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Flexibility at What Price? The Costs of Part-Time Work for Women Workers*

Ann Bookman**

I. Introduction

The topic of contingent employment is fraught with debates about many basic issues — how to define contingent employment, what categories of workers contingent employment includes, how categories of contingent workers do and do not overlap, and how many contingent workers exist in the United States. Since the mid-1980s, a number of seminal articles and monographs have been written that lay the foundation for our current understanding and future study of the topic.¹ However, many unanswered questions remain, making this conference an important opportunity for assessing our knowledge base and taking stock of how further research might inform the ongoing data and policy debates.

This paper will discuss four topics: (1) Professor Kalleberg's article in this symposium, *Part-Time Work and Workers in the United States: Correlates and Policy Issues*,² (2) why contingent work arrangements, including

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1. See generally RICHARD S. BELOUS, *THE CONTINGENT ECONOMY: THE GROWTH OF THE TEMPORARY, PART-TIME AND SUBCONTRACTED WORKFORCE* (1989); POLLY CALLAGHAN & HEIDI HARTMANN, *CONTINGENT WORK: A CHART BOOK ON PART-TIME AND TEMPORARY EMPLOYMENT* (1991); Kathleen Christensen & Mary Murphree, *Introduction to OFFICE OF THE SECRETARY, WOMEN'S BUREAU, U.S. DEP'T OF LABOR, FLEXIBLE WORKSTYLES: A LOOK AT CONTINGENT LABOR 1* (1988); Françoise J. Carré, *Temporary Employment in the Eighties*, in *NEW POLICIES FOR THE PART-TIME AND CONTINGENT WORKFORCE 45* (Virginia L. duRivage ed., 1992) [hereinafter *NEW POLICIES*]; Anne E. Polivka & Thomas Nardone, *On the Definition of "Contingent Work"*, *MONTHLY LAB. REV.*, Dec. 1989, at 9; Chris Tilly, *Short Hours, Short Shrift: The Causes and Consequences of Part-Time Employment*, in *NEW POLICIES*, *supra*, at 15.

2. Arne L. Kalleberg, *Part-Time Work and Workers in the United States: Correlates and Policy Issues*, 52 *WASH. & LEE L. REV.* 771 (1995).

part-time work, are of concern to the Women's Bureau, (3) ongoing work at the Labor Department addressing contingent work issues, and (4) some of the regulatory and legislative changes raised by Professor Kalleberg and others that could improve the circumstances of part-time workers.

II. Assessing the Job Satisfaction and "Choices" of Part-Time Workers

I think one of the most important contributions of Professor Kalleberg's article is his argument that, despite differences in hours worked, part-time workers are fundamentally similar to full-time workers in terms of their motivations and reasons for working.³ Part-time workers and full-time workers value their jobs and job security and seek interesting and challenging work, as well as opportunities for advancement.⁴ Kalleberg definitively debunks two common myths about part-time workers: that they lack ambition and that their commitment to their jobs and employers is weak.⁵ As many of the myths about part-time workers are also myths about women workers generally, the demythologizing he undertakes is doubly important. We know that most women work because it is a necessary part of economic survival for themselves and their families and that most part-time workers work for the same reason.

Professor Kalleberg also correctly points out that the rewards of working part time are quite mixed. On the one hand, part-time workers enjoy greater flexibility and more opportunities for leisure time than most full-time workers.⁶ On the other hand, part-time workers lack the pay and benefit levels enjoyed by many full-time workers, and part-time workers have less job security and fewer opportunities for advancement than full-time workers.⁷

My main reservation about the portrait of part-time workers painted by Professor Kalleberg is his acceptance of the terms "voluntary" part-time workers and "involuntary" part-time workers.⁸ Technically, these terms differentiate those who work part time because they want to work less than thirty-five hours per week (voluntary part-time workers) versus those who work part time because they cannot find jobs with more hours even though they want to work more hours (involuntary part-time workers). However, these terms have acquired an additional meaning referring to those workers who are

3. *See id.* at 779

4. *See id.* at 777-79.

5. *See id.* at 779, 790-91.

6. *See id.* at 787

7. *See id.* at 780, 782-83, 786-87

8. *See id.* at 776-77; *infra* notes 9-10 and accompanying text.

satisfied with part-time work versus those workers who are dissatisfied with such work.

While Professor Kalleberg acknowledges that the distinction between voluntary and involuntary part-time workers is "often murky and quite problematic,"⁹ he also seems to reaffirm the meaning associated with job satisfaction when he states, "If people voluntarily choose to work part time, then presumably they are getting what they want and there are fewer problems in need of legislative and regulatory remedies."¹⁰ Later in the article, after analyzing several measures of job satisfaction, Kalleberg concludes that there are no significant differences in job satisfaction between part-time workers and full-time workers and states that part-time work seems to be more problematic for males than for females.¹¹ He says, "The advantages of flexibility associated with part-time work may partly offset some of its disadvantages, and thus may explain in part the absence of an overall satisfaction gap between full-time and part-time workers."¹²

Although Kalleberg ultimately argues the case for greater parity between part-time and full-time workers,¹³ I find him insufficiently critical of the way that the terms "voluntary" and "involuntary" are used in reference to part-time workers. My own view is that these terms are quite misleading. I think we need to look at issues other than hours when we ask, "What exactly are 'voluntary' part-time workers choosing?" Are they choosing to work without health insurance or pensions? Are they choosing to have few opportunities for job advancement? Are they choosing a child care system in which quality child care is so expensive that it takes a hefty piece of a full-time worker's paycheck to pay for it? I do not think so. Similarly, we should not assume that "involuntary" part-time workers are willing to forego the flexibility that accompanies working less than thirty-five hours per week.

I would argue that the terms "voluntary" and "involuntary" should be replaced with terms such as "available for full-time work" and "unavailable for full-time work." We should eliminate terms that suggest that a part-time worker chooses to receive less pay and benefits than full-time workers receive, or chooses to work unprotected by certain labor laws, simply because the worker chooses to work fewer hours per week than full-time workers. Perhaps most importantly, the distinction between voluntary and involuntary part-time workers should not be the basis for deciding which part-time

9. *Id.* at 776.

10. *Id.* at 793.

11. *See id.* at 788.

12. *Id.* at 790.

13. *See id.* at 793-94.

workers work under conditions that require legislative or regulatory remedies.

A recent study found that full-time and part-time workers of both genders value flexible work arrangements.¹⁴ Currently, however, such great costs accompany part-time, flexible work arrangements that one could argue that most part-time workers — perhaps with the exception of the minority of part-time workers who have permanent positions and benefits packages¹⁵ — are "involuntary" in some important respect. In designing possible legislative and regulatory remedies, the goal should be to decrease the costs associated with working less than thirty-five hours per week and to eliminate the second class treatment accorded many part-time workers.

Kalleberg's article raises important warnings about the poor treatment of part-time workers and how it may be exacerbating the two-tiered labor market in the United States. He states that there is a need for regulatory reform and legislative action to create greater equality between full-time and part-time workers.¹⁶ I concur with the thrust of Kalleberg's conclusions. I would like to explain the Women's Bureau's concern about contingent employment arrangements generally, and what we have learned about part-time workers in particular from a recent survey that we conducted entitled "Working Women Count!"¹⁷

III. Women's Bureau Concern: Listening to the Voices of Working Women

Although the term "contingent workforce" was coined in 1985 by economist Audrey Freeman to describe workers who did not have a long-term attachment to their employers,¹⁸ contingent workers were a part of the U.S. economy long before the 1980s. Seasonal agricultural workers and

14. ELLEN GALINSKY ET AL., THE CHANGING WORKFORCE: HIGHLIGHTS OF THE NATIONAL STUDY 80-81 tbls. 31 & 32 (1993). Some workers who do not have flexible work options expressed their willingness to trade job advancement and even to change employers in order to obtain flexibility *Id.*

15. OFFICE OF RESEARCH AND ECONOMIC ANALYSIS, PENSION AND WELFARE BENEFITS ADMIN., U.S. DEP'T OF LABOR ET AL., PENSION AND HEALTH BENEFITS OF AMERICAN WORKERS: NEW FINDINGS FROM THE APRIL 1993 CURRENT POPULATION SURVEY A-2 tbl. A2 & A-3 tbl. A3 (1994) [hereinafter NEW FINDINGS].

16. See Kalleberg, *supra* note 2, at 794.

17. WOMEN'S BUREAU, U.S. DEP'T OF LABOR, WORKING WOMEN COUNT! A REPORT TO THE NATION (1994) [hereinafter WORKING WOMEN].

18. See Polivka & Nardone, *supra* note 1, at 9-10.

short-term service workers, for example, have made important contributions to our economy for decades.

What is new is that, during the 1980s, the demand for contingent workers started to increase as U.S. employers sought new strategies to respond to the technological changes and increased global competition affecting their firms. At the heart of this demand was the structural transformation occurring in many advanced industrial economies: a transformation that placed a premium on workers — often referred to as "flexible labor inputs" — whose time could be adjusted to short-term changes in the need for a product or a service. Presently, many firms are developing a labor deployment strategy in which employers hire a decreasing number of workers on a full-time, permanent basis and an increasing number of workers on a part-time, temporary or contract basis in order to ensure needed flexibility

What does this mean for workers? We are witnessing an overall weakening of the attachment between employees and employers. As Secretary of Labor Robert B. Reich has eloquently argued, only a small number of the best employers understand that workers are assets in which to invest, while many other employers see workers as costs to be cut.¹⁹ In the past, if an employee performed well, an employer offered that employee economic and job security, benefits, and opportunities for training and advancement. Today, regardless of an employee's performance, increasing numbers of employers are offering short-term pay, no benefits, and few if any opportunities for training and promotion. This transformation in the employer-employee relationship is a significant change — perhaps a change as profound as the movement of workers from farms to factories a century ago.²⁰

A. Women Are the Shock Absorbers of the Changing Economy

Contingent employment relationships affect workers of all kinds, particularly women, people of color, and the young. Women are disproportionately represented in the contingent work force. Women are "the shock absorbers" of a changing economy and changing employer-employee relations.²¹

19. Democratic Leadership Council, *The Revolt of the Anxious Class*, Remarks prepared for U.S. Labor Secretary Robert B. Reich 5 (Nov 22, 1994) (transcript on file with the *Washington and Lee Law Review*).

20. 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 (1994) [hereinafter *Flexibility*] (testimony of Karen Nussbaum, Director of Women's Bureau, U.S. Dep't of Labor, Washington, D.C.).

21. *Id.*

Women constitute nearly three-fifths (55%) of all temporary workers²² — just over two-thirds (67.3%) of part-time workers and 68.9% of the so-called "voluntary" part-time workers.²³ The number of women contingent workers has risen over the last fifteen years. For example, the number of women part-time workers rose from almost 11.3 million in 1980²⁴ to just over 13.8 million in 1993.²⁵ In addition, the proportion of multiple job holders who are women has risen from 16% in 1970 to 44% in the early 1990s.²⁶

Contingent workers are found across the economic spectrum. Women, however, are concentrated in the most disadvantaged sections of the contingent work force. At one end of the economic spectrum are self-employed workers, who tend to be older, white, well-educated, and male. Many workers in this group, such as doctors and lawyers, have a significant degree of financial security and significant assets. At the other end of the spectrum are temporary workers, who are disproportionately young, black, and female — workers with little hope of financial security. This part of the contingent work force experienced the most dramatic growth rate over the last twelve years — 32% average annual growth for the temporary help supply industry.²⁷

Almost 60% of women are clustered in low-wage, traditionally female jobs in clerical, sales, and service occupations²⁸ — jobs often targeted for contingent status. This fact exacerbates women's already disadvantaged position in the work force.

B. *The Human Face of the Contingent Worker*

Although the demographic profiles of each category of contingent workers provide a better understanding of the contingent work phenomenon, it is important to go beyond the demographics and explore how these

22. See Bureau of Labor Statistics, U.S. Dep't of Labor, Current Employment Statistics Survey 1-2 (1994) [hereinafter Employment Statistics Survey] (unpublished data from Labstat Series Report, on file with the *Washington and Lee Law Review*).

23. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT & EARNINGS, Jan. 1995, at 172 tbl. 8.

24. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 55 tbl. 12 (1989).

25. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT & EARNINGS, Jan. 1994, at 191 tbl. 7.

26. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT & EARNINGS, NEWS, Oct. 28, 1991, at 1 & 2 tbl. 1.

27. Employment Statistics Survey, *supra* note 22 (on file with the Women's Bureau, U.S. Department of Labor).

28. WORKING WOMEN, *supra* note 17, at 41 app. C.

employment relationships affect individual workers in particular workplaces across the country. As Women's Bureau staff members have traveled around the country talking to women workers, we have gathered compelling anecdotal evidence about the experiences of women who hold contingent jobs:

- Bank tellers, mostly women, who worked as permanent employees for a large bank in California, were laid off only to be rehired as part-time workers without health care benefits, pensions, sick leave, or vacation.
- Female temporary employees who performed bar-coding work for a branch of the U.S. Postal Service earned four to six dollars less per hour than people who performed the same work as permanent postal employees.
- Women who held permanent jobs as bus drivers in Ohio and clerical workers at a utility company in Wisconsin were displaced and replaced with temporary employees.
- A woman went to work for a temporary agency that advertised that health insurance would be available to her after she worked a specific number of hours. The agency then terminated the woman when she was just short of the threshold number of hours so that she never received health benefits.
- A woman who was a temporary employee of an employer for five years was eventually hired as a permanent worker, but she was not given service credit for the years that she was a temporary worker.

This anecdotal evidence has been reinforced by data from a recent national study conducted by the Women's Bureau known as *Working Women Count!*²⁹ We asked women what about their jobs they like, do not like, and want to see changed.³⁰ We conducted a popular survey, distributing the questionnaire to women through women's magazines and newspapers, businesses, unions, and grassroots organizations.³¹ We also conducted a scientific survey, telephoning a nationally representative random sample of households.³² The results from the two surveys were strikingly similar. Self-selected respondents and scientifically selected respondents described many of the same experiences in the workplace.³³

29. WORKING WOMEN, *supra* note 17

30. *Id.* at 4.

31. *Id.*

32. *Id.*

33. *See id.* at 5-7

Some of the results from the scientific sample are relevant to the discussion of job satisfaction among part-time workers raised in Professor Kalleberg's article. Twenty-three percent of the scientific sample worked less than thirty-five hours per week.³⁴ Of these part-time workers, nearly two-thirds worked in traditionally female, low-wage jobs as clerical and service workers, while about one-fourth worked in professional and managerial jobs.³⁵ Their answers to the core questions differed in interesting ways from full-time workers in the scientific sample.³⁶

1. When asked to name three things that they liked most about their jobs, the top answer from part-time workers, not surprisingly, was "flexible hours," an answer that did not appear at all in the top four responses of full-time workers.

2. When asked about their most serious job-related problem, the majority of part-time workers answered, "I need better benefits." The second most popular answer was, "I am not paid what my job is worth." In contrast, 60% of full-time workers said that their most serious job-related problem was "too much stress," with compensation problems coming in second, and benefits problems third.

3. When asked about their highest priorities for change in the workplace, part-time and full-time workers agreed that their top two priorities are "health care for all" and "improving pay scales."

4. However, when part-time workers were asked to rate their current jobs, their ratings were much more negative than those of full-time workers. For example, although only 11% of full-time workers said that they lacked health care insurance, 43% of part-time workers said they lacked health care insurance.³⁷ Similarly, although only 15% of full-time workers said that they lacked pensions, 53.7% of part-time workers told us that they lacked pensions.³⁸ On queries asking respondents to evaluate their sick leave, vacation, training opportunities and ability to advance, the negative ratings of part-time workers were two to four times greater than those of full-time workers. These responses do not reflect the kind of job satisfaction described in Professor Kalleberg's article.

34. *Id.* at 13.

35. *Id.*

36. Unless otherwise noted, the following information has been taken from unpublished data from the scientific survey presented in WORKING WOMEN, *supra* note 17 (on file with the Women's Bureau, U.S. Department of Labor).

37. WORKING WOMEN, *supra* note 17, at 26.

38. *Id.* at 27

Although most questions were answered with check marks, the survey included one open-ended question that asked working women what they would tell the President about what it is like to be a working woman.³⁹ Many respondents wrote long answers in the margins of their questionnaires or sent us letters. A young woman from Duluth, Minnesota, who is a part-time worker — she works twenty hours per week in a sales position — wrote the following in her letter to the Women's Bureau:

I am 25 years old and can not even afford an apartment. I have never held a full time position. Where I live a full time position is a rare and elusive thing. I know people who hold 3 jobs. They still barely have the money to make ends meet and they have no time for their families or themselves. I know people who have a Master's Degree but can only find part time work and are forced to take two jobs.

Lately we've been told that unemployment is down. I think that if we take a closer look we would see that people who have suffered long term unemployment are finally breaking down and taking jobs that truly are beneath them. The phenomena of underemployment has risen. Part time and temporary positions seem to be all that there is for my generation.⁴⁰

Her conclusion is sobering, to say the least, and a challenge to all of us who care about increasing economic security and economic equity for women workers and for all workers.

IV U.S. Labor Department Investigates Contingent Employment

The issues faced by part-time workers, and other contingent workers, are receiving serious attention and are the focus of ongoing investigation at the U.S. Department of Labor (DOL) under the leadership of Secretary of Labor Robert B. Reich. In the summer of 1993, as part of the DOL's streamlining efforts, a DOL Reinvent Team began investigating contingent work arrangements and recommended the formation of a DOL task force to study the issue further. A short-term task force was formed in the fall of 1993 and began disaggregating the components of the contingent work force. The task force compiled a summary of the demographic profile and growth rates for each category of contingent workers — agency temporary workers, directly hired temporary workers, voluntary and involuntary part-time

39. *Id.* at 20-21.

40. Anonymous letter to the Women's Bureau (May 1994) (unpublished, on file with the *Washington and Lee Law Review*); see also WORKING WOMEN, *supra* note 17, at 34.

workers, leased workers, and independent contractors. The task force then re-aggregated the data in order to look at trends and issues affecting all contingent workers.

The task force also studied ambiguities and deficiencies in existing data on contingent workers that have led to current debates about how to define and measure the contingent work force. One of the task force's conclusions was that serious gaps exist in the data. In response to this conclusion, the Bureau of Labor Statistics has added new questions to the Current Population Survey, which is conducted by the Census Bureau and covers 60,000 scientifically selected households that are representative of the U.S. population. New data, which will be available in the summer of 1995, should assist in the process of beginning to fill important gaps in our knowledge base.

The DOL task force recommended an internal review of DOL laws, regulations, and programs as they relate to contingent workers. The Secretary of Labor announced the DOL's decision to conduct such a review at a February 1994 conference about the "growing contingent workforce" organized by the Subcommittee on Labor of the Senate Committee on Labor and Human Resources.⁴¹ The DOL launched the internal review in March of 1994, and a summary of its major findings is expected to be available to the public later in 1995.

The review accepted as a starting point that many labor laws may not apply to the contingent work force because the laws were created in an earlier era characterized by predominantly full-time jobs and strong employer-employee attachments. The review was designed to examine the DOL's laws, regulations, and programs and to assess their coverage of workers in a variety of contingent work arrangements. The review's purpose was to determine whether gaps in coverage exist and, if they did, to clarify what level of action — legislative, regulatory, or administrative — would be appropriate if remedies are sought.

Each program agency reviewed its own laws and programs in three areas: (1) definitions of "employee" and "employer" and whether those definitions cover different types of contingent workers, (2) enforcement of the laws and regulations and whether some contingent workers are inadvertently excluded from the realm of labor protections, and (3) work force development policies, assessing the role that contingent employment plays in placement outcomes of DOL training programs.

41. See *Flexibility*, *supra* note 20, at 7 (testimony of Robert B. Reich, Secretary of Labor).

*V Avenues for Change: What Data is Needed?
What Can We Learn from the States?*

In the final section of Professor Kalleberg's article, he identifies several policy issues that warrant our attention in order for part-time workers to receive greater parity with full-time workers in the labor market.⁴² I would like to briefly discuss three of these issues: unemployment insurance, family and medical leave, and the Employee Retirement Income Security Act of 1974 (ERISA).⁴³ My purposes are to identify promising state-level policies and to delineate the kind of data collection and assessment that are necessary to evaluate the feasibility of such policies for federal-level policy changes. Given the current constraints on labor law reform, new federal policies seem unlikely, but hopefully this will change in the future.

Professor Kalleberg contends that the current status of labor laws may impose unfair costs on those who want flexible, part-time work.⁴⁴ I want to pose the following question: "How can we make part-time jobs both flexible and fair — a viable choice for those who want to work less than full-time?"

A. Unemployment Insurance

Unemployment insurance, which is administered by a federal-state system, consists of a complex set of monetary and nonmonetary eligibility requirements. These requirements are complex in part because of their variability. No federal criteria exist. Rather, each state is free to develop its own eligibility criteria.

Monetary requirements often pose difficulties for part-time workers who want to qualify for unemployment insurance. First, earnings during the "base period" must exceed some minimum level. Because earnings are equal to an individual's hourly rate multiplied by the number of hours worked, meeting the earnings requirement is most difficult for those who work at low-wage or part-time jobs. Second, most states also have a "high quarter" earnings requirement, which specifies the minimum earnings level that an individual must achieve within at least one calendar quarter in the base period. Some individuals whose base period earnings are sufficient to qualify them for unemployment insurance cannot collect the insurance because they do not earn enough in any single quarter to meet the "high

42. See Kalleberg, *supra* note 2, at 792-97.

43. 29 U.S.C. §§ 1001-1461 (1988 & Supp. V 1993).

44. See Kalleberg, *supra* note 2, at 792-94.

quarter" earnings requirement. This may happen, for example, to part-time, temporary workers and to part-time, minimum wage workers.

Nonmonetary requirements, which determine whether claimants are "able and available" for work and whether they are seeking work, may also cause part-time workers difficulties in qualifying for unemployment insurance. Twenty-five states require that a worker be available for full-time employment in order to qualify for unemployment insurance.⁴⁵ Five states have conflicting regulations or statutes, and twelve states, including Puerto Rico and the Virgin Islands, have no authority over this issue.⁴⁶ Of the nine states that do allow part-time workers to collect unemployment insurance, three require that claimants have a history of part-time work in order to prove their availability for employment.⁴⁷

In the states that cover part-time workers, regulations address the issue of whether "good cause" exists for a claimant to limit his or her search to part-time work.⁴⁸ Some of the reasons that have held up under judicial scrutiny include being a full-time student and following a physician's advice to work restricted hours.⁴⁹ The National Employment Law Project, which has conducted an analysis of state unemployment compensation availability in all fifty states, recommends that the approach adopted by the state of California could serve as a model for federal legislation.⁵⁰ The California regulations seem to strike a balance between opening up the unemployment insurance system to more workers who have lost jobs through no fault of their own and requiring rigorous criteria for unemployment insurance eligibility. California offers part-time workers access to unemployment insurance in return for the workers' providing reasonable evidence of the conditions that lead them to seek part-time employment.⁵¹ Study of how these regulations are working in practice would be useful in determining whether other states should or could replicate them.

A recent study conducted by the Advisory Council on Unemployment Compensation, which documents the negative effect of current unemploy-

45. Memorandum from the National Employment Law Project to the Advisory Council on Unemployment Compensation regarding the Survey of State Work Search Standards & Part-Time Work (revised) 1 (October 25, 1994) (on file with the *Washington and Lee Law Review*).

46. *Id.* at 2.

47. *Id.*

48. *Id.* at 2-3.

49. *Id.* at 3.

50. *Id.*

51. *See id.*

ment insurance requirements on part-time and low-wage workers, recommends that "[w]orkers who meet a state's monetary eligibility requirements should not be precluded from receiving [u]nemployment [i]nsurance benefits merely because they are seeking part-time, rather than full-time, employment."⁵² This approach would solve an important nonmonetary issue, but it would not address the monetary issues. Combining successful state level policies that alter the monetary requirements and the policies being developed by the Advisory Council on Unemployment Insurance may be needed to ensure that part-time workers attain genuine parity with full-time workers in their ability to access unemployment compensation.

B. Family and Medical Leave

When Congress enacted the Family and Medical Leave Act of 1993 (FMLA or Act),⁵³ the Act was a major step forward for working families who in the past had faced untenable choices between their jobs and family responsibilities. After two presidential vetoes, the Clinton Administration's passage of the FMLA was an affirmation that the parenting and caretaking work that so many working women and men perform is important. For the first time, families could take time off from work to care for newborn or adopted children and sick relatives and could return to their own jobs without losing health benefits or seniority.

However, this important new labor law is not available to all workers who need it. Because of eligibility limits based upon firm size, number of hours worked, and other factors, the Act only covers an estimated 50 million workers in the United States.⁵⁴ Although this situation is the result of years of legislative battle and legislative compromise, it seems ironic that some of the workers who most desire flexibility — part-time workers — are among those workers not covered by the FMLA. The new law extends unpaid family and medical leave to workers who work at least 1,250 hours per year.⁵⁵ This means that some part-time workers are covered (those who

52. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION, UNEMPLOYMENT INSURANCE IN THE UNITED STATES: BENEFITS, FINANCING, COVERAGE 18 (1995).

53. 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)).

54. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT AND WAGES BULLETIN 534 app. (1994) (on file with the Women's Bureau, U.S. Dep't of Labor) (showing number of workers in establishments with 50 or more employees).

55. See Pub. L. No. 103-3, § 101(2)(A)(ii), 107 Stat. 6, 7-8 (codified as amended at 29 U.S.C. § 2611(2)(A)(ii) (Supp. V 1993)).

work more than twenty-five hours per week) while other part-time workers who work less than twenty-five hours per week are not covered.

State models need to be evaluated. Some states, such as Connecticut, New Jersey, and North Dakota allow workers who work twenty hours per week to take family or medical leave.⁵⁶ Other states, such as Maine, Oklahoma, and West Virginia require only three to twelve months of continuous service and do not have hour-per-week or hour-per-year requirements.⁵⁷ Studies are currently being conducted under the auspices of the Commission on Leave, a bipartisan group required to report to Congress on the utilization and implementation of the new FMLA. The Commission has authorized and received congressional funding for two new studies that will look at the costs and benefits of the new law to employers and to employees, including its coverage, or lack of coverage, of part-time workers. When the Commission reports to Congress at the end of 1995, we will be in a better position to assess the costs and benefits of providing family leave to more, if not all, part-time workers in the future.

C. Pension and Health Coverage Under ERISA

The Employee Retirement Income Security Act of 1974, which governs private sector employee benefits including pension coverage and health insurance, applies to employers who voluntarily establish benefits plans.⁵⁸ Although the Pension and Welfare Benefits Administration of the U.S. Department of Labor (PWBA) administers ERISA, the PWBA cannot control which workers employers include and exclude from access to various benefits.

What are some of the problems for part-time workers with ERISA's current requirements? First, participation problems exist. A worker must accrue one thousand service hours before participating in a pension plan.⁵⁹ Benefits accrue on the basis of years of service, and employers can disregard any year in which an employee worked less than 1,000 hours.⁶⁰ Thus, a part-time worker who works less than twenty hours per week may never

56. See PARENTAL LEAVE AND CHILD CARE: SETTING A RESEARCH AND POLICY AGENDA 468 app. B, at 480; 482 (Janet S. Hyde & Marilyn J. Essex eds., 1991) [hereinafter PARENTAL LEAVE]; OFFICE OF THE SECRETARY, WOMEN'S BUREAU, U.S. DEP'T OF LABOR, STATE MATERNITY/FAMILY LEAVE LAW 4, 9, 10 (1993).

57. See PARENTAL LEAVE, *supra* note 56, at 478, 482, 488.

58. PENSION AND WELFARE BENEFITS ADMIN., U.S. DEP'T OF LABOR, WHAT YOU SHOULD KNOW ABOUT YOUR PENSION RIGHTS 6-7 (1995).

59. 29 U.S.C. § 1052 (1988 & Supp. V 1993).

60. *Id.*

become eligible. Even if a worker is eligible and has started participating and accruing benefits, ERISA allows those benefits to be forfeited unless the worker becomes vested after a substantial number of years of continuous service.⁶¹ As of April 1993, only 15% of part-time workers, compared to 56% of full-time workers, had pensions.⁶²

Solutions to these issues — such as lowering the number of service hours required for participation or allowing portability of pensions from one job to another — would require legislative action and broad support from the employer community. Although neither of these requirements seem likely at present, it is interesting to examine state-level experience. In Minnesota, for example, where the state legislature passed the Minnesota Care Act in 1992 to provide health insurance to uninsured families and individuals, amendments to ERISA are being proposed and debated. Some state officials say that ERISA presents a barrier to meaningful state reform. These officials seek changes in ERISA so that data on health care costs and outcomes may be gathered and taxes on health care providers may be collected.⁶³ It will be informative to follow the progress of health care reform and proposed amendments to ERISA in Minnesota and, if the amendments are passed, to assess their applicability to other states.

VI. Conclusion

Regardless of whether a narrow or broad definition of contingent employment is used, and regardless of whether a high or low estimate of the contingent work force is correct, we know that contingent work arrangements are increasing in number. This means that increasing numbers of workers are vulnerable and lack a secure labor force attachment. The challenge is to balance employers' needs for flexible labor inputs with workers' needs for adequate income, job security, life-long on-the-job learning, and labor law protection without regard to whether the workers work full time or part time, on a permanent or limited basis.

It is important to remember that many workers do not voluntarily choose all the terms and conditions that accompany contingent employment. Their "choice" is often between having no job or taking a contingent job.

61. *Id.* § 1053.

62. NEW FINDINGS, *supra* note 15, at B-1 tbl. B1.

63. *Oversight Hearing on the Effect of ERISA's Preemption Provision on State Health Care Reform, Hearing Before the Subcomm. on Labor-Management Relations of the House Comm. on Education and Labor, 103d Cong., 1st Sess. 12-15 (1993) (testimony of Linda Berglin, U.S. Senator, Minnesota).*

Contingent jobs may trap workers into employment ghettos from which they and their families cannot escape — ghettos that have negative consequences for society as a whole. The short-term cost savings that employers receive by employing workers on a contingent basis may be outweighed by the long-term, negative consequences of low productivity, low retention, and low morale for many American workers. Such savings may also be outweighed by contingent workers' lack of access to a middle class lifestyle, which many American families treasure. Updating our labor laws to fully cover all employees and strengthening enforcement of existing laws may be one of the best investments that we, as a society, can make in our collective future. This kind of investment will ensure that workers have real choices about hours worked and real access to economic prosperity and security, a benefit to everyone — employers, full-time workers, and part-time workers.