



Summer 6-1-1995

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Recommended Citation

Richard S. Belous, *The Rise of the Contingent Work Force: The Key Challenges and Opportunities*, 52 Wash. & Lee L. Rev. 863 (1995).

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The Rise of the Contingent Work Force: The Key Challenges and Opportunities

Richard S. Belous*

I. The Law and Contingent Labor Markets

When one mixes the law with contingent labor markets, one would be well advised to also add a teaspoon of humility. I learned this in the 1980s while I was conducting research for my original study of contingent work forces.¹ At that time, some of the best legal minds on Capitol Hill and on K Street told me that the 1986 Federal Tax Law would effectively shut down the employee leasing industry. Not being a lawyer, I assumed that these so-called legislative and practitioner experts were correct that the mushrooming employee leasing industry — a key part of the U.S. contingent work force — would be held in check if not reduced. In addition to using a wide range of national survey data, for my research I conducted over fifty detailed case studies with a wide range of corporations and nonprofit organizations representing many different segments of the American economy. I thought my research was faulty when it detected in the late 1980s that the employee leasing industry was growing even faster than it did in the early 1980s, despite the 1986 Federal Tax Law.

The data demonstrate that one should never underestimate the creativity of labor market participants to obviate regulations or to risk violating laws. Given the significant cutbacks in resources devoted by the Labor Department and others to enforcing federal labor laws, it is not surprising that many, and probably a growing number of, employers and employees have made a "rational" utility-maximizing decision to violate

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1. RICHARD S. BELOUS, *THE CONTINGENT ECONOMY: THE GROWTH OF THE TEMPORARY, PART-TIME AND SUBCONTRACTED WORK FORCE* (1989).

federal and state labor laws because the probability of punishment is often low and the fines are often cheap. Laws can define who is and who is not a legal temporary, part-time, or subcontracted worker; but, following the law of unintended consequences, the actual impact on labor markets can be very different from legislators' and legal scholars' visions. Unintended consequences are very important in many aspects of labor market regulations, including the Fair Labor Standard Act² and occupational safety and health regulations. However, unintended consequences may be an even more important consideration when one is concerned with the murky world of the contingent work force. In many cases, the laws applied to the contingent work force are hazy, definitions and regulations are easily stretched, and enforcement mechanisms are very weak.

This paper attempts to address some of the key questions raised by the growth of the contingent work force in the current economic and political climate. However, many of the important questions surrounding the contingent work force may not be answered for quite some time.

II. *Describing the Contingent Work Force*

The dramatic growth of the contingent work force in the United States has alarmed many observers. Some, including *Time* magazine,³ have predicted that the contingent work force could grow so rapidly that in a few years it will represent approximately 50% of the U.S. labor force. However, these predictions need to be qualified because the concept of contingency is in many ways difficult to define and measure. Two specific definitions and time series measurements will be presented for discussion: a liberal upper boundary estimate and a conservative lower boundary estimate of the size of the contingent work force.

The work force of a corporation, a university, a government, and a nation can be divided into two very general groups. The first group contains "core workers" who have a strong affiliation with an employer and are treated by the employer as having a significant stake in the organization. Core workers are part of the "corporate family." They show long-term attachment to the company and have a real measure of job stability. In the language of economists, core workers have an implicit contract with their employers: If the workers follow certain rules and norms and meet certain standards, their employers will provide long-term employment and some

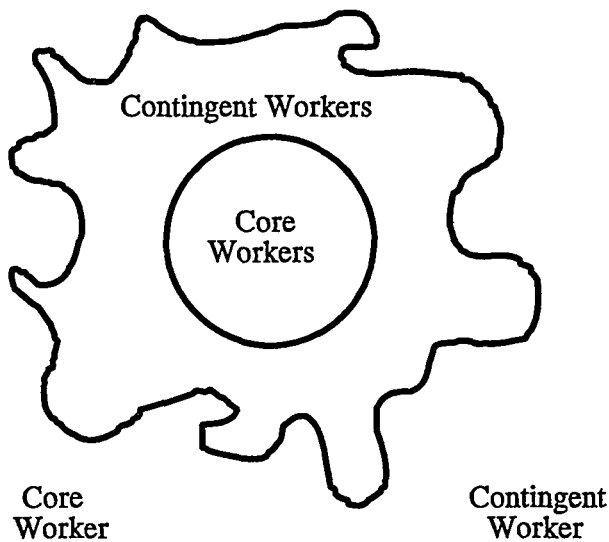
2. See Richard S. Belous, *America's Fair Labor Standards Act: The Rationale and the Record* (1994) (unpublished manuscript on file with the author).

3. Lance Murrow, *The Temping of America*, *TIME*, Mar. 29, 1993, at 40, 41.

measure of advancement.⁴ Core workers often enjoy significant fringe or employee benefits.

In contrast, the second group contains "contingent workers" who have a weak affiliation with a specific employer and do not have a significant stake in a company. Contingent workers are not considered part of the corporate family. They do not have long-term attachment to a company and often have no real job stability. Employers generally do not make implicit contracts with contingent workers.

Chart 1. Core and Contingent Workers⁵



- | | |
|--|--|
| <ul style="list-style-type: none"> ● Strong affiliation with an employer. ● Has an implicit long-term contract with an employer. ● A significant stakeholder in the company ● Part of the corporate family | <ul style="list-style-type: none"> ● Weak affiliation with an employer. ● Lacks an implicit long-term contract with an employer. ● Not a significant stakeholder in the company ● Not part of the corporate family |
|--|--|

4. See generally Sherwin Rosen, *Implicit Contracts: A Survey*, 23 J. ECON. LITERATURE 1144 (1985) (presenting implicit contract theory and comparing it to conventional labor market theories).

5. BELOUS, *supra* note 1, at 5.

In forming human resource systems, corporations use varying mixes of core and contingent workers. One of the most interesting changes in American labor markets following World War II was the rise of the "internal labor market" — a labor market within an organization that is protected from the day-to-day fluctuations of supply and demand.⁶ "External labor markets," on the other hand, existed outside of any labor organization and were subject to the shifts of supply and demand. By building up an internal labor market, many U.S. corporations built human resource systems that relied on a large proportion of core workers. In recent years, however, many employers have altered their basic human resource systems by reducing the size of their core work force and increasing their use of external labor markets and contingent workers.

III. The Rate of Growth of the Contingent Work Force

One can obtain some indication of the size and growth of the contingent work force by examining several of its major parts. Table 1 shows the number and growth of temporary, part-time, business service, and self-employed workers between 1980 and 1993. Given the current status of our national labor force data collection system, it is not possible to give a single number as the "true" size of the contingent work force in the United States. However, it is possible to estimate a liberal, or upper, boundary and a conservative, or lower, boundary on its size.

A liberal upper boundary consists of all the contingent work force components — that is, the sum of temporary, part-time, business service, and self-employed workers. This method estimates that in 1983 there were 38.5 million contingent workers in the United States. However, there is a double-counting problem with this upper boundary estimate. For example, a worker who is temporarily employed in the business service industry is counted twice — once as a temporary worker and once as a business service industry employee. The lower boundary estimate eliminates double counting, but, because it excludes some people who should be counted as contingent workers, it undercounts. For example, based upon data from unpublished surveys conducted by the Bureau of Labor Statistics, we know that about 40% of temporary workers are part-time workers. Therefore, instead of counting 1.6 million temporary workers in 1993, the conservative estimate would count only 960,000; the remaining 640,000 (40% of 1.6

6. See SAR A. LEVITAN ET. AL., HUMAN RESOURCES AND LABOR MARKETS: EMPLOYMENT AND TRAINING IN THE AMERICAN ECONOMY 104-08 (3d. ed. 1981) (discussing internal and external labor markets).

Table 1. The Growth of the Contingent Work Force⁷

	Workers in Millions			Percent Change	
	1980	1988	1993	1980-88	1988-93
Temporary Workers	0.4	1.1	1.6	175%	45%
Part-Time Workers	16.3	19.8	20.9	21%	6%
Business Service Workers	3.3	5.6	5.7	70%	2%
Self-Employed Workers	8.5	10.1	10.3	19%	2%
Liberal Upper Boundary on Size of Contingent Work Force	28.5	36.6	38.5	28%	5%
Conservative Lower Boundary on Size of Contingent Work Force	25.0	29.9	32.2	20%	8%
Total Civilian Work Force	106.9	121.7	128.0	14%	5%

million) temporary workers are already counted in the part-time totals. It is not possible to make the same type of adjustment for all business services. Thus, a very conservative estimate could assume that all business service workers are already counted in either the temporary, part-time, or self-employed groups. The conservative count does not include any leased employees. This very conservative definition estimates that in 1993 there were 32.2 million contingent workers in the United States.

Thus, the upper boundary double counts some workers and the lower boundary undercounts some workers; hence, the real size of the American contingent work force is probably somewhere in between. I believe that we already may be closer to the upper boundary than to the lower boundary because the U.S. work force data collections system often does not count the "underground economy" in which many of the workers are contingent.

If the upper boundary estimate is the correct size of the contingent work force, then between 1980 and 1993 approximately 30% of the American labor force was contingent; the contingent work force grew approximately 75% faster than the overall work force; and about 55% of the jobs created in this period were for contingent workers. If the lower boundary estimate is the correct size of the contingent work force, then between 1980 and 1993

⁷ Data represent NPA estimates based on methodology data from the Bureau of Labor Statistics, U.S. Department of Labor.

about 25% of the American labor force was contingent; the contingent work force grew roughly 40% faster than the overall work force; and about 40% of the jobs created in this period were for contingent workers. Thus, regardless of whether the real size of the contingent work force is closer to the lower or the upper boundary, we have strong grounds for asserting that the contingent work force is growing considerably faster than the entire labor force; that close to 25% or more of the American labor force is now contingent; and that a significant number of the jobs generated in the 1980s and the early 1990s were contingent jobs.

Although the contingent work force is continuing to grow in the United States, there are reasons to believe that future growth will occur at a relatively slower rate than in the 1980s and early 1990s. Indeed, the increase has already slowed. As the estimates presented in Table 2 indicate, using the liberal upper boundary the contingent work force increased from 26.7% of the American labor force in 1980 to 30.1% by 1988. In 1993, however, the liberal upper boundary still represented 30.1% of the American labor force. For the lower boundary estimate, the increases are from 23.4% to 24.6% between 1980 and 1988 and from 24.6% to 25.2% between 1988 and 1993.

Table 2. The Contingent Work Force as a Percentage of the Total Work Force⁸

	1980	1988	1993
Liberal Upper Boundary	26.7%	30.1%	30.1%
Conservative Lower Boundary	23.4%	24.6%	25.2%

Interestingly, as the data in the right-hand columns in Table 1 show, the temporary worker portion of the contingent work force increased by 175% between 1980 and 1988, but by only 45% between 1988 and 1993. Similarly, the part-time worker portion increased by 21% between 1980 and 1988, but by only 6% between 1988 and 1993. While the liberal upper boundary estimate of the contingent work force increased by 28% between 1980 and 1988, it increased by only 5% between 1988 and 1993 — the same percentage growth rate as for the total civilian labor force. Note, however,

8. Percentages are NPA estimates based on data from the Bureau of Labor Statistics, U.S. Department of Labor.

that the conservative lower boundary estimate of the contingent work force has been increasing somewhat faster (8%) than the total civilian labor force (5%) in recent years.

The "logistics curve" model may best explain the growth of the contingent work force. Logistics curves show rapid increase and strong exponential growth for a variable up to a certain point, then continued growth but at a slower rate. The United States is not about to experience a labor force that is 50% contingent, but slightly over 30% of the American work force could be contingent.

IV Key Changes in the Contingent Work Force in Recent Years

In recent years there have been some important changes in the composition of the contingent work force. As the data in Table 3 indicate, between 1985 and 1993 the percentage of men who are part-time workers has increased while the percentage of women who are part-time workers has declined slightly. The percentage of white workers who work part time has remained nearly constant, while the percentage of black workers who work

Table 3. Percentage of Part-Time Workers Within Groups⁹

	1985	1993
Men	10.1%	10.9%
Women	26.6%	25.3%
Whites	17.6%	17.8%
Men	9.8%	10.7%
Women	27.6%	26.4%
Blacks	16.0%	15.3%
Men	11.9%	12.5%
Women	20.1%	17.9%

9. Percentages are based on data from the Bureau of Labor Statistics, U.S. Department of Labor.

part time has declined. Women and minority workers still represent a significant portion of the contingent labor force, but in several components of the contingent work force men and white workers are in the majority. For example, men represent 54.3% of the "business services" portion of the contingent labor force while women represent only 45.7%, men also represent over 60% of the workers in the "services to building" subset of the contingent work force.¹⁰

Although clerical services is perhaps the most commonly recognized area of the contingent work force, contingent work has extended to a wide range of industries and occupations. For example, approximately 11% of temporary workers are managers and professionals, compared to 24% for all workers. While approximately 16.6% of all workers are in the unskilled blue collar area, approximately 16.9% of all temporary workers are in this category.

In addition to changes in the composition, occupations, and industries represented by contingent workers, there has also been an interesting change in the way many corporations manage their contingent work forces. David Lewin of the University of California at Los Angeles distinguishes between what he calls strategic thinking and reactive responses.¹¹ Strategic thinking is the formulation of goals and a plan to obtain specific objectives. A reactive response is a move undertaken to avoid some factor; no real plan is involved. Following the path of least resistance is an example of a reactive response but not of strategic thinking. In the 1980s, Lewin seriously questioned whether corporate human resource changes were the result of strategic thinking and said that in many cases corporate human resource systems were more the result of reactive responses.

In light of Lewin's observations, it is important to ask to what degree the move toward contingent work systems is the result of corporate strategic thinking. The answer depends upon the level of the corporation that is examined. At corporate headquarters, many senior company executives in the 1980s appeared to give little thought to work force flexibility issues.¹² Based on case studies undertaken in the 1980s, the increased use of the contingent work systems was not the result of strategic thinking at the top corporate level.

In many cases in the 1980s, division or line managers made the corporate decisions concerning the use of flexible systems. In the 1980s, the growth of

10. Percentages are based on unpublished data from the Bureau of Labor Statistics, U.S. Department of Labor.

11. See generally David Lewin, *Industrial Relations as a Strategic Variable*, in HUMAN RESOURCE AND THE PERFORMANCE OF THE FIRM 1 (Morris M. Kleiner et al. eds., 1987).

12. See BELOUS, *supra* note 1, at ch. IV

corporate contingent work forces was an ad hoc response to dramatic shifts in business conditions such as deregulation; increased competition from foreign and domestic sources; new alternative products which could act as substitutes; and increased relative cost differentials between core and contingent workers (in many cases due to a decline in unionization levels). Thus, it was not unusual for a corporation's use of and policies toward contingent workers to differ greatly between various division or line management areas.

Meanwhile at corporate headquarters, central managers often had no idea about the size of their contingent work force or their costs for contingent workers. For example, at many of the Fortune 500 companies that were part of the National Planning Association's (NPA) case studies in the 1980s, central human resource management did not know the total fees that their corporation was paying to temporary help agencies in any given year.

The NPA is currently re-interviewing people from the case studies that it used in its 1989 report on contingent workers. The preliminary results of these case studies show several interesting trends. In many cases, central corporate management has become much more interested in contingent workers. Although the hiring decisions concerning contingent workers often are still made at the divisional level, central corporate management now provides basic parameters as to when and how to use contingent workers. Central corporate human resource staff can now more often estimate both the costs of using contingent workers and the benefits of this flexible human resource strategy. Similar to a manager's "make or buy decision" for physical parts and machines, corporations in many cases evaluate contingent worker strategies on a much more solid cost-benefit basis.

Many of the case studies showed that corporations were not interested in vastly increasing their use of contingent workers. Instead, top corporate executives appeared to be more interested in better managing the contingent work forces that they already had. As one Fortune 500 senior vice president in charge of human resources put it, "The pioneer days of using contingent workers are over. It is now starting to behave as a more maturing industry. This means that the gang-buster growth days are probably over, and what we will need to do now is better and more productively manage what we are doing."

V Comparing the United States to Other Countries

The dramatic growth in the use of contingent workers is not just a trend in American labor markets; it is an international phenomenon. Employers in several western industrialized nations have pushed part-time employment

strategies even further than American employers. As the data in Table 4 show, part-time employment represented 16% of the labor forces in both the United Kingdom and the United States in 1979. However, by 1989 part-time employment in the United Kingdom had grown to 21% of the labor force while it increased to only 17% in the United States. Employers in Australia, New Zealand, Norway, Sweden, the United Kingdom, the Netherlands, Germany, and Belgium use a relatively greater number of part-time workers than their American counterparts. Even Japan, the home of "lifetime employment," has experienced a significant increase in the use of part-time, temporary, and subcontracted workers. Data covering temporary and subcontracted workers also show remarkable increases in this period within many other foreign labor markets.

Table 4 Part-Time Employment as a Percentage of Total Employment in Various Countries¹³

	1979	1989
Belgium	6%	22%
Denmark	12%	17%
Germany	11%	18%
Italy	5%	7%
Netherlands	11%	27%
United Kingdom	16%	21%
United States	16%	17%

VI. *The Meaning of These International Estimates*

First, these estimates indicate that U.S. employers are not alone in meeting more of their labor needs through an increased use of contingent workers. Employers in many countries are responding to growing international competition by using more part-time workers, who are often cheaper in terms of wages and benefits and more flexible than full-time core

13. Estimates are based on data from the Organization for Economic Cooperation and Development; the Bureau of Labor Statistics, U.S. Department of Labor; and the European Community Employment Commission.

workers. Based on the interviews conducted for NPA's studies with Japanese and European executives, many foreign corporations have also increased their use of employee leasing and other forms of subcontracting.

Second, the data indicate that U.S. employers may not obtain the competitive advantage through part-time strategies that they once expected. Because foreign employers are responding with the same strategy, American employers may be in the position of the Red Queen in *Alice in Wonderland* — they have to run faster just to remain in place. Part-time worker strategies may be lowering American labor costs, but the same strategies are also lowering foreign labor costs.

Third, nations with more advanced social welfare systems than the United States may be in a better position to obtain the benefits from part-time workers strategies. Many nations that have high part-time employment levels have developed advanced social safety nets that compensate for many of the costs born by part-time workers. Thus, for example, the lack of employer-provided health benefits may not be a real problem for workers living in a country with a national health system. However, part-time employment could generate serious social costs in the United States, which does not have a national health system. Thus, the United States may be at a competitive disadvantage.

VII. Examining the Benefits and Costs of Contingent Strategies

A. Benefits of Contingent Strategies

Contingent human resource systems often provide significant benefits to employers. Labor costs often dramatically decrease under contingent systems as compared with standard human resource models. Employers tend to save for three reasons. First, as the data in Table 5 indicate, contingent workers are often paid far less than core workers. Second, as the data in Table 6 indicate, contingent workers often do not receive the same fringe benefits as core workers. Third, contingent systems are much more flexible than standard models — by using contingent workers an employer only pays for the labor that he or she needs. This third savings may be the largest of the three categories. For example, consider corporate economists. It was not unusual at the start of the 1980s for a Fortune 500 company to have twenty-five to forty core economists on its staff. However, through various streamlining efforts many Fortune 500 companies have now reduced this number to five to ten economists. If the company needs more economists for a specific project, then it can devise various contingent systems. The net result is that the company pays for only the labor it needs and enjoys a vast savings, at least in the short run.

On a macroeconomic level contingent work forces have also blunted the rise in labor costs during an upswing in the business cycle. Contingent work systems also bring a high degree of flexibility to many households. This added flexibility is greatly appreciated by the many families with two or more wage earners.

Table 5 Earning Levels for Full-Time and Part-Time Workers¹⁴

Median Weekly Earnings:

Occupation	Full-Time	Part-Time	% Difference
Managerial & Professional	\$675	\$221	205%
Technical	\$419	\$136	208%
Service	\$293	\$115	155%
Precision Production	\$501	\$168	198%
Operators, Laborers	\$365	\$126	190%
Farming, Forestry	\$269	\$108	149%

Estimated Median Hourly Earnings:¹⁵

Occupation	Full-Time	Part-Time	% Difference
Managerial & Professional	\$19.29	\$ 8.84	118%
Technical	\$11.97	\$ 5 44	120%
Service	\$ 8.37	\$ 4.60	81%
Precision Production	\$14.31	\$ 6.72	113%
Operators, Laborers	\$10.43	\$ 5.04	107%
Farming, Forestry	\$7.69	\$ 4.32	78%

14. Estimates are based on data for 1993 from the Bureau of Labor Statistics, U.S. Department of Labor.

15. Estimates assume all full-time workers work 35 hours/week and all part-time workers work 25 hours/week.

Table 6. Sources of Health Insurance Coverage for Full-Time and Part-Time Workers¹⁶

Employment Status	Own Employer	Someone Else's Employer	Nonemployer Plan	No Coverage
Full-time, full-year	78.6%	7.0%	6.3%	8.1%
Part-time for noneconomic reasons	16.2%	34.3%	21.4%	28.1%
Part-time for economic reasons	34.8%	17.3%	17.4%	30.6%

B. Costs of Contingent Strategies

Contingent work systems also generate serious costs for corporations, individual workers, and society. On the corporate level, it has been very difficult to sustain long-term quality and high rates of productivity from contingent work force models. For the worker, contingent systems place a great deal of risk and economic uncertainty on them. For example, the rise of contingent work forces in the United States has contributed significantly to the relative decline in health care and pension coverage for typical American workers.

At the social level, the rise of contingent workers has raised serious concerns about affirmative action and equal employment opportunity. In the NPA's more than fifty case studies, only one major corporation had examined the equal opportunity and affirmative action consequences of contingent work force strategies. It is possible that the rise of the contingent work force is undermining some of the affirmative action accomplishments obtained in the 1970s and early 1980s. There is also a concern that the rise of contingent work forces has reduced the amount of skill training and human capital investments made in the United States because employers are much less likely to invest in contingent workers than in core workers.

16. Sar A. Levitan & Elizabeth Conway, *Part-Time Employment: Living on Half Rations* 11-12 (1988) (unpublished working paper of the Center for Social Policy Studies, George Washington University, on file with the author). Estimates are based on data from the Current Population Survey.

VIII. *Future Directions*

One response to the rise of the contingent work force has been to try to regulate it out of existence, or at least to reduce its size. However, even if the political will for such an action was there, which it is not, it would be difficult to do unless the United States was willing to vastly boost the amount of resources devoted to regulating labor markets in order to combat the "rational" choice to cheat when enforcement costs are low. Increased government regulation would also put many U.S. employers at a serious competitive disadvantage. Furthermore, given the increased mobility of capital and technology, it would increase the drive for many corporations to locate their facilities overseas. Thus, being against the rise of the contingent work force is like being against the automobile, which has produced costs as well as benefits. Just as it is unlikely that automobile use will be diminished, the contingent work force is not about to wither away.

A much more fruitful and productive approach would be to look at ways to magnify the benefits of the contingent work force and limit the costs. Keep in mind that we are really dealing with two different but equally important systems: the labor market in which labor services are bought and sold and the social welfare system that provides a wide range of benefits and protective services to Americans. By the social welfare system, one should think not just of programs such as Aid to Families with Dependent Children, but also of the large portion of the social welfare system that comes through the private sector in the form of health care coverage, pension programs, employer-sponsored savings programs, skill training, and career enhancement.

In the 1980s and early 1990s, the American labor markets became much more flexible, providing many benefits to employers and workers. However, the social welfare system has *not* — in most cases — been made more flexible. The social welfare system still is based on the assumption of a household with one worker who works for one employer during *his* economic lifetime. The rise of the contingent work force has made a mockery of this basic assumption. The net result of making the labor market more flexible — yet retaining the rigidities in the social welfare system — is that millions of workers and their families have been caught between the cracks. For example, almost 60% of core (full-time and full-year) workers are covered and included in pension plans provided by their employers; however, less than 20% of part-time workers are similarly situated.

Table 7 Percentage of Full-Time and Part-Time Workers Covered by Their Employers' Pension Plans¹⁷

Employment Status	No Plan	Plan Exists but Worker is not Included	Plan Exists and Worker is Included
Men:			
Full-time, full-year	35.8%	4.6%	59.7%
Part-time for economic reasons	73.0%	7.7%	19.6%
Part-time for noneconomic reasons	72.2%	10.5%	17.3%
Women:			
Full-time, full-year	34.4%	7.7%	57.9%
Part-time for economic reasons	69.6%	12.5%	17.9%
Part-time for noneconomic reasons	71.3%	13.2%	15.5%

The goal facing the United States in the 1990s should not be to reinstate rigidities on the American labor market system; nor would it be realistic to impose burdens on corporations in the form of promises that even the largest ones could not keep in the long run. Rather, U.S. policy should encourage labor market flexibility. At the same time, public policy should also encourage flexibility within the social welfare system. If both the social welfare system and the labor market can be made flexible, then the United States will have a human resource system that will be both internationally competitive and humane.

Some of the key features of a flexible labor and social welfare system would differ from our current system. A flexible system would mean abandoning the notion that most social welfare benefits will be provided by a sole employer and creating new flexible networks that could provide social welfare benefits to contingent and other workers. These flexible networks would not have to be government run or nationalized. For example, in the area of pension provisions, public policy could promote "defined contribution" plans as opposed to "defined benefits" plans. An employee would then have greater flexibility and portability in his or her pension. In the area of health care coverage, there are many international examples, such as

17 Levitan & Conway, *supra* note 16. Estimates are based on data from the Current Population Survey.

Germany, of private funds that provide health care coverage that extends beyond a single employer. Furthermore, public policy could encourage flexible career development systems through the tax code and through government grants and subsidies.

To date, efforts in this area have been tentative at best. In the long run, the United States will not be able to enjoy flexible labor markets and rigid social welfare systems. Employers who believe that this short-run approach will work in the long run are fooling themselves. The net result of inaction could be much more serious and broader labor market regulations than those outlined above. The rise of the contingent work force has been a major factor that has contributed to the growing uneasiness among many voters. The challenge as we near the twenty-first century is to develop creative solutions that make the social welfare system more flexible while preserving the benefits created by flexible labor markets.