

The Growth of the Exploited, Contingent Workforce

Contingent workers are those not employed in traditional, full-time jobs that are expected to last. This term also covers workers who are subcontracted, employed by temp agencies, or work as independent contractors. While widely accepted as a standard business practice to enable flexibility in hiring, employers are increasingly exploiting workers through this business model by lowering labor standards and exposing more workers to poor job conditions.

The contingent workforce continues to grow across multiple sectors of the economy

Employers have been expanding the contingent workforce since the 1980s.¹ A recent survey of 200 large companies estimates that the modern “contingent umbrella” (including temps, independent contractors, subcontractors and other nontraditional work roles) accounts for 22 percent of the average company workforce.² This trend has only accelerated since the recent recession. According to a Staffing Industry Analysts survey of large employers, the average share of a company’s contingent labor has increased from 12 percent in 2009 to 16 percent in 2012.³ Similarly, a Society for Human Resource Management 2011 survey of HR professionals noted that in response to economic and employment trends, 34 percent are increasing, or plan to increase, their use of contingent workers.⁴

The use of contingent workers spans a wide range of sectors. On-call workers are common in the education and health services sector; the construction industry relies heavily on subcontracted workers; and temp agency workers are widely used in the professional and business services industry.⁵ From subcontracted strawberry pickers to freelance television writers, few occupations or sectors are immune to this trend.

Contingent workers are vulnerable to labor and employment violations

Contingent workers are more at risk to labor and employment violations for several reasons. Independent contractors or freelancers do not have the right to form a union, and temp agency workers have difficult barriers to gaining union representation. Many contingent workers are excluded from minimum wage, health and safety, and discrimination laws that would protect them at work. Large companies are distancing themselves from direct liability for poor working conditions through the use of subcontractors. Here are some examples of how contingent workers face exploitation:

- **Walmart** outsources logistics operations, pressuring subcontractors to employ warehouse workers for very low pay and often under dangerous conditions. At one subcontractor, workers filed a complaint with Cal/OSHA over the temperature regularly reaching 100 degrees and drivers operating machinery without proper training.⁶
- **Hyatt Hotels** is increasingly relying on low-paid temp agency workers to do the work of its regular employees, in some cases firing its entire housekeeping staff in order to bring on temps.⁷
- **FedEx Ground** misclassifies drivers as independent contractors, denying them the right to organize and protections from discrimination. Numerous federal and state agencies and courts have found the company guilty of this practice, ordering it to pay millions in back taxes.⁸
- **Nonfiction television production firms** often hire writers and producers as freelancers or indirectly employ them through subcontractors, manipulating outdated employment exemptions to deny these professionals overtime pay and healthcare benefits.⁹

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American Rights at Work is the nation’s only independent labor policy and advocacy organization dedicated to advancing workers’ rights to form unions and bargain with their employers for fair wages, benefits, and working conditions. By fall 2012, American Rights at Work will merge with Jobs with Justice to form one organization united by a common mission to advance workers’ rights and social and economic justice.

Legislation is needed to address this growing problem

The Rebuild America Act (S. 2252), introduced by Sen. Tom Harkin in March 2012, would help bolster the middle class with a variety of policy solutions, including provisions to close loopholes allowing employers to misclassify workers as independent contractors, thus denying them the rights and benefits of standard employees. The Employee Misclassification Prevention Act (H.R. 3178), introduced by Rep. Lynn Woolsey in October 2011, also seeks to end this practice by employers, which would both benefit employees and potentially generate billions in lost tax revenue.¹⁰

In addition to addressing the problem of misclassification, U.S. labor law is in serious need of an overhaul in order to protect America's workers in today's economy. In 1935, when the National Labor Relations Act was passed, the typical American employer didn't have a set of employees working side-by-side with freelancers, subcontractors, temps, and part-time workers. Today, all of these varied workers may perform work side-by-side for the same employer—often even the same work—yet they have no right to organize and improve their working conditions. Until lawmakers are able to modernize federal labor laws, employers will continue to exploit this contingent labor model and lower job standards to the detriment of us all.

Further resources

- American Rights at Work review of academic literature on misclassification and contingent work
www.americanrightsatwork.org/misclassification
- National Employment Law Project website, see the page under "Independent Contractor Misclassification and Subcontracting"
www.nelp.org

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 6. Cho, Eunice Hyunhye and Anastasia Christman, Maurice Emsellem, Catherine K. Ruckelshaus, Rebecca Smith. "Chain of Greed: How Walmart's Domestic Outsourcing Produces Everyday Low Wages and Poor Working Conditions for Warehouse Workers," National Employment Law Project, June 2012 http://nelp.3cdn.net/5b7daf391f06aa6413_qfm6bigxz.pdf
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 8. Johansson, Erin. "Fed Up with FedEx: How FedEx Ground Tramples Workers' Rights and Civil Rights," American Rights at Work and the Leadership Conference on Civil Rights, 25 Oct. 2007. <http://www.americanrightsatwork.org/fedex>
 9. For more information on nonfiction writer/producer issues, visit: <http://nonfictionunited.org>
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