



At the Company's Mercy:

Protecting Contingent Workers from Unsafe Working Conditions

by CPR Member Scholars Martha McCluskey, Thomas McGarity, and Sidney Shapiro and Senior Policy Analyst Matthew Shutz

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Executive Summary

A new trend in the U.S. labor market is reshaping how management and workers think about employment, while at the same time reshaping the field of occupational safety and health. More and more workers are being employed through “contingent work” relationships. Day laborers hired on a street corner for construction or farming work, warehouse laborers hired through staffing agencies, and hotel housekeepers supplied by temp firms are common examples, because their employment is contingent upon short-term fluctuations in demand for workers. Their shared experience is one of little job security, low wages, minimal opportunities for advancement, and, all too often, hazardous working conditions. When hazards lead to work-related injuries, the contingent nature of the employment relationship can exacerbate the negative consequences for the injured worker and society. The worker might quickly find herself out of a job and, depending on the severity of the injury, the prospects of new employment might be slim. Employer-based health insurance is a rarity for contingent workers, so the costs of treating injuries are typically shifted to the worker or the public at large. Because employers who hire workers on a contingent basis do not directly pay for workers’ compensation and health insurance, they are likely to be insulated from premium adjustments based on the cost of workers’ injuries. As a result, employers of contingent labor may escape the financial incentives that are a main driver of business decisions to eliminate hazards for other workers.

This white paper examines the public policy challenges that industry’s increasing reliance on contingent workers presents, and proposes a series of policy solutions aimed at protecting this growing segment of the workforce from unsafe working conditions. In particular, the paper examines the role that contingent workers play in four specific industries:

- **Farming:** Growers are increasingly turning to farm labor contractors as a source of workers, with the percentage of workers hired through those firms increasing from 14 percent in 1993-1994 to 21 percent in 2001-2002. These workers face stagnating wages that remain below federal poverty levels, unhealthy work and living conditions that do not meet basic standards, and even cases of modern day slavery.
- **Construction:** Almost all of the contingent construction workers in the United States are young men, and most are Hispanic or Latino. They tend to take on some of the most dangerous jobs, such as general laborers, painters, and roofers. These jobs carry significant risks of musculoskeletal injuries, falls, and nail-gun injuries, among other things.
- **Warehousing:** A substantial human infrastructure supports retail behemoths like Walmart and Amazon. Hundreds of thousands of contingent workers suffer the repetitive stresses of lifting and moving goods, which can result in sore muscles and joints, carpal tunnel syndrome, and nerve system damage.

**“A job
is a dying
concept.”**

**–Dr. John
Howard,
Director
of NIOSH**

June 19, 2012.

- Hotel workers: A unique aspect of contingent work in the hotel housekeeping industry is that, unlike the other industries discussed in this report, this is an industry dominated by women. Scrubbing floors, vacuuming, changing sheets on heavy mattresses, and navigating unwieldy carts in carpeted hallways lead to musculoskeletal injuries that are aggravated by cleaned-room quotas that continue to increase.

Reforms to federal laws, regulations, and policies would help ensure that contingent workers are better protected from workplace hazards.

- Education and training: Contingent workers are often thrust into new jobs for which they have little formal training. The Occupational Safety and Health Administration (OSHA) should establish rules to ensure that employers provide to all of their workers a minimum level of job- and site-specific training about their assigned tasks, known hazards, relevant protective equipment and practices, and the proper methods for reporting hazards and injuries. In addition, OSHA should expand funding opportunities for community organizations to provide education and training programs that can address the particular vulnerabilities and barriers facing contingent workers.
- A right to act: Congress should amend the Occupational Safety and Health Act (OSH Act) to include a private right-of-action that allows any person to bring suit in federal court against any other person who violates provisions of the statute or its implementing regulations.
- Stronger OSHA enforcement: OSHA should conduct “sweeps” of the industries where contingent workers are most prevalent, issuing enhanced penalties against employers that have large numbers of contingent workers and fail to make special accommodations for those workers in the firms’ health and safety programs.
- Ergonomics standards: OSHA should craft ergonomics standards for certain industries, beginning with the industries in which contingent workers suffer high rates of musculoskeletal injuries. Although an attempt to issue industry-wide ergonomics rules failed twelve years ago, narrower rules are both feasible and legal under the Congressional Review Act.
- Voluntary Protection Program reforms: OSHA should revise its criteria for entry into the Voluntary Protection Program so that participating firms do not use significant numbers of contingent workers in high-hazard jobs.
- New studies: In conjunction with the National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Labor Statistics (BLS), OSHA should develop a clearinghouse for information concerning the health hazards in industries

where contingent workers are most prevalent. Technical data and statistics should be made available for policymakers and advocates, while other publications should be developed specifically for workers. These efforts should provide a basis to determine if loopholes in the OSH Act that limit the statute’s applicability to domestic workers and farmworkers on small farms should be closed.

- Enhanced foreign-language capabilities: OSHA should continue its efforts to develop staff able to communicate effectively with workers who have limited English proficiency. The agency should also continue developing relationships with foreign consulates that can help OSHA with education, training, and enforcement.

Women and people of color make up much of the new contingent workforce, which underscores the importance of reforming laws and policies. Vulnerable worker populations are especially reliant on a strong social safety net to protect them from workplace hazards.

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Introduction

In the early afternoon of March 23, 2005, explosions ripped through BP's Texas City refinery, killing 15 workers and injuring another 180. Contractors, not BP employees, absorbed the brunt of the explosions' force. All 15 workers who were killed were contractors, as were 166 of the 180 workers who were seriously injured (92 percent). The seriously injured workers came from 13 different firms. The Texas City refinery employs a large number of contractors (some 800 of the approximately 2,600 workers typically at the plant) and the explosion happened while BP was bringing a specialized unit back online after maintenance, a routine but infrequent task contracted out to firms that specialize in the work. The disproportionate impact on contract workers was also due to the fact that they were being housed in temporary trailers that were not properly sited. Fortunately, workplace catastrophes of the magnitude witnessed in Texas City are rare. Nevertheless, the event highlights the risks inherent to workplaces where employment relationships are tangled in ways that eliminate clear links between workers, their employers, and the available mechanisms for ensuring safe and healthy working conditions.

Contingent work, largely because of its flexible character, defies simple definitions. From a structural perspective, it is often described as a "tripartite" employment relationship, where employment rights and responsibilities are divided between the worker, the firm that places the worker and cuts paychecks, and the firm that needs work done. But from a worker's perspective, the most salient characteristic of contingent work is the absence of an express or implied contract for long-term employment. Day laborers who congregate in the early mornings in parking lots of big box home improvement stores obviously fit the bill because of lack of job security. So do warehouse workers who are hired to work in a distribution center for a well-known retailer but are supervised by a separate logistics company and are placed at the site and paid by temp agency. Counting up the number of contingent workers in the United States is difficult because employment relationships come in so many different forms and federal programs for developing these statistics are not designed to keep track of workers who weave in and out of the workforce.

Putting aside the definitional problem, this paper will highlight four industries in which contingent workers make up a significant portion of the workforce. These case studies will highlight health and safety hazards that might be addressed more effectively through reforms to relevant law and policy. Reforms are presented following the case studies.

Contingent Work in the United States – Four Case Studies

Farm work, construction, warehousing, and hotel housekeeping are four industries in which contingent workers make up a substantial portion of the workforce. A common feature of the industries is that they cannot, by their very nature, move jobs offshore, so employers have adopted a different strategy for reducing labor costs—they replace full-time employees with temporary workers. The workers in these industries, who typically come from vulnerable socio-economic backgrounds, do not feel empowered to engage in individual or collective action to improve working conditions, even though they are not protected against hazards that are inherent to their forms of work (especially ergonomic hazards), and even though they lack paid sick leave or health insurance to mitigate injuries and illnesses.

Farming

On the day after Thanksgiving, 1960, Edward R. Murrow's groundbreaking documentary, "Harvest of Shame," brought the depressing realities of the industrial food complex into Americans' living rooms. Murrow told the doleful story of migrant farmers who followed the seasons across the country, harvesting food for the tables of the richest nation on earth. The destitute workers – men and women, white and black, and their children – who starred in the film often struggled to feed themselves, living on less than \$1,000 per year. The film included stunning shots of squalid living conditions and long days of backbreaking work. Fifty years on, farm workers are still underpaid, overworked, and subject to deplorable conditions. Following in the footsteps of Murrow, researchers with Oxfam America, the Farmworker Justice Fund, and the Corporate Research Project of Good Jobs First published an exposé in 2004 that provides vivid details of a new generation of migrant farm workers' lives, highlighting stagnating wages that remain below federal poverty levels, unhealthy work and living conditions that do not meet basic standards, and even cases of modern day slavery.¹

Growers are using more farm labor contractors today than they did 20 years ago. Workers hired through farm labor contractors accounted for 14 percent of the workforce in 1993-1994; that percentage increased to 21 percent in 2001-2002.² Growers' increased use of contingent workers stems, in large part, from the fact that farm gate prices – the prices for crops paid to growers – have declined significantly when adjusted for inflation. For instance, researchers on the East Coast found that cucumber prices have declined by 15 percent and tomato prices have declined by 21 percent.³ Because labor costs are a driving factor in farm production costs (up to 30 or 40 percent for labor-intensive crops like fruits and vegetables),⁴ growers have resorted to hiring workers on an as-needed basis through farm labor contractors who take on the costs of housing, transportation, workers' compensation coverage, unemployment insurance, and so on.



The hazards of farm work run the gamut. Oppressive heat is common in every area with major agriculture. Heavy loads and repetitive motion strain workers' bodies. Slips, trips, and falls happen on a regular basis. Irrigation equipment can electrocute workers. Tractors overturn. Workers can become entrapped in grain silos and engulfed in clouds of pesticides. In short, farm work is dangerous business. That fact is borne out in data from the Bureau of Labor Statistics (BLS), which show that, on average, more than one farmworker dies and hundreds are injured in work-related accidents *every day*.⁵ These raw numbers translate into fatality rates that are seven times higher than the private industry average and injury rates that are 20 percent higher than average.⁶

These dangers can be mitigated through good work practices, proper tools and training, adequate staffing, and other techniques if employers have the right incentives. Unfortunately, the rise of contingent work arrangements in the agricultural sector undermines employer-employee relationships that can ensure compliance with basic standards and complicates health and safety agencies' ability to provide assistance. As a result, the occupational hazards of farming are not all well-controlled, and thousands of workers die or are injured on U.S. farms every year.

One reason that farm workers are not better protected is that they lack the power to demand change. Workers in the agricultural sector are some of the most vulnerable workers in the United States. A mere two percent of hired farm workers are unionized.⁷ And the most recent data from the Department of Labor's (DOL) National Agricultural Worker Survey indicate:

- Just 5 percent of farm workers had completed some education beyond high school;
- On average, the highest grade completed was seventh grade;
- 44 percent of workers said that they could not speak English at all, 26 percent said they could speak it "a little," 6 percent said "some," and only 24 percent said that they spoke English "well;"
- Average individual income was \$10,000 – \$12,499 and average family income was \$15,000 - \$17,499;
- Based on federal poverty guidelines, 30 percent of all farm workers had a family income below poverty guidelines;
- In the two years prior to being interviewed, 21 percent of farm workers received unemployment insurance, 15 percent used Medicaid, 11 percent received help from the federal Women, Infants and Children (WIC) program, and 8 percent used food stamps.⁸

These statistics paint a picture of a socioeconomically vulnerable population that is likely to endure without complaint occupational hazards that should be controlled. Given low levels of formal education, literacy, and English-language skills, a significant number of farmworkers are likely unaware of their rights under applicable occupational health and safety laws. And when jobs are scarce and wages are scant, workers are reticent to demand improved working conditions because they are fearful that such demands will lead to unemployment. Further compounding the problem, because of concerns about deportation, a substantial number of farm workers are mistrustful of government agencies that could help vindicate their rights to a safe workplace.

In addition, competitive pressures push employers to ignore guidance about safe workplace practices. Without an ergonomics standard, musculoskeletal injuries are a major source of work-related injuries on farms. Lower backs, shoulders, and upper extremities get abused as workers engage in repetitive motions in awkward positions. Musculoskeletal injuries disproportionately affect young and migrant workers because they are most often hired to do the tasks that lead to hazardous repetitive motion.⁹ Readily available guidelines provide useful information about equipment, tools, and work practices that can reduce the risk of farm-based musculoskeletal injuries, but without an enforceable standard in place to ensure all employers institute these protective measures, workers will continue to suffer.¹⁰

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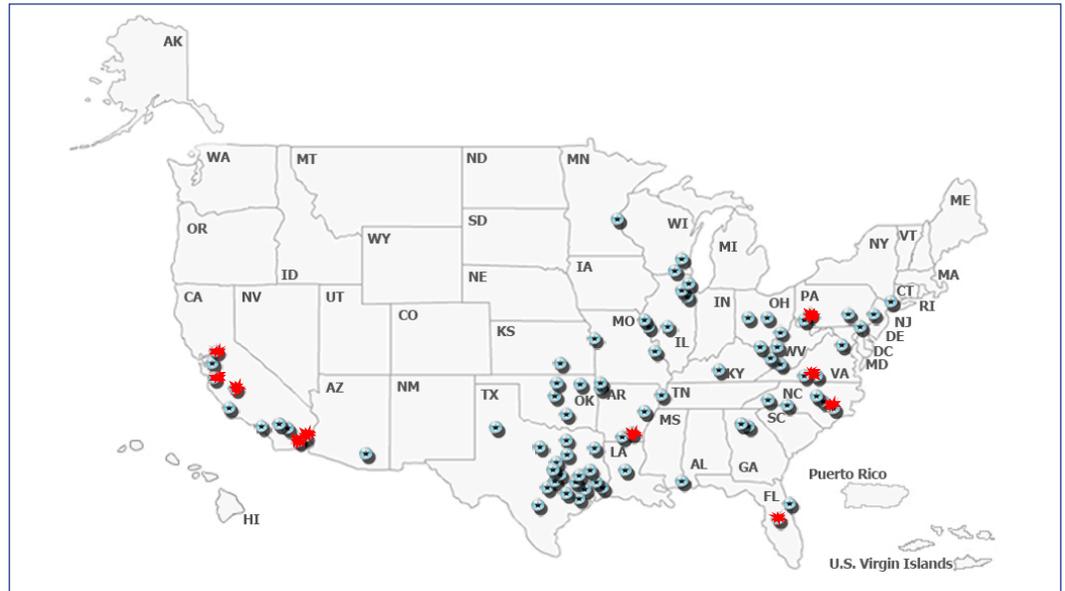


Figure 1: Heat-related deaths, 2009-2012 (farm deaths highlighted)¹¹

Likewise, heat stress is a manageable risk that many farm employers continue to overlook because minimum federal standards do not exist. That is not to say that the federal OSHA does not know how to address heat stress. Following the disaster on BP's Deepwater Horizon drilling rig, when millions of gallons of crude oil spilled in the Gulf of Mexico and tens of thousands of workers descended on the area to clean up BP's mess, OSHA strictly enforced guidelines designed to protect workers from the oppressive summer heat, including ensuring shaded areas were available, workers had opportunities to rest on a regular basis, and water and other drinks were available. The rate of heat-related illness was low and not a single worker died – no small accomplishment given the conditions. Yet farm workers continue to die in hot fields.¹²

For most small farms, OSHA is a barking dog with no teeth. For years, Congress has attached a rider to OSHA's budget, prohibiting the agency from enforcing any standards on farms that do not have temporary labor camps and employ 10 or fewer employees.¹³ Farms with 10 or fewer employees employ nearly half of all farm workers in the United States.¹⁴ Obviously, the fact that the enforcement exemption rests on whether the farm operator has a temporary labor camp creates an incentive for operators to hire workers without taking responsibility for housing or to hire from a farm labor contractor that does so. Due in large part to the congressionally mandated exemptions, OSHA conducted only 1,101 inspections in the crop production sector (NAICS code 111) in FY 2012.¹⁵ Compare that to 4,173 inspections in the residential building construction sector (NAICS code 2361), which also has a large population of immigrant contingent workers.¹⁶ BLS estimates that the total worker populations in the two industries are about 560,000 for residential construction and 760,000 for farming.¹⁷

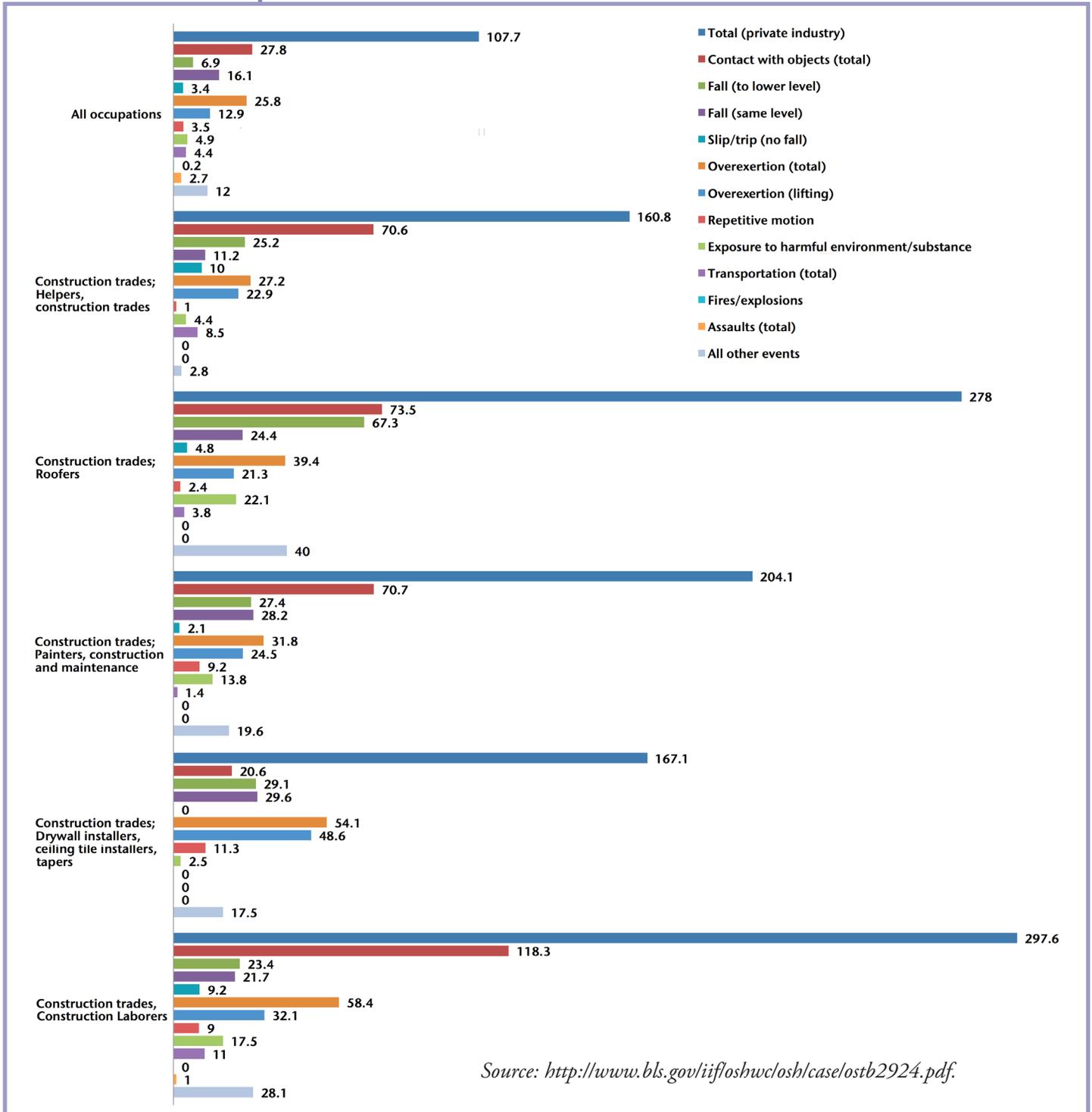
Construction

On street corners, in front of convenience stores, and in big-box hardware store parking lots across the country, day laborers gather in hopes of finding construction work that comes in dribs and drabs. These workers are perhaps the most visible members of the contingent workforce. They are seen mingling at informal hiring sites in almost every municipality and scaling roofs and scaffolds in the surrounding areas. Tragically, these workers are also highly visible in the occupational fatalities statistics.

The construction industry has one of the most diverse systems of contingent work. Twenty-eight percent of construction workers are employed on a contingent basis.¹⁸ Day laborers make up a significant percentage of workers in the industry, but more frequently workers are employed through other contingent employment relationships. In particular, independent contractors make up nearly 80 percent of the contingent construction workforce. This is explained by the fact that employers often claim workers as independent contractors to avoid workers compensation and payroll taxes.¹⁹ Temporary help agencies and contract firms also provide contingent workers. Contingent workers in the construction industry comprise a major part of the overall contingent workforce, accounting for 12 percent of all contingent workers surveyed by BLS in its last attempt to characterize the contingent workforce. Given that the construction industry as a whole makes up only eight percent of the overall workforce, the industry employs a disproportionate fraction of all contingent workers.²⁰

Almost all of these contingent construction workers are young men, and most are Hispanic or Latino.²¹ Wages are paltry. BLS data indicate workers employed by temporary help services companies and assigned to construction labor jobs earned, on average, 33 percent less per hour than the national wage average for the industry.²² And surveys of day laborers indicate that difficulty in finding jobs means that low wages are not earned consistently enough to provide for a good living. In the New York metropolitan area, a “good week” might involve five days of work, but in the more frequent bad weeks, work is only available, on average, two days per week.²³ Three-quarters of day laborers surveyed by academic researchers in a 2004 nationwide survey made less than \$12 per hour; this translated to median earnings in a “good month” of \$1400 and just \$500 in a “bad month.”²⁴ Benefits are insufficient, too. In 2005, just 15 percent of contingent workers in the construction industry had health insurance, compared to 58 percent of wage-and-salary workers in the industry.²⁵

Figure 2: 2010 Incidence Rates for Nonfatal Occupational Illnesses and Injuries Involving Days Away From Work



Contingent workers in the construction industry tend to take on some of the most dangerous jobs. One survey of 2,660 day laborers at 264 hiring sites in 139 municipalities in 20 states and the District of Columbia found that these workers were most often hired in the construction industry as general laborers, painters, and roofers.²⁶ These jobs carry significant risks of musculoskeletal injuries, falls, and nail-gun injuries, among other things. In fact, BLS injury and illness statistics for these occupations show substantially higher rates for all categories of injury, as compared to the rest of the working population (see chart). Surveys of day laborers confirm these disparities. Nineteen percent reported in 2004 that they suffered work-related injuries that required medical attention in the previous year – a significantly greater rate than the five percent of workers in all private industries and six percent of all workers in construction who reported the same.²⁷

Contingent workers in the construction industry are better covered by OSHA standards and enforcement than farm workers. Nevertheless, injury and illness rates in the construction sector remain stubbornly high, especially among contingent workers. It is the story of an industry so huge and widespread that underfunded regulatory agencies and limited union coverage simply cannot do enough to ensure universally good safety practices. On the positive side, complaints and referrals are more frequent in the construction industry than in farming, leading to more inspections of small sites despite the fact that OSHA does not affirmatively target for programmed inspection small construction sites (sites with a project value less than \$250,000). Overall, OSHA and its state plan partners conducted 43,370 inspections of construction sites out of a total of 92,939 inspections in all industries in 2011.²⁸ But the reality is that with millions of active projects, only a small percentage of construction sites are inspected in any given year. Many – if not most – of the incidents that lead to injuries and fatalities are preventable if employers comply with safety standards and other guidance of OSHA and its partners. But again, low-road employers will cut corners to save time or short-term costs, ignoring the longer-term costs of injury and illness that get offloaded to workers, their families, and government aid.²⁹

In addition to noncompliance with safety standards, insufficient training appears to be a major reason for high injury and fatality rates suffered by contingent workers in the construction industry. Day laborers may get instruction from a job supervisor about how to do a job, but general and site-specific safety training are far less common. Day laborers who have been surveyed also indicate that they are not always provided with proper protective equipment.

Policymakers target the construction industry to drive economic growth, through stimulus funds, tax incentives, and pure pork barrel spending. As they utilize these tools to pull us out of the recession, they must ensure that new growth is not built on the backs of vulnerable workers.

Warehousing

Few customers appreciate the human infrastructure that supports retail behemoths like Walmart and Amazon. As Walmart's Senior Vice President and Treasurer Jay Fitzsimmons once quipped, "the misconception is that we're in the retail business ... we're in the distribution business."³⁰ At the heart of these retailers' distribution chains are massive warehouse complexes all over the country, from the Inland Empire in California, to suburban Chicago, to the ports of New York and New Jersey. BLS estimates that more than 15,000 warehousing facilities dot the U.S. map and that they directly employ more than a half million workers. This is actually a significant underestimate of the real number of workers because that number includes only workers who are employed by warehousing firms, and it ignores the countless other workers who are employed by temporary staffing agencies, who may place another half million workers in those warehouses.³¹ Warehouse workers have a wide array of responsibilities, from typical warehousing and storage tasks like loading and unloading trailers and sorting goods, to logistics services like breaking up bulk-shipped goods, completing order entry and fulfillment, packaging, price marking, labeling, and light assembly.³²

As in the farming and construction industries, contingent workers in the warehousing industry are economically, socially, politically vulnerable. Surveys of the industry indicate that a significant number of workers are racial or ethnic minorities (primarily black and Hispanic or Latino). Wages specific to contingent work in the warehousing industry are difficult to obtain, but temp workers whose occupations were classified as "freight, stock, and materials movers" and "packers and packagers" earned just \$8.69 and \$8.09 per hour, on average across the United States, in May 2004.³³ A survey of warehouse workers in Will County, Illinois, a major shipping center just outside of Chicago, found that the median wage for temp workers was \$9.00 per hour, versus \$12.48 per hour for direct-hire employees (a 28 percent shortfall).³⁴ The Social IMPACT Research Center calculated living wages for Will County in the range of \$11.55 for a single adult with no kids to \$25.95 for a single parent of two children. Most contingent workers are placed at a particular worksite on what is supposed to be a probationary basis for a period of 30, 60, or 90 days, after which the site owner rarely, if ever, hires them on a full-time basis, with the result that, a significant number end up as "permatemps," working at one site for more than a year. Twenty-one percent of the temp workers in the Chicago-area survey reported working at the same job for more than a year. Long-term precarious employment leaves workers in a position of limited power to press for improved working conditions. Workers often describe a fear of reprisal for reporting injuries or mentioning other work-related concerns.³⁵

The hazards that warehouse workers face are serious. As could be expected, ergonomic issues dominated a survey of workers conducted by researchers in Southern California.³⁶ The repetitive stresses of lifting and moving goods, which can result in sore muscles and joints, carpal tunnel syndrome, and nerve system damage, are exacerbated by performance quotas and piece-rate payment schemes. Goods in transit are also often packaged in bulk, creating risks of straining and overexertion. Workers are also exposed to dangerous equipment and machinery, from unstable racks to poorly maintained forklifts, conveyors, and pallet jacks. To make matters worse, warehouse workers labor in extreme temperatures. Because many warehouses lack climate control, the summer's heat and winter's cold put added stresses on high-paced work. Tractor trailers and forklifts also emit diesel engine exhaust – a known human carcinogen. Particularly important for contingent workers, NIOSH has noted that the increased use of contractors along with flexible “just-in-time” business models “often necessitate frequent changes in work schedules and shift work that can result in increased worker stress.”³⁷



The occupational hazards of warehouse work manifest themselves in above-average injury, illness, and fatality rates. Warehousing and storage workers die on the job at a rate almost twice that of the average U.S. worker.³⁸ Nonfatal injury and illness rates are also much higher than average in the warehousing industry, with tens of thousands of injuries leading to a rate of 5.8 nonfatal injuries per 100 workers in 2010.³⁹ These numbers – the best available on a nationwide basis – are likely understatements because they do not include deaths or injuries to workers in the temporary labor industry who are assigned to warehouse jobs.

Numbers derived from warehouse worker surveys again confirm the BLS data. Two thirds of workers surveyed by Southern California researchers said they were injured on the job.⁴⁰ Only a third of them reported their injuries. About one in seven warehouse workers surveyed in Elizabeth, New Jersey reported suffering an injury while on the job.⁴¹ And in the Chicago-area survey, 18 percent of the surveyed workers reported suffering on-the-job injuries.⁴² Most of them (69 percent) reported their injuries, but 29 percent of those who reported injuries were disciplined or fired as a result.

Hotel Workers

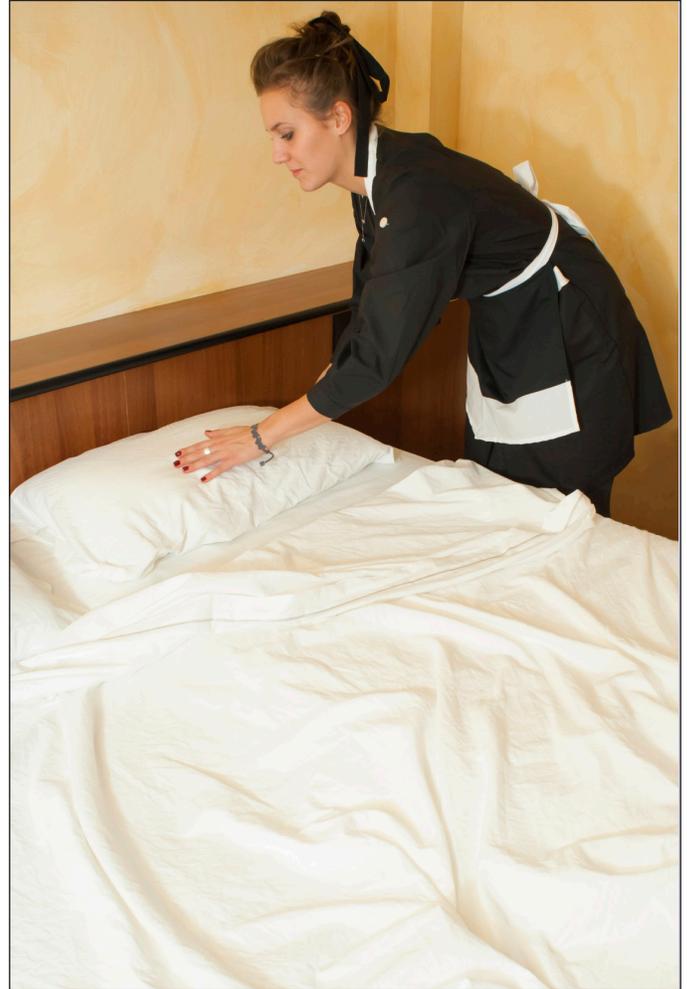
Hotels around the world are replacing full-time housekeeping staff with part-time workers hired through staffing agencies, under the premise that doing so will give management a tool to ensure that labor costs correlate with revenues derived from demand for hotel rooms. Some human resources experts have deemed this an “inevitable” trend.⁴³ But while these short-sighted cost considerations are obvious and simple to understand, the effects on individual workers and the broader workforce are more complex and often ignored.

From a worker’s standpoint, the hotel industry’s shift toward increased use of temporary hires eliminates stable jobs and increases vulnerability to economic and social injustices as well as health and safety risks. BLS data indicate that within the “traveler accommodations” industry, workers in the “maids and housekeeping cleaners” occupational class, have an average hourly wage of \$10.10 and an annual average salary of \$21,000. Workers in the same occupational class who are part of the “employment services” industry (which includes temp agencies) earn about five percent less.⁴⁴ Standard union contracts for room attendants often capped workloads for full-time employees at about 15 rooms per day.⁴⁵ In one large hotel chain that has begun replacing full-time staff with more workers hired through temp agencies, the new hires have been given quotas of up to 30 rooms per day. With only 15 minutes to clean each room, many of these workers report having to work through lunch breaks required by state law or after clocking out in order to meet their quotas. Of course, working off the clock is also a violation of the employer’s policies, putting the workers at risk of disciplinary action.

Having to scrub bathroom floors on hand and knee, without being paid, is not the only ignominy imposed on contingent staff in the hotel industry. Women working in these jobs report being victims of sexual assault. Precarious employment relationships and unclear lines of authority can lead to underreporting of these incidents and inadequate responses from employers.

In a similar vein, as management increasingly focuses on short-term cost containment in relation to hotel housekeepers, there is an increased risk that health and safety hazards will receive short shrift from management. Scrubbing floors, vacuuming, changing sheets on heavy mattresses, and navigating unwieldy carts in carpeted hallways lead to musculoskeletal disorders.⁴⁶ Workers’ advocates have identified simple technological solutions to some of these problems, including ergonomically designed carts, fitted bed sheets, and long-handled mops. But hotel management externalizes the costs of treating the chronic musculoskeletal injuries by hiring through temp firms. The temp employees are not covered by the hotel’s workers compensation program and are not eligible to enroll in the hotel’s health insurance program. As a result, hotels fight against the capital outlays for solutions that would prevent the injuries in the first place.

A unique aspect of contingent work in the hotel housekeeping industry is that, unlike the other industries discussed above, this is an industry dominated by women. BLS estimates that women make up 89 percent of workers in the “maids and housekeeping cleaners” occupational category.⁴⁷ Researchers have uncovered evidence that certain musculoskeletal problems, in particular back disorders like those related to the stresses of hotel room-cleaning work, can have greater negative impacts on women than on men. Women enrolled in these studies had higher rates of long-term disability and depression, as well as lower levels of physical functioning after treatment.⁴⁸ Low socioeconomic standing is known to make recovery from musculoskeletal injuries more difficult,⁴⁹ which further underscores the hazards faced by temp workers in the hotel industry.



The Growth of the Contingent Workforce Reduces Employer Incentives to Protect Workers

At the American Industrial Hygiene Association's annual conference in June 2012, NIOSH Director Dr. John Howard put it succinctly: "A job is a dying concept." Stability is no longer the hallmark of a relationship between workers and employers, nor is a direct connection between the entity that writes a paycheck and the people who control the worksite. Policy researchers have noted that employers are shifting "from a 'reactive' use of temporary workers to fill the jobs of absent employees or to supplement permanent employees during a busy period to a 'systematic' use, 'in which entire job clusters and industries are staffed with agency workers indefinitely.'"⁵⁰ For a number of reasons, employers are increasing their use of temporary staff to fill out their workforce, resulting in a highly vulnerable workforce that needs protection from workplace hazards.

One of the most common reasons for hiring workers through temp agencies is a desire to have highly adjustable staffing levels. In hospitality, construction, warehousing, farming, and a variety of other industries, the need for workers can fluctuate on a short-term basis. Many managers will even argue that the hourly cost for a temp worker is roughly the same as that of a regular employee, but the flexibility of only having to employ temp workers on an as-needed basis drives their decision to minimize hiring full-time employees. With workers' tenures measured in hours or days, safety training is often inadequate or nonexistent.

Indirect employment costs can be a significant factor in hiring workers on a contingent basis. When they hire workers as employees, employers must pay payroll taxes and Social Security contributions, as well as carry workers compensation and unemployment insurance. Independent contractors and temp firms take on those responsibilities, thereby lowering employers' indirect labor costs. For high-risk jobs like farm labor, construction, and warehousing, workers compensation insurance may be one of the most powerful factors in favor of hiring workers through a staffing agency or on a street corner.

Workers employed on an informal basis are often misclassified by the employer as "independent contractors" so that the employer can claim that the worker will pay for his or her own taxes and insurance. This practice reduces the employer's expenses, but it also eliminates a powerful incentive to provide a safe workplace. Insurance providers operate based on experience rating rules, under which rates are determined by an employer's history of claims. Injuries to temp workers misclassified as independent contractors will not affect the employer's costs, so the employer loses an incentive to prevent the injuries in the first place.

Workers hired through staffing agencies face a different set of obstacles. Many are unaware that workers compensation claims should be filed through the staffing agency, and those who know this may choose not to file a claim for fear of retaliation by the agency in the form of reduced hours or a refusal to re-hire the worker. These concerns are not hypothetical.⁵¹ Researchers in Massachusetts found that temp agencies there “commonly obscure the fact that the agency is the insurance carrier and fail to inform temp workers about how and where to file workers’ compensation claims.” And workers in Massachusetts report being denied access to jobsites after returning from an injury.⁵²

Health insurance coverage is a particularly important issue. Contingent workers often lack coverage, shifting the burden from employers to the public at large. Again, the absence of employer-based insurance eliminates an incentive system that would work to prevent worker injuries. Without strong insurance systems to create incentives for employers to prevent worker injuries, OSHA standards and enforcement become substantially more important to keeping workers safe and healthy.

Solutions

To truly improve the circumstances of the contingent workforce – to reduce psychosocial stresses, improve wages, ensure full employment, and eliminate health and safety disparities – would require massive restructuring of labor and employment laws as well as major changes in economic policies. Narrower reforms, however, could significantly improve working conditions in a way that creates safer and healthier jobs, while at the same time empowering workers.

Tax Incentives and Contingent Work

Local governments often use tax incentives and other special financing tools to lure new businesses to town, banking on the prospect that new jobs and capital investments will spur additional economic growth and community development. The local officials who strike these deals should ensure more than just the creation of new jobs—they should be working to ensure that new businesses create *good jobs*. Worker advocates in some localities have had success convincing government officials to add conditions to tax incentives that benefit workers. These successes indicate an important avenue to address the problems of the contingent workforce. In the City of Chicago, for instance, certain development funds are only available to projects that will deliver a certain number of full-time equivalent jobs and that will employ a certain minimum number of city residents and minority- or women-owned contractors during the construction phase.⁵³ Worker advocates have also pressed for requirements in government-financed development incentives that workers hired as a result of those programs be guaranteed access to healthcare, paid sick leave, and living wages.⁵⁴ Since stability is a fundamental characteristic of a good job, these economic development incentives should also include conditions that favor full-time, rather than contingent, work.

Empower Workers with a Stronger Right-to-Know

Well-educated and well-trained workers are the most empowered – they know their rights, they know when they have been wronged, and they know the best way to correct a hazardous work environment. Contingent workers do not get enough education and training.

Massachusetts legislators recently enacted a law that should serve as a model and a starting point for other jurisdictions.⁵⁵ The Massachusetts Temp Workers Right-to-Know Act requires, among other things, that staffing agencies inform workers about the type of job to which they will be assigned, as well as any special requirements for clothing, equipment, tools, training, or licenses. These are the basic elements of a good training program. In

addition, workers need to be educated about the proper procedures for reporting injuries and hazardous conditions, as well as the importance of doing so and the relevant whistleblower protections that are designed to prevent employer retaliation.

The federal government could help improve workers' right-to-know both through new regulations and through its power to collect and analyze data. Ideally, every worker would have a right to regular industry- or job-specific OHS education and training with minimum requirements for content and timing identified by OSHA. But in the absence of the political will or resources to accomplish that goal, mandates aimed at particularly problematic industries or classes of workers are the next best thing. As a starting point, OSHA should target the industries where contingent workers are most prevalent because of the socioeconomic vulnerabilities of these workers. The responsibility for ensuring compliance with the training requirements should be shared jointly by all entities that derive some direct benefit from the workers' labor. For example, the temp firm, the third-party logistics firm, and the big-box retailer who employ a warehouse worker should all be responsible for ensuring the worker is trained, with OSHA holding the power to enforce training requirements in legal proceedings against each firm.

OSHA and NIOSH should work together, using data collected by their own staffs and by BLS, to publish new research on the health and safety hazards most prevalent in industries that use a large number of contingent workers. More granular detail on hazards specific to those industries would give workers the knowledge base they need to demand improvements in working conditions and enable employers to devise ways to eliminate risks.

The way such information is disseminated will affect how much benefit workers derive from it. Statistics and data will be useful to researchers and advocates, but workers will need different information. First, they need the information delivered in a language and format that is easily understood by people with varying languages and literacy. Second, the content needs to be tailored to provide mainly *actionable* information; that is, information that workers can actually use on the job. For instance, a list of common hazards and how to eliminate them from the job would be useful, as would information about how to report hazards or injuries and a clear statement that immigrant workers enjoy the same rights to a safe job as everyone else.

To magnify the impact of these new informational resources, the agencies should reach out to unions, nonprofit organizations, worker centers, faith-based groups, and other organizers who are in touch with contingent workers. In the absence of regulations requiring employers to educate and train workers, these groups could play an important role in delivering knowledge to workers and training them on how to use that knowledge to improve their workplaces. OSHA's Susan Harwood Training Grant Program is one avenue for funding this type of work, but with a limited budget (\$10 million per year) its effectiveness is constrained. Congress should authorize additional funds for the program either by increasing OSHA's overall budget or repurposing money previously directed to benefit employers through the Voluntary Protection Program.

Empower Workers with a Right-to-Act

In addition to a strong knowledge base, workers also need effective legal tools to prompt changes in their working conditions when their employers are unresponsive. Under current law, workers lack the power to commence legal action on their own accord against an employer that is breaking the law; instead, they must make a formal complaint to OSHA and await the agency's response. While OSHA is generally responsive to workers' complaints, workers should not have to rely on an underfunded OSHA to redress serious health and safety issues in the workplace. Workers need to be able to wield power that is proportionate to their huge stake in the game. That power should come in the form of an amendment to the OSH Act that would create a legal vehicle for enforcing worker rights against employers.

Also known by the moniker "citizen suits," private rights-of-action to enforce federal laws typically come in the form of a clause added to a public health statute that says, essentially, "any person may bring legal action in federal court to enforce the statute against any person who violates it." Such powers have been used most effectively by environmentalists to force agencies to undertake nondiscretionary duties under the Clean Air, Clean Water, and Endangered Species Acts and to force polluters to comply with the terms and conditions of their permits. If a private right-of-action were added to the OSH Act, it is unlikely that contingent workers would avail themselves of it on a regular basis, given their precarious employment situations. However, unions, advocacy groups, and other worker organizers might be expected to litigate on workers' behalf.

Strengthen OSHA Enforcement

OSHA could make a significant impact on health and safety in contingent workers' lives through modifications to existing enforcement policies. Improvements to enforcement policies are relatively easy to implement because extended rulemaking procedures are not required. OSHA can implement the policies with stakeholder input fit to the task – enough input to ensure fair treatment of all affected, but not so much that trade associations' dilatory tactics prevent action. In addition, OSHA has the ability to test the new policies for effectiveness by implementing them in discrete geographical areas or selected industries.

OSHA should begin with a series of enforcement "sweeps" that target the temporary help industry. OSHA adopted a model for this sort of activity in 2009, when a large group of inspectors descended on Texas to do a "sweep" of the local construction industry. The program brought increased scrutiny to a unique problem. At the time, construction workers in Texas were dying at a rate of one fatality every two and a half days.⁵⁶ With evidence mounting that increased use of contingent workers brings added hazards to the workplace, OSHA should conduct similar sweep of workplaces where those workers are most prevalent. For example, OSHA could target staffing firms by going to their offices, asking for the location of employees sent to work at other firms over the past few weeks or months, then using that information to target further inspections.

Should OSHA inspectors uncover violations of the OSH Act or its implementing standards as the agency undertakes these sweeps, they should limit penalty reductions typically provided to cited employers. Under the Act, OSHA must give “due consideration” to the gravity of a violation, the size of an employer’s business, the employer’s good faith, and the employer’s history of cited violations.⁵⁷ Generally, this means setting a gravity-based penalty, and then reducing it based on the other factors. In cases where employers use contingent workers to fill positions, OSHA should estimate the size of the business by assuming that new workers fill positions on a regular basis and counting each new contingent worker towards the total size of the business, as opposed to existing policy of calculating the business size from the number of workers at a particular point in time. The “good faith” penalty reduction factor should also reflect the special circumstances of contingent workers. Good faith reductions are available to employers that have implemented safety and health programs with certain characteristics, including provisions for employee involvement in the program and proper health and safety training. Inspectors should only award the good faith penalty reduction to employers whose safety and health programs make special accommodations to contingent workers.

If OSHA had stronger training rules in place, it could use existing enforcement policies more forcefully to pursue temporary staffing agencies that fail to comply with the training rules. The OSH Act’s most severe penalties are reserved for willful and repeat violators. A temporary staffing agency that regularly sends workers to new jobs without adequate training could be cited for repeat violations of the standard, which would have maximum penalties of \$70,000 per violation, as compared to the standard maximum for a serious violation, which is \$7,000 per violation.

Inspections are just the first step toward strong enforcement. OSHA needs the support of the Solicitor of Labor’s office, which represents OSHA before the Occupational Safety and Health Review Commission. The Review Commission reviews penalties *de novo*, so contingent workers need the Solicitor to be a strong advocate for high penalties.

Adding a private right-of-action to the OSH Act would benefit all workers.

Create Ergonomics Standards

Since ergonomic hazards pose significant risks in industries and occupations that employ many contingent workers, OSHA should establish regulations to eliminate those hazards. Laborers, construction workers, and maids are among the jobs near the top of OSHA's list of occupations with high incidence of musculoskeletal disorders that result in lost workdays.⁵⁸ OSHA and NIOSH undertook a major effort in the 1990s to issue an ergonomics standard, and in doing so established the feasibility of eliminating ergonomics hazards in every industry. Unfortunately, the standard ultimately was overturned through the use of the Congressional Review Act when Republicans took control of both Congress and the White House in 2000. Although the Congressional Review Act prohibits an agency from issuing a new regulation in substantially the same form as one overturned by Congress, OSHA could issue a series of industry-specific ergonomics rules, geared toward particular hazards. Starting with industries that employ a significant number of contingent workers would lead to better protections for millions of workers without coming close to the alleged \$1 trillion price tag that prompted the congressional veto of the broader standard in 2001.

Reform Voluntary and Consultation Programs

In addition to revising enforcement policies, issuing ergonomic standards, and updating education and training requirements, OSHA should look for policy changes that could benefit contingent workers. As the contingent workforce grows, OSHA has an obligation to revisit existing programs to ensure that they meet the needs of contingent workers.

First, OSHA should revise the minimum criteria that companies must meet to be part of the Voluntary Protection Program (VPP). The program was created to reward employers who develop high-quality safety and health programs. In exchange for developing such a program, maintaining below-average injury and illness rates, and committing to addressing health and safety concerns quickly, the employer gets an assurance from OSHA that its worksites will not be subject to normal inspections (only inspections resulting from complaints, referrals, or incidents involving injuries or deaths). VPP drains substantial resources from OSHA's budget because of the time and effort that must be devoted to making decisions about whether to approve a company's application. It is unclear whether the program benefits workers.⁵⁹ OSHA's time, money, and expertise would be better spent on traditional deterrence-based enforcement programs, which are known to reduce illness and injury rates.⁶⁰ But until there is broad support for abandoning VPP, OSHA should adjust the program's parameters to ensure workers at VPP sites benefit from the best safety and health programs available.

Given the health and safety concerns raised by employer decisions to place contingent workers in new and high-hazard jobs, VPP entry criteria should be revised to require that VPP employers only use contingent workers in low-hazard occupations such as clerical work. Currently, the program addresses contingent worker health and safety by comparing injury rates between regular employees and temporary employees, supplemented by interviews with temporary and contract employees.⁶¹ Firms applying to VPP are also supposed to encourage contractors to have health and safety programs. To better understand whether a firm applying for VPP recognition is off-loading health and safety concerns to others through inappropriate use of contingent workers, OSHA's analysis should be updated to include a review of the types of jobs performed by contingent workers and an accounting of the hours worked by contingent workers as opposed to regular employees in high-hazard jobs. Disproportionate use of contingent workers in high-hazard jobs should weigh against approval of the applicant.

OSHA operates a similar program for small employers, the benefits of which should also be reserved for companies that eliminate use of contingent workers in high-hazard jobs. The Safety and Health Achievement Recognition Program (SHARP) offers the same benefit of no "programmed" inspections to firms that consent to a comprehensive on-site consultation visit from OSHA-approved professionals and have low injury and illness rates, good injury and illness prevention programs, and fewer than 500 workers nationwide and fewer than 250 workers at the worksite for which SHARP recognition is sought. OSHA should not grant the benefits of this program to companies that disproportionately use contingent workers in high-hazard jobs.

Build a Case to Close Statutory Loopholes

OSHA should also determine if there are data that support closing loopholes in the OSH Act that limit the statute's applicability to domestic workers and farmworkers on small farms. Domestic workers have been excluded from OSHA's purview since the Act was passed, a vestige of a bygone mid-twentieth century mentality with racist undertones. Likewise, Congress annually attaches language to OSHA's appropriations bill that forbids the agency from enforcing its rules on farms with ten workers or fewer. Notwithstanding the major political hurdles that would have to be overcome for these loopholes to be closed, better data on the special hazards or injury and illness rates in the ignored industries would help clarify the case for statutory reform.

OSHA should establish regulations to eliminate ergonomic hazards.

OSHA's staff and resources should be accessible to workers with varied cultural and educational backgrounds.

Improve Foreign-language Capabilities

Finally, OSHA should continue to pursue efforts it has undertaken to improve its capabilities to communicate in the many languages spoken by contingent workers. The agency has begun to hire more bilingual staff, particularly inspectors, and should continue to do so. As noted above, the high number of Hispanic workers in the contingent workforce suggests that language barriers can create challenges for education and training. And since interviews with workers are an important part of any inspection, OSHA inspectors' ability to speak with all workers is critical to proper enforcement of the law. In addition to hiring more bilingual inspectors, OSHA must increase the foreign-language capabilities of staff who develop education and training materials. The agency should establish a goal of making all of these materials available in multiple languages and formats, reflecting not only the spectrum of workers' native languages, but also differences in culture and literacy.

OSHA should also expand its cooperation with foreign governments' consulates. The agency has a number of Letters of Agreement with consulates from Mexico, the Dominican Republic, Guatemala, El Salvador, Ecuador, and other Central and South American countries, signed by both the national and area offices. The Letters of Agreement mostly focus on developing training and outreach programs that are designed to teach workers about their rights under the OSH Act and related laws. But there have been some innovative ideas that should be expanded upon. For instance, OSHA and the Nicaraguan embassy and consulates agreed to develop a joint program that would enable the foreign officials to file OSHA complaints on behalf of workers from their country. Ideally, one aspect of that program would be to ensure that someone from the embassy or consulate would be invited to participate in the resulting inspection as a worker representative so that workers would have a translator. Agreements with area offices might also enable OSHA staff to have a point of contact that would help them find translators for other inspections. The demographics of the contingent workforce likely presage changing demographics of the United States as a whole, so OSHA would do well to continue on the path of expanding its foreign-language capabilities so as to remain relevant in the future.

Conclusion

As the contingent worker population grows, the occupational safety and health community will have to adapt. OSHA can lead the way with new rules and better enforcement, but the agency will also need the help of other advocacy organizations, from union-affiliated campaigns to worker centers to faith-based groups. Because the contingent workforce is particularly vulnerable to unfair treatment and poor working conditions, empowering these workers to act will take the support of many advocates.

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