



Summer 6-1-1995

Does the Growth in the Contingent Work Force Demand a Change in Federal Policy?

Patricia Schroeder

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>



Part of the [Labor and Employment Law Commons](#)

Recommended Citation

Patricia Schroeder, *Does the Growth in the Contingent Work Force Demand a Change in Federal Policy?*, 52 Wash. & Lee L. Rev. 731 (1995).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol52/iss3/4>

This Article is brought to you for free and open access by the Washington and Lee Law Review at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Does the Growth in the Contingent Work Force Demand a Change in Federal Policy?

Patricia Schroeder*

Today's work force is in the midst of a massive realignment. Contingent — part-time, temporary, contract, on-call, and leased — work is on the rise, accounting for nearly 25% of the work force. Employment laws and policies, however, concerning health insurance, pension benefits, on-the-job training, unemployment benefits, and more were largely established for full-time, full-year employment with a single employer. As a result, contingent workers do not receive the same benefits and pay that full-time employees receive. Lawmakers need to address the inequities that millions of contingent workers face by bringing the laws in line with the real world.

The Rise in Part-Time and Temporary Work

To say that contingent work is a mainstay of today's work force is not an overstatement. One need only look at Manpower, Inc., a Milwaukee, Wisconsin based temporary employment agency. With over 500,000 employees, it is not only the world's largest temporary agency, but it is the largest private employer in America.¹ Manpower provides skilled workers at a moment's notice to companies of all sizes, allowing them to meet their flexibility needs without compromising productivity. While secretarial and clerical positions are the most common types of temporary jobs, other higher skilled professions are witnessing the emergence of temporary workers filling assignments as doctors, lawyers, managers, and even chief executive officers. From 1978 to 1985, the temporary help industry grew eight times faster than all nonagricultural industries.² From 1982 to 1990, the

* Member, United States House of Representatives.

1. Janice Castro, *Disposable Workers: America's Growing Reliance on Temporary Staffers Is Shattering a Tradition in Which Loyalty Was Valued and Workers Were Vital Parts of the Companies They Served*, TIME, Mar. 29, 1993, at 43, 43.

2. Françoise J. Carré, *Temporary Employment in the Eighties*, in NEW POLICIES FOR

temporary help industry grew ten times faster than the work force as a whole.³ Moreover, although there are almost no comprehensive data available, the number of temporary employees who are directly hired by firms probably outnumbers those hired through temporary services.

Part-time workers constitute approximately one-fifth of the work force.⁴ Between 1969 and 1993, the number of part-time workers increased from 10.8 million to 20.7 million, or 91.7%.⁵ This growth represented 24.6% of the growth in the work force, which totaled 40.3 million at that time.⁶ It is expected that the contingent work force will comprise one-half of the labor force by the year 2000.⁷ The statistics on the quality of part-time and temporary jobs and the number of such workers indicate a growing number of under-paid and under-insured workers at the mercy of a fluctuating economy and a restructuring of corporate America.

Part-time workers are classified generally as voluntary or involuntary. Voluntary part-time workers are those who prefer to work part time because they prefer the shorter hours, have certain self-imposed travel or child care restrictions, or enjoy the extra income, but who are not forced into part-time work as their primary and only means of subsistence. Conversely, involuntary part-time workers are those who would prefer to work a full-time, permanent job but cannot find such work.

Involuntary part-time workers accounted for two-thirds of the growth of all part-time workers between 1969 and 1988.⁸ Between 1969 and 1993, the involuntary part-time work force increased from 1.8 million to 6.1 million — an average increase of 5.2% per annum.⁹ With the trends in corporate hiring emphasizing a fluctuating and smaller employee base, companies are creating more part-time jobs. Consequently, the increase in

THE PART-TIME AND CONTINGENT WORKFORCE 45, 45 (Virginia L. duRivage ed., 1992).

3. Eileen Applebaum, *Structural Change and the Growth of Part-Time and Temporary Employment*, in NEW POLICIES FOR THE PART-TIME AND CONTINGENT WORKFORCE 1, 1 (Virginia L. duRivage ed., 1992).

4. Chris Tilly, *Short Hours, Short Shift: The Causes and Consequences of Part-Time Employment*, in NEW POLICIES FOR THE PART-TIME AND CONTINGENT WORKFORCE 15, 16 (Virginia L. duRivage ed., 1992).

5. EMPLOYEE BENEFIT RESEARCH INST., CHARACTERISTICS OF THE PART-TIME WORK FORCE: ANALYSIS OF THE MARCH 1993 CURRENT POPULATION SURVEY, Special Report & Issue Brief No. 149, at 5 (1979) [hereinafter EBRI].

6. *Id.*

7. Lance Morrow, *The Tempting of America*, TIME, Mar. 29, 1993, at 41, 41.

8. Tilly, *supra* note 4, at 4.

9. EBRI, *supra* note 5, at 11.

the number of involuntary part-time workers has surpassed the increase in the number of voluntary part-time workers.¹⁰

Not surprisingly, women and minorities are represented disproportionately in the part-time and temporary work force. For example, the percentage of African Americans in the temporary work force is double that of the whole work force.¹¹ Moreover, two out of every three temporary workers are women.¹² Women and minority groups, therefore, suffer a disproportionate share of the drawbacks of involuntary part-time and temporary employment — lower per-hour wages than full-time workers,¹³ reduced or no employment-based health, retirement, and other benefits; and the constant threat of being released with little or no warning.

Chris Tilly, who has done extensive research on part-time work and income inequality, notes that women are hit especially hard because, while they are more likely to choose part-time work, they are also more likely to be stuck in part-time jobs. He reports that the female rate of involuntary part-time work is 44% greater than that of men.¹⁴ Add to that formula the lack of sufficient child care and other special needs, and women tend to suffer additional hardships that make breaking out of part-time work especially difficult.

Benefits

The case of Jimmie Ruth Daughtrey, who testified before the Senate Labor and Human Resources Subcommittee on Labor, exemplifies the problem that many workers face. After working for Honeywell Information Systems as a computer programmer for eight years, she, and almost everyone else who worked in her department, was laid off.¹⁵ Honeywell

10. See Tilly, *supra* note 4, at 17

11. *NCPE's Annual Meeting Features Keynote Address on Problems Faced by Part-Time, Temporary, and Contingent Workers*, NEWSNOTES (Nat'l Comm. on Pay Equity/Wash., D.C.), Apr. 1992, at 1, 9 (discussing Eileen Applebaum's Keynote Address on Part-Time and Temporary Work at National Committee on Pay Equity Annual Membership Meeting (Dec. 6, 1991)).

12. *Id.*

13. Unpublished data from the March 1993 supplement to the Current Population Survey show median hourly earnings were \$5.55 for part-time workers and \$8.89 for full-time workers in 1993. See EBRI, *supra* note 5, at 17. This differential reveals that the median part-time worker earns 62% of the hourly wage of the median full-time worker. *Id.*

14. Tilly, *supra* note 4, at 19

15. *Toward a Disposable Workforce: The Increasing Use of "Contingent" Labor: Hearings Before the Subcomm. on Labor of the Senate Comm. on Labor and Human*

subsequently asked her to work for the company as a consultant rather than an employee.¹⁶ As a result of her changed status, she had no benefits and had to pay Social Security taxes.¹⁷ She found herself working in the same building side-by-side with many of the same co-workers who had also been fired and rehired as consultants.¹⁸ After a second layoff, Ms. Daughtrey, who is over fifty, filed an age discrimination suit.¹⁹ She later learned that, as a consultant, she was not covered by the Age Discrimination in Employment Act.²⁰

The repercussions for women run deep. Karen Nussbaum, Director of the Women's Bureau of the U.S. Department of Labor, also testified before the Subcommittee on Labor about the negative effects temporary jobs have on women workers.²¹ A study compiled for the Women's Bureau found that "effectively half of all women are barred from representation under the NLRA [National Labor Relations Act] because of their status in the work force."²² The Bureau estimates that up to 25% of women as a whole are denied protections of the NLRA because they are temporary or part-time workers and cannot access those rights.²³ Ms. Nussbaum also reported that because women are far less likely to meet the 1000-hours-per-year requirement of the Employee Retirement Income Security Act to receive pension coverage, they are also far less likely to have access to or actually receive pensions.²⁴ Moreover, the recently enacted Family and Medical Leave Act of 1993²⁵ covers only workers who are employed for at least 1250 hours during a twelve-month period.²⁶ Thus, women

Resources, 103d Cong., 1st Sess. 8 (1993) [hereinafter *Disposable Workforce*] (testimony of Jimmie R. Daughtrey, former employee of Honeywell Corp.).

16. *Id.* at 9.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. See *Conference on the Growing Contingent Work Force: Flexibility at the Price of Fairness?: Conference of the Subcomm. on Labor of the Senate Comm. on Labor and Human Resources*, 103d Cong., 2d Sess. 14-15 (1994) (testimony of Karen Nussbaum, Director of Women's Bureau, U.S. Dept. of Labor, Washington, D.C.).

22. *Id.* at 15.

23. *Id.*

24. *Id.*

25. Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 2 U.S.C. §§ 60m-60n; 5 U.S.C. §§ 2105, 6381-6387; 29 U.S.C. §§ 2601-2654 (Supp. V 1993)).

26. *Id.* § 101(2)(A)(ii), 107 Stat. at 7-8 (codified as amended at 29 U.S.C. § 2611(2)(A)(ii)).

who seek contingent work because they want more flexibility for family reasons commonly find jobs that have fewer family-friendly benefits.

The status of benefits for contingent employees is grim. Most part-time jobs provide limited pension and health coverage, and many temporary jobs carry none at all. According to the Employee Benefit Research Institute (EBRI), 30% of part-time workers, compared to 58% of full-time workers, reported that their employer or union had a pension or other type of retirement plan other than Social Security for employees.²⁷ Approximately 22% of part-time workers receive health insurance as a benefit, whereas 78% of full-time workers receive health insurance.²⁸ When broken down by source, one finds that part-time workers are more likely to receive employment-based coverage indirectly — as an employee's dependent — and are more likely than full-time workers to receive health insurance through a public source, such as Medicaid or Medicare.

Worst of all, one in every five part-time workers has no insurance at all.²⁹ Many employers of part-time and temporary workers either cannot afford to pay insurance for their employees or simply do not want to invest in these workers who will not be around for the long term. Contingent workers often have little or no opportunity for advancement and pay raises because they serve a limited function as short-term help for their employers. Thus, many part-time and temporary workers, particularly involuntary ones, are virtually trapped in a cycle of low-paying, unstable jobs with almost no benefits and little hope of improving their status within their companies.

Businesses that pay for benefits, on the other hand, are at a competitive disadvantage. Take, for example, the case of Hobbs, Inc., which is a small, custom residential construction company in Connecticut that treats its workers as employees rather than subcontractors. As a result, Hobbs pays Social Security taxes, workers' compensation, unemployment compensation, health insurance, and pension benefits. According to testimony by Michael Hobbs before the Subcommittee on Labor, thousands of construction workers in Connecticut are hired as independent contractors so that the construction companies that hire them do not have to pay for any of these benefits.³⁰

27 EBRI, *supra* note 5, at 27

28. Tilly, *supra* note 4, at 22.

29. See EBRI, *supra* note 5, at 22 (reporting 1992 insurance data for part-time workers).

30. *Disposable Workforce*, *supra* note 15, at 11 (testimony of Michael D. Hobbs, president of Hobbs, Inc., New Haven, Conn.).

These other companies can then undercut conscientious companies by as much as 25 to 30% ³¹

◦ *Government Policies*

Generally, the policies that affect labor and employment are out-moded. The EBRI reports that *Workforce 2000*, a study funded by a grant from the U.S. Department of Labor, noted that most of the policies and laws governing today's economy and labor markets originally developed during the 1930s or 1960s in response to conditions and problems of those times.³² Despite the tremendous growth in part-time and temporary work and the lack of benefits that it provides, the condition of contingent workers continues to go relatively unnoticed and drastically undocumented by policymakers and government bureaus. The fact that Congress has not acted on this issue in any substantial way points to a distressingly apathetic attitude of most of Washington toward the needs of the common working American.

In 1987, I first introduced the Part-Time and Temporary Workers Protection Act;³³ yet the plight of these workers is still largely ignored. Why is there a reluctance to deal with this issue? What needs to be done to rectify the situation? To begin with, there must be a better effort to educate lawmakers about the status of contingent workers. However, an in-depth analysis of certain segments of the contingent work force, especially temporary employees, is difficult at best; current statistics regarding many facets of the contingent work force are nonexistent.

The Part-Time and Temporary Workers Protection Act would require the Bureau of Labor Statistics to establish and conduct an annual survey to identify the characteristics of temporary workers and the relationship between the workers and their work establishment.³⁴ The survey would determine whether or not temporary employees were covered by health or pension benefits, how many temporary jobs an individual held, and the number of hours an individual worked at each job.

The Part-Time and Temporary Workers Protection Act also would provide health and pension benefits for part-time and temporary workers. It would grant pro rata health and pension benefits to employees who worked less than full-time if the employer offered health and pension plan coverage

31. *See id.* at 12.

32. EBRI, *supra* note 5, at 4.

33. H.R. 2188, 103d Cong., 1st Sess. (1993).

34. *Id.* § 3(1)-(2).

to employees who worked full time.³⁵ All employees who worked 500 hours or more per year would receive a prorated share of health benefits under the employer-sponsored group health plan based on the amount of time the employees worked.³⁶ For example, if an individual worked 40% of full time, the proposed act would require the employer to pay 40% of the employer contribution made for a full-time worker to participate in an employer-sponsored health plan. An employee's participation in the health plan would be optional.

In addition, employees who worked 500 hours or more per year could participate in an employer-provided pension plan.³⁷ Part-time and temporary workers could vest in the pension plan at the same rate now established for full-time workers but would accrue benefits at a lower rate based on a fixed percentage of their salary.³⁸ Additionally, this provision would cover contracted or leased employees who worked for an employer at the rate of 500 or more hours per year for one year for pension benefits and for six months for health benefits.³⁹

The proposed act also would allow part-time workers to receive unemployment compensation while looking for part-time work.⁴⁰ State eligibility requirements exclude most part-time and temporary workers from unemployment benefits. Currently, in order to receive unemployment insurance, a part-time worker must look for, and accept if offered, full-time work. My proposed act would not require an individual to actively search for full-time work and would allow an individual to refuse work that was "for more hours per week than the number of hours per week for which the individual normally performed services in the individual's last job in the base period."⁴¹ This would allow voluntary part-time workers to receive benefits while looking for a new part-time job.

Little suggests that the continued replacement of core workers with contingent workers will benefit companies in the long run. Management research consultant Helen Axel testified before the Senate Labor Subcommittee on the cost effectiveness of contingent labor.⁴² She noted that

35. See *id.* § 4(a)-(b)

36. See *id.* § 4(b).

37. See *id.* § 4(a).

38. See *id.*

39. See *id.* § 4(c).

40. See *id.* § 2.

41. *Id.*

42. See *Disposable Workforce*, *supra* note 15, at 40-51 (testimony of Helen Axel, management research consultant, Lebanon, N.J.).

companies do not necessarily realize cost savings if they compensate contingent employees less than regular employees by paying lower wages and providing fewer benefits.⁴³ High turnover rates of contingent employees have a negative impact on a company's productivity and, ultimately, on its cost effectiveness.⁴⁴ The costs involved and the time needed to train new employees, when coupled with the high turnover rate of employees, are not compensated for by trimming wages and benefits. We need to invest in our workers to ensure a high-wage, high-productivity work force that can carry us prosperously into the next century

43. *Id.* at 40.

44. *Id.*