite, and increasingly Latino in its demographic composition. And frequently most day laborers are undocumented workers. To control the day-labor population, Marietta, Georgia, following other communities in and around Atlanta, adopted an ordinance in 1999 that prohibits day laborers from congregating on public land.¹⁹ It also bans day laborers from waiting on private property without permission. Unlike other communities, however, Marietta's day-labor corners, heavily populated with workers from El Salvador, Guatemala, and Mex-

ico, have been the locus of an intensive crackdown on illegal immigrants. Despite the adverse conditions faced by workers getting day labor from the corner, for some, especially newly arrived South American and Mexican immigrants, it remains the only work they can find.

In other communities, the increasing reliance on day labor to build U.S. cities has attracted attention because of the dangerous nature of the work and of the blatant abuses day workers routinely endure. In perhaps the clearest example of the difficult, dangerous activity day laborers perform, and a pattern of incidents which U.S. Attorney General Janet Reno labeled "shameful human exploitation," untrained homeless day laborers are being recruited to remove asbestos from demolition projects around the country. Asbestos, long-used (and still manufactured in the United States) for insulation, is hazardous even when handled by highly skilled professionals. Asbestos fibers can easily become imbedded in the lungs, causing respiratory illnesses, including asbestosis. Careful removal requires special precautions, including protective masks and respirators. Removal procedures include wetting down the material and putting it into special containers. None of these precautions has been evident in the day-laborer cases. Clearly, this aspect of day labor is a nationwide problem and while several building contractors have been caught and punished, it is unclear how many similar incidents involving hazardous work and day labor go undetected.

Less dramatic evidence, but still demonstrative of the dirty, dangerous, and often unrelenting pace of day labor can be found in accounts from Texas, North Carolina, and California. For instance, in Houston, according to one contractor, it is the industry's little secret that illegal immigrants do the hard, concrete-busting, ditch-digging jobs at many construction sites. Hispanic immigrants are popular there because they have the reputation of being good workers willing to perform backbreaking tasks without complaint.²⁰ In Raleigh, N.C., inexperienced, untrained day laborers were employed to stuff sticks of dynamite down a metal tube and ignite them to clear land for a golf course.²¹ And in Los Angeles, where the most comprehensive survey of day laborers has been undertaken by UCLA's Center for the Study of Urban Poverty, more than half of the day laborers interviewed at eighty-seven Los Angeles sites reported being abused by their employers.²²

In short, not only are day laborers a sizable and important part of the U.S. contingent workforce, they are one of the most vulnerable and least protected groups. An irony surrounding the day-labor issue is that demand for such employment has been strongest in the same communities where resistance to their presence has been greatest (especially in southern California, where day laborers are intensively used for landscaping and other residential-type work).

Labor pools that routinely employ day laborers, much like labor corners, are particularly prominent in rapidly growing southern and southwestern

states such as Louisiana, Texas, Georgia, Nevada, and California. This very bottom sector of the temporary employment industry, together with the rapidly expanding practice of communities constructing facilities for day laborers and their employers, is leading to the institutionalization of day labor. Labor pools thrive on the work provided by low-skilled manual laborers, often entrapping them in an endless cycle of temporary day jobs that prevents them from escaping poverty.²³ Working for a labor pool usually involves hazardous, uncertain, arbitrary, and undesirable working conditions, features often shared with other segments of the contingent labor force. Labor pools attract workers from among large numbers of the urban poor, a population that is disproportionately nonwhite.

Other Types of Contingent Work

Many observers of the labor process in the United States have spent the bulk of their research efforts on the more prominent and publicized categories of the burgeoning contingent workforce. But many neglect more specialized subgroups in the working population who share all of the same fundamental features as temporary workers and involuntary part-time workers. These include groups such as independent contractors, on-call workers, and subcontracted employees.

In recent years, subcontracted employees have become increasingly common in U.S. workplaces as corporate officials pursue maximum flexibility in managing their workforces. Often, subcontracted employees work at jobs that were previously held by workers employed by the very same employers. For example, a growing number of subcontracting firms are providing "business services" such as janitorial and food service workers. Although the industrial sector known as "business services" includes companies with expertise in everything from advertising to engineering, the typical subcontracting scenario involves a corporation paying a (subcontracting) firm to landscape its physical plant or to provide custodial services.

It is difficult to precisely estimate how many subcontracted workers may be employed in the U.S. labor force on any given day, but the numbers are clearly on the rise. The BLS, in a special survey of subcontracting patterns among manufacturing companies, discovered that a majority were using some type of subcontracting arrangement. The canvass showed consistent increases among manufacturing companies in the use of subcontracting for a range of services, including accounting, machine maintenance, secretarial work, engineering and drafting, janitorial work, and trucking.²⁴ Subcontracted workers share many characteristics with other members of the expanding contingent workforce. They tend to be paid less than permanent, directly employed workers, have minimal access to fringe benefits, have short and unstable tenures with their employers, and are seldom a part of

any collective-bargaining agreement. Kalleberg et al., in their study of "insecure" or nonstandard work, estimated there were a total of 1.4 million part-time and full-time workers employed by contract companies in 1995.²⁵

On-call workers represent another sizable group of employees that tend to go neglected by analysts of the contingent work phenomenon. Generally, on-call workers refer to a pool of employees that employers may draw on as the need arises, often for relatively extended periods. In the U.S. labor force, employees such as construction workers, often supplied by a union hiring hall, and substitute teachers, employed and supplied by local school districts, are quintessential examples of on-call workers. Again, despite the lack of certainty surrounding the length of these types of work, neither the BLS nor private researchers generally include them in their count of the contingent workforce.

Independent contractors have become a particularly controversial part of the contingent workforce. Generically, independent workers are freelancers who offer a product or service to individuals, a company, or the government. Many of these workers are actually self-employed; offering their services as freelancers or consultants, some are doing very well. In their study of nonstandard work arrangements, Kalleberg et al. estimated there were more than 1 million wage and salaried contractors and 6.5 million self-employed independent contractors in 1995.²⁶ It should be emphasized that though the number of self-employed individuals is high, their economic fortunes are generally less favorable than full-time wage or salaried workers. Self-employment allows workers to exercise discretion over their own labor, but that often means overwork and relatively little income. Many are able to remain self-employed only for short periods, eventually seeking out permanent full-time work.

In recent years, the "independent contractor" type of arrangement has been grossly abused by employers. Many—the most infamous of which has been the Microsoft corporation—have engaged in the practice of terminating permanent, full-time employees en masse and then rehiring the same workers as independent contractors. For employers, this kind of subtle change in job status reaps significant financial rewards. In one simple stroke of the pen, and without losing any of their trained workers, employers have been able to cut their labor costs by one-third.

Few among the millions of workers discussed here enjoy the kind of health insurance coverage, vacation, or retirement plans that full-time permanent workers still expect to receive. This survey, which parallels the work of Rasell and Appelbaum, as well as Kalleberg et al., nonetheless omits additional groups that share an indefinite employment future and whose daily lives in every other way share much in common with the above cited segments of the workforce. But these workers seldom receive the same attention when the topic of contingent work surfaces.

SLOWING THE SHIFT TO CONTINGENT WORK

There are a host of reasons that may attenuate the growth of contingent work. Employers who rely on temporary and other contingent workers are likely to suffer from a variety of organizational "human resource" problems.²⁷ Many managers have begun to discover that contingent work is neither efficient nor cost-effective. Clearly, workers who have a more tangential association with their employers care less about tardiness, absenteeism, and even sabotage on the job than permanent full-time workers. Although a host of additional reasons surely play a role, a 1998 survey by CCH of 401 human-resource officials revealed that worker absenteeism was up 25 percent over the same period a year earlier (with dollars lost to companies as a result increasing 32 percent).²⁸

Other managerial concerns have been published with regularity in the business press during the 1990s. In 1995, in surveying the swelling numbers of contingent workers, *HR Focus* (a publication of the American Management Association) asked its business readers "Are Contingent Workers Really Cheaper?"²⁹ In *Computerworld*, Barb Cole-Gomolski documents problems from relying on contingent workers, especially for extended periods.³⁰ She quotes a worker who had been at Microsoft for more than six years (employed as a "permatemp") who spoke of temps creating a stratified workplace dividing permanent and temporary staff, making teamwork problematic, along with others who spoke of issues surrounding morale and frustration. Moreover, even temps or part-timers who are filling important, relatively well-paid positions tend to terminate their contingent status when full-time employment becomes available. For managers, this is a potential time bomb as growing numbers of temps work as highly-skilled technicians. According to the BLS, the number of computer systems analysts and engineers working as temps or contract workers increased from 76,000 in 1995 to 107,000 in 1997 (an increase of nearly 41 percent). Besides Microsoft, other household names in the information systems industry such as Compaq, maintain about one-fifth of their workforce on a contingent basis. Cole-Gomolski warns that information systems designed and implemented by "permatemps" will be more difficult to upgrade or repair in the future because the same contingent workers are unlikely to remain employed at the same firm. As one temp database administrator expressed it, "[I] really don't want people pestering me months down the road" once they have accepted other employment.

Still another reason the movement toward contingent work may slow substantially is the growing number of regulations and local laws that involve and often uphold the rights of workers. As Susan Massmann notes, some employers have found that the short-term benefits of hiring temporary workers and other contingent workers is being transcended by lengthy and costly litigation.

³¹ Key to much litigation has been the (nonmandatory) Equal Employment Opportunity Commission's (EEOC) issuance of guidelines for employers who use contingent workers. Though the guidelines are not legally binding, courts in many jurisdictions uphold its standards. Meanwhile, other corporations are being penalized for misclassifying their employees as independent contractors and temporary workers in an attempt to reduce labor costs.

L. Braff, for instance, outlines the kinds of legal pitfalls involved in classifying and misclassifying workers.³² The author notes that while there are significant advantages to employers who use contingent workers, such as being exempt from making contributions to Social Security and minimizing the likelihood of union activity, they may encounter problems with the Internal Revenue Service, the Department of Labor, the National Labor Relations Board, and may find themselves in violation of governmental regulations such as the Consolidated Omnibus Budget Reconciliation Act, the Worker Adjustment and Retraining Act, and the Family and Medical Leave Act, should they carelessly misclassify workers to secure short-term gains.

In recent years, Microsoft has exemplified the potential problems that corporations are encountering in their attempt to use contingent workers to cut costs. As noted, U.S. corporations like Microsoft, with the stroke of a pen, have been relabeling their workforces as independent contractors, thus permitting them to avoid fringe benefit costs and regulatory liabilities. For much of the 1980s and 1990s, Microsoft has increased its independent contractor and temporary workforce, and reaped a windfall in increased profits as a result. But in October 1996, the Ninth U.S. Circuit Court of Appeals in San Francisco, following an investigation by the Internal Revenue Service, ruled in favor of contingent workers in a class-action lawsuit. The suit accused Microsoft of wrongly classifying many of their workers as independent contractors, therefore unfairly denying benefits to those who were actually full-time employees.

In the Microsoft case, most of the plaintiffs were software testers and writers of technical manuals. They had worked for years at the same company, worked under the same supervisors as regular workers, performed the same kind of work in the same offices as other employees, and even had similar company badges. But Microsoft hired them as temps, and had them sign agreements in which the workers accepted responsibility for paying their own withholding taxes and all fringe benefits. After it was initially fined and penalized in 1990 by the IRS over the practice, Microsoft began intensively using private-sector temporary staffing companies. These workers were given the option of continuing to be Microsoft employees if they agreed to be hired by the temporary agency. The workers refused and the class-action suit was filed. In reaching its 1996 decision, the court explicitly scorned the "large corporations" that hire temporary employees "as a way of avoiding payment of employee benefits, and thereby increasing their profits."

The Microsoft case illustrates that the corporate obsession of using independent contractors to save money may actually cost firms more in penalties, fines, and back payments (not to mention employee morale and loyalty) than if they were classified correctly at the outset. More recently, Microsoft suffered another legal blow in its continuing efforts to deny benefits to temporary workers.³³ In early 1999, a three-judge panel of the Ninth Circuit Court of Appeals in San Francisco ruled that thousands of previously excluded workers were eligible to buy discounted stock in the company. The decision potentially adds millions to the company's past and current compensation costs. Despite Microsoft's best efforts, this ruling expanded their liability from hundreds to thousands of workers, many of whom may eventually buy company stock and be paid for the appreciation of shares they were unable to buy.

Again, the business and legal literature makes it plain that Microsoft is not the only company involved in such illicit practices, nor are theirs the only tactics being used against contingent workers. In October 1998, the Labor Department filed suit against media giant Time Warner Inc. for denying benefits to its temporary employees, and in June 1999, contingent hospital workers in California's Santa Clara County sued the county government for denying them benefits. In their case, roughly one-third of the 3,500 employees at Valley Medical Center have been classified as temporary, even though many have been employed by the hospital for years.³⁴ And according to the General Accounting Office (GAO), between 1994 and 1998, the IRS conducted more than 11,000 Employment Tax Examination Program audits that resulted in the assessment of \$751 million in taxes and the reclassification of nearly 500,000 workers.

In short, the 1990s has presented numerous obstacles to U.S. corporations in their quest to create a flexible, disposable, contingent workforce. Although victories are being scored on both sides, the issue of contingent work has been raised to an unprecedented point of contention between workers and their employers. The U.S. legal and regulatory apparatus, then, provides one important reason to believe contingent work may slow in the near future.

But at the same time, it is important to emphasize that workers have not simply been passive in the transition to a contingent labor force. As individuals, in organizations, and in labor unions, workers have resisted the trend to nonstandard work arrangements.³⁵ Workers have been proactive and are showing that they are willing to invest heavily to protect the more marginalized members of the U.S. workforce.

Perhaps the industrial dispute involving contingent work that gained the greatest national profile recently was the successful August 1997 strike of workers employed by the United Parcel Service (UPS), a labor action that was heavily influenced by the contingent work issue. Earlier in the 1990s, UPS had been hiring disproportionate numbers of contingent workers. In-

deed, of 46,000 unionized workers the company added from 1993 to 1997, fully 38,000 were hired as part-timers. By that point, the UPS part-time workforce had reached 110,000 workers.

In negotiations with UPS, the union rejected the company's rationale for its growing reliance on contingent workers. With revenues that exceeded \$22 billion in 1996 and the market dominance it enjoyed, UPS officials' argument that it needed more part-time workers to remain competitive appeared dubious. During the process, the Teamsters emphasized the savings the company was accumulating from the lower earnings of part-time workers who were paid \$9 to \$10 hourly compared with \$20 by full-timers. In early August 1997, with little sign of progress in the negotiations, 185,000 UPS drivers and package sorters went on strike. It was the largest strike in the United States in three decades and, according to a Gallup/CNN poll, 55 percent of Americans surveyed supported the Teamsters while just 27 percent backed UPS.

The Teamsters won major concessions as a result of the contentious fifteen-day strike, including higher wages for both part-time and full-time workers, more full-time jobs, and worker control over their pension plan. With respect to the use of contingent workers, UPS agreed to convert 10,000 part-time positions into full-time jobs (compared with the 1,000 figure initially offered by the company). Additionally, the company gave ground on the use of subcontractors—agreeing to phase out their use over six months (except during holidays). Taken together, then, important legal victories involving contingent workers, the regulatory environment of the United States, and the resistance of organized labor represent significant constraints in U.S. corporations' continuing efforts to implement contingent work arrangements.

CONCLUSION

In this examination of current issues surrounding contingent work in the U.S. labor force, we are left with some important conclusions and many unanswered questions. Clearly, one point that deserves reiteration is that the efforts of government bureaucrats and unreflective academics to define and measure the magnitude of the contingent workforce has led to a significant understatement of the true nature of the problem. In the quest to precisely operationalize and enumerate this marginalized segment of the workforce, government statisticians and independent researchers omit large and significant groups in the U.S. labor force. In this chapter, attention was drawn to groups of contingent workers who have come to serve a function for employers in facilitating management control within the workplace. In addition, it was shown that the creation of a contingent workforce has served to divide workers. It has erected an obstacle to communication and mobilization

among workers, and pitted one group against another. The use of temporary workers, part-time employees, subcontractors, and others who are paid less, receive significantly fewer benefits, and have a loose affiliation with their employers undermines the pay and working conditions of all workers. In this way, the use of contingent workers has been a highly effective management tool for employers—a strategy that, in the short run at least, has facilitated management's control over the labor process and assured the maximization of the potential output of every hour of paid labor.

However, despite the tremendous economic and political power of U.S. corporations, a combination of their own narrow self-interest and the ongoing contest with organized labor may actually hinder and slow the advance toward contingent work in the twenty-first century.

NOTES

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