The Age of Contingent Employment

How changes in employment relationships are impacting worker wages, power, and prospects

By Clermont Ripley and Allan Freyer
north carolina **JUSTICE CENTER**

The Age of Contingent Employment

How changes in employment relationships are impacting worker wages, power, and prospects

By Clermont Ripley and Allan Freyer | north carolina JUSTICE CENTER

TABLE OF CONTENTS

Executive Summary

The American economy has witnessed the explosive growth of contingent employment—any job in which an individual does not have an explicit or implicit contract for long-term employment—over the past 30 years. This report examines several key trends related to the growth of contingent work in general and one form in particular—temporary work—and charts their impacts on workers, the overall economy, and the fundamental relationship between employer and employee. Key findings include:

About one-third of the entire American workforce can be classified as contingent workers.

- **Contingent employment takes many forms.** It includes using labor contractors, temporary help agencies, employee leasing companies or other labor intermediaries, misclassification of employees as independent contractors, franchising, and contracting out services and the production of goods. **Employers use contingent workers for the core business functions of the firm (e.g., manufacturing), and not just for peripheral activities like facilities maintenance or clerical support.**
- **About one-third of the entire American workforce can be classified as contingent workers.** This includes part-time workers (13.2 percent of the total workforce), independent contractors (7.4 percent), self-employed workers (4.4 percent), and a combination of temporary workers hired through agencies, temps hired directly by an employer, and temps hired as contractors (5.6 percent).
- **Employers have increasingly relied on contingent workers as a strategy for keeping down labor costs, a strategy that has cushioned corporate bottom lines and contributed to middle class wage stagnation.** Despite historic productivity gains boosting record levels of corporate profitability, employers have sought to keep labor costs low. Instead, they spent these productivity gains on executive compensation and income distributions to shareholders — benefitting wealthy investors at the expense of workers and their wages. **That's why North Carolina's workers saw their productivity increase by 86 percent, while their hourly compensation increase by just 22 percent.**
- **Although some workers may benefit from the flexibility afforded by voluntary nonstandard work, many workers are stuck in contingent work relationships involuntarily**—a trend that increases the distance between employers and their employees, reduces wages, weakens worker bargaining power, and presents challenges that our nation's outdated, employment-related regulatory structure is unable to adequately address.
- **An important form of contingent employment involves temporary work, nonpermanent jobs provided through staffing agencies that supply labor to client companies on a short-term basis.**
- **Temp work is growing much faster in North Carolina than in the nation as a whole, a troubling trend since temp work pays a lot less the state's average wage.** Between 2009, the number of temp workers grew by 52 percent in North Carolina, compared to 39 percent in the national economy as a whole. North Carolina temp workers earned just $30,627, far less than $45,022 average wage.

- Temp work in North Carolina has grown as a share of the economy over the past five years, from 2.4 percent in 2009 to 3.4 percent in 2014. **This trend matters for workers because it suggests that temporary work is growing at the expense of more permanent and stable work**—and that there's proportionally less stable work available in North Carolina than in the nation as a whole.

- **North Carolina needs more permanent work, not less,** in order to provide workers with the stable, regular incomes they need to make ends meet, ensure financial security for themselves and their families, and ensure long-term upward mobility.

Policymakers can lead the way to a better future for North Carolina's workers by recognizing the harmful growth of contingent employment and taking steps to rein in the problems associated with both temp work and broader contingent labor practices. Policymakers should consider the following recommendations:

- **Forbid public contracts from using contingent workers.** State and local money should only be used to create stable, quality jobs. Public contracts funded by government money should include restrictions on using temp workers and sub-contractors and ensure that all public contractors pay their workers a living wage.

- **Rein in the over-use of temp workers.** North Carolina policymakers should recognize that this temporary workforce model has become a permanent part of the state's economy and adopt policies that discourage companies from using temps as a means to evade legal responsibilities—including legislation that requires businesses to provide the same wages, benefits, and safety standards to temps that they provide to their standard employees.

- **Explicitly impose joint liability to prevent workplace abuses.** The most effective way to ensure that labor intermediaries comply with all workplace laws is to motivate their clients to monitor compliance. Imposing liability on the companies that are purchasing labor and controlling market conditions will force those companies to evaluate whether subcontractors or labor suppliers will comply with workplace laws.

- **Enforce wage and hour laws in contingent employment arrangements.** The NC Department of Labor should issue guidance to employers and employees about who is liable for wage violations, and include specific examples for the industries where outsourcing is common, such as janitorial work, homecare work, and construction. The NCDOL should also be more strategic about targeting its resources to industries known for labor violations and trying to evade responsibility through many layers of contracting.

- **Enact policies that provide contingent workers with outside supports and benefits that are mostly available through standard, full-time work, including raising the minimum wage.** As contingent work grows, so will the number of workers without access to the basic features of a quality jobs—paid sick days, access to pensions or retirement savings, health insurance, or even pathways for career advancement. The state and federal governments need to promote policies that provide workers with these vitally important supports that contingent workers can rarely get through their jobs.

Introduction

In a trend with enormous implications for workers, the American economy has witnessed the explosive growth of nontraditional employment arrangements, or contingent employment, over the past 30 years. Contingent employment takes many forms. According to the Bureau of Labor Statistics, "contingent work is any job in which an individual does not have an explicit or implicit contract for long-term employment.[1]" It includes using labor contractors, temporary help agencies, employee leasing companies or other labor intermediaries, misclassification of employees as independent contractors, franchising and contracting out services and the production of goods. Workers in contingent employment can be engaged in the central business functions of the firm, such as when a furniture making company uses temp workers to produce its furniture, or they can be engaged only in peripheral functions, such as when a furniture company contracts out its Information Technology needs.

Although workers who voluntarily choose to engage in contingent work can benefit from the flexibility it provides, the growth of nonstandard employment is troubling for most workers, especially those who are working contingent jobs because standard jobs are unavailable.

Depending on which definition of contingent employment you use, about one-third of the entire American workforce can be classified as contingent workers. This includes part-time workers (13.2 percent of the total workforce), independent contractors (7.4 percent), self-employed workers (4.4 percent), and a combination of temporary workers hired through agencies, temps hired directly by an employer, and temps hired as contractors (5.6 percent).[2]

Although workers who voluntarily choose to engage in contingent work can benefit from the flexibility it provides, the growth of nonstandard employment is troubling for most workers, especially those who are working contingent jobs because standard jobs are unavailable. Moreover, the trend presents challenges for the economy as a whole. The use of contingent work to distance the employer from its workers and reduce its obligations to them originated as a strategy to hold down labor costs, and unfortunately for workers, the strategy has proved largely effective in meeting this goal. As a result, the rise of contingent work has contributed to middle class wage stagnation and the breakdown of the traditional employer-employee relationship. In turn, this instability has weakened the ability of workers to bargain with their employer and has made the enforcement of workplace laws more difficult. This is largely because the very nature of contingent work generates confusion among workers and enforcement agencies about who the employer is, who should be held liable when worker protections are not recognized, and who the worker should bargain with for improved conditions.

An important form of contingent employment involves *temporary work*[3], nonpermanent jobs provided through staffing agencies that supply labor to client companies on a short-term basis. Like all contingent work, temporary work has seen explosive growth in North Carolina and the nation as a whole. In a troubling trend, these low-wage temp jobs are replacing higher wage, permanent jobs as temp workers begin to increase their share of overall employment.

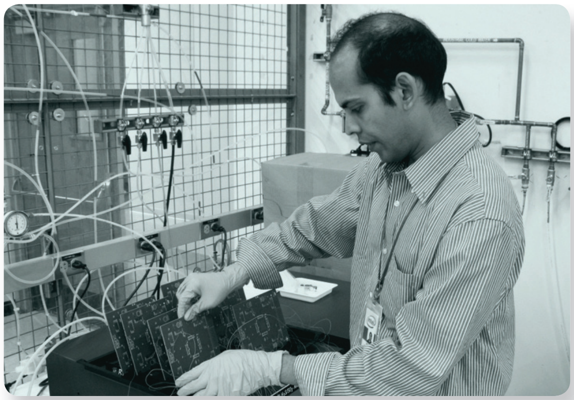
Given the rise of contingent and temporary work, policy makers are encouraged to bring accountability back to the employer-employee relationship and ensure that all contingent workers are covered by worker health and safety protections and have the opportunity to earn enough to afford the basics.

The Rise of Contingent Work in the American Economy

Over the past several decades, the traditional model of work has steadily eroded as employers have increasingly come to rely on contingent relationships. Thirty years ago, the dominant model was a direct employment relationship between workers and the company for which the workers performed services or produced goods. Those jobs were likely to be lifetime jobs, or at least to last for a decade or more. Over the last several decades a growing segment of our economy has shifted away from two-party employment relationships between one company and its employees to a system in which workers are kept separate from the company through a chain of intermediaries. In this new model workers are treated as disposable, hired to meet a specific and timely demand for labor, and then terminated.[4] These employment relationships are often described as "contingent employment arrangements," a phrase coined by Audrey Freeman in 1985 as economist and labor historians were first starting to talk about the shift towards temporary or conditional employment with little or no attachment between the employee and the employer.[5]

Using labor intermediaries to secure the necessary work force is not a new phenomenon. Contracting out labor has been the norm in agriculture for many years where farmers rely on farm labor contractors or crew leaders to supply additional labor to plant and harvest crops and to distance themselves from the people who work their fields. Over the last several decades more and more industries have adopted the agricultural model of labor contracting. The manufacturing industry in particular has driven growth in the temporary help industry both because of their need to quickly scale up or down the labor force due to volatile demand for the goods they produce and because of their growing reliance on *permatemps* as their permanent workforce.[6]

Employers have embraced alternative employment models like those involved with using labor contractors for a number of reasons—most of which are related to keeping labor costs down. Certainly, firms may use temp workers to screen for new employees, or to fill in for short term staffing needs caused by regular employees taking vacation or sick leave. Doing so provides flexibility by allowing firms to respond to seasonal or cyclical changes in the workload and to hire workers temporarily when they are uncertain about future economic conditions. But increasingly economists believe that the driving factor behind the growing use of labor intermediaries and alternative staffing arrangements is cost savings—especially cost savings from *labor*.[7] Outsourcing labor allows firms to save money in several ways. First, it allows them to hire workers only at the moment they are needed. This just-in-time hiring practice cuts down on paying for idle time and under-utilization of employees. Second, relying on an intermediary such as a temp company to provide labor reduces personnel cost related to recruiting, screening and training. Using temps or subcontractors also allows firms to avoid the costs associated with lay-offs, including both costs to morale and the potential cost of litigation. Third, putting distance between the firm and the labor allows the firm to pay less for labor. Not only can they avoid paying costs that they are responsible for —such as unemployment insurance, workers compensation, and payroll taxes — but firms can also pass many of these costs along to subcontractors and end up paying contingent workers less than regular employees and offering them fewer benefits.[8]



Employers have embraced alternative employment models like those involved with using labor contractors for a number of reasons—most of which are related to keeping labor costs down.

Increased automation and technological innovation has also allowed employers to shift to contingent work models. New technologies have spawned management and production practices that allow firms to focus on core business functions—manufacturing widgets for example— and contract out everything else (like human resources). In turn, businesses keep their labor costs down but end up generating a satellite workforce integral to the functioning of the firm. This satellite workforce, though, is held at arms' length in terms of compensation and worker protections.[9]

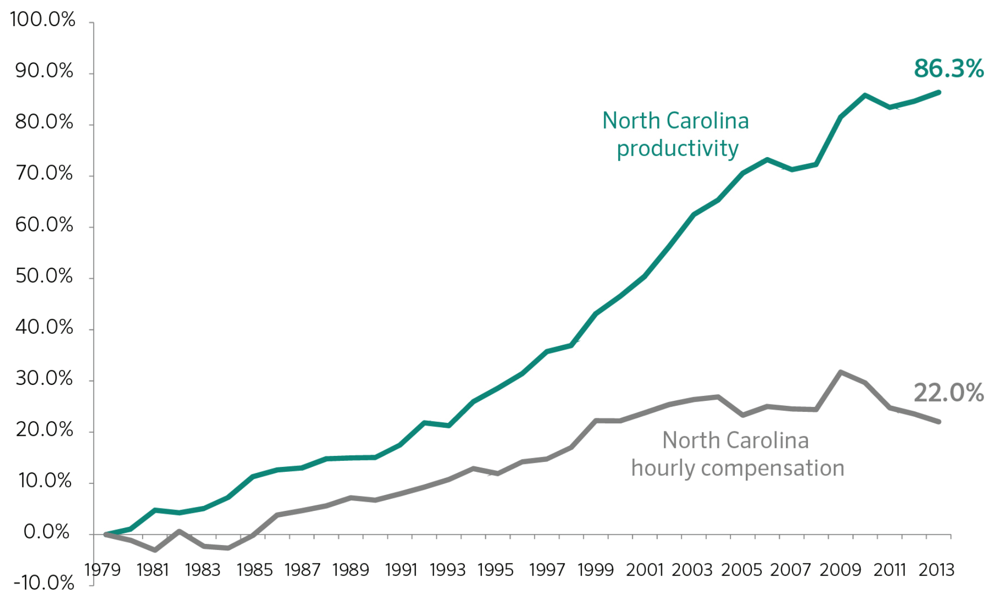
Contingent Work and Its Implications for the Economy

Although businesses and some workers may benefit from more flexible work arrangements, the growth of contingent employment relationships is troubling for a majority of workers and the economy as a whole. This is due to a growing distance between employers and their employees, falling wages, weaker worker bargaining power, and an outdated employment-related regulatory structure that is unable to adequately address this new reality.

Contingent Work Erodes Quality Jobs

Perhaps the largest problem it poses for workers is the breakdown of the traditional relationship between employer and employee and the accompanying erosion of stable

FIGURE 1: North Carolina workers' productivity is not translating into strong wage growth



SOURCE: EPI analysis of unpublished total economy data from Bureau of Labor Statistics, Labor Productivity and costs program; employment data from Bureau of Labor Statistics, Local Area Unemployment Statistics; wage data from the Current Population Survey and compensation data from the Bureau of Economic Analysis, State/National Income and Product Accounts public data series work. Under the standard employment model of the 20th Century, big businesses in the manufacturing and service industry employed thousands of people across the country and were directly accountable to those employees for providing safe workplaces, adequate salaries and benefits, and reasonable working conditions. Today those same big businesses still play a role in shaping the labor market, but instead of playing the role of employer they are purchasing labor from an expanding array of smaller business units.[10] The proliferation of lower level firms supplying labor to big firms creates increased competition and pressure to cut costs as the various staffing agencies and labor suppliers endeavor to underbid each other. This competition "lead[s] some to seek out vulnerable workers, cut corners, and cheat."[11] A consequence of this shift is "the lead firms that collectively determine the product market conditions in which wages and conditions are set have become separated from the actual employment of the workers who provide goods or services."[12]

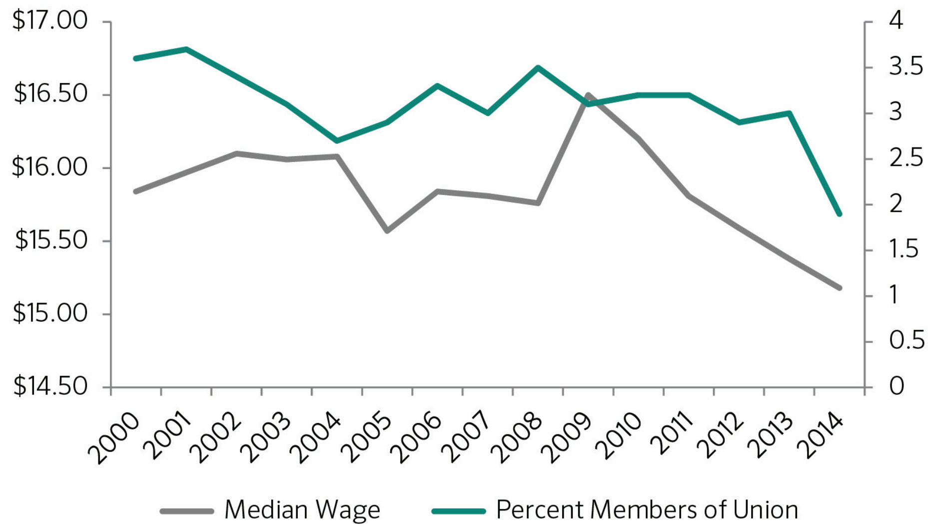
Contingent jobs are characterized by low pay, lack of benefits, little job security, high turnover, and have higher rates of health and safety violations.

Businesses find substantial labor savings from pushing workers out of the traditional employee-employer relationship and into contingent relationships.[13] They face significantly lower regulatory and compliance costs and provide considerably lower quality jobs for most non-technical occupations. As a result, contingent jobs are characterized by low pay, lack of benefits, little job security, high turnover, and have higher rates of health and safety violations.[14]

Contingent Work Leads to Wage Stagnation

Unsurprisingly, the growth in contingent jobs is a significant factor contributing to wage stagnation and present a serious barrier to moving out of poverty and into the middle class, largely because they ensure that historic business productivity gains over the past three decades have gone to increase corporate bottom lines rather than workers' wages. In turn, corporate employers have spent these gains—largely achieved by reducing labor costs—on executive compensation, expensive stock buy-backs, dividends, and income distributions to shareholders, benefitting wealthy investors at the expense of workers and their wages.[15] In effect, wages and productivity have become disconnected since the late 1970s, and especially since the Great Recession. From 1948 to 1979 wages and productivity increased at similar levels (productivity by 108.1 percent and wages by 93.4 percent).[16] In contrast, from 1979 to 2013, productivity increased by nearly 65 percent while wages only increased by 8.2 percent. During that same time period wage growth for the top 1 percent of the economy was 153.6 percent.[17] Similarly, productivity has increased by about 3 percent during the ongoing recovery from the Great Recession, but in a historically unprecedented trend, wages fell by more than 5 percent in the

FIGURE 2: Wages have declined in North Carolina along with unionization



SOURCE: Economic Policy Institute analysis of Current Population Survey

same period. As seen in the following figure, North Carolina has followed the national trend—the state's productivity has increased by 86 percent in real terms 1979-2014, while wages grew by just 22 percent. As a result, it is no surprise that the percentage of low-income working families in the state (those earning below the federal poverty line while working full-time) grew from 32 percent in 2008 to 37 percent in 2013 today, a level higher than the national average.[18]

> The rise in contingent employment relationships undercuts worker power and the ability to organize, which in turn negatively impacts wage growth and contributes to wage stagnation.

As a result of this wage stagnation, the United States has experienced growing income inequality between the top 1 percent of earners and everybody else. And given that excessive inequality depresses long-term economic growth and reduces social mobility, the growing wedge between productivity and wages should be a warning sign for policy makers and employers alike that trying to increase profitability by continually slashing labor costs is damaging the overall economy. While contingent labor is not solely responsible for these macroeconomic trends, it clearly plays a contributing a role.

Under the narrow definition of joint-employment adopted by the National Labor Relations Board in the 1980s, employees of sub-contractors or temporary staffing companies were not considered employees of the host organization and therefore cannot participate in the bargaining unit without explicit permission from the worksite employer. In a positive step forward, however, the National Labor Relations Board adopted a new joint employment standard in *Browning-Ferris Industries* on August 27, 2015.

According to this new standard, the board found a temporary staffing agency and its client to be joint employers of the employees supplied by the staffing company. It is too soon to tell just what impact this decision will have on contingent workers' ability to organize, but it is certainly a positive development.[22]

Contingent Work Weakens the Bargaining Power of Workers

In a related problem, the rise in contingent employment relationships undercuts worker power and the ability to organize, which in turn negatively impacts wage growth and contributes to wage stagnation.[19] Large corporations have successfully undermined workers' ability to organize and collectively bargain with the entities that control their working conditions by distancing themselves from those workers.[20] The nature of contingent work makes it very difficult for workers to impact working conditions by voting with their feet. Contingent workers who complain or try to bargain for changes risk being replaced by a new set of temps or a new labor contractor's employees. When companies claim that there is no relationship between the workers and the firms for whom they are providing goods and services, workers have no voice.[21] Furthermore, even in a unionized workplace contingent workers have been excluded from participating in the union.

Contingent Work Undermines Enforcement of Workplace Laws

The sharp rise in outsourcing of labor has also made enforcement of workplace laws more difficult, due to confusion among workers and enforcement agencies about who the employer is and who can and should be held responsible for following these laws. Companies that have distanced themselves from their workforce through intermediaries and sub-contractors are able to escape liability because many of our employment laws have not kept up with the changes in employment relationships. The laws are based on identifying who is an employee and employer and assume a direct bilateral relationship between the two.[23] The Fair Labor Standards Act (FLSA) does have a broad definition of "employ" which can be used to hold multiple entitles liable for minimum wage and overtime violations, but other employment laws are not as broad and courts do not always apply the FLSA definition consistently. As a practical matter, the US Department of Labor's Wage and Hour Division (WHD), the agency charged with enforcing the FLSA, does not have the resources or manpower to investigate every workplace. As increasing numbers of small labor brokers and staffing companies enter the market and the chance of being investigated by WHD decreases, the threat of an investigation is not enough to motivate employers to comply with wage obligations.[24] Even if they were investigated, the civil money penalties assessed by WHD are so low that they don't deter bad behavior either.[25]

Contingent Work Harms Law-Abiding Employees

Finally, the rise in contingent employment hurts law abiding employers. In many industries, contracting out labor to undercapitalized labor suppliers has become so common that employers have no choice but to follow suit in order to survive economically. The intense competition among labor intermediaries to offer the lowest price for labor creates a race to the bottom in which cutting corners on workers compensation, unemployment insurance, and wage and hour obligations are common.

Employment Services Sector[26]

NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAIC) 5613

Temporary help services (NAICS 56132) = temp agencies that provide labor to a client firm on a short-term basis, the client firm provides on-site supervision but the temp agency is the employer[27]. Represent 80.9% of all Staffing Services Sector employment nationally.

Professional Employment Organizations (PEOs) (NAICS 56133) = agencies that lease employees to a client firm, PEO handles payroll. 10.4% of employment in Staffing Services Sector nationally.

Employment Agencies(NAICS 56131) = agencies that are hired by a firm to help find new employees for the client. 8.8% of employment in Staffing Services Sector nationally.

Temporary Work—A Common Form of Contingent Labor

Temp work, one form of contingent employment, has become a more and more popular choice for companies looking to increase flexibility and cut labor costs. Temporary employment agencies — also known as temp agencies, temp firms, staffing agencies and staffing firms — which supply labor to client companies often on a short-term basis, are increasingly supplying the entire labor force to companies. The client company usually has a contract with the temp agency to provide a certain number of workers, with a certain set of skills, for a set period of time. The contract also specifies how much the client company has to pay the temp agency for each hour worked by the temp worker, which includes the fee for the temp agency. The temp agency is the entity that recruits, screens and pays the workers for the work performed at the client company. The client company is the entity that trains, when appropriate, and supervises the work onsite.

While some workers may value the short-term and flexible nature of temp work alongside the opportunity to build work experience, surveys show that the majority of temporary employees are working temporary jobs involuntarily and would prefer to be in permanent positions.

It is difficult to know exactly how many people are working in the temp industry because of inconsistencies in how workers classify their jobs, but it is clear that this industry is growing. The Bureau of Labor Statistics measures employment in the temp industry through the monthly establishment survey, the Current Employment Statistics Survey.

During the 20th Century, temps were mostly used to fill administrative positions such as secretarial jobs. Towards the end of the century the kinds of jobs performed by workers in the staffing services sector changed in two important ways. First, there was an overall shift from using temps primarily for clerical or administrative jobs to using temps for blue-collar or production jobs.[28] Second, the share of temp employees working in the industrial/ manufacturing sector has increased.[29] Last year, according to an industry group survey, 37 percent of all temps worked in industrial jobs while 28 percent worked in office-clerical and administrative jobs.[30] (The remaining 35 percent are split between professional-managerial, technical and scientific, and healthcare.) These changes demonstrate that employers have increasingly used temp agencies to outsource their core production jobs and unskilled manual labor.

Unfortunately, by its very nature, temp work does not support stable, long-term employment, and very frequently, it doesn't provide a guarantee of regular hours. Temp jobs almost never provide other components of quality jobs—decent wages, paid leave, retirement savings.[31] Moreover, temp workers are often employed in dangerous jobs, which are made even more dangerous because temp workers get less safety training and are not always provided with necessary personal protective gear.[32]

While some workers may value the short-term and flexible nature of temp work alongside the opportunity to build work experience, surveys show that the majority of temporary employees are working temporary jobs involuntarily and would prefer to be in permanent positions.[33] The staffing industry advertises that these jobs will lead to better, permanent employment by creating opportunities to be screened and recruited by client companies. Yet overwhelmingly these opportunities do not pan out— most employers are just reducing labor costs and rarely attempt to create pathways for full-time hiring or advancement. In part, this is because temps are typically hired into lower-skill jobs by client firms that generally don't require higher skills or place much value on prior experience.

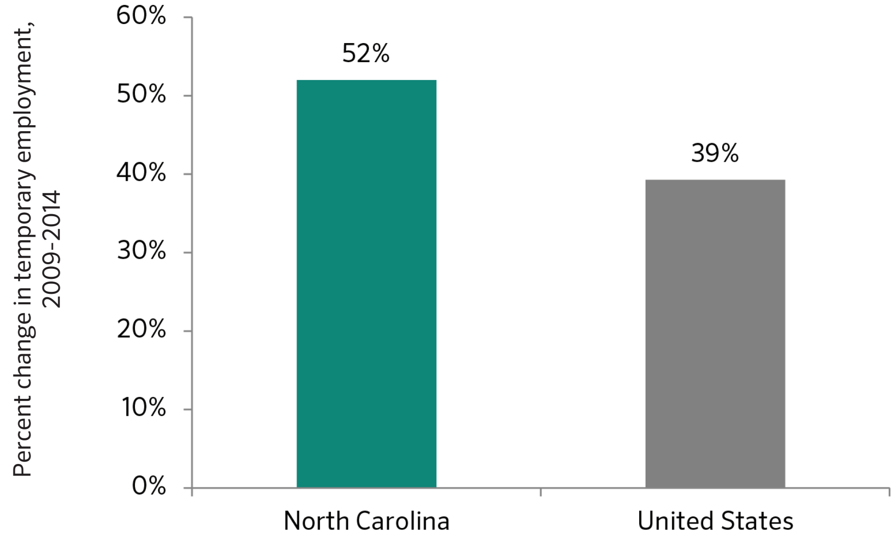
Indeed, a number of recent studies have shown that having a temp job does not increase a worker's chances of moving into traditional, stable employment—except for in high-skilled occupations.[34] As a result, it is unsurprising that temp work provides little in the way of stepping stones to upward mobility, but rather ends up trapping workers in more temporary, unstable, low paying jobs with no path to advancement. And this has clear, negative implications for future prosperity, as stable employment that pays enough to allow workers to make ends meet is critical for promoting long-term economic growth.

Temporary Work in North Carolina

In line with the overall trajectory of contingent employment, temp work is experiencing significant long-term growth in North Carolina—and the nation as a whole—yet, this trend is much more pronounced in North Carolina. In the five years since the end of the Great Recession in 2009, the Tarheel State saw annual employment in temporary work industries—including those workers in Temporary help services and Professional Employment Organizations— grow by an astonishing 52 percent, compared to just 39 percent growth in temp employment in the nation as a whole (see Figure 3). As a result, temp work is now a much larger share of total employment in North Carolina than in the United States as a whole. From 2009 to 2014, national employment in the temp industry grew from 2 percent of the entire national economy to 2.7 percent, yet over the same period, North Carolina's temp industry saw its share of the state's total employment grow from 2.4 percent to 3.4 percent in 2014—a much greater increase than the 0.7 point gain in the national average. And this is no short-

> The boom in temp work is harmful to North Carolina's workers for the straightforward reason that temp jobs pay a lot less than the average wage across the overall economy.

FIGURE 3: Temporary employment grows faster in North Carolina than in nation as a whole

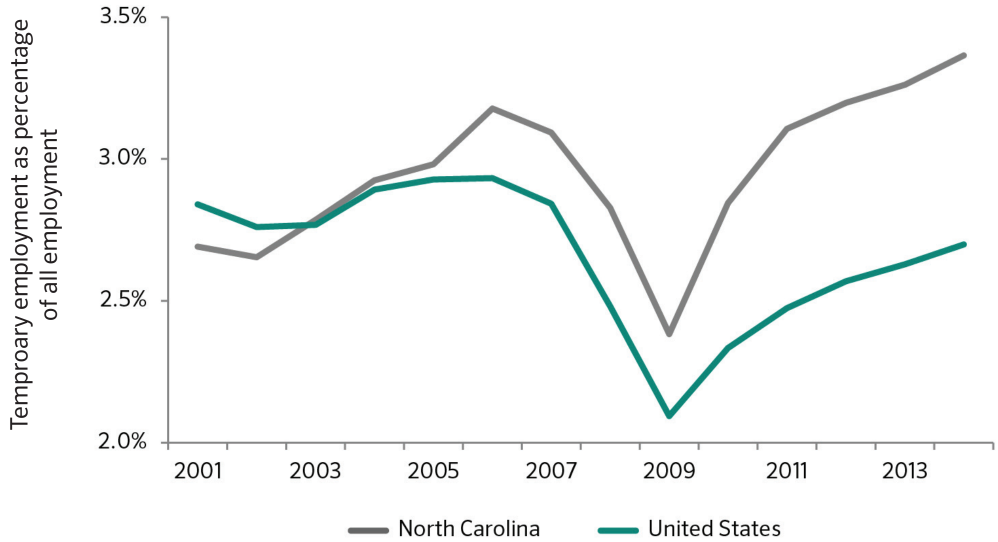


SOURCE: Author's analysis of annual employment in NAICS 56132 and 56133, Quarterly Census of Employment and Wages

term trend—North Carolina has long seen faster growth and greater reliance on temp workers than has the national economy. As seen in Figure 4, North Carolina saw the temp industry's share of total employment surpass the national average in 2003 and never look back. This trend matters for workers because it suggests that temporary work is growing at the expense of more permanent and stable work—and that there is proportionally less stable work available in North Carolina than in the nation as a whole. North Carolina needs more permanent work, not less, in order to provide workers with the stable, regular incomes needed to make ends meet, ensure financial security for themselves and their families, and ensure long-term upward mobility.

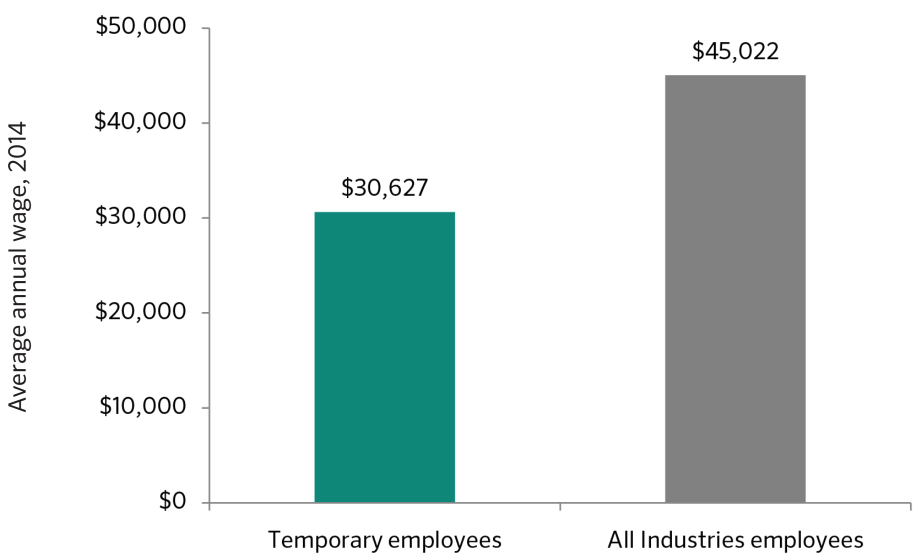
These trends are troubling for several reasons. First, the growth of temp jobs as a share of all the jobs in the economy directly translates to a loss of quality jobs in the overall economy—in effect, temp jobs are replacing stable jobs with a long-term commitment from the employer. As a corollary, Figures 3 and 4 reveal the more vulnerable nature of these jobs. Because temps are so easy to let go and replace, the staffing services sector contracts more quickly during downturns and expands more quickly during recoveries. So as North Carolina replaces permanent jobs with temporary jobs, the state is increasing its reliance on those jobs that are first on the chopping block when the economy enters a recession—increasing instability for individual workers during tough economic times and creating new vulnerabilities for the state's overall economy. Further exacerbating

FIGURE 4: North Carolina sees widening share of total employment belong to temporary work



SOURCE: Author's analysis of annual employment in NAICS 56132 and 56133, Quarterly Census of Employment and Wages

FIGURE 5: North Carolina's temp workers earn less than the average work in the state's economy



SOURCE: Quarterly Census of Employment and Wages[35] the impact on both workers and the economy is the fact that temp workers are not able to access basic work supports such as unemployment insurance when they lose their jobs through no fault of their own.

Lastly, the boom in temp work is harmful to North Carolina's workers for the straightforward reason that temp jobs pay a lot less than the average wage across the overall economy. As seen in Figure 5, North Carolina's temp workers earn $30,627 per year, significantly lower than the $45,022 average annual wage earned by workers in the overall state economy. This is unsurprising, given that temp work by its very nature—as with all unstable, contingent work—is intended to treat workers as temporary, disposable, and in doing so, minimize labor costs and keep down wages.

But as temp jobs continue to grow as a share of the total economy, it means that more and more of these contingent low-wage jobs are replacing better-paying, more stable jobs in other industries. This is a recipe for creating an increasingly vulnerable segment of workers unable to access the basic supports or access the basic protections provided by traditional employer-employee relationships.

Policy Recommendations

North Carolina needs an economy that works for everyone, including jobs that provide workers with predictable, regularly scheduled work and wages that allow them to afford the basics. These kinds of quality jobs allow workers to benefit from their improved productivity and support vibrant communities. Unfortunately, the explosive growth of contingent work calls into question the ability of workers to secure stable jobs and earn adequate incomes, a problem particularly acute for temporary workers who want a permanent full-time job but can't find one. The rise of involuntary, temporary work is a trend that presents a grave threat to upward mobility and sustainable long-term economic growth.

Policy makers can lead the way to a better future for North Carolina's workers by recognizing the harmful aspects of the growth in contingent employment and taking steps to rein in the problems associated with temp work in particular and contingent labor more broadly. Specifically, policy makers should consider the following recommendations:

- **Forbid public contracts from using contingent workers.** State and local money should only be used to create stable, quality jobs. Therefore, whenever government money is used to fund public contracts the contract should include restrictions on using temp workers and sub-contractors. Public contracts should include requirements that all workers party to the contract—up and down the subcontracting chain—are paid a living wage and are covered by federal and state wage and hour laws and worker protections.

- **Rein in the over-use of temp workers.** North Carolina policymakers should recognize that this model of using temps is a permanent part of the state's economy. Then, they should adopt policies that discourage companies from using temps as a means to evade legal responsibilities and pass legislation to ensure temp jobs are safe and pay a decent wage. Such policies could require the company using temps to provide the same wages and benefits they provide to regular employees. They could also limit the amount of time a company is allowed to use temps before being required to hire them directly and forbid the use of temps for any work that is considered part of the core function of that business.

- **Explicitly impose joint liability on the entity with the power to prevent workplace abuses.** The most effective way to ensure that labor intermediaries comply with all workplace laws is to motivate their clients to monitor compliance. When workers are supplied by a labor intermediary, the worksite employer is often the entity in the best position to make sure that health and safety, labor, and employment laws are respected for those workers. This is also true when a firm contracts with multiple subcontractors for different aspects of the work. Imposing liability on the companies that are purchasing labor and controlling market conditions will cause those companies to take into account the ability of the subcontractors or labor suppliers to comply with workplace laws.

- **Enforce wage and hour laws in contingent employment arrangements.** Often the work-site employer who uses temp workers or sub-contracted workers should legally be considered a joint employer under federal and state wage and hour laws, but workers, employers, and the regulatory agencies are all confused about who can be held liable. The NC Department of Labor should issue guidance to employers and employees about who is an employer liable for wage violations and include specific examples for the industries where outsourcing is common, such as janitorial work, homecare work and construction.[46] The NC Department of Labor should also be more strategic about targeting its resources[37] to the industries that are known for labor violations and for trying to evade responsibility through many layers of contracting.

- **Raise the Wage.** The simplest way to ensure that contingent employment pays enough to keep full-time workers out of poverty is by raising the minimum wage for everyone. North Carolina policymakers should raise the minimum wage to at least $10.10 per hour and allow it to automatically grow with inflation.

- **Enact policies that provide contingent workers with outside supports and benefits that are mostly available through standard, full-time work, but that are rarely available to contingent workers.** As contingent work grows, so will the number of workers without access to the basic features of a quality jobs—paid sick days, access to pensions or retirement savings, health insurance, or even pathways for career advancement. As a result, the state and federal governments need to promote policies that provide workers with these vitally important supports that contingent workers cannot get through their jobs. These policies should include access to health insurance, retirement savings plans, paid sick days and paid family medical leave, and access to job training programs that provide pathways for career advancement in the new world of work. ■

Endnotes

1. Polivka, Anne, 1996, *Contingent and Alternative Work Arrangements, Defined*, Monthly Labor Review, October 1996
2. U.S. Government Accountability Office (2015), Contingent Workforce: Size, Characteristics, Earnings, and Benefits. Publication No. GAO-15-168R; U.S. See also, Government Accountability Office (2006) EMPLOYMENT ARRANGEMENTS: Improved Outreach Could Help Ensure Proper Worker Classification. Publication No. GAO-06-656.
3. We refer to this work as temporary or temp throughout the report, but this work is often not temporary at all. Instead, staffing company workers are purportedly hired as temps but stay with the host company for years without ever being made permanent. These workers are referred to as "permatemps."
4. Polivka, supra note 1.
5. Polivka, Anne and Thomas Nardone, 1989, *On the definition of 'contingent work,'* Monthly Labor Review December 1989.
6. Houseman, Susan N., *Temporary Agency Work*, IZA World of Labor 2014:27
7. See Polivka, et al, supra note 5. In the 1980s firms tried to get control over costs by relying more on alternative or flexible employment arrangements which allowed them to quickly change size of the labor force to respond to market conditions.
8. Weil, David. *Enforcing Labor Standards in the Fissured Workplace: The US Experience*, The Economic and Labour Relations Review, Vol 22 No.2. Shifting work out allows employers to pay different wage rates because when they are all employed by the same firm there usually isn't much variation in pay even with varying skill level and job assignments.
9. Id.
10. Id.
11. Smith, Rebecca and Claire McKenna, 2014, *Temped Out; How the Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers*, National Employment Law Project and National Staffing Worker Alliance
12. Weil, supra note 8
13. Gould, Elise, 2015, *"2014 continues a 35-year trend of broad-based wage stagnation,"* Economic Policy Institute Issue Brief #393, February 19, 2015.
14. Ruckelshaus, Catherine, Rebecca Smith, Sarah Leberstein, and Eunice Cho, 2014, "*Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work"* National Employment Law Project. See also, Annette Bernhardt, et al, *"Broken Laws, Unprotected Workers. Violations of Employment and Labor Laws in America's Cities"*
15. Galston, William and Elaine C. Kamarck, *More builders and fewer traders: a growth strategy for the American Economy*. Center for Effective Public Management at Brookings, June 2015.
16. Bivens, Josh, Elise Gould, Lawrence Mishel and Heidi Shierholz, 2014, *Raising America's Pay, Why It's Our Central Economic Policy Challenge*. Economic Policy Institute Briefing Paper #378, June 4, 2014.
17. Id.
18. Analysis of American Community Survey by Working Poor Families Project.
19. Gould, supra note 13, page 3. "The rise in wage inequality (and income inequality for that matter) over the last three-and-a-half decades has been driven by a pronounced reduction in the collective and individual bargaining power of ordinary workers, for whom wages are the primary source of income."
20. Ruckelshaus, et al, supra note 14.

21. Weil, supra note 8.
22. According to the new standard adopted by the National Labor Relations Board, two or more entities are joint employers of a single workforce if (1) they are both employers within the meaning of the common law; and (2) they share or codetermine those matters governing the essential terms and conditions of employment, including where one entity exercised control over terms and conditions of employment through an intermediary. *Browning-Ferris Industries of California, Inc., et al*, 362 NLRB 186 (2015).
23. The Dunlap Commission speculated that some of the growth of contingent employment is actually motivated by employers' desire to avoid tax, labor and employment law liability rather than a desire for more efficiency and flexibility. See Dunlap Commission on the Future of Worker-Management Relations: Final Report, December 1, 1994.
24. Weil, supra note 8.
25. Id.
26. Data from 2014 Current Employment Statistics Survey.
27. Under some workplace laws, such as the Fair Labor Standards Act, both the temp agency and the client-employer may be considered the employer of the worker.
28. See Dey, Matthew, Susan N. Houseman and Anne E. Polivka, *Manufacturers' Outsourcing to Staffing Services,* June 2012, ILRReview 65(3). In 1990 42% of staffing services workers did administrative work and 28% did blue-collar work; in 2000 47% did blue-collar work and 28% did administrative work.
29. Id. In 1989, 80,000 staffing services workers were engaged in manufacturing jobs but in 2000, 600,000 staffing services workers were engaged in manufacturing. Although manufacturing jobs have decreased overall, the share of manufacturing performed by temps has continued to increase throughout the 21st century.
30. American Staffing Association 2014 Staffing Employee Survey
31. Houseman, supra note 6.
32. Dietz, Miranda. *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.
33. Houseman, supra note 6.
34. Id.
35. Author's analysis of annual employment and wages in NAICS 56132 and 56133
36. The Administrator of USDOL's Wage and Hour Division issued guidance on July 15, 2015 about interpreting the FLSA's definition of employ. Available here: **http://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm**
37. Weil, David. 2010, *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division*. Washington, DC: Department of Labor.

ACKNOWLEDGEMENTS:

The NC Justice Center's Workers' Rights Project would like to thank Catherine Ruckelshaus and Claire McKenna of the National Employment Law Project for their invaluable insights and the Working Poor Families Project for their generous support for this report.

north carolina
JUSTICE CENTER

www.ncjustice.org

contact@ncjustice.org

Phone:	(919) 856-2570
Fax:	(919) 856-2175
Physical Address:	224 S. Dawson Street • Raleigh, NC 27601
Mailing Address:	PO Box 28068 • Raleigh, NC 27611