

TEMPORARY WORK



PERMANENT ABUSE

How Big Business
Destroys Good Jobs

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Contents

Executive Summary	2
About the Collaborators	6
Methodology	7
Introduction	8
Corporate Gains, Good Job Losses	10
Replacing direct hire jobs with temps	11
Keeping workers permanently temporary	12
The resurgence of sweatshops for profit	13
<i>Greater control for companies, instability for workers</i>	13
<i>Greater profits for companies at greater costs for workers.</i>	16
Shirking Responsibility through Abuse of Law	20
Shielded from lawful responsibilities	21
Obstacle course for justice	22
To Bring Back Good Jobs, Restore Rule of Law at Work	24
Acting Locally to Win Supply Chain Accountability	27
California: Temp and direct hire workers joint organizing model	28
Illinois: Responsible job creation legislation	29
Massachusetts & Rhode Island: Legal responsibility for businesses at the top.	30
New Jersey: Temp workers' stories demand legal reform	30
Conclusion	31
Appendix: About the Participants.	32
Notes.	34

Executive Summary



“[M]ajor companies have shifted the direct employment of workers to other business entities that often operate under extremely competitive conditions. This “fissuring” or splintering of employment . . . means that enforcement policies must act on higher levels of industry structures in order to change behavior at lower levels, where violations are most likely to occur.”

—David Weil, Administrator of the Wage and Hour Division, U.S. DOL

Big brand name companies have fundamentally restructured blue-collar jobs in the United States using temp work. Companies like Amazon, Walmart and Home Depot, and even companies like Johnson & Johnson that project an image of corporate responsibility, have, en masse, outsourced management of their supply chains, including the production, procurement and movement of their goods. By contracting with temp agencies that promise more for less at the expense of workers, this outsourcing model is driving the replacement of well-paid and often unionized direct hire jobs with permanently unstable temp work in factories and warehouses across the country. As companies contain their costs and squeeze profit out of workers’ wages, benefits and working conditions, they make these blue-collar workers disposable, easily replaced without cost to the contracting company.

The cost to workers living on the margins, however, is tremendous. Caught in a permanent cycle of temporary work and forced to always be on the search for enough work to make ends meet, workers are in a poor position to negotiate fair terms around work. The message of expendability directed at temps poses a constant threat to workers who try to improve their jobs through organizing or to defend their rights against abuse. In fact, retaliation for claiming basic rights is deployed as a standard business practice, forcing workers who live paycheck to paycheck to remain silent about abuse. Employers reinforce this repressive culture through discriminatory hiring that targets workers perceived to be most fearful and least likely to claim rights.

Temped out work has turned good workplaces into sweatshops. It has forced warehouse and factory workers to accept on-demand hours and unnecessarily dangerous conditions for low wages and no benefits or suffer having no work at all. Under these conditions, temp workers experience significantly higher rates of injury than their direct hire counterparts. They are also pushed to work while sick and injured, leading to greater complications. Adding further injury, temp agencies must compete to win low-bid contracts, which creates a market imperative for them to make up profit margins by stealing from workers’ already low wages. Even some temp agencies concede that it is impossible to stay competitive in this unbridled market while complying with labor laws. Out of necessity, temp workers bear the abuse, while big corporations profit.

Enforcement of every workplace protection depends on legal recognition of “employer” status. Despite the reality that the temp industry adds no value beyond controlling a company’s supply of workers, the industry has successfully lobbied legislatures and government agencies for this recognition as “employer,” shielding companies up the supply chain from legal liability for workplace abuses. As a result, the industry has become a major vehicle for companies to extract the fruits of workers’ labor while avoiding legal obligations owed to workers.

Enforcement also relies on workers being able to claim their rights and blow the whistle on abuse. The current system of complaint resolution, however, is an obstacle course for low-wage workers. Like non-temps, temp



workers face the risk of job loss due to retaliation and discouraging barriers to justice in a fractured complaint system that delivers too little too late. But, for temps, these challenges are exacerbated by the additional difficulties of proving who is their employer and holding accountable key decision-makers at the top of supply chains.

To address this landscape of abuse and restore rule of law, workers need critical reforms, which should be implemented through public policy but can also be achieved or reinforced through legally binding supply chain contracts:

1. Legal liability must extend fully up supply chains, holding companies with the power and influence to monitor and regulate intermediaries accountable for working conditions, as they are regularly held accountable for product quality.
2. Penalties must be designed to incentivize legal compliance and corrective action.
3. An effective path to workplace accountability must

be made available for workers to defend their rights and improve these jobs for the benefit of all.

Temp workers in four regions of the country are showing the way forward, building power through innovative organizing and policy campaigns at the local and state level. In California, temp workers are testing a new union organizing model that leverages solidarity between temps and direct hires at a shared job site. In Illinois, workers are campaigning to win legislation that will strengthen enforcement of previously enacted groundbreaking laws regulating the temp industry. Massachusetts and Rhode Island temps have proposed bills to hold companies at the top of supply chains accountable for wage theft. And in New Jersey, temp workers are organizing around wage and safety abuses on the job, using their own stories to generate public demand for needed legal reforms. These local and state based efforts are more important than ever as a Trump Administration promises to deepen the crisis captured in this report.

**PERMANENT INSECURITY:
NATIONAL TEMP WORKER
SURVEY RESULTS**

PERMANENTLY TEMPORARY

Six years	Average time worked in temp industry
Three years	Average length of typical assignment
Four out of five	Never had a temp job lead to being directly hired
Zero	Prefer temp work to a direct hire position

JOB INSTABILITY

Two days	Average days sought work but found none each week
30–39 hours	Average hours of work received each week
69 percent	Have gone without work for extended period of time
66 days	Average length of time gone without work

DISCRIMINATION & RETALIATION

47 percent	Filed complaint with DOL or tried to improve wages or working conditions and experienced retaliation
53 percent	Latino workers felt targeted for immigration status
22 percent	Experienced racial discrimination
12 percent	Experienced sexual harassment

**TEMPED OUT SWEATSHOPS:
NATIONAL TEMP WORKER
SURVEY RESULTS**

DANGEROUS CONDITIONS

84 percent	Experienced violation of basic health and safety rights
64 percent	<i>No safety training</i>
43 percent	<i>No safety equipment</i>
28 percent	<i>Severe work-related injury</i>
56 percent	Worked while sick or injured

LIMITED BENEFITS

1 percent	Employer-provided health insurance
10 percent	Paid sick days
3 percent	Paid vacation days

POVERTY WAGES

\$9.07	Average hourly wage
\$13,966	Average annual income

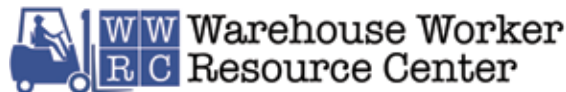
WAGE THEFT

74 percent	Experienced illegal wage theft
57 percent	<i>Not paid all hours worked</i>
30 percent	<i>Not paid overtime</i>
3 percent	<i>Not paid at all</i>
29 percent	<i>Charged for transportation an agency required</i>
57 percent	Forced to wait without pay for over 15 minutes to begin work
26 percent	Charged for job necessities, including clothes, equipment and cashing checks

ABOUT THE COLLABORATORS

National Staffing Workers Alliance (NSWA) was founded by workers' organizations in California, Illinois, Massachusetts, New Jersey and Rhode Island to build power among temp workers. NSWA is working to interrupt efforts by large corporations to turn workplaces into sweatshops with temp labor and to ensure all workers have access to good, permanent jobs that are neither disposable nor abusive. www.nationalstaffingworkersalliance.wordpress.com

National Economic and Social Rights Initiative (NESRI) partners with communities to build a movement for economic and social rights, including health, housing, education and work with dignity. NESRI brings an inclusive human rights approach to supporting the on-the-ground work of its partners by putting people's experiences at the center of efforts to build power, shift narratives and change policies. www.nesri.org



METHODOLOGY



This report is based primarily on surveys and focus groups with temp workers employed in factories and warehouses in four regions: the Chicago and Boston metro areas and around major New Jersey and Southern California ports. Surveys and focus groups documented in-depth workers' experiences working through temp agencies. Questions concerned their employment arrangements, wages, health and safety, efforts made to improve their jobs and other conditions of employment. Though not generalizable, data of this kind provides an important snapshot of workers' experiences in the often invisible world of industrial temp work, and can be used to identify patterns of shared experiences and trends that are relevant to the broader population.

Worker centers in these four regions, all members of the National Staffing Workers Alliance (NSWA), designed the survey and focus group materials in collaboration with an advisory board consisting of academic researchers and advocates who have studied and analyzed the restructuring of U.S. employment relations in recent decades through the growth of subcontracting work arrangements, particularly involving the temporary services industry. Members of the Advisory Board include:

George Gonos at Center for Labor Research and Studies, Florida International University; Fabiola Inzunza at Clark University; Carmen Martino and Michele Ochsner at Rutgers School of Management and Labor Relations; Jessica Martinez of the National Council for Occupational Safety and Health; and Rebecca Smith of the National Employment Law Project. The advisory board also provided guidance in completing supplemental secondary research to expand our findings.

Eighty-six workers shared their experiences through 13 focus groups across the four regions, as well as through surveys. Focus groups and surveys were conducted in both English and Spanish during the Fall and Winter months of late 2015 through early 2016. They were conducted with new and existing worker members by staff of the worker centers that make up NSWA. Worker members were invited to participate through each worker centers' existing processes of outreach and intake to maintain contact with their base of community members. Workers' participation was entirely voluntary. The resulting sample population includes workers commonly missed by traditional research data collection due to their immigration status and/or the fly-by-night nature of segments of the temp industry that keeps their places of work relatively hidden.



Introduction



“It’s not easy, living with the uncertainty of whether we have work, daily or only three days a week, and the anxiety that we may not have enough for rent or food. It is very hard and stressful work, but we don’t have another option to work with dignity.”

—Massachusetts/Rhode Island survey participant

Communities across the United States are losing good jobs. They are being lost, not overseas, but to companies turning them into bad jobs right here at home. Driven by the quest to maximize profits, companies have waged a structural assault on jobs across a range of industries, particularly degrading the blue-collar jobs that forged America’s middle class. Through a strategy of replacing direct hire jobs with temp jobs, companies have transformed these once-good workplaces into dangerous and abusive sweatshops.

As temps, many of today’s blue-collar workers are struggling daily to make ends meet. Kept permanently “temporary,” U.S. factory and warehouse workers work for years through temp agencies. In fact, perma-temps account for one-third of all temps today. Yet, wages remain low, benefits remain nonexistent and conditions remain grueling and dangerous. Temp workers are injured at a rate double that of direct hire employees. Wage theft is widespread, as are other tactics used to skim profits from workers’ already low wages. Left unchecked, violations of workers’ basic rights have enabled companies at the top and the temp agencies at the bottom to gain market advantages and to spread this disastrous model.

Government at all levels has failed to ensure that enforcement frameworks effectively respond to companies’ aggressive tactics to find, make and exploit loopholes for profit at the expense of workers’ basic rights. Policy decisions to recognize temp agencies as sole “employers” of perma-temps opened the door for companies to use the temp industry as a shield from legal responsibilities owed U.S. workers. At the same time, the design of formal complaint mechanisms has critically failed to consider the needs of the low-wage workers consistently at the center of the greatest abuse. This has made violations of basic rights a low-risk, cost-effective business strategy, while

creating a tremendous risk for workers to defend their rights and try to improve their workplaces.

It is this imbalance in temped out workplaces that companies use to their advantage. Constantly reminding workers that they are expendable, companies use intimidation, retaliation and discrimination in hiring to gain workers’ silent acceptance of a growing volume of abuse. The temp arrangement exacerbates this vulnerability shared by many workers throughout today’s precarious economy. This report documents this intensifying norm in critical sectors of the U.S. economy and demonstrates the need for a structural response to ensure that good jobs, not abusive temp jobs, define America’s future.

In this report, workers’ experiences create a vivid and unsettling picture of the working conditions of industrial temps, making clear the need for critical reforms to secure supply chain accountability through an effective worker-centered enforcement framework. The report highlights four different local and state initiatives led by temp workers across the country, including: (1) a new organizing model in California for temped out workers in alliance with direct hires at a shared job site; (2) responsible job creation legislation in Illinois that advances a powerful bill of rights for temp workers and fills critical enforcement gaps; (3) legislation in Massachusetts and Rhode Island that reconnects legal responsibility to businesses at the top; and 4) an organizing model driven by the needs and stories of temp workers in New Jersey that is creating public demand for legal reforms. These models are more important than ever as the Trump Administration further threatens this workforce by intensifying the climate of fear in immigrant workplaces and appointing new leaders who openly threaten to put corporate interests ahead of workers’ rights.

Corporate Gains, Good Job Losses



“As temporary workers, we are victims of a ‘legal’ but not fair process, because it is the way [companies] avoid the burdens that employers should assume.”

—Massachusetts/Rhode Island survey participant

Replacing direct hire jobs with temps

Just a few decades ago, a worker without a college degree could get a good, permanent job in a factory or warehouse simply by applying directly with the company that had the pizzas to make, pills to manufacture, boxes to pack or shipments to unload. This is no longer how it works. Today, finding a blue-collar job in the United States increasingly means working through a temp agency.

Big brand name companies such as Walmart, Home Depot and Amazon, and even companies like Johnson & Johnson that project an image of corporate responsibility, have fundamentally degraded and reshaped industrial jobs in the United States through outsourcing management of their supply chains en masse. In 2012, 86 percent of domestic Fortune 500 companies worked with third-party logistics companies (3PLs).¹ (These are the companies that manage production or procurement of goods and fulfillment and distribution in big businesses’ supply chains.) That is nearly double the 46 percent of Fortune 500 companies that worked with 3PLs in 2001.² Among the 100 most profitable companies in the country, the use of 3PLs is ubiquitous—maxing out at 96 percent several years ago.³ The trend among large corporations to outsource the labor-intensive parts of their businesses is clear and extreme.

Concurrently, the staffing industry has undergone exponential growth. The number of temp jobs doubled in the 1970s, doubled again in the 80s⁴ and again between 1990 to 2008.⁵ In fact, since the 1980s, one in five new job vacancies in the United States was a temp job,⁶ and since

2010, the staffing industry added more jobs to the U.S. economy than any other sector.⁷ Today, in the course of a week, three million workers find work through a staffing agency, and over a year, 16 million workers find work intermediated by an agency.⁸ Striking as these statistics are, they likely underestimate the actual number of temp workers in the United States.⁹

Without doubt, these two trends—the outsourcing of supply chain management by American corporations and the incredible growth of staffing services—are deeply intertwined. 3PLs win low-bid contracts with Walmart, for instance, and make a profit by finding ways to minimize their labor costs.¹⁰ In many instances, cost cutting has

“When I went to get regular work, everyone directed me to temp work. No one would directly give me an application, so I had to go to a temp agency to get a job.”

—Illinois focus group participant

been achieved by replacing unionized and well-compensated blue-collar jobs with temp jobs.¹¹ That is, rather than directly hire workers to labor in their factories and warehouses, corporations, through their 3PLs, have contracted with temp agencies to do the same work for less.



“They never keep you, so you keep doing temp.”

—Illinois focus group participant

The relationship between corporate outsourcing and the growth of temp labor is apparent in the kinds of jobs that have driven the temp industry’s growth. In 1990, blue-collar jobs made up 28 percent of temp work, but, by 2013, they accounted for 47 percent of the industry.¹² In fact, if temp workers were accounted for in official measures of the manufacturing industry, employment would have increased 1.3 percent between 1989 and 2000, rather than decline by over four percent.¹³ In Chicago, arguably the most important distribution hub in the United States, temp workers today make up an incredible 63 percent of the warehousing workforce.¹⁴ It is clearly time to replace the image of a temp worker filing papers and answering phones with one working on the factory line and unpacking shipping containers.

years. Four out of five workers had never had a temp job lead to being directly hired. The old image of temp work involving supplemental workers brought in during busy seasons, to stand in for core staff or to meet special needs, is no longer the whole picture.¹⁵ Moreover, corporations are rarely hiring temps directly into positions with permanent status.¹⁶ This perma-temp population now accounts for more than one-third of “temp” workers.¹⁷

Marginalized Black and Latino workers make up a disproportionate share of the workforce employed long-term through temp agencies.¹⁸ In job markets like Chicago and New Brunswick, temp agencies appear to have become *the* hiring hall for Latino immigrants, especially those without work authorization.¹⁹ For undocumented immigrants, “You arrive here and you have to work, so you have to create some connection with the temp agency,” a Massachusetts/Rhode Island focus group participant said, explaining the central role temp agencies play in their securing work. “If you can’t win them over, you know you will not be getting work.” An undocumented mother working as a temp in New Jersey said that, for her and many others like her, “our countries aren’t any good because of the economy and crime. The children don’t have a future, so we sacrifice ourselves for our children.”

Similarly, the skyrocketing proportion of workers who bear the scarlet letter of incarceration as a result of mass criminalization, disproportionately Black men, find they too are largely excluded from mainstream employment

Keeping workers permanently temporary

Rather than serve as an entry point to better opportunities and greater economic security for marginalized workers, workers are being kept temporary on a permanent basis. Participants in the *National Temp Worker Survey*, in fact, had worked in the temp industry for an average of over six years with a typical assignment lasting over three

NATIONAL TEMP WORKER SURVEY RESULTS	
Six years	average time worked in temp industry
Three years	average length of typical assignment
Four out of five workers	never had a temp job lead to being directly hired

and have few options but to find work through the temp agencies.²⁰ Stuck on the fringes, these workers often find that industrial temp work is their only option.

Far from a choice or desire for flexibility, most temp workers would prefer a permanent, direct hire job, turning to temp agencies strictly out of necessity. Over half of all temps reported to the Bureau of Labor Statistics in 2005—the last time this information was collected—that temp work was the only work they could find, and another 13 percent said they hoped the job would lead to permanent work.²¹ Or, measured another way, 59 percent would prefer a different employment arrangement.²² To make matters worse, long-term temp work seems to hurt workers' future job prospects, ensuring their continued struggle at the margins.²³ It is no wonder that not one worker who participated in the *National Temp Worker Survey* preferred temp work to a permanent, direct hire position.

The resurgence of sweatshops for profit

Greater control for companies, instability for workers

The driving force behind this temp-based restructuring of industrial work is the demand of corporate America for low-cost bids from 3PLs. To meet this demand, 3PLs use the temp arrangement to gain greater control over workers' wages, benefits and working conditions. Far from oblivious to this, workers in the *National Temp Worker Study* largely understood that “they don't give us [direct hire] jobs . . . because they want to have us controlled



“You keep hoping it [temping] will not be permanent—that you won’t always be there. But if you don’t leave that circle, you have to figure out how to survive. It’s like you enter a jail, but we exit daily, and you have to be likable or they will get rid of you or harm you.”

—Massachusetts/Rhode Island focus group participant

through the agencies,” as one Illinois participant succinctly put it. Indeed, this arrangement increases the ease with which companies can take or leave any number of workers from any number of temp agencies day to day.²⁴ Temps are treated as entirely expendable, replaced with little cost to companies that need not spend even their time firing a worker, changing payroll or ending benefits.²⁵

For workers living paycheck to paycheck, however, lost work imposes tremendous costs, and lack of job security is a central concern.²⁶ This California worker's story is illustrative of the daily struggle that people in temp jobs face just to find enough work to survive each week:

“We apply at one agency and then another. I complete one day, another day, until I complete my week. Why? Because the agencies don’t give you the whole week. Sometimes, yes, and if they do they give you the whole week temporarily—one month, two months, three months—and then that’s it. And then you have to find another agency. For you to get your week or 15-day period to pay for everything you need, you have to apply to several agencies.”

Almost none of the workers in the *National Temp Worker Survey* enjoyed the job security of a union contract.²⁷ An average of two days each week that they report to work, workers are turned away without work. Schedules are irregular. And at the end of the week they have, on average, secured fewer than 40 hours of work. They sometimes



even go without any work for stretches of time. Among the 69 percent of workers who had gone without work for an extended period while working as a temp, the average stretch of time reported was 66 days.

A Massachusetts/Rhode Island focus group participant explained that having “no economic stability” impacted them “a great deal. You stop achieving goals. You can’t even pay your rent, medication—all that is affected. You can’t make long-term plans.” Similarly, a California worker noted, “Without any job security or steady income, you can’t have a BBQ or go somewhere on a weekend. What if you don’t get work for two or three days? You gotta save that \$100 for rent. I got a second job, but through another agency, so it’s the same thing.”

With “something different” every day, it is constant “ups and downs,” said a worker in Illinois. “If [I lose work] I have nothing. I lose everything. You can’t live like that.”

NATIONAL TEMP WORKER SURVEY RESULTS	
Two days	average days sought work but found none
30–39 hours	average hours of work received each week
69 percent	had gone without work for extended period of time
66 days	average length of time gone without work

Workers feel pressured to accept long shifts “because tomorrow I don’t know if there will be work,” stressed a Massachusetts/Rhode Island participant. Not accepting companies’ long, sometimes open-ended, hours or last minute schedule changes is not an option because it means risking job loss, as illustrated by this Illinois worker’s story:

“Around 2 o’clock, a supervisor let us know they needed us an extra four hours. My son gets out of school at 3:30. I was supposed to get out at 3. You’re not giving me enough time to call someone to see if they can pick up my son. When I told them I wasn’t able to stay those four hours, I wasn’t on the schedule for the next two days. They cut into my money I need for my children, for my light and gas. So, they punished me for that.”

The message of expendability hangs over people in temp jobs as a persistent threat, insisting on their amenability to employers’ demands. Temp agencies are already a last resort for marginalized workers. The need to secure enough work to survive week to week puts workers in a dangerously weak position to negotiate fair terms around work. In fact, an Illinois worker explained how he gets picked up each day without any explanation of where he is going or what he will be doing: “They say, ‘if you have necessity, you will go where we send you or we will send someone else.’” Our tattered public safety net programs provide little relief from this pressure. Most notably, unemployment insurance eligibility requirements in most states, in practice, disqualify temp workers.²⁸

Fear of being replaced with ease also affects temp workers’ ability to successfully organize for better terms. This was exacerbated by the National Labor Relations Board’s (NLRB) position, until 2016, requiring temp workers to obtain employer consent to form mixed bargaining units with direct hires and temps employed at the same workplace and refusing to recognize the companies that used temp labor as joint “employers.”²⁹ This made it lawful for these companies to retaliate against temp workers who tried to organize for improved conditions.³⁰ The Trump Administration is expected to revert back to the NLRB’s previous position and once again make retaliation against temp workers for organizing lawful.

The fear of lost work weighs heavily on temp workers deciding whether to even speak up about abuses of their fundamental rights. A 2008 study representing hundreds of thousands of low-wage frontline workers in the three largest U.S. cities, including temps, found that 20 percent of them had decided to not report a serious rights violation such as wage theft or dangerous work conditions in the previous year.³¹ A 2015 study in Chicago with a similar population of workers, one-third of whom were temps, asked the question differently and found that nearly three-quarters kept quiet at least sometimes about problems at work out of fear.³² In this group, fear was a *greater* motivator for temp workers, as compared to direct hires, to remain silent about abuse.³³

Workers' fears are well-founded. Story after story in the *National Temp Worker Study* involved employers getting rid of workers who were outspoken, injured or complained about abuses. For instance, these stories were just a few of myriad examples shared by workers in California:

"If someone didn't respond to an [sexual] advance, you lost work. And if you responded, then you had work. If someone defends themselves, you lose work."

"When you actually complain [about wage theft] or say something to any of them, that's it. They don't want you anymore. You don't get work or, when you do, it's once in a blue moon."

"You have to constantly check whether a [supervisor] is in a bad mood, because when you see the whole environment and the screaming and the demands, it torments your mind. They treat us like disposable objects and it's no good."

Employers regularly take away work and make other changes to workers' assignments in response to workers who courageously bring attention to abuses and try to improve conditions. These tactics are so widespread that they have essentially become a standard business practice in the low-wage workplaces that em-

ploy temp workers. "If you even look at that board [with health and safe postings] too long, you get DNRed [put on the Do Not Return list for the company]," observed a long-time temp worker in Illinois. "If you go to OSHA, all hell breaks loose." Roughly one in two frontline low-wage workers in the large national 2008 study experienced illegal retaliation for making a complaint or organizing for improved conditions in the prior year,³⁴ while over half of the workers in the 2015 Chicago study reported such retaliation.³⁵ Again, temps in the Chicago study faced disproportionately high rates of retaliation compared to direct hires.³⁶ Similarly, in the *National Temp Worker Survey*, nearly one in two workers who had complained to the Department of Labor or tried to improve their wages or working conditions experienced retaliation.

These unbridled displays of retaliation not only harm individual workers who speak up but send a chilling message to others that they, too, are taking a risk if they refuse to silently accept abuse. They attack the will of workers to defend good jobs by making these efforts seem risky and doomed, feeding a culture of hopelessness and helplessness. The message to workers is clear: "Whoever never says nothing they'd rather have in there," explained a California participant. "The ones who complain, let's leave them aside. People who are quiet are getting let in. People who speak out, get shut out. It's shady what they're doing."

Systematic discriminatory and abusive hiring practices reinforce a repressive workplace culture. Recently, temp agency dispatchers have blown the whistle on illegal requests made by companies of temp agencies to fill work orders by race.³⁷ The leaks demonstrate that companies



are targeting workers they believe are undocumented and less likely to claim their rights.³⁸ In fact, 53 percent of Latinos in the *National Temp Workers Survey* felt targeted for their immigration status. “They tell [us with no papers], ‘Stay quiet and you will get work,’” explained a New Jersey focus group participant. Staffing agencies have even conspicuously set up shop in new immigrant Latino neighborhoods.³⁹

These same practices exclude Black workers.⁴⁰ One in five *National Temp Worker Survey* participants reported racially discriminatory practices. In fact, Black participants were assigned significantly fewer hours of work per week than their Latino counterparts.⁴¹ A Latino focus group participant in Illinois remarked, “They say they don’t want to hire Blacks because they are too lazy, they don’t want to work. [But] they claim their rights and we [Latinos] don’t, so that is why they leave them [Black workers] for last.” No group of workers benefits from these divisive and abusive tactics.

Women also experience discrimination.⁴² “Men have priority. We are second tier,” a female Massachusetts/Rhode Island focus group participant noted. Women are treated as less valuable than men and paid less for the secondary roles they are given.⁴³ Both male and female workers in the *National Temp Worker Survey* commented that, to get any work in this environment, women endure a great deal of sexual harassment and abuse.⁴⁴ “The women have to do this [accept sexual advances] to remain preferred or they will have no more work,” a male focus group participant in Illinois revealed. A female temp in a Massachusetts/Rhode Island focus group echoed him, stressing:

“[People] say you have to say no, but what you are living and your circumstances is not the same as what the law says. The victim consented and then they say she is not a victim. But no one knows the psychological coercion, the pressure of needing a job and supporting your family.”

One in ten survey participants had experienced sexual harassment as a temp worker.

Greater profits for companies at greater costs for workers

Workers’ wages, benefits and the workplace conditions that created America’s comfortable consumer engine have been eroded to deliver lower costs and higher profits to the companies at the top. In fact, temped out work has turned good workplaces into sweatshops. These workplaces are marked by multiple, chronic violations of labor and employment law, which is how the U.S. Government Accountability Office has defined modern-day sweatshops.⁴⁵ As when the term was first used in the late 1800s, these sweatshops shaped through the temp arrangement are labor intensive, involve subcontracting systems and are endured by a mostly immigrant workforce.⁴⁶ The parallels between conditions then, which led to the passage of child labor and minimum wage laws, and the abuses perpetrated in wanton violation of these laws today are unsettling.

In fact, unprompted, focus group participants in both California and Massachusetts/Rhode Island shared stories of abusive child labor. In California, a worker revealed, “I have a ten year old, where I am, working eight hours or more.” Another reported laboring himself at 13 years old in California factories under harsh conditions. “We had heavy, hard things to do,” he said. “They never took me to the doctor. They would just cover an injury up and that was it. And then back to work.” In a Massachusetts/Rhode Island focus group, a man confirmed, on the other side of the country, that he had seen the same thing. “The drivers—they are the office,” he explained. “Many vans pass continuously, recruiting people. If the employer sees they are too young, they say, ‘just look the other way’ when they are indigenous. They put them to work.”

The companies’ disregard of workers’ well-being is obvious from the lack of health and safety precautions.





Temp workers are worked to death, or at least to injury, in the name of delivering more for less. Pressure is applied on temps to work faster, do more, for long hours, without time off, often including in cases of sickness or injury. Not being allowed to use the bathroom or drink enough water were common themes in focus groups across the country. In fact, for going to the bathroom “too much” or for “too long”, California workers reported supervisors getting mad, Massachusetts and Rhode Island workers reported being timed and then harassed, Illinois workers reported lost wages and New Jersey workers reported lost work. Bathrooms came up again in this Massachusetts/Rhode Island worker’s story about the work environment she toiled in:

“They barely let us breathe. They are on top of us, yelling, ‘Hurry! Hurry!’ Every day you know you are going to hear the screams and you anticipate them. You have to go because of necessity and you don’t want to go because you go in fear. I say to myself, ‘God help me, please. I have to walk into this place again.’ We can’t even go to the bathroom and we can’t drink water. We can’t even stretch and we have to be bent over all day.”

The pressure to overwork is made riskier by the fact that companies are often contracting out their most dangerous work, and, along with it, many of the checks and balances that have historically encouraged employers to correct hazards.⁴⁷ “Metal was flying,” a worker in California said, describing his workplace. “They should have giv-

“It’s like being a slave. They work you to death.”

—Illinois focus group participant

en me a mask. Sometimes I couldn’t breathe. I would have been dead, if I had stayed there.” Trying to find safe work through temp agencies is an often-repeated challenge among workers. This Massachusetts/Rhode Island worker expressed the frustration of many in trying to find work that did not pose risks to his health and safety:

“They sent me to a fruit place, but the chemicals they used would make my eyes water. They sent me to the lobster place, but I killed my back. I would work 12 hours straight standing in the cold. It was too much, too tiring. And, the last one I had, I got so sick from the chemicals, I said no more.”

In one Illinois factory, a worker revealed that they “share some pills for the pain for people to be able to endure.” For many, regardless of the job, “It’s repetitive doing the same movements all day standing,” as another Massachusetts/Rhode Island worker stated. “And, at the end, the health of the majority will be affected. We complain about our hands or backs, but we have to keep working because there is no other choice—until we get permanent pain that disables us.” A full 84 percent of *National Temp Worker Survey* participants reported that the companies where they worked denied their basic health and safety rights.⁴⁸

Injuries and deaths that arise from such hazards do not lead to increases in workers’ compensation premiums for the companies that contract out the work—the temp agencies are considered legally responsible.⁴⁹ And temps and agencies alike are less likely to complain about hazards to companies or to OSHA (the U.S. Occupational Safety and Health Administration) for fear of lost work and lost contracts.⁵⁰ The loss of these incentives leads to the widely recognized failure to ensure temp workers have the safety equipment and training they need to do the jobs as safely as possible.⁵¹ The *National Temp Worker Survey* confirmed that too often trainings are not happening and equipment is not available.⁵² This Illinois worker’s story, in many ways, is illustrative of many temps’ experiences:



NATIONAL TEMP WORKER SURVEY RESULTS IN PERSPECTIVE

\$9.07 average hourly wage, while a living wage for one adult and one child is \$24-28.00 in Cook County, Illinois; Los Angeles County, California; Suffolk County, Massachusetts; and Middlesex County, New Jersey

\$13,966 average annual income, while \$16,240 is the federal poverty line for a household of two, which experts recognize still is insufficient to meet basic needs

“[My] first day, there was no training. The hot glue damaged our hands. Things popped up—no safety glasses. After I did my first eight hours, as we were swiping out, that’s when they told us we needed steel-toed boots, gloves and glasses. But we had to buy these things ourselves. They let us work the full eight hours with none of these things, then notified us of things we needed the next day. But we haven’t received a check yet, so how are we supposed to purchase them? I let them know I wouldn’t be able to have all these things. So, they got rid of me.”

Health and safety shortcuts shift costs onto workers rather than employers in rates of work-related injuries and deaths that are noticeably higher for temps than their direct hire counterparts.⁵³ A whopping 17 percent of all work-related fatalities occurred in jobs that were outsourced through subcontracting.⁵⁴ A study in Washington State found temp workers in the manufacturing sector experienced injuries at twice the rate of direct hires.⁵⁵ Temps also lose more days from work than others when injured, suggesting greater severity, and were less likely to receive workers’ compensation or adequate reimbursement in any form for their lost time and medical costs.⁵⁶

Work injuries kept over a quarter of workers in the *National Temp Worker Survey* from working for a day or more (28%), and a majority of workers had worked while sick or injured (56%). A worker in a Massachusetts/

Rhode Island focus group explained how he had worked at a factory for 18 years and still “had no right to be ill one day.” He had recently experienced chest pain on the job. When he told his supervisor, the supervisor responded, “You have to stay. If you leave, there will be no more work.” A worker in California told a similar story of a co-worker who “went to the ER and they [his supervisors] wanted him to keep working, but he couldn’t even stand. They wanted him to work that way. So, they got rid of him.” And in Illinois, another worker revealed how she became disabled because of pressure to work through injuries. “My tendon is messed up,” she said. “It affected my shoulder. They [the supervisors] don’t care. They just put you like that injured in the line and now my hand is no good.” And in New Jersey? “They just leave you there even if you faint.”

And what do temp workers receive for tolerating brutal condition? Low-bid labor contracting ensures temp workers are compensated for a grueling day’s work with poverty wages and few, if any, of the benefits that workers, and the public at large, have long relied on to meet their basic human needs. Temps earn a full 22 percent less than direct hires that do the same work.⁵⁷ And focus group participants reported that the wages stay low. One in California noted, “You never get recognized. Never get raises. People there ten years are still making \$10.00 an hour.” Workers in the *National Temp Worker Survey* made an average annual income of under \$14,000 and average hourly wage of just over \$9.00. Health benefits, retirement benefits, paid vacation and sick days are all extremely rare.⁵⁸



A clear result of temping out these jobs, therefore, is the entrenchment of poverty among these groups of workers. Temps are twice as likely as non-temps to live in poverty⁵⁹ and, among those eligible, disproportionately rely on public assistance.⁶⁰ “In reality, the government is subsidizing the company. The company’s paying low wages and we turn around and get money from the government for medical or other types of assistance. Why? Why let them walk off with those profits?” asked a focus group participant in California.

Making matters worse, big corporations enable temp agencies to make up their profit margins through systemic wage theft. This California worker shared his experience with wage theft:

“Many of the agencies steal from you. When the check arrives and you add it up, something is missing. They’ll [the agencies] just ask how much is missing. You tell them eight hours and they say it will be in the next check, but it doesn’t arrive. But if you insist, you get punished. Many people say, ‘It’s just a few hours, I won’t complain because then I will lose work.’ They [the agencies] prefer getting rid of you to paying you.”

Tight margins for temp agencies are the product of highly competitive bidding for supply chain contracts.

While wage theft is endemic in the low-wage sector generally, affecting nearly half of these workers each year,⁶¹ temps are at an even greater risk. Seventy-four percent of *National Temp Worker Survey* participants reported illegal wage theft, which includes not being paid for the right number of hours (57%), not being paid overtime (30%), not being paid at all (3%) or being charged roughly \$7.00 per day for transportation that the agency requires them to take (29%). In other ways, too, temps are nickel and dimed by agencies, such as having to wait, without pay, over 15 minutes each day to begin work (57%)—17 percent typically wait over an hour—and being charged for other necessities of the job, including clothing, equipment and cashing checks (26%).

Workers know they are being mistreated. Over half of the *National Temp Worker Survey* participants said they do not feel treated with respect (52%). But, remarked a California focus group participant:

“You have to put up with it, because you have kids. You have to support your family, so you let yourself be mistreated because of necessity. And we are all seeing that each person that complains, the following week doesn’t return. It puts you in a bad mood because, when you see the whole environment and the screaming and demands, it torments your mind. They treat us like objects that are no good.”

Shirking Responsibility through Abuse of Law



“In this system, you have no protection or support. It’s like being in a war.”

—California focus group participant

Shielded from lawful responsibilities

The temp arrangement, which involves a system of subcontracting, has become a major vehicle for companies to enjoy the fruits of workers’ labor but avoid the legal obligations owed workers. Technically, state and federal workplace laws do not distinguish between temps and non-temps.⁶² Workplace health and safety, minimum wage, non-discrimination and other labor and employment laws apply to temps just as they apply to non-temps. But the effectiveness of enforcement turns on how “employer” is defined.

Companies use the temp industry as intermediary labor suppliers that add no other value.⁶³ The temp agency model is simple: move a high volume of bodies as cheaply as possible.⁶⁴ The agencies themselves rarely, if ever, provide any materials, knowledge, tools, safety equipment or specialized services.⁶⁵ The companies for whom the workers labor pay the agencies the workers’ wages plus overhead and a profit for every hour each worker is employed.⁶⁶ Participants in the *National Temp Worker Survey* estimated that agencies receive roughly \$4.00 per hour off the back of each worker. “I am barely there [at the temp agency],” remarked a focus group participant from New Jersey. “The check is given by the company and I pick it up there. When you apply, you are there from early to late. But I don’t engage with them otherwise.”

Companies that outsource work, meanwhile, retain tremendous control. They determine whether there is work at all, and largely, through the contract with the temp agency, determine the wage rate and terms and conditions of employment. Payment of workers does not tend to start until the workers have arrived at the company’s job site. The labor is integral to companies’ businesses, not the temp agencies’, with workers operating the companies’ machinery.⁶⁷ In fact, putting one temp agency out of business will only result in another emerging to take over a company’s contract.

Yet counter to long-held legal doctrine and common sense, under law the temp agency is generally recognized as the “employer” of these workers. This fact is the result not of some invisible natural order or public consensus, but the successful lobbying efforts of the temp industry. Beginning in the 1950s, the IRS (Internal Revenue Service) began accepting temp agencies’ payroll taxes and state legislatures and public agencies started to make laws and interpretations of the law more favorable to the industry. At the heart of these decisions, the industry claimed their intermediary companies were the workers’ employer, seeking to distinguish themselves from the “placement agencies” that were under heavy regulation. At the time, the industry’s campaign received little attention and faced little opposition.⁶⁸ This opened the door for companies to exploit loopholes in supply chain regulation, using temp agencies as a shield from legal responsibility.

“The agencies are simply earning money. I don’t think that is valid. Every day, they treat us badly and we have less quality of life. And for them, more profit.”

—Illinois focus group participant

Enforcement of every workplace protection depends on the existence of an employer-employee relationship. In theory, there are three general categories of tests, with some variation, used to determine who is an “employer.”⁶⁹ In practice, the many different agencies and courts involved in workplace enforcement have developed inconsistent lists of factors to weigh in making these decisions.⁷⁰ This has created legal confusion and disparate results depending on the decision-maker.⁷¹ Although

clearly irrational, a business may be an employer for purposes of wages, for instance, but not social security. This benefits no workers.

The test used in federal wage and hour cases promises the broadest definition of employment. Legal responsibility in these cases attaches to any business that “suffers or permits” workers to work.⁷² This should extend the responsibility far and wide through labor supply chains. That was the clearly articulated intention of Congress when they adopted this standard from state child labor laws and shaped it to address subcontracting systems.⁷³ Nevertheless, courts have deviated from this broad original meaning, frequently employing instead a narrower “economic realities” test that demands a variety of factors be weighed to determine the “economic dependence” of a worker on a company for continued employment.⁷⁴ This brings interpretation of the “suffer or permit” standard much more in line with the other more limited “traditional” legal test of employment.⁷⁵

Most importantly, at the end of the day, few judges or investigators have been willing to interpret either test to extend responsibility for workers’ rights far enough through labor supply chains to hold the big companies like Amazon and Walmart accountable for workplace protections.⁷⁶ A partial victory, however, has been a growing body of cases that recognize “joint liability.”⁷⁷ In these cases, both temp agencies *and* the companies that contracted directly with them were held responsible for compliance with labor and employment law. This is currently limited to cases involving workers’ wages, health and safety, discrimination and most recently in cases of workplace organizing.⁷⁸ For now, employee benefits, unemployment insurance and workers’ compensation in most states continue to be considered the sole responsibility of temp agencies, and, of course, legal responsibility for workplace laws in general does not reliably reach the top of multi-layered supply chains.

While an important step in the right direction, the limited expansion of joint liability to date is not enough to close the loopholes in supply chain regulation. Over 20 years ago, in 1994, the U.S. Departments of Labor and Commerce noted that it was widely recognized that companies used the temp industry to evade their legal obligations, enjoying significant financial benefits as a result.⁷⁹ The estimated payroll savings for businesses that temp out their staff is between 15 and 30 percent.⁸⁰ Legal incentives

still encourage businesses to use the temp industry to take advantage of loopholes, but not without costs for the local communities that are losing good jobs.

Obstacle course for justice

Enforcement relies on workers being able to claim their rights and blow the whistle. Even when public agencies are tasked with enforcing workplace laws, agencies discover only a fraction of violations without workers first reporting them. Public agencies are simply not resourced or positioned to effectively oversee all workplaces, and the worst offenders always seem to find a way to evade regulatory oversight.

Protecting good, permanent jobs therefore requires a reliable path to justice that workers on the frontline feel safe navigating. A majority of workers in the *National Temp Worker Survey* had tried to improve their jobs (56%) and over a third had reported wage theft to the Department of Labor (35%), but existing paths to justice do not meet the needs of these workers who are most affected by workplace abuses. Bringing a complaint requires workers to navigate a web of multiple, disconnected processes to seek relief from various workplace abuses, including retaliation. There are over half a dozen public agencies

“I thought it was just in my country that things functioned wrong, but here your schemas are broken. [In my wage theft case], to date, [the temp agency] keeps asking for time and the DOL keeps giving him his time. It’s been a year and he has not paid. He even wrote to say he would not pay and the DOL has done nothing. The DOL is not up to speed to give us an effective response. They just have a bureaucracy and you just fill out papers.”

**—Massachusetts/Rhode Island
focus group participant**

and courts involved in workplace enforcement, each implementing a distinct piece of workplace regulation.⁸¹ This discourages workers from seeking complete relief and from holding employers comprehensively accountable.⁸²

On average, successful resolutions of complaints take months, even years, to reach, which is too long for workers living paycheck to paycheck.⁸³ Justice delayed is justice denied for these workers, as this California focus group participant expressed:

“If something serious happened to me, I don’t think I could wait through a legal process, because that takes a long time. That’s what happens to a lot of people. They get stuck in the process and can’t wait, because they’re already poor, so waiting is just making you more poor and for something that’s not even sure.”

Yet perhaps the most significant barrier to justice for all workers are the less visible issues of “proof” or evidentiary standards in cases involving discrimination, retaliation and, in general, temp arrangements. An employer’s action with a clear discriminatory or retaliatory impact is still not enough to prove liability. Workers have the burden of proving an employer’s underlying motive, but it is very rare for employers to state directly that they are intending to discriminate or retaliate.⁸⁴ Employers can and do claim a range of often flimsy justifications for their discriminatory and retaliatory tactics, from being a poor worker to simply not being needed or a good fit.⁸⁵ This then puts the burden entirely on workers to show these justifications are false—a burden that, even when the justification strains credibility, is seemingly impossible to meet under the law.⁸⁶

Temps also have the added burden of proving, in all cases, *who* should be held accountable. But, temp workers do not always know who is responsible for the abuse they are experiencing—the staffing agency or the company for whom they labor. “I don’t know who the supervisor is there. They change one to another. And they change to another. And that’s how they do things,” a New Jersey focus group participant said, describing the confusing supervision structure in his workplace. Though most could name the company they labored for (69%), many workers in the *National Temp Worker Survey* were unclear about who their supervisor represented—about one in four relayed some uncertainty. Twice as many, or about half, were

unclear specifically in cases of discipline. This is a barrier in itself, let alone the considerable amount of time and resources that resolving this legal question demands.⁸⁷ This approach tips the scales in favor of well-resourced businesses and against workers who are struggling day to day to make ends meet.

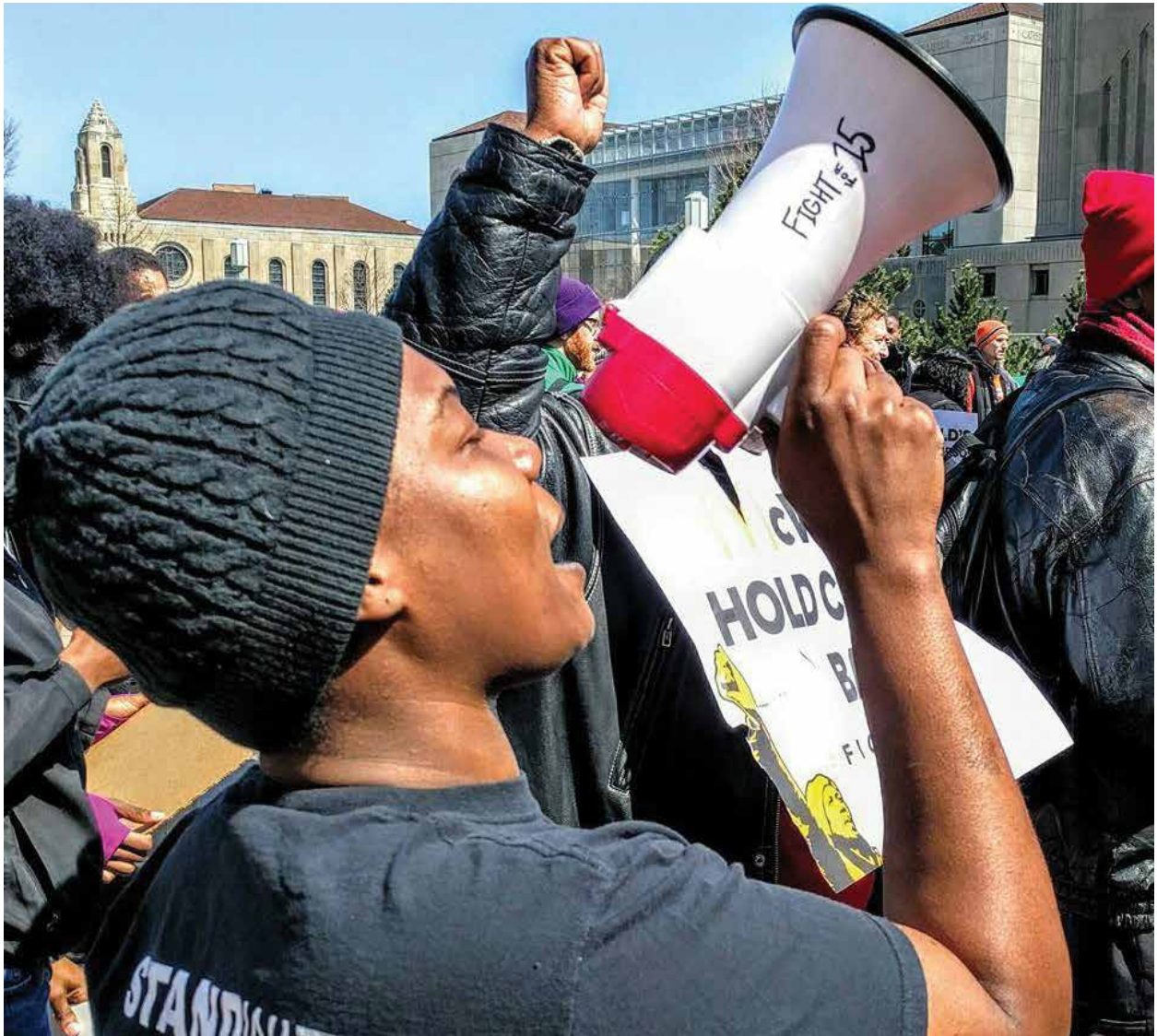
Given the significant hurdles to securing relief through formal workplace complaint processes and lack of consequences imposed on guilty companies, it is no surprise that workers sometimes decide not to seek it. For instance, few severely injured workers in the *National Temp Worker Survey* even tried to apply for workers’ compensation (just 21%).⁸⁸ Workers said they did not apply because they feared retaliation, faced employer interference, lacked information and believed it was a waste of time.⁸⁹ A focus group participant in California shared his father’s experience when, working at a warehouse through a temp agency, a forklift hit him in the face:

“For the next seven years, he fought a [workers’ compensation] case. He never ended it, because he passed away. I lost my dad for that reason. He went through so many surgeries. Is that going to happen to everyone that gets hurt at an agency? It’s not worth it! My dad was a Vietnam vet, a citizen, but they didn’t listen to him. He just got shut down and never got anything for the injury he received as a temp. It was like a waste of life.”

This is unacceptable. Temp workers face all of the same problems as other low-wage workers including: unchecked retaliation, a fractured complaint system that delivers too little too late, and a penalty system that is not tailored to deter violations or encourage corrective action from companies. These fundamental challenges must be addressed for all low-wage workers. Because temp workers also, however, face an absurd lack of legal clarity as to who is their employer and accountable for the abuse, these already serious challenges are deeply exacerbated.

Anti-retaliation laws should protect all workers and cover all employer tactics, including tactics known to be used by companies to dismiss temp workers who claim their rights. If temp workers do not have at least the same protections from retaliation as direct hires, market incentives will continue to normalize this model as a strategy to evade accountability.

To Bring Back Good Jobs, Restore Rule of Law at Work



**“We are all the same. The myth between permanent and temp workers . . .
There are no differences, just that they’re with the company and we’re temps.”**

—New Jersey focus group participant

The protection of good jobs and basic rights in the workplace begins with an expanded understanding of corporate legal responsibility in the context of today’s increasingly complex supply chain work-arounds. Extending accountability to the top is critical.⁹⁰ These companies at the top should be incentivized to provide oversight of their labor intermediaries to prevent workplace abuses, just as they do for product quality.⁹¹

Workers need a vigorous, clear and knowable “employer” standard to match the aggressive practices of U.S. corporations that have been deployed to legally distance companies from the exploitative parts of their businesses.⁹² Rather than a system with many complex tests that will require assessment anew in each case as to which business or businesses most subjectively controls the workplace, a new legal framework should attach responsibility to any business that outsources any part of its operations for workers’ rights compliance anywhere along its supply chain.⁹³ In essence, this is little more than a clarifying return to the original intentions of the Fair Labor Standards Act’s “suffer or permit” standard.⁹⁴ The idea behind it was always to reach any business that allowed or tolerated workplace abuses, regardless of the presence of intermediaries.⁹⁵ Now more than ever, a broad, but straightforward approach like this is the simplest solution.

In some cases, outsourcing should be prohibited. It should unquestionably be prohibited when ensuring accountability and imposing liability becomes impossible. Additionally, in parts of Europe, Asia, Africa and Latin America, temp work is also limited to extraordinary business needs, prohibited for hazardous work and work central to a business’ operations, and limited to short time frames.⁹⁶ This would constrain businesses from using these arrangements to distance themselves from their legal responsibilities in the first place.

Secondly, it must cost corporations less to keep good,

permanent jobs than to turn them into abusive, temporary jobs. That means corporations at the top of supply chains must face serious legal consequences for failing to monitor for and fix supply chain abuses.⁹⁷ These consequences must be tailored to lead to compliance with the law.⁹⁸ To begin with, significant penalties should not be imposed on an employer that takes quick action to correct abuse in their supply chain, such as disciplining supervisors, retraining labor intermediaries and allowing workers’ groups on site to investigate and monitor conditions. For employers found guilty of allowing abuses, however, penalties must be swift, certain and appropriately disruptive of business as usual, such as loss of sales, loss of a license to do business, truly significant monetary sanctions and/or jail time.⁹⁹ The magnitude of the penalty must induce other similarly situated employers to comply with the law,¹⁰⁰ and parallel efforts should be undertaken to support employers in implementing best practices for prevention.

And third, workplace enforcement must enable workers most affected by abuse to bring attention to it. Workers are in a unique position to monitor violations and be the frontline in improving conditions. Existing enforcement frameworks rely almost exclusively on workers to trigger accountability measures. As such, paths to justice must be made reliable and safe.

Adequate protection from retaliation for workers who are injured or exercise their rights and protection of workers’ right to organize without interference is essential to ending the erosion of good, permanent jobs in the United States and fueling a new story of American growth with, rather than at the expense of, workers. Protection should be inclusive of all workers, as well as all employer tactics. It should obviously include known tactics used by client companies to retaliate against temp workers, such as the use of Do Not Return lists, and companies should



have to prove their reasons for ceasing to hire or changing work assignments are lawful following workers' injuries, complaints or exercise of rights.¹⁰¹ It should also include a firewall between labor disputes and immigration enforcement activities.¹⁰² Without this, threats of deportation will continue to give businesses an exploitable group of workers with whom to undermine the efforts of all workers. Likewise, threats and employer policies that anticipate workers exercising rights must be made clearly unlawful.¹⁰³ No worker should have to guess whether the law will protect them or not from a form of retaliation.

The system of enforcing workplace protections cannot begin to function effectively, and will continue to represent a failed legal framework, until the complaint process is redesigned to ensure it addresses the needs of workers. Thus, workers also need a simpler, timely and cohesive process to secure justice in all cases, especially when facing retaliation. Workers should be able to resolve the range of workplace issues they are experiencing through one coherent and unified process. The process could be streamlined either by replacing the messy patchwork system with a "one stop shop"¹⁰⁴ or unified through inter-agency coordination. For instance, agencies can share a common complaint form, offer a shared point of access for workers, use a team of investigators and a bench of judges to resolve the range of issues to which workers bring light and avoid discouraging workers from pursuing them all.¹⁰⁵ Creating

a system that ensures timely resolution requires changes in incentives for employers to respond rapidly to workers' complaints. This could be achieved through improving workers' access to temporary relief while their complaint is investigated,¹⁰⁶ or a penalty structure with punitive measures that encourage employers to monitor their supply chains for abuses and respond quickly, such as by automatically accruing fines at least equal to workers' wages from the moment the violation takes place.¹⁰⁷

The law must also flip assumptions and burdens of proof in cases of retaliation and cases involving temp workers. The assumption in a temp case, for instance, could be that an employment relationship exists until proven otherwise.¹⁰⁸ While in a retaliation case, for instance, it should be that adverse actions impacting workers experiencing an injury, a violation of their rights or organizing for better conditions are retaliatory.¹⁰⁹ As this Illinois focus group participant sharply put it:

"We need to hold companies accountable to make sure they're not [taking away people's work] for sexual harassment or mistreatment. If a person comes to work every day on time, does what they're assigned every day, they shouldn't be DNRed [put on a company's Do Not Return list] without question. There should be paperwork done and a reason why."

Keeping this burden on workers makes it impossible to hold businesses responsible.¹¹⁰ Flipping these assumptions will help lift the virtually impossible burdens of proof and place the responsibility on the party overseeing the supervisors and in possession of the paperwork and other information required to establish proof.



Acting Locally to Win Supply Chain Accountability



“When people get united, we have strength. It’s hard, but when people start to obtain victories they’re able to see they can make changes.”

—Illinois focus group participant

The Trump Administration threatens to deepen the problems captured in this report. For starters, the Administration promises a more complete breakdown in workplace enforcement by appointing leaders who put corporate interests ahead of workers’ rights. This threatens critical progress in filling enforcement loopholes, such as through reversals of recent NLRB decisions that extended legal liability and protected temps from retaliation and intimidation for workplace organizing. The Administration is also stirring up fear in immigrant worker communities, sending an ominous message to undocumented workers that anyone is fair game for deportation. This is taking the place of the Obama Administration’s assurances that workers should be protected from unfair immigration action when they defend critical rights at work.¹¹¹ Just the increased threat of deportation promises to increase workers’ sense of personal risk in bringing attention to these abuses.

Four campaigns led by temp workers across the country, however, show four ways forward even in these brutal times. Workers in each of those localities are building models for effecting structural change at the local and state level and demonstrate the power of temps to realize that change through public and private policy. In California and New Jersey, temp workers are modeling how temps, in the face of extreme abuse, can build power to

effect change through organizing, alliance building and storytelling. And in Illinois, Massachusetts and Rhode Island, temps are harnessing their power to institutionalize change through landmark state legislation aimed at restoring rule of law by holding companies responsible for the work they outsource and making the path to workplace accountability more effective for temp workers.

California: Temp and direct hire workers joint organizing model

Warehouse workers in California are on their way to achieve the unprecedented: one joint bargaining unit representing temp and direct hire workers. On December 22, 2016, temps and direct hires at a California Cartage warehouse near the Port of Long Beach voted, for the first time, on joint union representation by the Teamsters.¹¹²

Temps and direct hires, who work side by side on the job site, have been unable to do this in the past. The law made it impossible—that is, until two important decisions by the National Labor Relations Board (NLRB) brought the rules around union organizing in line with the reality of today’s workplaces.

In August 2015, the NLRB reconfigured its employer test, resulting in recognizing joint employment more often.¹¹³ This decision also made it unlawful for lead companies to retaliate against temp workers trying to organize a union.¹¹⁴ This has made it easier for the mixed group of California warehouse workers to band together to improve shared working conditions. In 2015 and 2016, California workers, with the support of the Warehouse Workers’ Resource Center and the Teamsters, initiated multiple strikes, lawsuits and policy actions. They successfully defended and secured shared rights, including new state heat regulations, while fighting the company’s retaliation and intimidation tactics.¹¹⁵

In July 2016, the NLRB issued the critical second decision, making it possible for temps and direct hires to form



one joint bargaining unit to negotiate common terms and conditions with the company that employs both direct hires and, indirectly, temp workers.¹¹⁶ This decision removed a nearly unsurmountable barrier to organizing—a requirement that consent for a joint bargaining unit be given by both the temp agency and the company that contracted with the temp agency for the labor.

When the California workers' union organizing campaign succeeds, the Teamsters will negotiate a contract that will govern all workers at the Cal Cartage warehouse. While the contract will set only the terms and conditions of work at the workplace—not following temps when they work at other job sites—it will apply equally to temps as it does direct hires on site. It will also give temps the right to hold both their temp agency and Cal Cartage accountable through protests that target both. A reversal of the NLRB decisions, on which this union organizing strategy is based, will not stop this united force of temp and direct hire workers from continuing to pave the way by other means for the benefit of all.

Illinois: Responsible job creation legislation

Ten years ago, Illinois passed the Day and Temporary Labor Services Act¹¹⁷ to address the growing presence of unregulated temp agencies throughout the state. The Temp Act requires these agencies to register with the state Department of Labor, showing proof of workers' compensation and unemployment insurance. A list of registered agencies is published online. Companies are required under the law to use only registered temp agencies. Temp agencies that do not register or companies that use unregistered agencies face fines.

Additionally, the Temp Act addresses some of the abuse particular to temp work. The law requires agencies to pay a four-hour minimum wage to workers who they call in but do not use and to give workers notice of where and for whom they are working, forbids the agencies from charging for transportation to job sites, and places limits on placement fees the agencies charge companies that want to directly hire workers placed as temps. It also, importantly, holds agencies and the companies that use them, which are called “client companies” in the statute, jointly responsible for the state minimum wage and wage payment laws.

It is the most comprehensive piece of legislation of its kind in the country.¹¹⁸ And yet, as this report shows, workers and workers' organizations in Illinois are clear



that more is needed to effectively improve workers' lived experiences and for Illinois to start to see good, permanent jobs make a comeback.

That is why temp workers, their organizations—namely, the Chicago Workers' Collaborative and Warehouse Workers for Justice—and their allies, including the Illinois AFL-CIO, have introduced the Responsible Job Creation Act (RJCA).¹¹⁹ The bill is tailored around two objectives: (1) closing the enforcement gap and (2) better protecting temp workers from abuse and keeping good jobs in Illinois from being turned into abusive temp jobs. Focusing on these two goals, the bill promises to benefit workers, local economies and the state, saving Illinois money that is lost paying for abusive jobs and making up for poverty wages.

Key provisions in the RJCA aim to improve enforcement of the Temp Act. There are essentially five areas of improvement: retaliation protections, transparency, joint responsibility of “client” companies, stop gaps against common forms of evasion around enforcement and increased costs for noncompliance. Notably, the bill addresses the ongoing epidemic of unlawful retaliation, creating a presumption of retaliation for 90 days following a workers' exercise of rights under the Act. It also critically requires agencies to track what percentage of temp jobs are actually leading to permanent jobs and the race and gender of applicants and workers assigned jobs. Other measures fill in a gap in joint responsibility around the four-hour minimum wage for workers required to report to a job site, require agencies to secure surety bonds (essentially insurance) to address legal violations and make it costlier all around to violate the law.

Other areas of the RJCA aim to eliminate the incentives to temp out good jobs and target abuses particular to temp work not yet addressed in the Temp Act. This includes a mandate that temps receive equal pay and

benefits as their direct hire counterparts who do similar work at the same job site. It includes added protections around known wage theft tactics and other abuses, such as requiring notice of scheduling changes for multi-day assignments, and it requires agencies to provide a ride home when they require workers take their transportation to a job site. It also establishes clear responsibilities for both companies and agencies related to health and safety on the job.

Adopted, this impressive list of new protections and powerful enforcement tools could dramatically improve the ability of workers' organizations to defend good jobs in Illinois and improve conditions for all workers.

Massachusetts & Rhode Island: Legal responsibility for businesses at the top

Community Labor United, a coalition of immigrant worker organizations and labor unions in Massachusetts, has been bringing attention to the way big businesses aggressively distance themselves from legal liability for worker abuses by employing contracts on top of contracts, and also to the failure of current legal frameworks to create accountability to good jobs standards in these increasingly common arrangements.¹²⁰ The coalition is working to advance an innovative law to hold "lead businesses" in multi-layered subcontracting arrangements accountable.

The bill was introduced for the first time in 2015 in both the state's House and Senate as An Act to Prevent Wage Theft and Promote Employer Accountability.¹²¹ It introduced a definition of a "lead business" as any that obtains or is provided workers by a labor contractor *or* indirectly by a subcontractor to perform work that "has a nexus with the company's business activities, operations or purposes."¹²² If adopted, lead businesses would be jointly responsible for wage violations and misclassifications of relevant workers within their supply chains.

Despite receiving a great deal of attention, including a detailed report by the *Boston Globe* on the widespread incidence of wage theft in the heavily subcontracted construction industry,¹²³ the bill has not yet passed. However, the bill's proponents, including the bill's sponsor, have promised to keep up the fight in the new year to win this first-of-its-kind supply chain accountability law for the benefit of all workers.¹²⁴ Similar legislation will also be introduced for the first time in Rhode Island, led by the worker center Fuerza Laboral.

New Jersey: Temp workers' stories demand legal reform

In New Jersey, industrial temp workers are influencing public opinion with their stories and creating an outcry for legal reform. Last fall, dozens of temp workers shared their experiences with reporters who ran an investigative series in *The Star-Ledger*.¹²⁵ The series examined the growth of the temp industry in the state, revealing rampant racism, sexism and abusive working conditions.

The series represents a culmination of workers' efforts, supported by the community-based group New Labor, to confront these issues, which industrial temp workers have endured daily. New Labor encourages workers to bring their issues to the collective and work together to address them, such as through the kind of organizing and storytelling that led to the *Star-Ledger* series.

**"We are working for a better workplace."
—New Jersey survey participant**

The series has created a groundswell of public support for legislative action. A few short months after the series was published, a state Assemblywoman introduced a bill in response, citing the series as her inspiration.¹²⁶ The Assemblywoman's bill would increase state oversight of the industry, require the agencies to put up \$10,000 bonds to open and enhance protection against discrimination. Even the staffing agencies, following the series, publicly issued a call for stronger enforcement, including new fines and protections for undocumented workers who brought abuses to light.¹²⁷ The workers themselves will make their own call for legislation they want to see move forward at a state or local level in the new year.

The success of these efforts will rely on the involvement of trained worker leaders. Premised on the clarity that all workers have the right to safe workplaces, New Labor trains workers to be "safety liaisons," teaching them about their legal rights to workplace health and safety and how to spot hazards. The organization supports workers' leadership in doing the work to address their own concerns, including building power by forming health and safety committees.

Conclusion

Companies are rapidly abandoning the responsibilities of direct hires through perma-temps in a wide range of industries and sectors in the United States and around the world.¹²⁸ The unconscionable conditions suffered by industrial temp workers in this report show us that this new normal of precarious work destroys good jobs, destabilizes families and precludes defending even basic rights on the job. We need a bold and broad economic development response to create a fair business climate compatible with the rights and dignity of all workers, which urgently includes supply chain accountability through an effective worker-led enforcement framework.



APPENDIX

ABOUT THE PARTICIPANTS

AGE	ALL	MA/RI	IL	NJ	CA
25 and under	6	0	2	2	2
26-35	19	3	2	8	6
36-45	22	1	10	7	4
46-55	17	1	7	7	2
56-65	7	1	1	2	3
Over 65	2	0	0	1	1
Blank	12	2	2	4	4

GENDER	ALL	MA/RI	IL	NJ	CA
Female	46	5	12	23	6
Male	29	1	8	8	12
Other	1	0	0	0	1
Blank	10	2	4	1	3

RACE/ETHNICITY	ALL	MA/RI	IL	NJ	CA
Black	8	0	8	0	0
Latino	72	8	14	31	19
White	1	0	0	1	0
Blank	5	0	2	0	3

COUNTRY OF ORIGIN	ALL	MA/RI	IL	NJ	CA
USA	13	0	6	2	5
Mexico	50	1	13	26	10
Honduras	4	1	0	2	1
El Salvador	4	2	0	0	2
Columbia	1	1	0	0	0
Peru	2	0	0	2	0
Guatemala	1	1	0	0	0
Dominican Republic	1	1	0	0	0
Blank	10	1	1	0	1

YEARS IN USA OF NONCITIZENS	ALL	MA/RI	IL	NJ	CA
Average	17	10	15	15	25
Median	15	10	15	14	25
Mode	15	10	15	13	20
Minimum	4	4	5	8	4
Maximum	41	15	27	30	41
Blank	4	1	0	3	0

PRIMARY LANGUAGE

English	8	0	4	1	3
Spanish	67	8	15	31	13
English and Spanish	2	0	0	0	2
Blank	9	0	5	0	4

**ENGLISH PROFICIENCY OF
NON-NATIVE SPEAKERS**

None	14	1	3	8	2
Beginner	22	4	4	7	7
Intermediate	14	2	5	4	3
Advanced	2	0	1	1	0
Fluent	2	0	0	2	0
Blank	13	1	2	9	1

EDUCATION

None	5	0	1	3	1
Some primary	3	0	0	1	2
Primary	10	0	3	5	2
Some secondary	18	2	2	10	4
Secondary	24	1	9	9	5
Some college	6	2	1	0	3
College	5	2	0	1	2
Blank	15	1	8	3	3

**INDUSTRIES WORKED
AS TEMP**

	ALL	MA/RI	IL	NJ	CA
Manufacturing	54	3	18	25	8
Warehouse/logistics	29	0	7	8	14
Laborer	14	3	7	1	3
House keeping	14	1	7	1	5
Meat packing	8	1	4	0	3
Food handling	13	4	7	0	2
Assembly	12	0	8	0	4
Clerical	2	1	1	0	0
Other	10	1	5	2	2
Blank	2	1	0	0	1

NOTES

1. Armstrong & Associates, Trends in 3PL/Customer Relationships—2013, 6 (2013).
2. *Id.*
3. *Id.* at 5.
4. Nik Theodore & Jamie Peck, *The Temporary Staffing Industry: Growth Imperatives and Limits to Contingency*, 78 *Econ. Geography* 463, 464 (2002).
5. Tian Luo, Amar Mann & Richard Holden, *The Expanding Role of Temporary Help Services from 1990 to 2008*, *Monthly Labor Review* 4 (2010).
6. Theodore & Peck, *supra* note 4 at 463.
7. Keith Cunningham-Parmeter, *From Amazon to Uber: Defining Employment in the Modern Economy*, 96 *Boston Univ. L.R.* 1673, 1682 (2016).
8. American Staffing Association, Staffing Industry Statistics, americanstaffing.net.
9. Several factors contribute to an undercount of “temp” workers. Some businesses that operate like temp agencies identify themselves as a different kind of business. Organizers in most communities report the underground operation of numerous unlisted temp agencies. The substantial international traffic in agency workers is largely uncounted.
10. Jason Struna, et al., *Unsafe and Unfair: Labor Conditions in the Warehouse Industry*, 5 *Policy Matters* 2 (2012).
11. Theodore & Peck, *supra* note 4 at 478; *see also* Annette Bernhardt, et al., *Confronting the Gloves-Off Economy: America’s Broken Labor Standards and How to Fix Them* 10 (2009).
12. Matthew Dey, Susan N. Houseman & Anne E. Polivka, *Manufacturers’ Outsourcing to Staffing Services*, 65 *ILR Review* 533, 543 (2012).
13. *Id.* at 549.
14. Warehouse Workers for Justice, *Bad Jobs in Goods Movement: Warehouse Work in Will County, IL* 13 (2011); *see also* Rebecca Smith & Claire McKenna, *Temped Out: How Domestic Outsourcing of Blue-Collar Jobs Harms America’s Workers* 9 (2014) [hereinafter *Temped Out*] (citing *Bad Jobs in Goods Movement* and noting Will County is the “heart” of the warehouse industry).
15. *See* Theodore & Peck, *supra* note 4 (reviewing stages of temp industry growth).
16. Even the American Staffing Association, which represents the temporary services industry and promotes the notion that temp jobs lead to permanent jobs, only claims one-third of temps have been offered permanent jobs. American Staffing Association, Staffing Industry Statistics, americanstaffing.net.
17. Harris Freeman & George Gonos, *Taming the Employment Sharks: The Case for Regulating Profit-Driven Labor Market Intermediaries in High Mobility Labor Markets*, 13 *Empl. Rts. & Empl. Pol’y J.* 285, 293 (2009) (citing Lawrence Mishel, et al., *The State of Working America 2006/2007*, 9 (2006)).
18. *Temped Out*, *supra* note 14 at 11; *see also* Warehouse Workers for Justice, *supra* note 14 at 13 (finding 84% of warehouse workers were Black or Latino).
19. *See, e.g.*, George Gonos & Carmen Martino, *Temp Agency Workers in New Jersey’s Logistics Hub: The Case for a Union Hiring Hall*, 14 *WorkingUSA: The Journal of Labor & Society* 499, 503 (2011).
20. Jamie Peck & Nik Theodore, *Carceral Chicago: Making the Ex-offender Employability Crisis*, 32 *Int’l J. Urb. & Reg’l Res.* 251, 268 (2008); *see also* Gretchen Purser, “Still Doin’ Time’: Clamoring for Work in the Day Labor Industry”, 15 *WorkingUSA: The Journal of Labor & Society* 397 (2012).
21. U.S. Government Accountability Office, *Contingent Workforce: Size, Characteristics, Earnings, and Benefits*, Report GAO-15-168R to U.S. Senators Murray and Gillibrand 34 (2015).
22. *Id.* at 39.
23. Carolyn J. Heinrich, Peter R. Mueser & Kenneth R. Troske, *The Role of Temporary Help Employment in Low-Wage Worker Advancement*, Working Paper 13520, National Bureau of Economic Research 26 (2007).
24. *See, e.g.*, *Temped Out*, *supra* note 14 at 22 (describing a Walmart warehouse to which 11 temp agencies simultaneously supplied workers).
25. *See, e.g.*, Michael Grabell, *The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed*, ProPublica, Jun. 27, 2013 (featuring old advertisements from temp agencies marketing the advantage to companies of fewer responsibilities to workers).
26. When asked, the “worst problem” identified by the most workers in the *National Temp Worker Survey* was job insecurity (21%), followed by identification of multiple issues (13%), mistreatment in broad terms (13%) and the rest citing particular rights violations, injuries and low wages.
27. Just four workers said they belonged to a union out of 86 participants.
28. *Temped out*, *supra* note 14 at 20. Other safety net programs force recipients to work, making them more vulnerable to work-related abuse. Bernhardt, et al., *supra* note 11 at 20 (commenting on the impact of welfare reform). These programs also exclude formerly incarcerated and undocumented workers. Key federal legislation included the Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104–193, 110 Stat. 2105, and the Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105–276, 112 Stat. 2518.
29. Harris Freeman & George Gonos, *Temp Organizing Gets Big Boost from NLRB*, *Labor Notes* (Aug. 23, 2016); *Browning-Ferris Industries of California, Inc.*, 362 *NLRB No.* 185 (2015); *see also* Miller & Anderson, 331 *NLRB* 1298 (2000) (ending the practice of requiring workers to obtain employer consent to form a bargaining unit combining workers directly and jointly employed).
30. *Browning-Ferris Industries of California, Inc.*, *supra* note 29.
31. Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* 24 (2009) [hereinafter *Broken Laws*].
32. Raise the Floor Alliance & National Economic and Social Rights Initiative, *Challenging the Business of Fear: Ending Workplace Retaliation, Enforcing Workers’ Rights* 17 (2016) [hereinafter *Business of Fear*].
33. Authors’ analysis of *Business of Fear* survey data. *Id.*
34. *Broken Laws*, *supra* note 31 at 24.
35. *Business of Fear*, *supra* note 32 at 11.
36. Authors’ analysis of *Business of Fear* survey data, finding a p-value of less than 0.01. *Id.*
37. Liam Stack, *Black Workers’ Suit Accuses Job Agency of Favoring Hispanic Applicants*, *NY Times*, Dec. 6, 2016; Will Evans, *When Companies Hire Temp Workers by Race, Black Applicants Lose Out*, *Reveal News*, Jan. 6, 2016.
38. Stack, *supra* note 37; *see also* *Business of Fear*, *supra* note 32 at

- 15 and 17 (finding immigrants significantly more likely to avoid bringing attention to problems out of fear than U.S. citizens with a p-value <0.001).
39. Gonos & Martino, *supra* note 19 at 503–506 (mapping temp offices in New Jersey); Jamie Peck & Nik Theodore, *Contingent Chicago: Restructuring the Spaces of Temporary Labor*, 25 Int'l J. of Urb. & Reg'l Res. 471 (2001).
 40. *See, e.g.*, Evans, *supra* note 37.
 41. P-value less than 0.01.
 42. *See, e.g.*, Evans, *supra* note 37 (finding code words used to fill work orders by race, gender and age).
 43. Center for Women and Work & New Labor, *Controlled Chaos: The Experiences of Women Warehouse Workers in New Jersey* (2015).
 44. *See also id.* (finding sexual harassment rampant and connected to preferential treatment).
 45. U.S. Government Accountability Office, “Sweatshops” in the U.S.: *Opinions on Their Extent and Possible Enforcement Options*, Report GAO/HRD-88-130BR to Representative Shumer 11 and 16 (1988).
 46. *Id.* at 9.
 47. OSHA, *Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job* 9 (2015).
 48. 84% of survey participants reported at least one of the following: safety trainings not happening, not having the safety equipment needed or work injuries that kept them from working for a day or more.
 49. *See* OSHA, *supra* note 47 at 9.
 50. *See id.*
 51. *Id.*
 52. 64% aren't getting training and 43% don't have safety equipment they need.
 53. *See, e.g.*, Ellen MacEachen, *Workers' Compensation Experience-rating Rules and the Danger to Workers' Safety in the Temporary Work Agency Sector*, 10 Pol'y & Practice in Health & Safety 77 (2012); Caroline K. Smith et al., *Temporary Workers in Washington State*, 53 Am. J. Ind. Med. 135 (2010).
 54. U.S. Bureau of Labor Statistics, *National Census of Fatal Occupational Injuries in 2015*, News Release, Dec. 16, 2016, available at <https://www.bls.gov/news.release/pdf/cfoi.pdf>.
 55. Smith, *supra* note 53.
 56. *Id.*
 57. *Temped Out*, *supra* note 14 at 2.
 58. Among *National Temp Worker Survey* participants, 3% had vacation days, 10% had sick days, 13% were offered healthcare but 12% declined due to costs. *See also* Arne L. Kalleberg, Barbara F. Reskin, Ken Hudson, *Bad Jobs in America: Standard and Nonstandard Employment Relations and Job Quality in the United States*, 65 Am. Sociological Rev. 256, 264 (2000) (identifying “bad job characteristics” in temp services industry based on 1995 Current Population Survey data).
 59. Miranda Dietz, *Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, UC Berkeley Labor Center (2012).
 60. *See, e.g.*, Ken Jacobs et al., *Producing Poverty: The Public Cost of Low-Wage Production Jobs in Manufacturing*, Research Brief, UC Berkeley Center for Labor Research and Education (2016).
 61. *Broken Laws*, *supra* note 31 at 23 (finding 44% of frontline low-wage workers experienced at least one wage violation).
 62. *See, e.g.*, federal workplace laws: Fair Labor Standards Act, 29 U.S.C.A. §215(a)(3); Title VII of the Civil Rights Act, 42 U.S.C.A. § 2000e-3; National Labor Relations Act, 29 U.S.C.A. §158(a); Occupational Safety and Health Act, 29 U.S.C.A. § 660(c).
 63. *See* George Gonos, *The Contest Over “Employer” Status in the Postwar United States: The Case of Temporary Help Firms*, 31 Law & Soc'y Rev. 81 (1997).
 64. Theodore & Peck, *supra* note 4, at 465.
 65. Gonos, *supra* note 63, at 88.
 66. *Id.* at 85.
 67. *Id.* at 88.
 68. *Id.* at 84–98.
 69. *See* Cunningham-Parmeter, *supra* note 7 at 1727 (reviewing two of these tests: the FLSA “economic realities” test and the traditional “right to control” test). The third test is the “ABC” test used in most state unemployment insurance laws. *See* Catherine Ruckelshaus & Bruce Goldstein, *The Legal Landscape for Contingent Workers in the United States* 8 (2003).
 70. *Id.* at 1704.
 71. *See id.* at 1696 (noting that the narrow traditional test, at times, applies to more workers than the broad FLSA standard).
 72. 29 U.S.C.A. § 203(g); *see* Bruce Goldstein, et al., *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA L.R. 983 (1999).
 73. Cunningham-Parmeter, *supra* note 7 at 1693.
 74. *Id.* at 1692.
 75. *Id.* at 1697; *but see* Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act, U.S. Dep't of Labor Administrator's Interpretation No. 2016-1 (2016) (uplifting seven factors of economic dependency and instructing that these factors not be used in a way that loses sight of the intended expansive definition of employment under the FLSA).
 76. *See, e.g.*, Cunningham-Parmeter, *supra* note 7 at 1701.
 77. *See* Ruckelshaus & Goldstein, *supra* note 69.
 78. *Id.*; *Browning-Ferris Industries of California, Inc.*, *supra* note 29; *see* Faush v. Tuesday Morning, Inc., 808 F.3d 208 (3d Cir. 2015).
 79. John Thomas Dunlop, U.S. Dept. of Labor, U.S. Dept. of Commerce, *Fact Finding Report: Commission on the Future of Work of Worker-Management Relations* 22 (1994).
 80. *See, e.g.*, Jose Pagliery, *You Make \$70k But Cost Your Boss \$88k*, CNN Money, Feb. 28, 2013.
 81. For wage claims, workers choose between court and the state or U.S. DOL. For discrimination claims, workers must go first to the EEOC or a state equivalent, through which an investigation is completed prior to pursuing justice in court. For health and safety, workers' comp or organizing-related claims, workers must turn to OSHA, a state workers' comp board and NLRB, respectively.
 82. *Business of Fear*, *supra* note 32 at 25.
 83. *Id.* at 24–25 (confirming surveyed workers' impressions of delayed resolutions through public data review).
 84. *Id.* at 23.
 85. *See* McDonnell Douglass Corp. v. Green, 411 U.S. 792, 801 (1973) (describing the employer's burden as “to articulate some legitimate, nondiscriminatory reason” for their adverse employment decision).
 86. After a worker makes an initial case of discrimination or retaliation, the employer has an opportunity to claim a non-discriminatory or non-retaliatory motive for their action, shifting the ultimate burden of proof back on the worker. *Id.* Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981) (limiting employers' duty to provide a justification and ensuring the worker's burden almost always includes proving the employer's rationale is pretext).
 87. *See, e.g.*, Ruckelshaus & Goldstein, *supra* note 69.
 88. *See also* Broken Laws, *supra* note 31 at 4 (only 8% of severely

- injured frontline workers filed for workers' comp).
89. *Id.* (50% of workers who told their employer about an injury experienced an illegal employer reaction, including firing, unfair immigration action or being told not to file).
 90. See David Weil, *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division 25* (2010) (discussing the enforcement problems in subcontracted work).
 91. See Cunningham-Parmeter, *supra* note 7 at 1707 (noting advances in technology that have improved monitoring capabilities).
 92. Temped out, *supra* note 14 at 27.
 93. Haeyoung Yoon & Tsedeye Gebreselassie, Nat'l Emp't Law Project, *Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties 4* (2015) (citing Cal. Lab. Code § 2810.3).
 94. See *id.*; Cunningham-Parmeter, *supra* note 7 at 1693.
 95. Cunningham-Parmeter, *supra* note 7 at 1693.
 96. Mariya Aleksynska & Angelika Muller, *Nothing More Permanent than Temporary? Understanding Fixed-Term Contracts* (International Labour Office, INWORK and GOVERNANCE Policy Brief No. 6 2015).
 97. See Business of Fear, *supra* note 32 at 37–38.
 98. See Weil, *supra* note 90 at 11 (2010) (“Effective enforcement policies must change employer behavior . . .”).
 99. See Yoon & Gebreselassie, *supra* note 93 at 4–6.
 100. See Weil, *supra* note 90 at 14 (explaining that personal relief for workers, such as reinstatement or back wages, is critical, but changing incentives of employers is also required).
 101. See, e.g., OSHA, *Whistleblower Protection Rights: Protection from Retaliation for Using Rights under the OSH Act, Temporary Worker Initiative, TWI Bulletin No. 3* (2015) (recognizing “failing to hire or rehire” as retaliation).
 102. See California's expanded whistleblower laws, for example. A.B. 263, 2012–2013 Leg. Session (Ca. 2013), A.B. 524, 2012–2013 Leg. Session (Ca. 2013), and S.B. 666, 2012–2013 Leg. Session (Ca. 2013); see Nat'l Emp't Law Project, *California's New Worker Protections Against Retaliation, Fact Sheet* (2013), available at <http://www.nelp.org/content/uploads/2015/03/ca-immigration-retaliationv3.pdf>.
 103. See N.Y. Wage Theft Prevention Act, McKinney's Labor Law § 215(1)(a) (prohibiting threats under anti-retaliation provision); Charlotte Alexander, *Anticipatory Retaliation, Threats and Silencing of the Brown Collar Workforce*, 50 Am. Bus. L. J. 779, 800–806 (discussing caselaw that has recognized unfulfilled threats as prohibited under anti-retaliation laws because of their likely chilling effect on workers' rights).
 104. Ireland created a new enforcement agency that merged the roles and functions of five different agencies and courts. See Gordon Smith, *Workplace Relations Commission: How New System Works*, Irish Times, Nov. 27, 2015. This kind of cohesive complaint resolution process is central to the French and Spanish systems of labor enforcement. Michael J. Piore, *Flexible Bureaucracies in Labor Market Regulation*, prepared for “The Idea of Labor Law” International Workshop, Cambridge, UK (2010).
 105. In California, workers can report all kinds of workplace violations through a common whistleblower hotline. Cal. Lab. Code § 1102.7. California's Labor Enforcement Task Force even coordinates some investigations and enforcement efforts in industries that are at high risk of multiple violations. LETF 2015 Report to the California Legislature, Department of Industrial Relations Labor Enforcement Task Force (2015).
 106. Temporary relief is theoretically available under various laws, but this relief is rarely granted due to a difficult standard. See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 19 (2008). The Mine Safety and Health Act, however, eases access to temporary relief, requiring an immediate order if an agency investigator decides a worker's retaliation claim is not “frivolous.” 30 U.S.C.A. § 815(c)(2); see also Business of Fear, *supra* note 32 at 37 (suggesting greater ease of access to temporary relief by flipping presumptions in workers' favor).
 107. Business of Fear, *supra* note 32 at 37–38.
 108. See Catherine Ruckelshaus, Nat'l Emp't Law Project, *Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work 35* (2014) (noting California's assumptions of employment in high risk industries).
 109. The just cause standard, in union contracts and public policy around the world, provides a broad assumption of protection against being fired arbitrarily, requiring employers to have a valid reason for firing workers. In re *Enterprise Wire Co. & Enterprise Indep. Union*, 46 LA 359 (1966) (Daugherty, Arb.); see Clyde W. Summers, *Employment at Will in the United States: The Divine Right of Employers*, 3 U. Pa. J. Lab. & Emp.L. 65, 65 (2000). A presumption of retaliation, a more recent legal innovation, assumes that adverse action by an employer taken against a worker for a period of time after that worker exercises a right is retaliatory. See Tia Koonse, Miranda Dietz & Annette Bernhardt, *Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships 5* (2015).
 110. Business of Fear, *supra* note 32 at 23.
 111. See, e.g., Tal Kopan, *Democrats, Advocates Question ICE Raids After Hundreds of Arrests*, CNN, Feb. 14, 2017.
 112. California Cartage, case no. 21-RC-188813, filed Nov. 28, 2016, status as of Dec. 29, 2016: “objections to an election,” available at https://www.nlrb.gov/case/21-RC-188813?order=ds_activity&sort=asc.
 113. *Browning-Ferris Industries of California, Inc.*, *supra* note 29.
 114. Freeman & Gonos, *supra* note 29.
 115. See California Senate Bill No. 1167 (2016).
 116. *Miller and Anderson*, *supra* note 29.
 117. 820 Ill. Comp. Stat. Ann. § 175/85(b).
 118. Temped Out, *supra* note 14 at 25.
 119. See, e.g., Michael Grabell, *New Bill in Illinois Would Increase Temp Worker Protections*, ProPublica, Jan. 25, 2017.
 120. Sarah Jimenez & Lena Afridi, *Gaming the System—How Employers Short-Change Workers and Get Away with It* (2015).
 121. Massachusetts Senate Bill No. 966 (2015), available at <https://malegislature.gov/Bills/189/S966>.
 122. *Id.*
 123. Katie Johnston, *Study Shows Wage Theft Rampant in Construction Industry*, Boston Globe, May 12, 2015.
 124. Sal DiDomenico, *Mass. Lawmaker Will Keep Up the Fight Against Wage Theft*, Boston Globe, Sep. 25, 2016.
 125. Kelly Heyboer, *Invisible Workforce: Death, Discrimination and Despair in N.J.'s Temp Industry*, The Star-Ledger, Sep. 17–18, 2016.
 126. Kelly Heyboer, *N.J. Temp Agencies Would Face More Scrutiny Under Bill Inspired by 'Invisible Workforce' Series*, The Star-Ledger, Dec. 12, 2016.
 127. Kelly Heyboer, *N.J. Temp Firms Call for Stricter Enforcement of Laws in Light of Investigation*, The Star-Ledger, Oct. 4, 2016.
 128. See, e.g., Liz Alderman, *Feeling 'Pressure All the Time' on Europe's Treadmill of Temporary Work*, NY Times, Feb. 9, 2017; Brigid Schulte, *From the Ranks of Microsoft's Permatemps*, Washington Post, Mar. 28, 2015.

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