

HIGHROAD FELLOWSHIP REPORTS

A FIRST LOOK EXPLORING BUFFALO'S TEMP ECONOMY

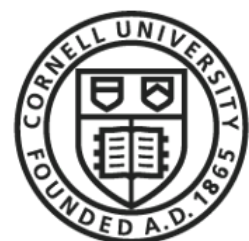
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Safety and Health



ILR Buffalo Co-Lab

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A First Look: Exploring Buffalo's Temp Economy

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27 July 2018



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Expendable Workers

Expendable, yes, but by no means uncommon. Across the United States, temporary workers are now greatly ingrained and essential to our economy. Yet, their working conditions and quality of life are subject to greater levels of insecurity, instability, and indignity. Who are these workers? How did they rise to prominence in the labor market? What has been done --what can be done--to alleviate their precarious position? This report will attempt to define, explore, and analyze temp workers in the Buffalo/Niagara region to better understand their role and prevalence in the community.

Despite the label “temporary,” the classification “temp worker” refers not to the duration of the job, as many are placed in permanent positions, but to the triangular nature of the employment relationship.¹ Instead of a single employer that hires, fires, controls, and pays the laborer, two employers divide the responsibilities. A staffing agency hires and place laborers at third-party host “clients” who assign tasks and direct the work in these joint employment relationships (see *Chart 1*).² Temp workers generally labor beside full time employees at the client’s worksite, but because they are compensated differently, they are often excluded from pensions, health insurance plans, state laws, and federal labor law protections.³

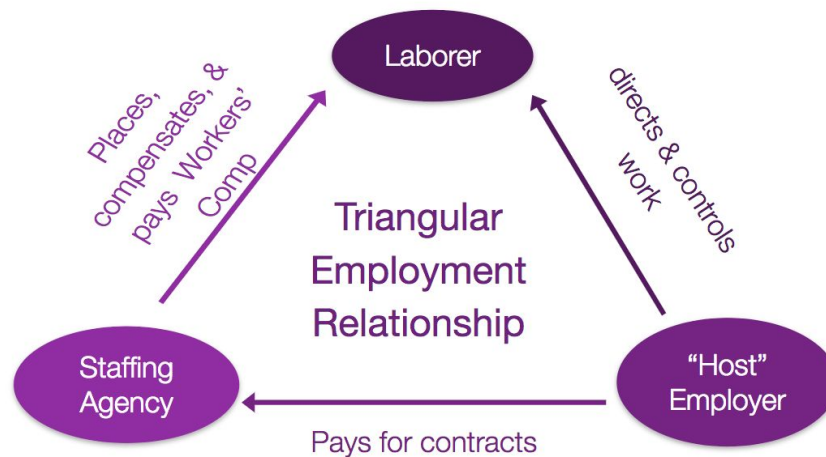


Chart 1: “Triangular Employment Relationship” *Employer responsibility is split between two entities: one that places and compensates, and one that controls and directs laborers. “Hosts” pay large sums to staffing agencies for their placement services.*

¹ George Gonos, (1997) “The Contest Over ‘Employer’ Status in the Postwar United States: The Case of Temporary Help Firms,” in *Law & Society Review*, Vol. 31, No. 1, pp. 81-110

² *Ibid*

³ Harris Freeman & George Gonos “The Challenge of Temporary Work in Twenty-First Century Labor Markets: Flexibility with Fairness for the Low Wage Temporary Workforce” *Labor Relations and Research Center* [A Working Paper on the Future of Work in Massachusetts]



This relationship poses several problems that exacerbate the state of working conditions because of the way it creates ambiguity and legally permits employers to deflect liability and responsibility. Interviews and surveys across the country indicate temp workers:

- ❖ Are less likely to work in safe environments. They are less likely to receive the proper training or equipment to safely and effectively complete their jobs. Temp workers face higher levels of injury, illness, and death on the job.⁴
- ❖ Lack job security and may be exposed to higher levels of economic instability.⁵
- ❖ Are subject to discrimination⁶ and harassment⁷ and have fewer means to correct adverse treatment.
- ❖ Encounter low wages, wage theft, and legal misclassifications that restrict access to benefits.⁸
- ❖ Are virtually barred from organizing a union under the National Labor Relations Act (NLRA).⁹

⁴ Bruce Rolfsen (2013) “New OSHA Enforcement Initiative Focuses on Temporary Staffing Agency Workers” *Bloomberg News*; Michael Grabell, Jeff Larson, & Olga Pierce (2013) “Temporary Work, Lasting Harm” *ProPublica*

⁵ Harris Freeman & George Gonos “The Challenge of Temporary Work in Twenty-First Century Labor Markets: Flexibility with Fairness for the Low Wage Temporary Workforce” *Labor Relations and Research Center* [A Working Paper on the Future of Work in Massachusetts]

⁶ Brittany Scott (2017) “Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs,” *National Economic & Social Rights Initiative*

https://d3n8a8pro7vhmx.cloudfront.net/raisethefloor/pages/129/attachments/original/1488480425/CONFIDENTIAL_-_Temp_Work_Permanent_Abuse_Report_Final.pdf?1488480425

⁷ Will Evans (2016) “When companies hire temp workers by race, black applicants lose out” *Revealnews.org*

https://www.revealnews.org/article/when-companies-hire-temp-workers-by-race-black-applicants-lose-out/?utm_source=Reveal&utm_medium=dist&utm_campaign=temps

⁸ Michael Grabell (2013) “The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed” *ProPublica*

⁹ “Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs”



Who are they?

Roots of the Temp Industry

After World War II, advertisers targeted women who were bored at home or who desired to supplement their income. These organizations built on cultural stereotypes of women to make the work seem “extra” so as not to erode domestic gender roles. Agencies and companies that recognized this opportunity for profit began to use temping in a variety of industries to avoid heavy market regulation in the 1960s, reduce staffing costs, and increase profit margins.

Agencies legitimized this model by educating employers about the dangers of the business cycle, pushing organizations to compete with one another, and encouraging the government to temp civil service positions. The industry has almost completely abandoned the asset, or human capital theory, model of employment and sees employees as costly liabilities, further prompting and promoting the temp worker model. The idea of employing temporary laborers is a novel solution to workplace ebb and flow, however proponents of this system have taken it so far that temps are exploited.¹⁰

National Statistics and Measures

Measuring temp worker populations is a difficult task because researchers have not fully defined the “contingent” workforce nor have they developed methods capable of differentiating between the variety of workers whose work is “contingent.” The following is a summary of the most readily available statistics on temp workers in the United States.

- ❖ In 2015, the United States Government Accountability Office (GAO) estimated contingent work comprised approximately 7.9% of the total workforce. However, the same report, also estimated the contingent workforce ranged from anywhere between 1% and 33% of the labor force.¹¹
- ❖ In 2015, the Alliance for the American Temporary Workforce estimated the U.S. had nearly 3 million workers and that 14 million would work as temps in the course of the year.¹²

¹⁰ Hatton, Erin Elizabeth. *The Temp Economy: from Kelly Girls to Permatemps in Postwar America*. Philadelphia, Pa.: Temple University Press, 2011.

¹¹ 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)

¹² <http://www.temporaryemployees.org/>



- ❖ Independently, in 2015, economists that imitated techniques employed by the Bureau of Labor Statistics (BLS) estimated 3.1% of the total workforce was employed by “contract companies.”¹³
- ❖ BLS has not conducted a comprehensive study of temp workers in the United States since 2005.¹⁴

In Buffalo

No organization has conducted a formal survey of the temp worker population in Buffalo. Information from leaders in the industry, workforce trainers, and staffers¹⁵ indicate that specific to the Buffalo Niagara region:

- ❖ The temp industry in Buffalo is well connected and maintains a veil of secrecy and silence that shields the industry from public spotlight and critique.
- ❖ The job economy in Buffalo is bifurcated. Low wage and high skill employment work are on the rise, but upward mobility and access to middle class jobs has greatly diminished. Although workers are in high demand, the supply of trained workers is inadequate to suit the needs of the market. Current efforts focus on providing soft skill education to workers. Although education prepares workers for jobs, on-the-job training still comes at a high cost to the employer. One solution to bridging this gap is for state governments to provide subsidies to employers that offer specialized workforce training.¹⁶
- ❖ Temping is growing in Buffalo. The industry is likely to grow as more and more employers desire to evade the costs of hiring workers, paying benefits, and adequately compensating workers.
- ❖ Most temp workers are placed in manufacturing or construction trades positions in Buffalo and the suburbs. Access to jobs is restricted by Buffalo’s transportation system.¹⁷ Two staffing agencies that contract with manufacturers in the region are Aerotek and Remedy Staffing. A complete list of staffing agencies in the area is available in Appendix Section 4.0 *Staffing Agencies in Buffalo*.
- ❖ The temp industry disproportionately impacts immigrants, refugees, and formerly incarcerated populations. These folks are targeted for their low bargaining power. Staffing agencies rely on vulnerable workers to fill jobs.

¹³ “The Rise and Nature of Alternative Work Arrangements in the United States, 1998-2015,” Lawrence F. Katz & Alan B. Krueger (2015) <http://www.nber.org/papers/w22667.pdf>

¹⁴ “Maybe the Gig Economy isn’t Reshaping Work After All” Ben Casselman (2018) <https://www.nytimes.com/2018/06/07/business/economy/work-gig-economy.html>

¹⁵ A “staffer” is anyone within a staffing agency or not for profit agency that positions workers in the triangular employment relationship.

¹⁶ Interview, Jeff Conrad, Director of Workforce Development and Education at Catholic Charities

¹⁷ Nicole Hallett (2018) “Workers on the Brink: Low-Wage Employment in Buffalo and Erie County” in a Policy Report with Partnership for the Public Good (PPG)

https://ppgbuffalo.org/files/documents/poverty_low_wage_work_income_inequality/workers_on_the_brink_low_wage_employment_in_buffalo_and_erie_county_4112018.pdf



- ❖ Staffing agencies in Buffalo fill a community need. Some agencies provide opportunity to individuals who may not otherwise have access to jobs or who are systematically barred from traditional methods of employment. Additionally, temp agencies allow those with low skills to build their resumes, receive basic training, and gain experience.
- ❖ Job developers and placements specialists often use staffing agencies in last resort situations or when non-profits desire to maintain good relationships with companies and are unwilling to take risks placing individuals with companies directly.
- ❖ The biggest myth perpetuated by the industry is that temp work provides flexibility. Many positions do not hire temps after their placement ends. Laborers who cannot meet the demands of staffing agencies are placed on “Do Not Return” DNR lists and barred from future placements.
- ❖ Temp work varies by locality and what is true for one city may not be for the next. The temp industry fills different needs in every community. Although national information and trends are descriptive and informative, they may not be representative at the local level.



Current Protections

Although temp workers are not considered “employees,” they are afforded three main protections that ensure the right to:

- (1) “Be free from discrimination by both the agency they use and the host employer”
- (2) “Be provided with identical or equivalent safety training as host employer’s non-temp employees”
- (3) “The minimum wage”¹⁸

Enforcement of these standards, however, is incredibly low, which has prompted several state and local coalitions to take the lead enacting change.

¹⁸ <https://wnycosh.org/know-your-rights>; image: <http://www.kaleidoscopeadventures.com/wp-content/uploads/2015/03/>



State Level

In Buffalo, New York temp workers are covered by the New York Wage Theft Protection Law.¹⁹ Although the law is not specifically written for temp workers, it confers responsibility on staffing agencies and host employers by mandating they give detailed notices of employment, keep records, and provide wage statements. These agreements increase accountability and transparency by improving channels of communication between temps and their employers and thereby deterring wage theft. The state enforces these measures by prescribing penalties for improper recordkeeping, retaliation, and wage theft.

California, Illinois, Rhode Island, and Massachusetts also have laws that attempt to increase protections for temp workers. The California law assigns liability to “client employers” when “labor contractors” violate labor and wage standards. Laborers no longer have to prove “joint-employer” status when filing claims. This standard reduces the burden on laborers and applies to all employers with 25 or more employees and at least 6 contracted laborers.²⁰

In Illinois, day and temporary laborers are covered by the Illinois Day and Temporary Labor Services Act (IDTLA).²¹ Two striking features of the IDTLA are the agency registration requirement and the transportation guidelines. Firstly, all staffing agencies must register with the Illinois State Department of Labor and provide information on their employment numbers, proof of workers’ comp, and unemployment insurance. Secondly, staffing agencies cannot charge mandatory transportation fees for transportation provided by the agency.

On June 1st, 2018, the Responsible Job Creation Act (RJCA) strengthened the IDTLA.²² This law has six new stipulations that intend to reduce the precariousness of temp workers.

- (1) Temp agencies must try to place temps in permanent positions as they become available and avoid “permatemping,” which is when temps are permanently placed in the triangular relationship.
- (2) Agencies cannot charge laborers for “criminal background checks, credit reports, and drug tests.”

¹⁹ <https://www.labor.ny.gov/workerprotection/laborstandards/PDFs/wage-theft-prevention-act-faq.pdf>

²⁰ <http://advocacy.calchamber.com/wp-content/uploads/2015/09/ab-1897-fact-sheet.pdf>;
<https://www.stevenrubinlaw.com/2017/07/04/protecting-subcontracted-workers-through-ab-1897/>;
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1897

²¹ <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2417&ChapterID=68>

²² Kelsey J. Schmidt & Tobias E. Schlueter *Society for Strategic Human Resource Management* (2017) <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/illinois-responsible-job-creation-act-adds-requirements-for-staffing-agencies.aspx>; <https://www.responsiblejobs.org/>



- (3) If agencies give transportation to a job, they have to provide transportation for the return. The goal of this provision is to reduce transportation costs and increase access to job sites to surrounding areas that don't have strong public transportation.
- (4) If a laborer is sent to a job that does not exist, that laborer is entitled to four (4) hours of standard pay, or two (2) hours pay if they are assigned a new job.
- (5) Agencies must track and report the race and gender of the laborers they hire.
- (6) Agencies must provide employees with "equipment, protective clothing, and training required to perform the job."

The laws in Massachusetts and Rhode Island take a similar approach to the New York State law. These states require employers give notice and keep records in order to increase accountability and transparency. Full descriptions of the laws are available in Appendix 1.0 (*Laws and Summaries*) and a side-by-side comparison is available in section 2.0 of the Appendix (*Law Comparison Chart*).

Federal Level

OSHA's mission is to promote safe and healthy working environments. A recent OSHA ruling confers joint responsibility on staffing agencies and third-party employers to protect temporary and day laborers.²³ Although this responsibility is not clearly defined, third party host employers and staffing agencies must work closely to ensure a temporary employee is trained at least as well as non-temp employees. OSHA does not require a contract between joint employers, but emphasizes how a contract can decrease ambiguities and promote enhanced worker well being.²⁴

OSHA takes the official position that, "The extent of the obligations each employer has will vary depending on workplace conditions and may be clarified by their agreement or contract."²⁵ This ruling recognizes that responsibilities are worksite specific and promoting worker safety is unique to the hazards of a particular worksite. Host employers are responsible for providing specific on-the job training. Staffing agencies are responsible for providing general work training and taking measures to ensure they are placing laborers in safe work environments.

²³ U.S. Department of Labor (2014) "Policy Background on the Temporary Worker Initiative" *Occupational Safety & Health Administration*; https://www.osha.gov/temp_workers/Policy_Background_on_the_Temporary_Worker_Initiative.html

²⁴ <https://www.osha.gov/Publications/OSHA3751.pdf>

²⁴ https://www.osha.gov/temp_workers/

²⁵ U.S. Department of Labor (2014) "Policy Background on the Temporary Worker Initiative" *Occupational Safety & Health Administration* https://www.osha.gov/temp_workers/Policy_Background_on_the_Temporary_Worker_Initiative.html



Both entities are responsible for communicating safety and work issues and facilitating the clear transfer of information.²⁶ Each employer is also responsible for the health and safety of all employees and are liable for dangerous situations or violations regardless of which employer commits an offense.²⁷

OSHA has developed the Temporary Worker Initiative (TWI) in an effort to raise awareness on the precarious status of temporary and day laborers as well as to educate employers and contractors about how they can legally and responsibly fulfill their duties. Seven bulletins provide information on (1) Injury and Illness Recordkeeping Requirements;²⁸ (2) Personal and Protective Equipment;²⁹ (3) Whistleblower Protection Rights;³⁰ (4) Safety and Health Training;³¹ (5) Hazard Communication;³² (6) Bloodborne Pathogens;³³ and (7) Powered Industrial Truck Training.³⁴

Campaigns & Initiatives

Federal Initiatives

In the current political climate, federal regulation and labor law protections are weak and the position of the federal government is unlikely to change in the coming years.³⁵ The National Labor Relations Board (NLRB) has delivered several rulings that greatly inhibit temp workers' ability to organize by requiring temps to prove joint employer relationships and by permitting legal retaliation against temp workers that try to organize.³⁶ Temps, organizers, and activists must therefore take a more local or state-led approach.

²⁶ https://www.osha.gov/temp_workers/Policy_Background_on_the_Temporary_Worker_Initiative.html

²⁷ <https://www.osha.gov/Publications/OSHA3735.pdf>

²⁸ https://www.osha.gov/temp_workers/OSHA_TWI_Bulletin.pdf

²⁹ <https://www.osha.gov/Publications/OSHA3780.pdf>

³⁰ <https://www.osha.gov/Publications/OSHA3781.pdf>

³¹ <https://www.osha.gov/Publications/OSHA3859.pdf>

³² <https://www.osha.gov/Publications/OSHA3860.pdf>

³³ <https://www.osha.gov/Publications/OSHA3888.pdf>

³⁴ <https://www.osha.gov/Publications/OSHA3889.pdf>

³⁵ “Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs”

³⁶ *Ibid.*



State Level Campaigns & Initiatives

Several states have undertaken unique organizing methods that highlight on-the-ground issues and advocate for favorable state legislation.³⁷ California, Massachusetts, Rhode Island, and New Jersey have employed a variety of methods that attempt to increase the status of temp workers. The State of Illinois has undertaken the most vigorous approach in securing the Responsible Job Creation Act (RJCA). These movements are a start and must serve as models for grassroots organizing in locations across the country.

California: Warehouse Workers Resource Center & Joint Employer Organizing

- ❖ The Warehouse Workers Resource Center & Teamsters at the California Cartage Company warehouse used a joint organizing model during the period that the NLRB extended retaliatory protections to temp workers in 2016. The law permitted workers paid by different entities to organize under the same contract.³⁸
- ❖ The Warehouse Workers Resource Center and Teamsters used strikes, lawsuits, policy actions, and legislative lobbying to push for more protective legislation and better working conditions.³⁹

Illinois: Coalition Building & Political Action

- ❖ Chicago Workers' Collaborative (CWC) & Warehouse Workers for Justice (WWJ) began a grassroots campaign and worked with state senators to pass the ITDLSA. Labor and state officials invited staffing agencies to the table in an effort to eliminate bad agencies and drive up the bottom line.⁴⁰
- ❖ Raise the Floor (RTF) Alliance is a legal clinic and non-profit that builds coalitions with other Chicago-area labor organizations to make changes that would increase shared capacity for low wage and unorganized workers. Their model for making change is to:
 - Research national and local trends
 - Communicate and share worker narratives directed at specific audiences to build support and raise awareness
 - Use impact litigation to identify ambiguities within the law and expand definitions of employment
 - Identify new gaps and issues within the current system
 - Use research to inform policy in a positive manner

³⁷ "Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs;" George Gonos, (1997) "The Contest Over 'Employer' Status in the Postwar United States: The Case of Temporary Help Firms," in *Law & Society Review*, Vol. 31, No. 1, pp. 81-110

³⁸ These protections have since been repealed and this model is no longer viable.

³⁹ "Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs"

⁴⁰ Cable, Josh, "Illinois Law Aims to Protect Temporary Workers," *EHS Today* (2005) http://www.ehstoday.com/news/ehs_imp_37631



- Monitor workplace violations and progress
- ❖ Arise Chicago is a Labor-Faith coalition with the goal of “fighting poverty in the Chicagoland area.” Arise helped pass a wage theft ordinance in 2015 that revoked the license of businesses that committed wage theft.⁴¹
- ❖ Chicago organizers were also successful because they had access to high-quality research and were knowledgeable of the temp market. Knowledge of the temp industry in Chicago and partnerships with academic research institutions made communicating with legislative actors more effective and supplemented on the ground work.⁴²

Massachusetts & Rhode Island: Supply Chain Accountability

- ❖ Worker centers and advocates used news and the press to identify lead businesses and establish accountability along the supply chain.⁴³
- ❖ Fuerza Laboral⁴⁴ (formerly the United Workers Committee) in Rhode Island led a campaign to end wage theft in the subcontracting industry by creating accountability along the supply chain. They partnered with the National Staffing Workers Alliance (NSWA) and the National Guestworker Alliance (NGA).⁴⁵ They built coalitions, educated government officials, held rallies, sponsored litigation, and set up worker clinics.
 - In 2003, they secured a provision that limits what staffing agencies can charge workers for transportation.
 - In 2013, they helped pass a law that allowed workers to directly file wage theft claims with the Rhode Island Department of Labor⁴⁶
- ❖ Fuerza Laboral has a comprehensive website that lists their victories and framing tactics. They framed abuse in the temp industry as a wage theft issue and focused on small wage theft cases to draw attention to the impact even “small” instances of wage theft could have on workers and their families.

New Jersey: New Labor Writes a New Narrative

- ❖ New Labor’s mission is to use collective action and stories to solve problems, create a better environment, and strategically develop narratives that demand reform⁴⁷

⁴¹ <http://arisechicago.org/anti-wage-theft-ordinance-passes-unanimously/>

⁴² Jamie Pek & Nik Theodore, *Contingent Chicago: Restructuring the Spaces of Temporary Labor*, 25 Int’l J. of Urb. & Reg’l Res. 471 (2001); “Bad Jobs in Goods Movement: Warehouse Work in Will County, IL,” Warehouse Workers for Justice

⁴³ “Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs”

⁴⁴ <https://www.fuerza-laboral.org/#welcome>

⁴⁵ <https://www.fuerza-laboral.org/end-wage-theft/>

⁴⁶ <https://www.fuerza-laboral.org/end-wage-theft/>

⁴⁷ “Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs”; <http://newlabor.org/>



- ❖ New Labor also has a coalition with the Latino Occupational Safety and Health Initiative (LOSHI) to increase worker wellbeing, collect research, survey workers, build coalitions, and generate support for wage theft ordinances ⁴⁸

Permatemp Organizing Example

Another solution for organizing temp workers is the WashTech/CWA case study. In the 1990s, permanently temporary “PermaTemp” workers at Microsoft were discouraged by disparate treatment, lack of a voice on the job, and a mandatory provision stating PermaTemps must take 31 days off after each project they completed.⁴⁹

Although these workers were highly skilled, in great demand, well compensated, and precluded from collectively bargaining, the Permatemps took a twofold approach of on the ground organizing and political action in conjunction with lawyers in the area that litigated the *Microsoft v. Vizcaino* tax misclassification case to win favorable legislation, broaden definitions of employment and increase training and benefit opportunities for permatemps. The combination of on the ground actions, litigation, and political action were key in the Permatemps winning Senate Resolution 8402 (Contingent Workforce Study Bill) which authorized research on the proliferation and scope of temp work in the area.

Because this population of permatemps was so unusual, on the ground organizers used strategic and unconventional framing tactics. Organizers spoke with workers to identify meaningful issues and create “values-based” strategies that would encourage regional Labor Councils to join their fight. Other strategies included lobbying, strategic media attention, and partnering with Microsoft to subsidize training efforts, improve pathways to direct employment, and facilitate dialogue between labor and management.

⁴⁸ <http://loshi.org/?lang=en>

⁴⁹ Danielle D. van Jaarsveld & Lee H. Adler, “A Discussion of Organizing and Legal Strategies in a High Technology Environment: The Microsoft-WashTech/CWA Case” Cornell University ILR School (1999)



What Next?

Reframing “Employment”

One solution is to advocate for the return of the asset liability of employment. By reframing and complicating the notion of employment, temporary workers will be better equipped to

- (1) Improve conditions of employment;
- (2) Unionize and increase opportunities for organizing; and
- (3) Confine temporary work.

This reconceptualization requires on the ground actions that drive up the bottom line and leaders that can advocate for practices that increase the value of the employee in the eyes of the employer.⁵⁰

Alternatives in Buffalo

Partnership for the Public Good is a think tank that promotes growth and development in the Buffalo community. They engage with different community leaders and actors to promote sustainable solutions that increase Buffalo’s vitality. In a report on the growth of temp workers in the Buffalo area, the organization suggested using worker centers and non-for-profit staffing agencies to increase the standard of living for temp workers.⁵¹

(a) Worker Centers

Worker centers operate outside the traditional National Labor Relations Board (NLRB) organizing model by engaging with employees in a different manner. Worker centers can advocate, train, and provide resources and support for workers in a variety of industries. Although their ability to directly enter the workplace is limited, worker centers are a viable and unique solutions because they create a space for dialogue and build solidarity within communities. An example of a worker center is the Western New York Council on Occupational Safety and Health (WNYCOSH) Worker Center.

⁵⁰ Erin Elizabeth Hatton (2011) *The Temp Economy: from Kelly Girls to Permatemps in Postwar America*. Philadelphia, Pa.: Temple University Press

⁵¹ Partnership for the Public Good “Temp Work and Poverty in Buffalo” (2015)
https://ppgbuffalo.org/files/documents/poverty_low_wage_work_income_inequality/exploitative_businesses/poverty_low_wage_work_income_inequality-temp_work_and_poverty_in_buffalo.pdf



(b) Not for Profit Staffing Agencies

Staffing agencies that have less a stake in generating profits and that diligently follow the laws are one solution to help connect laborers with sustainable and respectable jobs.⁵² Research on whether staffing agencies can provide pathways out of low wage work, even when used to build experience, is unclear. The industry may force workers to take wage penalties in future jobs, thus trapping workers in low wage jobs and perpetuating industry issues.⁵³

⁵² Partnership for the Public Good “Temp Work and Poverty in Buffalo” (2015)

⁵³ David Autor & Susan Houseman (2005) “Temporary Agency Employment as a Way out of Poverty” *National Bureau of Economic Research*; Elke J. Jahn & Dario Pozzoli (2013) “The pay gap of temporary agency workers – Does the temp sector experience pay off” *Journal of Labour Economics* 24; 48-57



Looking Forward

In the temp industry, the traditional concept of employer is entirely eroded by the disjointed triangular relationship. Organizing temp workers is nearly impossible because of weak labor law protections, ambiguous legal classification, constant turnover, and lack of flexibility. Moving forward, the coalition that helped push for the Responsible Job Creation Act (RJCA) recommends the following strategy for sustainable change that will reorient the temporary employment industry business model and increase conditions for temp workers. The first steps they see in improving the climate are:

- (1) An “Expanded understanding of corporate legal liability” that has “Clear and Knowable ‘Employer’ Standards;”
- (2) Increased penalties that incentivize sustainable change; and
- (3) Better retaliatory protections.⁵⁴

Although temps fill a specific need in the Buffalo community, the unsteady nature of their work makes them highly susceptible to abuse. Because the national trends did not generalize to the local trends,⁵⁵ organizers and reformers leading the fight for better work must create localized and specific solutions. The next step is to gather a more comprehensive understanding of the scope of the industry and the extent of the issues. Once organizers have created profiles, they can build solidarity around meaningful issues. However, although on the ground work will increase support and rectify individual situations, without improving statutory and federal protections, employers will have the upperhand. Through targeted lobbying, strategic litigation, and particularized narratives that build broad political support, temps will be able to reform the system. Reorienting and reframing the system will be an incredibly challenging task, but confining the spread of temp work and holding employers accountable for their action is just one step necessary to reduce inequality and poverty in the Buffalo community.

⁵⁴ “Temporary Work Permanent Abuse: How Big Business Destroys Good Jobs”

⁵⁵ My sample was small (n=4) and I was not able to speak with temps in the area. My sample may be too small to gather an accurate understanding.



Appendix

1.0 Laws

1.1 New York State : New York Wage Theft Protection Law⁵⁶

The primary New York State Law protecting temporary laborers is the New York Wage Theft Protection Law. This law requires notice of employment, specific provisions for wage statements and payroll record keeping, and attaches penalty provisions for retaliations and bookkeeping violations.

- (1) **Notice of Employment.** At the time of hire, or when the wage rate changes, all private employers (including staffing agencies) must provide notice in the temporary employee’s primary language. Although the Department of Labor (DoL) provides “Notice” templates⁵⁷, employers are not obligated to use those forms as long as they provide this information in a signed agreement at the time of hire, or within seven days of changes in hiring terms. Notice must include the following information:
 - (a) Rate of pay
 - (b) Basis of pay, or how a laborer will be compensated
 - (c) The intention to claim deductions or allowances that would detract from the minimum wage.
 - (d) Regular pay days in compliance with NYS and federal laws.
 - (e) Name of Er and “doing business as” names that are used by the “employer”
 - (f) Employer’s telephone number
 - (g) Physical addresses of business⁵⁸
 - (h) “Such other information as the commissioner deems material and necessary”
- (2) **Wage Statements:** For every payday, employers must provide wage statements that include the employee’s name, the employer’s name, address, and phone number, and the dates of the pay period. Employers must be able to explain how pay was calculated.
- (3) **Payroll Record Keeping:** Employers must keep inclusive records and archive them for a minimum of six years. Records must contain information about the regular and overtime hours an employee works, the basis or rate of pay for regular and overtime hours, how the employee is paid, an “employee’s net and gross wages,” “itemized deductions,” and “itemized allowances and credits claimed by the employer.”⁵⁹
- (4) **Retaliation Provisions, Penalties, and Damages:** If an employer retaliates in any manner or refuses to comply by the provisions set forth by the act, the employer may be subject to:
 - (a) Criminal liabilities

⁵⁶ <https://www.labor.ny.gov/workerprotection/laborstandards/PDFs/wage-theft-prevention-act-faq.pdf>;

⁵⁷ <https://www.labor.ny.gov/formsdocs/wp/LS54.pdf>

⁵⁸ Publications from the DoL, including FAQs are not clear about whose address, I’d imagine it should be for the Staffing Agency but having both would increase responsibility.

⁵⁹ <https://www.labor.ny.gov/formsdocs/wp/p715.pdf>



- (b) Daily fines
- (c) Lump sum fines
- (d) Retaliatory penalties up to \$40,000⁶⁰

(5) **Notice of Violations.** If an employer violates the provisions of these laws, they must post notice of the violation.⁶¹

1.2 Illinois: Illinois Day and Temporary Labor Services Act⁶²

The primary law protecting temp workers in Illinois is the Illinois Day and Temporary Labor Services Act (IDTLA).⁶³ This act has a more stringent registration process than the NYS law, but similar notice, record keeping, retaliation, and penalty provisions.

Registration

- (1) Staffing agencies must register with the Illinois Department of Labor.
- (2) Staffing agencies must have proof of unemployment and worker compensation insurance.
- (3) Staffing agencies must report “lapses” of insurance coverage.
- (4) Staffing agencies must post a notice that includes:
 - (a) The provisions of the act;
 - (b) in English or in a “language of the area;” and
 - (c) A “toll-free number for reporting” violations.

Notice: Staffing agencies in Illinois are required to provide notice of employment, comprehensive wage statements, and work verification forms.

- (1) **Employment notices** must include the terms and conditions of employment; the nature of work; wages for that work; the name, address, and location of the worksite; the terms of transportation; and meal, transportation, or equipment costs associated with that placement.
- (2) At the time of payment, **wage notices** must list the name, address, and telephone number of each third party client; the rate of pay for each day on the job(s), the number of total hours spent on the job, total earnings, and any deductions, including meals, taxes, equipment, and agreed-upon withholdings.
- (3) For every job, staffing agencies must provide **work verification forms**. These forms must include the date, the worker’s name, the work location, and the hours spent working.

Wages and Deductions: Staffing agencies that place temporary and day laborers must abide by the following regulations:

- (1) Agencies must pay the minimum wage and follow all minimum wage laws. Any meal or equipment deductions may not bring the compensation below the minimum wage
- (2) Staffing agencies may only charge deductions after a worker signs a written DoL agreement.

⁶⁰ Violations are subject to investigations and employers are liable even in instances of “good faith” violations.

⁶¹ <https://www.labor.ny.gov/formsdocs/wp/p715.pdf>

⁶² <https://www2.illinois.gov/idol/Employees/Documents/DLposterE.pdf>

⁶³ <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2417&ChapterID=68>



- (3) If a laborer requests payment in the form of cash vouchers, agencies may not fine the laborer.

Recordkeeping Requirements

- (1) The staffing agency must maintain comprehensive records for each day or job a laborer completes. The agency must keep records for 3 years.
- (2) Records must be available and open to the DoL for inspection as requested.
- (3) If a worker requests to see the records, the agency must provide the records to that laborer within 5 days.

Transportation

- (1) Staffing agencies cannot charge for transportation from the agency to the third-party “host employer” worksite.
- (2) The agencies and the third party are responsible for the conduct of those providing transportation. These responsibilities include verifying both transportation mediums and operators are compliant with all traffic laws, seat belt regulations, insurance requirements, and driver licensing standards.
- (3) If an agency sends a laborer to a placement where no job exists, the agency must compensate that laborer for 4 hours pay. If that laborer is placed at a new position on the same day, the laborer is entitled to 2 hours pay.

Placement Fee Restrictions: Staffing agencies may attach unreasonable fees in instances where temporary laborers transition into full-time employment.⁶⁴

- (1) Staffing agencies cannot “restrict” or interfere with a laborer trying to accept a “permanent position with a third party client.”
- (2) Staffing agencies cannot restrict the third party client’s ability to provide permanent employment to day laborers.
- (3) Staffing agencies are permitted to charge “limited”⁶⁵ placement fees to third-party clients for placing a laborer full-time.

Worker Retaliation Prohibited/Private Right of Actions:

- (1) Staffing agencies are forbidden from retaliating. If liable agencies are subject to civil penalties.
- (2) Laborers have the right to bring a private right of action to remedy violations.

⁶⁴ Note, the transition to “employment” signifies a laborers exit from the “triangular” relationship. The laborer would be paid by the employer and no longer compensated by the staffing agency.

⁶⁵ The IDoL does not specify what would entail a reasonable fee.



1.3 Massachusetts: “Massachusetts Temporary Right to Know Laws”⁶⁶

Massachusetts also has a specific law protecting temporary and day laborers. The Massachusetts Temporary Right to Know Law guarantees equal protection for temp workers⁶⁷ and sets forth several “additional protections”⁶⁸ designed to promote fair and equitable hiring and compensation practices. These provisions include access to information about job orders, fee limits, and protections from retaliation and discrimination.

- (1) Under Massachusetts law, temporary and day laborers have **rights to information**.⁶⁹ This right must describe:
 - (a) The name, address, and phone number of the staffing agency;
 - (b) The name, address, and phone number of the agency’s workers’ compensation insurance carrier;
 - (c) The name, address, and phone number of the third-party employer;
 - (d) A description of the work assignment;
 - (e) Work hours and pay;
 - (f) Whether the worksite is on strike or lockout;
 - (g) Anticipated start and end dates;
 - (h) Information and costs about transportation and meals;
 - (i) The cost of any training or protective equipment; and,
 - (j) Any anticipated fees or charges for meals, transportation, or equipment.
- (2) The Massachusetts law **restricts** staffing agencies from charging day laborers for:
 - (a) Registering with an agency;
 - (b) Individual work assignments;
 - (c) Drug tests;
 - (d) Criminal background tests;
 - (e) The use of alternate payment methods;
 - (f) Transportation that the employer requires the worker use or transportation costs that are more than 3% of the daily wage.
- (3) The Temporary Right to Know Laws also protect day and temporary laborers from **retaliation, discrimination, coercion, and/or threats**.

⁶⁶ <https://www.mass.gov/service-details/temporary-workers>

⁶⁷ “Temporary workers who work for temporary or staffing agencies are protected by the same laws as other workers” taken from <https://www.mass.gov/service-details/temporary-workers>

⁶⁸ <https://www.mass.gov/service-details/temporary-workers>

⁶⁹ https://www.mass.gov/files/documents/2018/01/10/twrk-job-order-English-fs_0.pdf



1.4 Rhode Island Laws: Temporary Employee Protection Act⁷⁰

Rhode Island has a Temporary Employee Protection Act. This act defines the actors in a triangular employment relationship, requires notice for job assignments, details best recordkeeping practices, and prescribes penalties for violations.

- (1) **Definitions.** The Rhode Island law defines⁷¹ “employment agencies,” “temporary employees,” and “labor organizations.”
- (2) **Job Assignments.** For each job assignment, an employer, or staffing agency, must give written notice that includes:
 - (a) A “Job description with classification requirements;”
 - (b) The “Estimated longevity of the assignment;”
 - (c) Any “Information concerning any job hazards;”
 - (d) The “Anticipated pay rate;”
 - (e) Any “Benefits and work schedules;”
- (3) **Recordkeeping.** Staffing agencies must keep track of hiring practices and make information available as needed.
 - (a) Notices and wage statements must be kept on file for up to a year and available to laborers as requested.
 - (b) Agencies must post a copy of this law on-site.
- (4) **Penalties.** If an employer breaks any of the aforementioned provisions, after a proper investigation an employer may be subject to:
 - (a) A warning for the first violation;
 - (b) A \$500 fine for a subsequent violation within a 5 year period;
 - (c) A \$1000 fine for any additional violations that occur within 5 years of the first violation.

1.5 California: Assembly Bill 1897⁷²

California Assembly Bill 1897 confers liability to “client employers” when “labor contractors” violate labor and wage standards. Previously, laborers had to prove “joint-employer” status before recouping damages. This standard reduces the burden on laborers and holds accountable employers that have 25 or more employees and at least 6 contracted laborers.⁷³

⁷⁰ (<https://law.justia.com/codes/rhode-island/2012/title-28/chapter-28-6.10>)





⁷¹ <https://law.justia.com/codes/rhode-island/2012/title-28/chapter-28-6.10/chapter-28-6.10-2/>

⁷² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1897

⁷³ <http://advocacy.calchamber.com/wp-content/uploads/2015/09/ab-1897-fact-sheet.pdf>;
<https://www.stevenrubinlaw.com/2017/07/04/protecting-subcontracted-workers-through-ab-1897/>;
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1897



2.0 Law Comparison

				
Law Name	New York Wage Theft Prevention Law**	Massachusetts Temporary Right to Know Law	Rhode Island Temporary Employee Protection Act	California Assembly Bill 1897
Notice	✓	✓	✓	
Registration		✓***		
Wage Notice	✓	✓	✓	
Recordkeeping	✓	✓	✓	✓****
Protection from Retaliation	✓	✓	✓	✓
Penalties & Fees	✓	✓	✓	✓
Offered in Language other than English	✓	✓		
Posting Law		✓	✓	
Fee Restrictions		✓		
Notice of Violation	✓			

*Illinois Temporary and Day Labor Services Act is not included because it provides overwhelmingly more protections than the other laws. The

** New York law is not specific to Temp Workers

***Massachusetts is not clear about the registering process, but says that a staffing agency shall not operate under a name that is “not registered with the department” (Section 159(c))

****California law says agencies and employers must provide “records” but does not detail what those records must include



3.0 Questions for Identifying Issues Within the Temp Industry

Starter Qs:

- (1) Have you ever worked for a temp staffing agency? Or in a “triangular relationship” in which you were paid by a Staffing agency and not the host-employer?
- (2) How did you find your staffing agency?
- (3) Which staffing agency (names will not be revealed)
- (4) How long does it usually take to be placed on a job?
- (5) Has a family member ever worked for a staffing agency?
- (6) For how long are you “involuntarily” not working?
- (7) Do you hold multiple jobs?

Notice + Wages

- (1) Were you given notice when you were hired? Did it include:
 - (a) Your name?
 - (b) The employer’s name?
 - (c) The employer’s address?
 - (d) Wage Rate?
 - (e) Pay period?
 - (f) Itemized deductions and allowances?
 - (g) Basis of pay? How you would be paid?
- (2) Was it provided in your primary language?
- (3) Did you sign the notice?

Discrimination; Wage Issues; Retaliation

- (1) Were you ever discriminated against on the basis of race, color, religion, sex (pregnancy, gender identity, sexual orientation), national origin, age (40+), disability or genetic information (<https://www.eeoc.gov/eeoc/>) while on the job at a temporary position?
 - (a) If so, did you report your discrimination?
 - (b) What was the outcome of reporting your discrimination? What happened?
- (2) Were you ever deprived of wages or improperly paid?
 - (a) What happened?
 - (b) Did you file a complaint?
- (3) Were you ever retaliated against? (Retaliation includes threats, loss of wages, job, or any other retaliatory employment measure in response to filing a complaint, instituting an investigation, or testifying in response to an issue)
 - (a) If so, did you report the instance of retaliation?
 - (b) What was the outcome of reporting the retaliation? What happened?



Health and Safety Questions

- (1) Were you ever injured on the job?
- (2) Did you receive any training on the job?
 - (a) If so, can you describe what it was and who provided it?
 - (b) Were you given any protective equipment?
 - (c) Did you think the training prepared or didn't prepare you for your assignment?

Preferences/Opinion Page

- (1) What do you enjoy about being a temporary worker?
- (2) What do you dislike about being a temporary?
- (3) Have you ever sought help from an NGO, union, mutual aid society, or working association to assist with your claims?
- (4) Is there anything else you would like to share?

Other:

- (1) Did your agency provide you with meals? Did they ask you to pay for these meals?
- (2) Were you treated similarly to other employees (as far as you could tell)?
 - (a) Can you describe working conditions?
- (3) How did you get to that job?
 - (a) Did the agency provide transportation?
 - (b) Were you required to pay for the transportation?

Demographic Section:

(unclear yet if this is relevant?)

- (1) Gender
- (2) Race
- (3) Age
- (4) Industry
- (5) Highest level of education



4.0 Staffing Agencies in Buffalo

The following is a list of staffing agencies in the Buffalo area. The “stars” denote average ratings on a 5 point scale self-submitted by Google Users based on their experience. The ratings are unverified and may represent a single rating. Additionally, this list is neither all-inclusive nor exhaustive. Many agencies may operate underground or informally.

- Key Resource Group, LLC (4 stars)
- Adecco (3.5 stars)
- Imagine Staffing Technology (3.5 stars)
- Durham Staffing, Inc (2.4 stars)
- Staffing Solutions of WNY, Inc (2.8 stars)
- SPS Temporaries, Inc (2.8 stars)
- All Team Staffing Western NY (1.0 stars)⁷⁴
- Remedy Intelligent Staffing (3.3 stars)
- EGW Associates Inc (2.5 stars)
- PeopleReady (2.9 stars)
- Express Employment Professionals (4.4 stars)
- Snelling Staffing (2.8 stars)
- Squarefoot Tradesmen (4.4 stars)
- Affinity Personnel Solutions (no rating)
- Superior Group (3.7 stars)
- Robert Half (5.0 stars)
- Remedy Intelligent Staffing (2.8 stars)
- People Ready (3.1 stars)
- Center for Employment Opportunities (5.0 stars)
- Affinity Personnel Solutions (3.0 stars)
- SelectOne (4.4 stars)



⁷⁴ A low rating may indicate poor business practices.

