

GAO

Report to the Ranking Minority
Member, Committee on Health,
Education, Labor, and Pensions,
U.S. Senate

July 2006

EMPLOYMENT ARRANGEMENTS

Improved Outreach Could Help Ensure Proper Worker Classification





Highlights of [GAO-06-656](#), a report to the Ranking Minority Member, Committee on Health, Education, Labor, and Pensions, U.S. Senate

Why GAO Did This Study

Millions of U.S. workers participate in “contingent” employment, such as temporary or part-time work, and not in permanent or full-time jobs. The Department of Labor (DOL) enforces several labor laws to protect these and other workers, including the Fair Labor Standards Act (FLSA), which provides minimum wage, overtime pay, and child labor protections. In June 2000, GAO reported that contingent workers lagged behind standard full-time workers in terms of income, benefits, and workforce protections, and that some employees do not receive worker protections because employers misclassified them as independent contractors. GAO was asked to update this report by describing (1) the size and nature of the contingent workforce, (2) the benefits and workforce protections provided to contingent workers, and (3) the actions that DOL takes to detect and address employee misclassification. We analyzed DOL survey data on contingent workers and interviewed DOL officials.

What GAO Recommends

GAO recommends that DOL (1) provide additional contact information to facilitate the reporting of possible misclassification complaints, and (2) evaluate the extent to which misclassification cases found through FLSA investigations are referred to other agencies and take action to improve as needed. DOL generally agreed with both recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-656.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215 or robertsonr@gao.gov.

EMPLOYMENT ARRANGEMENTS

Improved Outreach Could Help Ensure Proper Worker Classification

What GAO Found

Contingent workers constituted a relatively constant proportion of the total workforce from 1995 through 2005 and had diverse characteristics. While the population of the contingent workforce grew by an estimated 3 million workers during this time period, the proportion of contingent workers in the total workforce remained relatively constant at about 31 percent. In 2005, there were about 42.6 million contingent workers in the workforce. Contingent workers vary in terms of their demographic characteristics, industries, and occupations. For example, on average, contingent workers range in age from about 35 years for one category of temporary workers to about 48 years for self-employed workers. In addition, contingent workers are employed in a wide range of industries and occupations, including the services industry, construction, and retail trade.

A smaller proportion of contingent workers than of standard full-time workers has health insurance or pension benefits, or is protected by key workforce protection laws, including laws designed to ensure proper pay and safe, healthy, and nondiscriminatory workplaces. While 72 percent of standard full-time workers received employer-provided health insurance in 2005, the proportion of contingent workers who received employer-provided health insurance ranged from 9 to 50 percent, depending on the category of contingent worker. With regard to pension benefits, 76 percent of standard full-time workers reported working for an employer who offered a pension, whereas 17 to 56 percent of contingent workers reported working for an employer who offered a pension. One reason that contingent workers are less likely to receive protections is that some laws contain requirements that exclude certain categories of contingent workers.

DOL detects and addresses misclassification of employees by investigating complaints, but does not always forward misclassification cases to other federal and state agencies. Some workers do not receive worker protections to which they are entitled because employers misclassify them as independent contractors—a category of contingent workers excluded from many protections—when they should be classified as employees. DOL investigators detect and address employee misclassification primarily when responding to FLSA minimum wage and overtime pay complaints. DOL investigators examine whether a worker is an employee or an independent contractor to determine coverage under FLSA. DOL relies heavily on complaints from workers to enforce FLSA, but the FLSA workplace poster does not contain any information on employment classification or provide a telephone number for individuals to register complaints. Misclassification of employees may contribute to an FLSA violation or may violate laws enforced by other agencies, such as tax laws. DOL procedures require officials to share information with other federal and state agencies whenever investigators find possible violations of other laws. However, the district offices we contacted vary in how often they forward misclassification as a possible violation of other agencies' laws.

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Abbreviations

BLS	Bureau of Labor Statistics
CPS	Current Population Survey
DOL	Department of Labor
EMPLEO	Employment Education and Outreach
ERISA	Employee Retirement Income Security Act
ESA	Employment Standards Administration
ETA	Employment & Training Administration
FLSA	Fair Labor Standards Act
FOH	<i>Field Operations Handbook</i>
IRS	Internal Revenue Service
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board

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United States Government Accountability Office
Washington, DC 20548

July 11, 2006

The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education,
Labor, and Pensions
United States Senate

Dear Senator Kennedy:

Millions of workers in the U.S. economy participate in some form of “contingent” employment, such as temporary or part-time work. While definitions of the contingent workforce vary, broadly defined, contingent workers are workers who do not have standard full-time employment, that is, are not wage and salary workers working at least 35 hours a week in permanent jobs. Contingent work arrangements often have the potential to provide flexibility for employers and workers. However, such arrangements may also exclude some contingent workers from receiving key worker benefits and protections such as the guarantee of workers’ rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, and unemployment insurance. The Department of Labor (DOL) enforces a wide range of labor laws that provide protections to workers, including the Fair Labor Standards Act (FLSA), which provides minimum wage, overtime pay, and child labor protections. Other federal and state agencies enforce laws that provide workers with additional workforce benefits and protections.

In June 2000, we reported that contingent workers, as broadly defined, constituted almost 30 percent of the workforce and that compared with standard full-time workers, contingent workers lagged behind in terms of income and benefits.¹ We also reported that some workers do not receive worker protections to which they are entitled because employers misclassify them as independent contractors—a category of workers that is excluded from many protections—when they should be classified as employees. In its last comprehensive misclassification estimate, the

¹ GAO, *Contingent Workers: Incomes and Benefits Lag Behind Those of Rest of Workforce*, GAO/HEHS-00-76 (Washington, D.C.: June 30, 2000).

Internal Revenue Service (IRS) estimated that 15 percent of employers misclassified 3.4 million workers as independent contractors in 1984, resulting in an estimated tax loss of \$1.6 billion (or \$2.72 billion in inflation-adjusted 2006 dollars²) in Social Security tax, unemployment tax, and income tax.

In this context, you asked us to update our work on contingent workers and review employee misclassification issues. Specifically, you asked us to examine (1) the size and nature of the contingent workforce, (2) the benefits and workforce protections provided to contingent workers, and (3) the actions that DOL takes to detect and address employee misclassification.

To respond to your request, we analyzed data from the Bureau of Labor Statistics' (BLS) Current Population Survey (CPS), which is used to survey people about their work and workplace benefits, and a CPS supplement developed to collect information on the contingent workforce. We used this CPS contingent workforce supplement to produce estimates of characteristics of contingent workers, their receipt of health insurance, and their participation in pension programs. To ensure reporting consistency, we used the same definition of contingent workers that we used in our 2000 report. This definition included eight categories of contingent workers: agency temporary workers (temps), direct-hire temps, on-call workers, day laborers, contract company workers, independent contractors, self-employed workers, and standard part-time workers.³ We interviewed BLS officials and other researchers about contingent worker issues. We also reviewed key workforce protection laws to determine coverage of contingent workers. To obtain information on DOL's efforts to detect and address employee misclassification as part of FLSA enforcement, we reviewed DOL documents and interviewed DOL officials

² The \$2.72 billion is intended to be an estimate of the magnitude of tax loss due to misclassification in 2006 dollars—not an updated estimate. The actual tax loss due to misclassification in 2006 may be higher or lower based on the tax rates, the level of independent contractors used in various sectors of the economy, and the types and levels of misclassification observed in 2006.

³ Standard part-time workers are individuals who regularly work less than 35 hours a week for a particular employer and are wage and salary workers.

from headquarters, 3 of 5 regional offices, and 9 of 51 district offices.⁴ We also reviewed literature and interviewed researchers about employee misclassification issues. We performed our work in accordance with generally accepted government auditing standards between July 2005 and June 2006. Appendix I provides detailed information on the scope and methodology of our work.

Results in Brief

Contingent workers constituted a relatively constant proportion of the total workforce from 1995 through 2005 and had diverse characteristics. While the population of the contingent workforce grew by an estimated 3 million workers during this time period, the proportion of contingent workers in the total workforce remained relatively constant at about 31 percent.⁵ In 2005, there were about 42.6 million contingent workers in the workforce. Across categories, contingent workers vary in terms of their demographic characteristics. For example, on average, contingent workers range in age from about 35 years for direct-hire temps to about 48 years for self-employed workers. While about two-thirds of standard part-time workers are female, females constitute about one-third of contract company workers. Contingent workers are employed in a wide range of industries and occupations, including the services industry, construction, and retail trade.

A smaller proportion of contingent workers than of standard full-time workers has health insurance or pension benefits, or is protected by key workforce protection laws, including laws designed to ensure proper pay and safe, healthful, and nondiscriminatory workplaces. While 72 percent of standard full-time workers received employer-provided health insurance in 2005, the proportion of contingent workers who received employer-provided health insurance ranged from 9 to 50 percent, depending on the category of contingent worker. When other sources of

⁴ We selected the regional and district offices using a nonprobability sample—a sample in which some items in the population have no chance, or an unknown chance, of being selected. Results from nonprobability samples cannot be used to make inferences about a population; thus, the information we obtained cannot be generalized to all regional and district offices.

⁵ Estimates of the size and characteristics of the contingent workforce are based on CPS sample data and are subject to sampling error. For example, the 95 percent confidence intervals for percentages of the total workforce are within +/- 1 percentage point of the estimate itself. Appendix I contains information on the magnitude of sampling error for the CPS estimates contained in this report.

health insurance are taken into account, the proportional difference between contingent and standard full-time workers decreases substantially but is not eliminated. With regard to pension benefits, 76 percent of standard full-time workers reported working for an employer who offered a pension, and 64 percent reported being included in their employer's plan. In contrast, 17 to 56 percent of contingent workers reported working for an employer who offered a pension, and 4 to 37 percent reported being included in their employer's plan.

DOL detects and addresses misclassification of employees as independent contractors by investigating complaints, but does not always forward misclassification cases to other federal and state agencies. DOL investigators detect and address employee misclassification primarily when responding to FLSA minimum wage and overtime pay complaints. DOL investigators examine the employment relationship—whether a worker is an employee or an independent contractor—to determine whether workers are covered under FLSA. DOL relies heavily on complaints from workers to enforce FLSA, but the FLSA workplace poster—a principal means of communicating FLSA protections—does not contain any information on employment relationship or provide a telephone number for individuals to register complaints. While misclassification of an employee as an independent contractor is not a violation of FLSA, it may contribute to an FLSA violation if the employer does not pay the minimum wage or overtime required by the act. In addition, employee misclassification may contribute to a violation of laws enforced by other agencies, such as tax laws. DOL procedures require officials to share information with other federal and state agencies whenever investigators find possible violations of other laws. However, the district offices we contacted vary in how often they forward misclassification as a possible violation of other agencies' laws.

This report contains recommendations that DOL (1) revise its FLSA workplace poster to include additional contact information that would facilitate the reporting of potential employee misclassification complaints, and (2) evaluate the extent to which misclassification cases identified through FLSA investigations are referred to the appropriate federal or state agency, and take action to make improvements as necessary. In commenting on our draft report, DOL agreed with the first recommendation and agreed with the primary part of the second recommendation, but disagreed with one part of this recommendation. Regarding the second recommendation, DOL agreed with the value of sharing potential employee misclassification with appropriate federal and state programs, but did not agree with a part of the draft recommendation

that referral of cases should include notifying the employer that the misclassification case has been forwarded to the appropriate agency. After considering DOL's position concerning this aspect of the draft recommendation, we deleted this part from the final recommendation. DOL also provided technical comments, which we incorporated in the report as appropriate. Our summary evaluation of the agency's comments is on page 36. DOL's comments are reproduced in appendix V.

Background

The term "contingent work" can be defined in many ways to refer to a variety of nonstandard work arrangements. Broadly defined, "contingent work" refers to work arrangements that are not long-term, year-round, full-time employment with a single employer. For example, an employer may hire workers when there is an immediate and limited demand for their services, without any offer of permanent or even long-term employment. Temporary workers, independent contractors, and part-time workers are examples of contingent workers. In 2000, we reported our definition of contingent workers that we also used in this report.⁶ Figure 1 shows this definition, which includes eight categories of contingent workers.

⁶ Although we used data from the Contingent Work Supplement, we used a definition of contingent worker different from the one used by BLS in its analysis of the data. As in our 2000 review of contingent workers, we did not restrict our definition to include only workers with relatively short job tenure, but rather provided information on a range of workers who could be considered contingent under different definitions. Although we believe that it is useful to consider the nature and size of the population of workers in jobs of limited duration as well as their access to benefits, we also believe that it is useful to provide information according to categories that are more readily identifiable and mutually exclusive. Appendix I provides a more detailed description of GAO's definition of contingent workers.

Figure 1: Categories of Workers That GAO Considered Contingent

Agency temporary workers (temps)	Individuals who work for temporary employment agencies and are assigned by the agencies to work for other companies ("client firms"), such as temporary workers supplied to companies to fill in for full-time workers who are on vacation or to work on special projects
Contract company workers	Individuals who work for companies that provide services to other firms under contract, such as security, landscaping, or computer programming services
Day laborers	Individuals who get work by waiting at a place where employers pick up people to work for the day, such as low-skilled construction workers
Direct-hire temps	Temporary workers hired directly by companies to work for a specified period of time, such as seasonal workers and workers hired to work on special projects
Independent contractors	Individuals who obtain customers on their own to provide a product or service (and who may have other employees working for them), such as maids, realtors, child care providers, and management consultants
On-call workers	Individuals who are called to work only on an as-needed basis, such as substitute teachers and construction workers supplied by union hiring halls
Self-employed workers	Self-employed workers who are not independent contractors, such as doctors and restaurant owners
Standard part-time workers	Individuals who regularly work less than 35 hours a week for a particular employer and are wage and salary workers

Source: GAO/HEHS-00-76.

Research has shown that employers use contingent work arrangements for a variety of reasons. Employers may hire contingent workers to accommodate workload fluctuations, fill temporary absences, meet employee's requests for part-time hours, screen workers for permanent

positions, and save on wage and benefit costs, among other reasons.⁷ Previous analyses of data from the CPS Contingent Work Supplement have indicated that workers also take temporary and other contingent jobs for a variety of personal and economic reasons. For example, workers in various types of contingent jobs indicated that they (1) preferred a flexible schedule to accommodate their school, family, or other obligations; (2) needed additional income; (3) could not find a more permanent job; or (4) hoped the job would lead to permanent employment.⁸ Studies using data from the BLS National Longitudinal Survey of Youth show that events such as the birth of a child or a change in marital status affect the likelihood of entering different types of employment arrangements and prompt some workers to enter contingent work arrangements.⁹

Concerns arise when employers misclassify workers as independent contractors, who are in a category of contingent workers excluded from certain worker protections. Employee misclassification occurs when an employer improperly classifies a worker as an independent contractor when the worker should be classified as an employee. In 2000, we reported that because most key workforce protection laws cover only workers who are employees, independent contractors and certain other contingent workers, such as self-employed workers, are, by definition, not covered. (See app. IV for a more detailed description of these key laws.)

Misclassification of employees can affect the administration of many federal and state programs, such as payment of taxes and pension benefits. For example, if employers misclassify workers as independent

⁷ See Susan N. Houseman, "Temporary, Part-Time, and Contract Employment in the United States: A Report on the W.E. Upjohn Institute's Employer Survey on Flexible Staffing Policies" (November 1996, revised June 1997), and Susan N. Houseman, "Why Employers Use Flexible Staffing Arrangements: Evidence from an Establishment Survey," *Industrial and Labor Relations Review* (October 2001):149-170.

⁸ See Sharon R. Cohany, "Workers in Alternative Employment Arrangements," *Monthly Labor Review* (October 1996): 31-45; Anne E. Polivka, "Into Contingent and Alternative Employment: By Choice?," *Monthly Labor Review* (October 1996):55-74; Sharon R. Cohany, "Workers in Alternative Employment Arrangements: a Second Look," *Monthly Labor Review* (November 1998):3-21; Steven Hipple, "Contingent Work: Results from the Second Survey," *Monthly Labor Review* (November 1998):22-35; Steven Hipple, "Contingent Work in the Late-1990s," *Monthly Labor Review* (March 2001):3-27.

⁹ Donna S. Rothstein, "Entry Into and Consequences of Nonstandard Work Arrangements," *Monthly Labor Review* (October 1996): 76-83, and Barbara A. Wiens-Tuers and Elizabeth T. Hill, "How Did We Get Here from There? Movement into Temporary Employment," *Journal of Economic Issues* (June 2002):303-311.

contractors, then they may not be paying the payroll taxes required to be paid for employees. At the federal level, misclassification can reduce tax payments, Medicare payments, and Social Security payments. At the state level, misclassification can affect payments into state tax, workers' compensation, and unemployment insurance programs. Table 1 shows key federal and state agencies that can be affected by employee misclassification issues.

Table 1: Key Federal and State Agencies That Can Be Affected by Employee Misclassification

Entity	Law	Areas potentially affected by employee misclassification
U.S. Department of Labor	Fair Labor Standards Act	Minimum wage, overtime, and child labor provisions
	Family and Medical Leave Act	Job-protected and unpaid leave
	Occupational Safety and Health Act	Safety and health protections
U.S. Department of Treasury–Internal Revenue Service	Federal tax law, including: Federal Insurance Contributions Act Federal Unemployment Tax Act Self-Employment Contributions Act	Federal income and employment taxes
U.S. Department of Health and Human Services	Title XVIII of the Social Security Act (Medicare)	Medicare benefit payments
DOL/IRS/Pension Benefit Guaranty Corporation	Employee Retirement Income Security Act	Pension, health, and other employee benefit plans
Equal Employment Opportunity Commission	Title VII of the Civil Rights Act	Prohibitions of employment discrimination based on race, color, religion, gender, and national origin
	Americans with Disabilities Act	Prohibitions of discrimination against individuals with disabilities
	Age Discrimination in Employment Act	Prohibitions of employment discrimination against any individual 40 years of age or older
National Labor Relations Board	National Labor Relations Act	The right to organize and bargain collectively
Social Security Administration	Social Security Act	Retirement and disability payments
DOL/state agencies	Unemployment insurance law	Unemployment insurance benefit payments
State agencies	State tax law	State income and employment taxes
	State workers' compensation law	Workers' compensation benefit payments

Source: GAO analysis of laws.

DOL may encounter employee misclassification while enforcing worker protection laws. DOL's mission is to promote the welfare of job seekers, workers, and retirees in the United States by improving their working conditions, advancing their opportunities for profitable employment, protecting their retirement and health care benefits, helping employers find workers, strengthening free collective bargaining, and tracking

changes in employment, prices, and other national economic measurements. In carrying out this mission, DOL enforces a variety of worker protection laws, including those guaranteeing workers' rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, and unemployment insurance.

In particular, DOL's Employment Standards Administration's (ESA) Wage and Hour Division enforces FLSA. The Wage and Hour Division—with staff located in 5 regional and 72 district, area, and field offices throughout the country—conducts investigations of employers who have \$500,000 or more in annual sales volume.¹⁰ In addition, the division conducts outreach efforts for employers and workers to ensure compliance with FLSA. District directors oversee investigators, who play a key role in carrying out FLSA enforcement. Investigators are trained to investigate a wide variety of workplace conditions and complaints and enforce a variety of labor laws in addition to FLSA.¹¹ Regional and district offices conduct outreach to employers and workers through brochures, workplace posters, presentations or training sessions for individuals or groups, and Web-based information.

FLSA—which provides minimum wage and overtime pay protections—requires that employers pay those employees covered by the act at least the minimum wage and pay overtime wages when they work more than 40 hours a week.¹² FLSA requires that an employer-employee relationship exist for a worker to be covered by the act's provisions. The act defines "employee" broadly as an individual employed by an employer. The U.S. Supreme Court has identified certain factors to be considered in determining whether a worker meets the FLSA definition of employee. Appendix II contains more information on establishing the employment relationship under FLSA.

¹⁰ In addition, other types of employers—such as hospitals and schools—are covered by FLSA regardless of their annual sales volume.

¹¹ Complaints are a key component of DOL enforcement efforts under many federal labor laws. DOL enforcement generally relies on two types of information to identify potential violations: (1) complaints from individuals who believe they may have suffered a violation and (2) analysis of data to specifically target problematic industries or work sites.

¹² FLSA also includes record-keeping and child labor provisions.

Contingent Workers Constitute a Relatively Constant Proportion of the Workforce and Are Diverse

Contingent workers constituted a relatively constant proportion of the total workforce from 1995 through 2005 and had diverse characteristics. While the number of contingent workers grew by an estimated 3 million during this time period, the contingent proportion of the total workforce remained relatively constant. In 2005, there were about 42.6 million contingent workers in the workforce. The different categories of contingent workers vary in terms of demographic characteristics, industries, occupations, preferences for the type of job that they currently hold, and incidence of low family income.¹³ Appendix III contains detailed information on changes in the size of the contingent workforce and characteristics of contingent workers.

Contingent Workers’ Proportion of the Total Workforce Has Changed Little over the Past Decade

In 2005, an estimated 31 percent of the workforce could be considered to maintain a contingent work arrangement.¹⁴ As shown in table 2, while the number of contingent workers grew from 39.6 million workers in 1995 to 42.6 million workers in 2005, contingent workers’ share of the total workforce remained relatively constant over this time period.¹⁵

¹³ GAO’s 2000 review of contingent workers used \$15,000 as the family income threshold for defining “low family income.” This income level was selected because the BLS reports family income in \$5,000 increments, and \$15,000 was the income level closest to and below the 1999 federal poverty threshold for a family of four (\$17,028). We selected \$20,000 as the family income threshold for “low family income” for this report because it was the income level closest to the current federal poverty level. The 2004 federal poverty threshold for a family of four (the most current information published by the Bureau of the Census at the time this project was designed) was \$19,307.

¹⁴ Workforce characteristics are estimated from the CPS February 2005 Contingent Work Supplement. Percentage estimates based on the total workforce have 95 percent confidence intervals of within +/- 1 percentage point of the estimate itself. Appendix I contains additional information and confidence interval ranges for other CPS estimates presented in this report.

¹⁵ Similarly, the proportions of the various categories of contingent workers changed little over this time period (see app. III).

Table 2: Contingent Workers and the Total Employed Workforce (February 1995, February 1999, February 2005)

Category of worker	February 1995		February 1999		February 2005	
	Estimated numbers of workers (in thousands)	Estimated percentage of the workforce	Estimated numbers of workers (in thousands)	Estimated percentage of the workforce	Estimated numbers of workers (in thousands)	Estimated percentage of the workforce
Contract company workers	652	0.5	769	0.6	813	0.6
Agency temps	1,181	1.0	1,188	0.9	1,217	0.9
On-call workers/day laborers	2,014	1.6	2,180	1.7	2,736	2.0
Direct-hire temps	3,393	2.8	3,227	2.5	2,972	2.1
Self-employed workers	7,256	5.9	6,280	4.8	6,125	4.4
Independent contractors	8,309	6.7	8,247	6.3	10,342	7.4
Standard part-time workers	16,813	13.6	17,380	13.2	18,360	13.2
Subtotal: contingent workers	39,618	32.2^a	39,271	29.9^a	42,567	30.6
Standard full-time workers	83,589	67.8	92,222	70.1	96,385	69.4
Total workforce	123,207	100.0	131,493	100.0	138,952	100.0

Source: GAO analysis of data from the CPS February 1995, 1999, and 2005 Contingent Work Supplements.

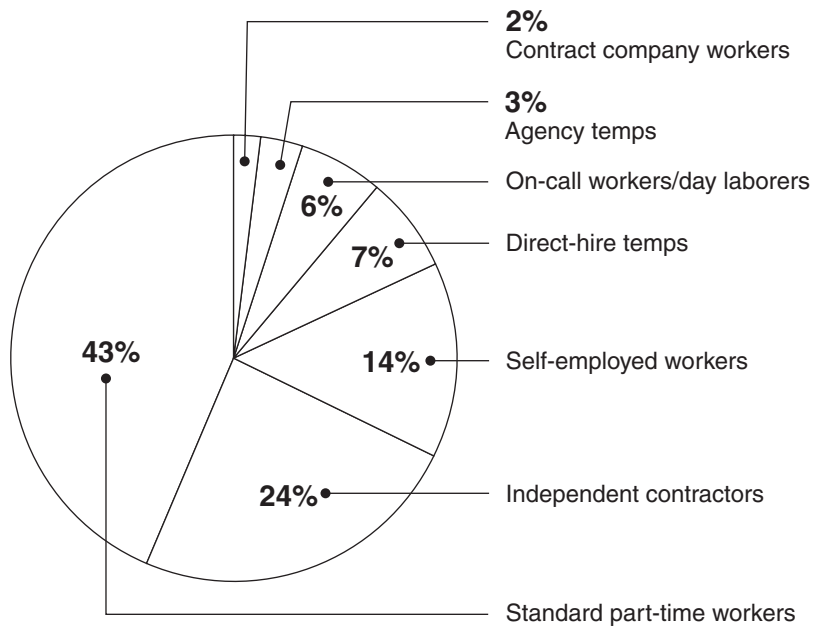
Note: We combined the on-call workers and day laborers categories because the definitions and characteristics of these workers are similar and the number of day laborers alone was not large enough to be statistically significant.

^a Percentages do not add up to subtotal because of rounding.

Contingent Workers Are a Diverse Group

The categories of contingent workers differ considerably in terms of their share of the contingent workforce. In 2005, standard part-time workers constituted the largest category (43 percent) and contract company workers constituted the smallest category (2 percent) of the contingent workforce (see fig. 2).

Figure 2: Composition of the Contingent Workforce (February 2005)



Source: GAO analysis of data from the CPS February 2005 Contingent Work Supplement.

Note: Actual estimated percentages do not add to 100 percent because of rounding.

Contingent workers exhibit a wide range of demographic characteristics. For example, direct-hire temps (with a mean age of about 35 years¹⁶) were, on average, the youngest contingent workers in 2005, while self-employed workers (with a mean age of about 48 years¹⁷) were the oldest. An estimated 68 percent of standard part-time workers were female, while about 31 percent of contract company workers were female.¹⁸ Self-employed workers had the highest percentage (81 percent) of white/non-Hispanic workers, while agency temps had the smallest percentage (50 percent) of white/non-Hispanic workers. Standard part-time workers had the highest percentage (21 percent) of workers with less than a high school degree, while self-employed workers and independent contractors had the lowest percentages (8 percent).

¹⁶ The 95 percent confidence interval is from 34.1 to 36.3 years old.

¹⁷ The 95 percent confidence interval is from 47.2 to 48.5 years old.

¹⁸ The percentage estimates for individual categories of contingent workers have 95 percent confidence intervals of within +/- 10 percentage points, unless noted. See appendix I for additional information.

Contingent workers are employed in a wide range of industries and occupations. Regarding industry, in 2005, the percentage of part-time workers employed in retail trade (38 percent) was greater than in other industries, the percentage of agency temps in business services (28 percent) was greater than in other industries, the percentage of direct-hire temps in educational services (28 percent) was greater than in other industries, and the percentage of independent contractors in construction (22 percent) was greater than in other industries. Regarding occupation, in 2005, the percentage of self-employed workers in management (29 percent) was greater than in other occupations, the percentage of agency temps in office and administrative support (25 percent) was greater than in other occupations, and the percentage of contract company workers in construction and extraction (20 percent) was greater than in other occupations.

The extent to which contingent workers express a preference for a different type of employer or job also varies across the different categories of contingent workers. For example, in 2005, 59 percent of agency temps expressed a preference to work for a different type of employer. Similarly, 48 percent of on-call workers/day laborers indicated that they would prefer a job where they worked regularly scheduled hours. In contrast, 9 percent of independent contractors and 8 percent of self-employed workers indicated that they would prefer to work for someone else.

The proportion of contingent workers reporting low family incomes varies considerably across the different categories of contingent workers. As shown in table 3, while 16 percent of the overall contingent worker population reported family incomes below \$20,000 in 2005, the incidence of low family income ranged from 8 percent for self-employed workers (the same percentage as for standard full-time workers) to 28 percent among agency temps. The relatively high incidence of low family income among some groups of contingent workers may reflect a number of factors, including lower levels of educational attainment, lower number of hours worked, or employment in low-wage sectors of the economy.

Table 3: Workers with Annual Family Incomes below \$20,000 (February 2005)

Category of worker	Estimated number of workers with family incomes below \$20,000	Estimated percentage of workers with family incomes below \$20,000 ^a
Self-employed workers	382,484	8
Contract company workers	85,210 ^b	11
Independent contractors	952,924	11
Direct-hire temps	464,561	18
Standard part-time workers	2,963,389	19
On-call workers/day laborers	501,014	21
Agency temps	318,535 ^b	28
Subtotal: contingent workers	5,668,117	16
Standard full-time workers	6,902,861	8
Total workforce	12,570,978	11

Source: GAO analysis of data from the CPS February 2005 Contingent Work Supplement.

^aThe percentages in this table are based on valid responses only.

^bThe 95 percent confidence interval for agency temps and for contract company workers are 318,535 +/- 70,692, and 85,210 +/- 36,585, respectively. The 95 percent confidence intervals for totals for other categories of contingent workers are within +/- 20 percent of the estimate itself.

A Smaller Proportion of Contingent Workers than Others Has Benefits or Is Covered by Key Workforce Protection Laws

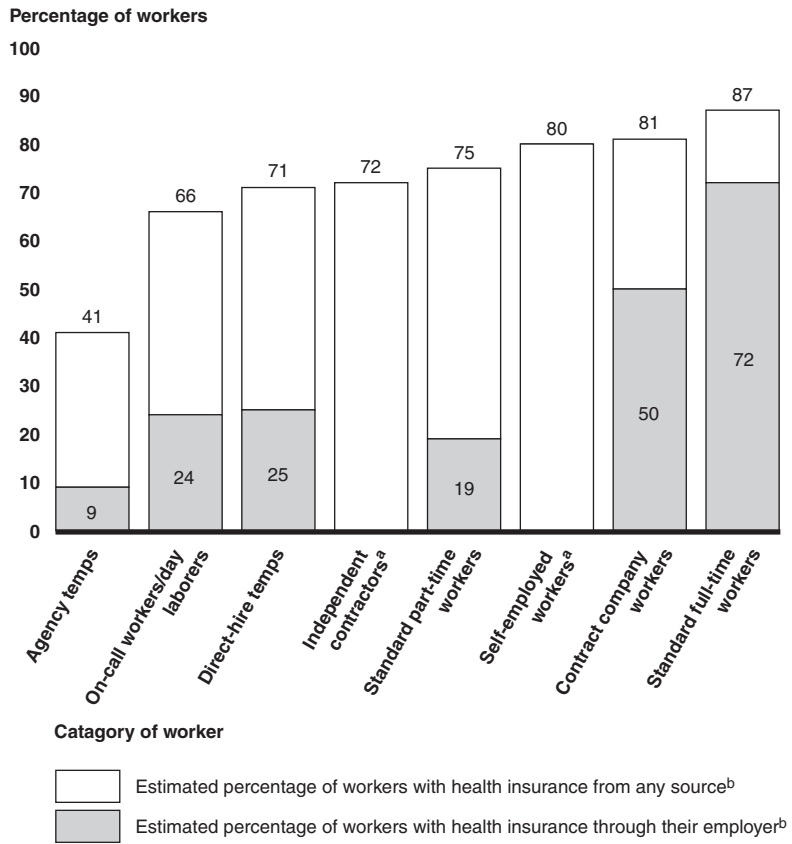
A smaller proportion of contingent workers than of standard full-time workers has health insurance or pension benefits, or receives protections offered by key workforce protection laws, including ones designed to ensure proper pay and safe, healthy, and nondiscriminatory workplaces. A smaller proportion of contingent workers than of standard full-time workers has employer-provided health insurance coverage. When other sources of health insurance are taken into account, the difference between contingent and standard full-time workers decreases, but it remains the case that a smaller proportion of contingent workers is insured. In addition, a smaller proportion of contingent workers than of standard full-time workers has employers who offer pension plans or is included in employer-provided plans. Finally, contingent workers are less likely than standard full-time workers to receive protections offered by key workforce protection laws. Some laws contain requirements that exclude certain categories of contingent workers or contain certain time-in-service requirements that make it difficult for them to be covered. In addition, in cases where contingent workers have more than one employer, it is difficult to determine which employer is responsible for providing workers with workforce protections. Appendix IV contains a detailed description of the key workforce protection laws.

A Smaller Proportion of Contingent Workers than Others Receives Health Insurance

The proportion of contingent workers receiving health insurance is smaller than the proportion of standard full-time workers receiving health insurance. Overall, an estimated 13 percent of contingent workers received health insurance through their employer in 2005, compared to 72 percent of standard full-time workers. As shown in figure 3, the share of contingent workers receiving employer-provided health insurance ranged from 9 percent for agency temps to 50 percent for contract company workers.¹⁹

¹⁹ Workers who do not have employers are not included in the questions on employer provided health insurance in the CPS February 2005 Contingent Work Supplement. All workers in the “self-employed” category, and most workers in the “independent contractor” category, do not have employers and were excluded from our analysis of employer-provided health insurance.

Figure 3: Workers with Health Insurance (February 2005)



Source: GAO analysis of data from the CPS February 2005 Contingent Work Supplement.

^a Most workers in these categories do not have an employer and were excluded in our analysis of employer-provided health insurance.

^b For this figure, the population of contingent workers is defined as all those respondents who gave a valid response to the question "Do you receive health insurance from any source?" The percentages reported above are based on this population.

Although the proportion of contingent workers who received health insurance increased significantly when other sources of health insurance were taken into account, a smaller proportion of contingent workers than of standard full-time workers received health insurance from any source. Overall, about 73 percent of contingent workers received health insurance through any source in 2005, compared to 87 percent of standard full-time workers. The share of contingent workers who received health insurance through any source ranged from 41 percent among agency temps to 81 percent among contract company workers. As might be expected, a smaller proportion of workers with low family incomes received health

insurance than of workers of all income levels.²⁰ Overall, the highest percentage of contingent workers who had health insurance through a source other than their employer received it from their spouse's health insurance plan. Contingent workers also reported receiving health insurance through other family members' plans, plans offered through other or previous jobs, direct purchase, or participating in Medicare or Medicaid programs.

Workers may lack access to employer-provided health insurance for a number of reasons, including electing not to participate in an available plan, having an employer who does not offer a health insurance plan, or being ineligible for their employer's plan if one is offered. Just over half of workers—both contingent and standard full-time—who lacked employer-provided health insurance coverage in 2005 worked for an employer who offered health insurance to some of its employees. Not all workers reported being able to participate in their employer's health insurance plan. An estimated 38 percent of the contingent workers in this group reported that they could participate in their employer's health insurance plan if they wanted to, compared to 81 percent of standard full-time workers. Both contingent and standard full-time workers reported several reasons for not participating in health insurance plans offered by their employer, including having coverage through another plan and the expense of their employer's plan.

Some states and professional associations have developed health insurance programs that help contingent workers access health care. For example, Massachusetts recently passed legislation that will make health insurance available to all residents of the state, including contingent workers such as part-time workers, contractors, and self-employed workers. This new law provides for health insurance premium assistance for low-income workers as well as low-cost policies available for purchase in the private market. In addition, Maine recently created the Dirigo program, which provides low cost health insurance to self-employed workers and workers without employer-sponsored insurance. Similarly, New York's Healthy NY program helps uninsured workers, including self-employed workers, who earn too much to qualify for Medicaid access

²⁰ In 2005, 49 percent of contingent workers with low family incomes received health insurance from any source, as compared to 73 percent of contingent workers of all income levels. Similarly, 9 percent of contingent workers with low family incomes received employer-provided health insurance, as compared to 13 percent of contingent workers of all income levels.

comprehensive health insurance. Professional associations are also creating health plans to serve contingent workers. For example, the HR Policy Association—a nonprofit organization of senior human resources executives of Fortune 500 companies—recently brought major health insurers and large companies together to create the National Health Access program. This program provides a range of low-cost health plans to part-time, seasonal, and temporary workers, as well as independent contractors at participating companies who are ineligible for the companies’ traditional health plans. While these public and private initiatives are relatively new and long-term outcomes have yet to be determined, the programs have succeeded in expanding health insurance options to some contingent workers.

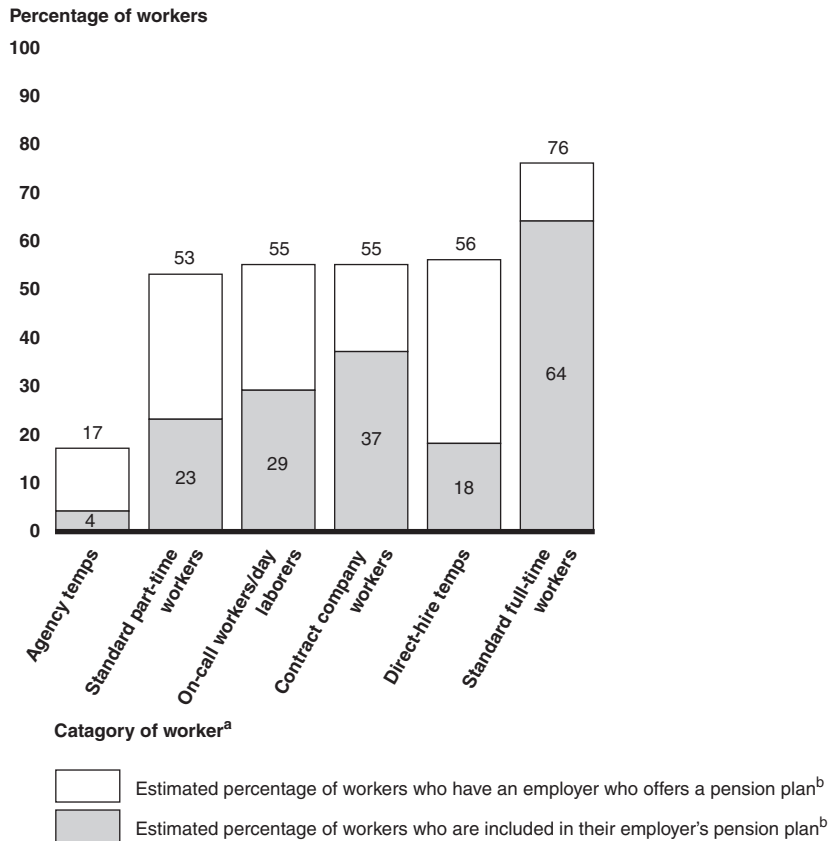
A Smaller Proportion of Contingent Workers than Others Has Access to Employer-Provided Pensions

A smaller proportion of contingent workers than of standard full-time workers has employers who offer pensions or is included in their employer’s pension plans.²¹ Overall, 38 percent of contingent workers reported having employers who offered a pension in 2005, compared to 76 percent of standard full-time workers. Similarly, while 17 percent of contingent workers reported being included in their employers’ pension plan, 64 percent of standard full-time workers reported being included in such plans. As shown in figure 4, with the exception of agency temps, 53 to 56 percent of the contingent workers in other categories reported having employers who offered pension plans.²² The percentage of contingent workers who were included in employer-provided pension plans ranged from 4 percent for agency temps to 37 percent for contract company workers.

²¹ The CPS classifications regarding access to employer-provided pensions are sometimes described in different terms. For example, the CPS questionnaire asks workers if their employer “offers” a pension plan to any of its employees, and if they are “included” in this plan. In a past GAO report, GAO has used other terms to describe access to employer-provided pensions. For example, GAO has indicated that employers can “sponsor” a pension plan (similar to “offering” a plan) and workers can be “covered” by a plan (similar to being “included” in a plan). See GAO, *Pension Plans: Characteristics of Persons in the Labor Force without Pension Coverage*, [GAO/HEHS-00-131](#) (Washington, D.C.: Aug. 22, 2000).

²² Most workers in the self-employed and independent contractor categories do not have employers and were excluded from our analysis of employer-provided pensions.

Figure 4: Workers with Employer-Provided Pensions (February 2005)



Source: GAO analysis of data from the CPS February 2005 Contingent Work Supplement.

^a Because workers in the self-employed category, and most workers in the independent contractor category, do not have employers, they were not included in this figure.

^b For this figure, the population of contingent workers is defined as all those respondents who gave a valid response to the question "Do you work for an employer who offers a pension plan?" The percentages reported above are based on this population.

Among contingent workers with employers who offered pension plans, the most frequently reported reasons for not being included in the plan were those related to eligibility. For example, these workers reported that they were not allowed to join the plan, they had not worked enough hours or weeks, or they had not worked long enough to be eligible.

In addition to employer-provided pension plans, other types of tax deferred retirement accounts (such as individual retirement accounts and Keogh plans) may offer workers an opportunity to save for retirement. A larger proportion of self-employed workers and independent contractors

than of other categories of contingent workers reports having other types of tax deferred retirement accounts.²³ For example, 45 percent of self-employed workers and 42 percent of independent contractors, compared to 16 percent of standard full-time workers, reported having such accounts in 2005.

Contingent workers with low family incomes have less access to employer-provided pension benefits than workers of all income levels. Overall, 29 percent of contingent workers with low family incomes reported having employers who offered pension plans in 2005; 7 percent of contingent workers with low family incomes reported being included in such plans. Contingent workers with low family incomes commonly reported that they were not included in their employer's pension plan for reasons related to eligibility; for example, they were not allowed to join the plan, they had not worked enough hours or weeks, or they had not worked long enough to be eligible.

²³ Most workers in the independent contractor category were self-employed.

Some Categories of Contingent Workers Are Not Covered by Key Laws Designed to Protect Workers

Contingent workers who are employees are generally protected under key laws designed to protect workers, but certain categories of contingent workers—such as independent contractors and self-employed workers—may be excluded from coverage under these laws. While most of the key worker protection laws do not distinguish between types of employees (i.e., contingent and standard full-time employees), some laws contain requirements that exclude certain categories of contingent workers or contain certain time-in-service requirements that make it difficult for them to be covered.²⁴ In addition, because these laws are based on the traditional employer-employee relationship, they generally cover only workers who are employees; independent contractors and self-employed workers, therefore, are not covered. According to the 2005 Contingent Work Supplement, 10.3 million individuals are independent contractors; these individuals would not be covered by these workforce protection laws.

When employers have misclassified workers as independent contractors, workers may need to go to court to establish their employee status and their eligibility for protection under the laws. In addition, DOL may bring a lawsuit on behalf of the worker or group of workers to require that the employer provide the benefit or protection under the law. As shown in figure 5, the key workforce protection laws cover a wide range of issues.

²⁴ All of the key laws designed to protect workers have some exclusions, such as exclusions for small businesses, that apply to both contingent workers and standard full-time workers. We did not, however, examine whether contingent workers are disproportionately affected by these exclusions.

Figure 5: Key Laws Designed to Protect Workers

Fair Labor Standards Act	Establishes minimum wage, overtime, and child labor standards
Family and Medical Leave Act	Requires employers to allow employees to take up to 12 weeks of unpaid, job-protected leave for medical reasons related to a family member's or the employee's own health
Occupational Safety and Health Act	Requires employers to maintain a safe and healthy workplace for their employees and requires employers and employees to comply with all federal occupational health and safety standards
Employee Retirement Income Security Act	Establishes uniform standards for employee pension and welfare benefit plans, including minimum participation, accrual, and vesting requirements; fiduciary responsibilities; and reporting and disclosure requirements
Consolidated Omnibus Budget Reconciliation Act	Requires employers to allow employees and their family members who would lose coverage under employer-sponsored group health plans as a result of certain events, such as being laid off from or quitting their jobs, to continue coverage at their own expense for a limited time
Health Insurance Portability and Accountability Act	Guarantees the availability and renewability of health insurance coverage for certain individuals and limits the use of preexisting condition restrictions
Title VII of the Civil Rights Act	Protects employees from discrimination based on race, color, religion, sex, or national origin
Americans with Disabilities Act	Protects employees from discrimination based on disability
Age Discrimination in Employment Act	Protects employees 40 years of age or older from discrimination based on age
National Labor Relations Act	Guarantees the right of employees to organize and bargain collectively
Unemployment Insurance	Pays benefits to workers in covered jobs who become unemployed and meet state-established eligibility rules
Workers' Compensation	Provides benefits to injured workers while limiting employers' liability strictly to workers' compensation payments

Source: GAO analysis of laws.

Certain categories of contingent workers, such as temporary, on-call, and part-time workers, are not covered by some of the laws designed to protect workers. For example, the Family and Medical Leave Act requires workers to have worked for the same employer at least 12 months and a minimum of 1,250 hours during the past 12 months to be covered. These conditions decrease the likelihood that workers who are temporary, on-call, or part-time will be covered. Although employers are not required to provide pension or health care plans to their employees, when plans are offered, the Employee Retirement Income Security Act (ERISA) has rules that govern which employees must be included in the plans in order to qualify for special tax treatment. For example, ERISA allows employers to exclude workers who have worked less than 1,000 hours in a 12-month period from entering their pension plans. ERISA also allows employers to exclude employees who have worked for the company less than 3 years as well as part-time and seasonal employees from the count of employees who must be included in self-insured medical plans and group term life insurance plans. As a result, some temporary, on-call, and part-time workers may not be included in their employers' benefit plans. These exclusions are intended to strike a balance between providing benefits to workers and not be unduly burdening employers. For example, the exclusions in ERISA were enacted to recognize that it may be impractical or too costly for employers to include all short-term employees in their pension plans.

Some laws have exemptions for portions of certain industries or types of employers that may disproportionately affect contingent workers. For example, FLSA exempts all agricultural employers from the overtime pay requirement and exempts agricultural employers who do not use more than 500 days of labor in any calendar quarter from the minimum wage requirement. These exemptions affect some categories of contingent workers more than standard full-time workers because a greater proportion of these contingent workers is in the agriculture industry; for example, an estimated 11 percent of self-employed workers, 2 percent of on-call workers and day laborers, 2 percent of independent contractors, and 1 percent of direct-hire temporary workers are employed in agriculture, compared with 1 percent of standard full-time workers.

Similarly, the nature of contingent work makes it difficult for some contingent workers to meet state eligibility requirements for unemployment insurance. Temporary and part-time workers may not meet the minimum earnings requirements, which vary by state, and these workers may have difficulty meeting the rules governing job loss because they have less flexibility when the circumstances of their jobs change.

For example, temporary workers who choose this type of work in order to meet family obligations or to attend school might be more likely to quit if their employer changed the job location or required them to work different hours. Nevertheless, they would be ineligible for unemployment insurance benefits in many states because they voluntarily quit without good cause.²⁵ In addition, contingent workers can find it difficult to meet continuing eligibility requirements.²⁶

Some contingent workers, such as temporary or contract workers, may also find it difficult to meet the requirements of the National Labor Relations Act (NLRA) for joining an existing bargaining unit or forming a new bargaining unit. For example, under the act, temporary workers wanting to join an existing collective bargaining unit at a work site must first demonstrate that they have a “sufficient community of interest” with the permanent workers in the bargaining unit.²⁷ In 2004, the National Labor Relations Board (NLRB) overturned a decision made in 2000, and required consent from both the user and supplier employer before temporary employees could join an existing bargaining unit.²⁸ The 2004 decision made it more difficult for temporary and leased employees to join unions and bargain collectively. Contingent workers may also find it difficult to form new collective bargaining units. For example, temporary workers and day laborers may find it difficult to form bargaining units because they do not work at one location or with one employer long enough to identify with a particular group of workers and organize a union. In addition, some worker advocacy groups maintain that contract company workers have difficulty forming new collective bargaining units because employers that use contract company workers may cancel contracts and contract with other companies when workers attempt to unionize.

²⁵ Applicants are generally disqualified from receiving benefits when job loss is due to voluntary separation without good cause, although the definition of “good cause” varies from state to state.

²⁶ According to a report by the National Employment Law Project (“Part Time Workers and Unemployment Insurance,” March 2004), unemployed workers who limit their search for new work to only part-time jobs are denied unemployment benefits in many states because workers are not available for full-time employment. Since 2001, 24 states and the U.S. Virgin Islands maintain restrictive rules regarding part-time unemployment insurance eligibility.

²⁷ A “sufficient community of interest” includes factors such as common supervision, working conditions, and interest in the unit’s wages, hours, and conditions of employment.

²⁸ *M.B. Sturgis*, 331 NLRB 1298 (2000) and *H.S. Care L.L.C.*, 343 NLRB No.76 (2004).

Incorrect Employment Relationship May Result in Lack of Worker Protections

In some cases it is difficult to determine which employer is responsible for providing workers with workforce protections because some contingent workers have more than one employer. In these cases, employers may be (1) an intermediary, such as a temporary employment agency, contract company, or leasing company; (2) the client firm that obtains the workers through the intermediary; or (3) both the intermediary and the client firm. Because it is often difficult in these cases to determine which employer is liable to provide workers with workforce protections, litigation may be necessary to resolve this issue.

Even in cases where there is only one employer involved, employers sometimes classify workers improperly, primarily by designating some workers as independent contractors when, in fact, they are more appropriately considered employees. Moreover, employers have economic incentives to misclassify employees as independent contractors because employers are not obligated to make certain financial expenditures for independent contractors that they make for employees, such as paying certain taxes (Social Security, Medicare, and unemployment taxes), providing workers' compensation insurance, paying minimum wage and overtime wages, or including independent contractors in employee benefit plans.

In addition, the tests used to determine whether a worker is an independent contractor or an employee are complex, subjective, and differ from law to law. For example, the NLRA, the Civil Rights Act, FLSA, and ERISA each use a different definition of an employee and various tests, or criteria, to distinguish independent contractors from employees.²⁹ (See app. II for more information on employment relationship.)

²⁹ See app. IV for descriptions of the tests used under each law.

DOL Detects and Addresses Employee Misclassification through Investigations, but Offices We Studied Vary in How Often They Forward Misclassification Cases to Other Federal and State Agencies

DOL detects and addresses employee misclassification when enforcing the FLSA minimum wage and overtime pay provisions. As part of its FLSA investigation process, DOL examines the employment relationship—whether a worker is an employee or an independent contractor—to determine which workers are covered. Investigators use various methods to test the employment relationship of workers, including interviewing employers and workers, reviewing payroll and related documents, and touring work sites. While misclassification alone is not an FLSA violation, it may contribute to FLSA violations or violations of other laws, such as tax violations. DOL’s outreach efforts provide some information to employers and workers on employee misclassification issues. DOL procedures require officials to share information with other federal and state agencies whenever investigators find possible violations of other laws. However, the district offices that we contacted vary in how often they forward misclassification cases as a possible violation of other agencies’ laws.

Investigators Determine Workers’ Employment Relationship

DOL relies on complaints as a primary way to identify potential violations for investigation.³⁰ All FLSA investigations of minimum wage and overtime pay complaints begin with an examination of workers’ employment relationship because FLSA applies only to employees, not to independent contractors. If investigators determine that a worker is an employee and not an independent contractor, they continue with their FLSA investigation to determine whether the employer has provided the minimum wage and overtime pay required by the act.

DOL’s *Field Operations Handbook* (FOH) provides investigators with statutory interpretations and investigation procedures regarding the employment relationship required for FLSA to apply. It also describes the Supreme Court factors and explains how to apply them to test employment relationship. For example, the Supreme Court factors address whether the worker uses his or her own tools or equipment and whether the worker can decide which hours to work. Appendix II contains more information on the employment relationship. According to DOL officials,

³⁰ Complaints are a key component of DOL enforcement efforts under FLSA. DOL enforcement of FLSA generally relies on two types of information to identify potential violations: (1) complaints from individuals who believe they may have suffered a violation and (2) analysis of data to specifically target problematic industries or work sites.

investigators rely on their professional judgment when applying the Supreme Court factors. Investigators receive classroom training and on-the-job mentoring on the Supreme Court factors and techniques for applying the factors. In their training, they are taught to identify all the relevant factors and make a full, balanced assessment of the facts of each case.³¹

Investigators may identify possible employee misclassification at different points during the investigation. According to DOL officials, misclassification issues may come up during the initial conference with the employer or during an investigator's review of records to determine whether an employer had classified workers as employees or independent contractors. At the initial conference with the employer, investigators ask employers about the nature of their work, annual dollar volume of business, the number of workers, and how workers are paid, and they request payment documents, such as payroll records, time cards, and W-2 forms. While it is standard practice for investigators to review payroll and other records related to wages and employment, investigators do not necessarily review contracts or 1099 forms used to pay independent contractors unless they have a reason to suspect possible misclassification.

Investigators may have reason to suspect misclassification stemming from the complaint that initiated the case or their knowledge of potential misclassification in that industry. In these cases, the investigator would ask employers about whether they contract any work and how they classify their workers. For example, according to DOL officials, if an investigator was conducting an investigation of a large drywall employer, then the investigator would probably spend a large amount of time pursuing independent contractor issues because misclassification has been a problem in the past with construction contractors subcontracting work to drywallers, roofers, electricians, and carpenters. In other cases where the investigator has no knowledge about potential misclassification, the employer's responses at the initial conference may raise questions. For

³¹ In 2005, DOL began an "Off-the-Clock" initiative to identify employers who do not compensate workers for all the hours that they work and who may not keep accurate wage and employment records for their workers (also referred to as "off the books"). Although the focus is off-the-clock work, this effort may help detect employee misclassification. This initiative includes training, outreach, and investigation. The investigator training includes a section on employment relationship, with questions and scenarios about how to determine whether a worker is an independent contractor or an employee.

example, if the employer had millions of dollars in annual business but only two employees, then the investigator would likely ask further questions about the employment relationship of any other workers. In addition, DOL officials told us that investigators compare payroll records with the work process identified by the employer to see if there are any gaps. For example, investigators would need to follow up with employers who describe work processes that required many workers but had no employees listed on the payroll. Such a scenario could indicate that employers had misclassified workers as independent contractors who were not listed on the payroll.

Investigators may learn about employment relationship when interviewing workers to verify the employer's payroll and time records or to identify workers' duties in order to determine whether FLSA applies. According to DOL officials, an investigator would not ask directly whether the worker is an independent contractor or an employee; instead, an investigator would ask questions to determine whether the worker is an employee or an independent contractor. For example, an investigator would ask whether workers set their own work hours or use their own equipment on the job—indications that workers may be independent contractors, not employees.

Investigators may obtain additional information on employment relationship while touring an employer's establishment. During a tour, investigators can compare their observations about employment relationship in the work environment to the information from the records and interviews with employers and workers. Specifically, investigators can observe control issues, such as whether workers are supervised and provided with supplies and equipment. For example, if an apartment rental complex treats its maintenance workers as independent contractors, then the investigator would observe who provides the plumbing supplies and paint—the employer or the workers—to help determine whether workers are independent contractors or employees. Also, a tour can identify potential misclassification issues for an investigator to follow up on. For example, if the payroll records show that the employer has 10 employees but the investigator sees 15 workers during the tour, then the investigator will conduct further interviews and record review to determine whether these other 5 workers are employees or independent contractors.

Because employee misclassification is not a violation of FLSA, investigators are not required to discuss misclassification identified during FLSA investigations with employers or to include it in their investigation report. According to DOL officials, however, an investigator may discuss

misclassification with the employer during the investigation and may note instances of misclassification in the investigation report. In discussing a misclassification case with the employer, the investigator would explain that the workers should be classified as employees, not independent contractors, and that the employer may be violating other laws administered by other agencies, such as tax laws or workers' compensation laws. Specifically, investigators would explain to the employer how they applied the Supreme Court factors in determining that the workers were employees, not independent contractors. DOL officials said that investigators would provide employers with publications and fact sheets on employment relationship if they identified misclassification during an investigation. In addition, the investigators may mention employee misclassification in their final investigation report that summarizes the facts of the investigation. According to DOL officials, if the investigators included misclassification in the case report, it would be mentioned as an underlying reason for a minimum wage or overtime violation. However, investigation reports do not always include the reason for the violation.

Employee Misclassification, though Not an FLSA Violation, May Contribute to FLSA or Other Violations

Employee misclassification alone is not a violation of FLSA, but may contribute to FLSA minimum wage and overtime pay violations or violations of tax, workers' compensation, or unemployment insurance laws.³² DOL investigations have identified FLSA violations associated with employee misclassification. For example, one misclassification case involved a valet parking company located in Arizona that provided services to local restaurants, sports venues, hotels, and theaters. In 2004, this company paid \$66,947 in minimum wage and overtime pay back wages to 262 employees who had been misclassified as independent contractors. When reviewing the employment relationship, the DOL investigator found that the services provided by these workers were integral to the business, and that the employer had imposed strict policies and procedures to follow and told them when they would work, where they would work, what their pay rate would be, and what uniforms they would wear. The investigator determined that the workers were not required to use initiative, judgment, or foresight to be successful as independent

³² According to DOL officials, in some cases, misclassification may be considered an FLSA record-keeping violation, but there are no penalties for record-keeping violations under FLSA.

contractors; did not have any investment in facilities or equipment; and were not operating to make a profit.

Another misclassification case involved a chicken-processing company based in California that contracted out its deboning operations to a subcontractor. In 2005, DOL investigators found that the subcontractor had misclassified as independent contractors the employees he hired to work at this deboning plant. The subcontractor violated FLSA when he failed to meet payroll for 2 weeks, pay minimum wages and overtime pay, and keep adequate payroll records. The subcontractor also illegally deducted the cost of aprons, gloves, hair nets, and other required equipment from workers' paychecks. When the subcontractor went bankrupt, the contractor agreed to cover the back wages due—\$40,000 owed to 59 workers—although the contractor was not legally required to do so.

DOL officials told us that their investigators have encountered cases where employers classified workers as independent contractors instead of employees to avoid paying proper wages under federal and state wage laws or to avoid providing benefits under other laws, such as workers' compensation and unemployment insurance laws. For example, in 2004, a joint DOL-State of California investigation found that a services company located in California had misclassified employees and not paid overtime in accordance with FLSA. The affected workers provided janitorial services to a major department store chain located in California, Arizona, Nevada, Texas, and New Mexico. According to DOL officials, the company contracted out the janitorial work to individuals who were not legitimate contractors in that, among other things, they did not control the location or hours of work. These "contractors" then hired others to do the janitorial work. As a result of this arrangement, the services company avoided paying minimum wage, overtime, and other benefits, such as workers' compensation. In response to the investigation, the company agreed to pay \$1.9 million in back wages to 775 employees. Throughout the investigation, DOL worked with the state to ensure compliance with state wage laws, workers' compensation programs, and unemployment insurance programs.

**DOL's Outreach Efforts
Provide Some Information
on Employee
Misclassification Issues**

As part of general FLSA outreach efforts to employers and workers, DOL provides some information on establishing the employment relationship. While these outreach efforts primarily focus on how to comply with provisions of FLSA—minimum wage, overtime pay, and child labor—they also include some information on the employment relationship.

Specifically, information on employment relationship issues is available to employers and workers through brochures, pamphlets, fact sheets, and Web-based information. According to DOL officials, outreach efforts conducted specifically for industries likely to use independent contractors may also address the topic of employee misclassification.

The DOL Web site contains several sources of information on the FLSA employment relationship. DOL's Wage and Hour Division posts its *Employment Relationship under FLSA* (WH Publication 1297) and fact sheets that provide information on determining the employment relationship in applying provisions of FLSA. For example, *Fact Sheet 13: Employment Relationship under the Fair Labor Standards Act (FLSA)* outlines the Supreme Court's factors for determining an employment relationship under FLSA and is available in several languages, including Chinese, Korean, Spanish, Thai, and Vietnamese. It also identifies common problems: (1) construction contractors hire so-called independent contractors, who in reality should be considered employees because they do not meet the Supreme Court tests for independence and (2) individuals who work at home are often improperly considered independent contractors. Another DOL Web site resource is Employment Laws Assistance for Workers and Small Businesses (elaws) FLSA Advisor, an interactive system that allows employers and workers to determine whether a worker would be considered an employee or an independent contractor. These Web site outreach sources contain contacts—such as the Wage-Hour toll-free telephone line and links to district office telephone numbers—to obtain additional information about employment relationship issues.

Another form of outreach that DOL provides is its workplace poster. FLSA regulations require that every employer that has employees subject to the act's provisions post a notice explaining the act in a prominent and accessible place at the work site.³³ While DOL relies heavily on complaints from workers to enforce FLSA, the FLSA workplace poster does not provide a telephone number for workers or others to call to register complaints. Instead, the poster directs inquiries for additional information to the nearest Wage and Hour Division office listed in the telephone directory under "United States Government, Labor Department." Also, the FLSA workplace poster does not include any information on the

³³ DOL's Wage and Hour Division prescribes the content of the FLSA workplace poster (WH Publication 1088).

employment relationship. As a result, individuals seeking to report possible employee misclassification complaints have no easy method to do so.

DOL district offices conduct locally based general FLSA outreach efforts for employer and worker groups that do not target employee misclassification, but they provide some information on establishing the employment relationship. DOL officials told us that they distribute employment relationship publications and fact sheets to industries that use independent contractors—such as the construction and garment industries—and may be more likely to misclassify employees. According to DOL officials, this outreach to industries using independent contractors may also address the topic of employee misclassification. Also, in DOL’s Western Region, a recent outreach effort to educate Hispanic employers and workers about general workplace rights and responsibilities has identified cases of employee misclassification from calls to a hotline. Specifically, the Employment Education and Outreach (EMPLEO)—an alliance of federal and state agencies, Mexican and Central American consulates, and private nonprofit groups—provides a toll-free hotline staffed by Spanish-speaking volunteers, not associated with the government, who forward calls to the appropriate agency for response.

DOL Offices We Studied Vary in How Often They Forward Misclassification Cases to Other Federal and State Agencies

Employers’ misclassification of workers as independent contractors may in some circumstances violate tax, unemployment insurance, and workers’ compensation laws. According to the *Field Operations Handbook*, DOL regional or district officials are required to share information with other appropriate federal and state agencies whenever investigators conducting FLSA investigations find instances of possible violations of other laws. At the same time, however, the FOH cautions investigators not to interpret laws outside their authority. We discussed whether DOL forwards misclassification cases identified during an FLSA investigation. The DOL officials we spoke to in 9 district offices could not provide the number of misclassification cases they referred to other agencies because they do not track this information. However, their responses indicated that district offices vary in how often they implement the procedures to refer cases to other agencies. Some of the DOL district offices told us that they notified IRS and state agencies when they found misclassification, while others told us that they had little or no contact with other agencies regarding misclassification issues. These district offices also reported that it was

rare for them to receive misclassification referrals from other federal or state agencies.³⁴

DOL requires its regional or district officials to notify other agencies about possible violations identified during DOL investigations. The procedures state that investigators should note conditions that appear to be possible violations of other federal or state laws or regulations. They also state that for matters that are not within the authority of the Wage and Hour Division, investigators should confine their investigative activities to obvious conditions that they observe, or are brought to their attention, to avoid any impression that the Wage and Hour Division is overstepping its investigation authority. Further, the procedures instruct investigators not to interpret any law other than those administered by the Wage and Hour Division. They also direct investigators to report to district office management any possible violations of other laws or regulations. The Wage and Hour Division provides a form (WH-124) for regional or district office officials to use to notify other federal or state agencies about possible violations of laws or regulations administered by those agencies.

According to DOL officials, investigators do not have the authority or the expertise to look for violations of other laws. DOL officials told us that because investigators focus on identifying minimum wage, overtime pay, and child labor violations during FLSA investigations, checking for compliance with laws enforced by other agencies is not a priority. DOL officials also noted that interagency collaboration on employee misclassification referrals is difficult because different laws have different tests of establishing the employment relationship.

The DOL district offices we contacted varied in how often they implemented the procedures to refer possible violations, including misclassification, to other federal or state agencies. According to the DOL officials in these offices, in most cases, district offices are responsible for contacting other agencies. While some districts told us that they notified IRS and state agencies about misclassification cases, other districts told us

³⁴ Beginning in 2005, DOL's Employment & Training Administration (ETA) has been involved in efforts to coordinate with other agencies about misclassification: (1) ETA has coordinated with IRS to assist states in obtaining IRS 1099 information to identify misclassification in state unemployment insurance tax audits and (2) ETA is participating on an interagency Questionable Employment Tax Practices team with IRS, federal tax administrators, and state workforce agencies to develop a memo of understanding, share information, and coordinate compliance activities. The team is planning to address several issues, including misclassification.

that they had no contact with states or other federal agencies about misclassification issues. Some district officials told us that they notified IRS when investigators found instances of misclassification that appeared to involve tax law violations, but rarely received any response from IRS after submitting their referral.³⁵ Other districts told us that they had little contact with IRS regarding misclassification.³⁶ For example, one district official said his district generally does not receive any feedback from IRS. He said that his district would have more incentive to refer cases if IRS would inform the district when it received DOL referrals and if the district knew that IRS would act on the referrals.

Similarly, some DOL officials told us that their contact with state agencies could include misclassification, while others said they had little contact with states about these issues. For example, one regional official cited coordination with the state agencies that are responsible for employment tax and registration of contractors in the construction industry. He said that this state agency imposes fines on individuals who are not registered as contractors and that this sometimes involves misclassification.³⁷

District officials in the offices we contacted said they rarely receive referrals about misclassification from other federal or state agencies. While one district official said that other state agencies in the region refer some complaints that occasionally include misclassification issues, most officials said their districts have not received any misclassification referrals from IRS or other federal or state agencies.

Conclusions

Contingent workers constitute an important and diverse sector of the U.S. workforce. Yet while contingent work arrangements offer flexibility to both employers and workers, they also provide contingent workers with fewer workforce protections than are available to other workers. Contingent workers also received fewer benefits. Many contingent

³⁵ The IRS officials we contacted about this could not comment on the specifics of referrals at the district level.

³⁶ Also, some districts have made referrals and conducted general outreach to IRS when DOL has identified that employers are paying workers in cash, and most likely are not paying taxes. However, this practice is not necessarily employee misclassification.

³⁷ One district has coordinated with state agencies that enforce tax, workers' compensation, unemployment insurance, and Social Security laws about workers paid in cash and probably not paying taxes. However, this practice is not employee misclassification.

workers may not be covered under employer-sponsored health and benefit plans and may not be able to afford these benefits on their own—a situation that could have long-term adverse consequences for workers and government programs. To the extent that contingent workers neither receive health or pension benefits nor qualify for unemployment or workers' compensation, they may have to turn to needs-based programs, such as Medicaid, to make ends meet. To the extent that this occurs, costs formerly borne by employers may be shifted to federal and state public assistance budgets. To help address the lack of health insurance coverage, some state and professional associations have developed programs that help contingent workers access health care. Although these initiatives are relatively new and long-term outcomes have yet to be determined, they may serve as promising practices for the future.

DOL investigators identify instances of employee misclassification when responding to minimum wage and overtime pay complaints. However, because the FLSA workplace poster does not provide an easy method for workers to report complaints, DOL may be missing opportunities to address other instances of potential misclassification. Improving the workplace poster would reinforce DOL's complaint-based strategy and would help further protect the wages of employees who may be misclassified.

While DOL investigators conducting FLSA investigations are required to share information with other federal and state agencies whenever they find instances of possible violations of other laws, DOL district offices we studied varied in how often they forwarded misclassification cases to other agencies. DOL does not know the extent to which district offices refer misclassification cases to other agencies. DOL cautions investigators not to interpret laws outside their authority, but referring misclassification cases identified through FLSA investigations would not require DOL to interpret other agencies' laws. In addition, referring this information may assist other federal and state agencies in addressing misclassification. Furthermore, when DOL does not refer cases of misclassification, other agencies lose opportunities to fulfill their fiduciary duties in conserving government funds.

Recommendations for Executive Action

To facilitate the reporting of FLSA complaints, we recommend that the Secretary of Labor instruct the Wage and Hour Division to revise the FLSA workplace poster to include national, regional, and district office telephone numbers and a Web site address that complainants may use to report alleged employee misclassification issues.

To facilitate addressing employee misclassification across federal and state programs, we recommend that the Secretary of Labor instruct the Wage and Hour Division to evaluate the extent to which misclassification cases identified through FLSA investigations are referred to the appropriate federal or state agency potentially affected by employee misclassification, and take action to make improvements as necessary. In addressing its referral mechanism, the Wage and Hour Division officials should consider building upon efforts by district offices currently engaging in referrals.

Agency Comments

We provided a draft of this report to DOL for comment. Overall, DOL agreed with the first recommendation and agreed with the primary part of the second recommendation, but disagreed with one part of this recommendation. DOL's written comments are reproduced in appendix V.

DOL's ESA agreed with the first recommendation on revising the workplace poster to provide additional contact information to facilitate the reporting of possible misclassification complaints. ESA noted that the Wage and Hour Division is in the process of revising its workplace poster to add the division's toll-free phone number.

Regarding the second recommendation, on referring misclassification cases to other agencies, DOL agreed with the value of sharing potential employee misclassification with appropriate federal and state programs. The agency commented that the Wage and Hour Division will review its processes to determine the appropriateness of referral of such cases to other agencies. However, DOL did not agree with a part of the draft recommendation that referral of cases should include notifying the employer that the misclassification case has been forwarded to the appropriate agency. The agency stated that such notification could place the Wage and Hour Division staff in the untenable position of having to defend a referral based upon interpretations of laws, which the division staff has no expertise or authority to interpret or enforce. After considering DOL's position concerning this aspect of the draft recommendation, we deleted this part from the final recommendation.

DOL's BLS also provided technical comments, which we incorporated in the report as appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this report. At that time, we will send copies of this report to the Secretary of Labor and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or robertsonr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who have made major contributions to this report are listed in appendix VI.

Sincerely,

A handwritten signature in black ink that reads "Robert Robertson". The signature is written in a cursive style with a large initial "R".

Robert E. Robertson
Director, Education, Workforce,
and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

The objectives of our study were to determine (1) the size and nature of the contingent workforce, (2) the benefits and workforce protections provided to contingent workers, and (3) the actions that the Department of Labor (DOL) takes to detect and address employee misclassification.

To obtain information on the contingent workforce, we analyzed data from the Bureau of Labor Statistics (BLS). Specifically, we reviewed BLS's Current Population Survey (CPS), which is used to survey people about their work and benefits, and a CPS supplement that BLS developed to collect information on the contingent workforce. We defined "contingent workers" according to the methodology used in our 2000 review of the contingent workforce, examining eight categories of workers who could be considered contingent: agency temporary workers (temps), direct-hire temps, on-call workers, day laborers, contract company workers, independent contractors, self-employed workers, and standard part-time workers.¹ Standard full-time workers were defined as all workers who do not fall into one of the contingent worker categories. We reported descriptive statistics on the characteristics of contingent workers and standard full-time workers, their receipt of health insurance, and their participation in pension plans. We did not conduct multivariate analyses to determine the causal relationships explaining contingent workers' incidence of low family income, receipt of health insurance, or participation in pension plans. We also interviewed BLS officials and other researchers about contingent worker issues.

To estimate the size of the contingent workforce and describe how it has changed over the past decade, we used data collected in the CPS as well as data collected in a special supplement to the survey—the Contingent Work Supplement—in February 1995, 1999, and 2005.² To describe the demographic characteristics of the contingent workforce and the extent to which these workers have access to health insurance and pension benefits, we used data collected in the CPS and the Contingent Work Supplement in February 2005.

¹ GAO, *Contingent Workers: Incomes and Benefits Lag Behind Those of Rest of Workforce*, GAO/HEHS-00-76 (Washington, D.C.: June 30, 2000).

² The years 1995, 1999, and 2005 were selected to examine changes in the size of the contingent workforce over the past decade in order to reflect the changes that occurred during the time period covered in our 2000 review of contingent workers (1995-1999) as well as those occurring since that time (1999-2005).

The CPS is designed and administered jointly by the Bureau of the Census (Census) and BLS. It is the source of official government statistics on employment and unemployment in the United States. The survey is used to collect information on employment as well as such demographic information as age, sex, race, marital status, educational attainment, and family structure. The survey is based on a sample of the civilian, noninstitutionalized population of the United States. Using a multistage stratified sample design, about 60,000 households are selected on the basis of area of residence to be representative of the country as a whole and of individual states. A more complete description of the survey, including sample design, estimation, and other methodology, can be found in the CPS documentation prepared by Census and BLS.³

The Contingent Work Supplement was designed by BLS to obtain information from workers on whether they hold contingent jobs, defined by BLS as jobs that are expected to last only a limited period of time.⁴ In addition, information is collected on several alternative employment relationships, namely working as independent contractors and on call, as well as working through temporary help agencies or contract firms. All employed persons except unpaid family members are included in the supplement. For persons holding more than one job, the questions refer to the characteristics of their main job—the job in which they work the most hours. Similar surveys have been conducted in February of 1995, 1997, 1999, 2001, and 2005. For a more complete description of the supplement see the technical documentation prepared by Census and BLS.⁵

For our data reliability assessment, we reviewed agency documents on the CPS and conducted electronic tests of the files. On the basis of these reviews, we determined the required data elements from the CPS were sufficiently reliable for our purposes.

Because the CPS is a probability sample of the population based on random selection, the sample is only one of a large number of samples that

³ See Technical Paper 63RV: “Current Population Survey—Design and Methodology,” issued March 2002.

⁴ See Anne E. Polivka, “Contingent and Alternative Work Arrangements, Defined,” *Monthly Labor Review* (Oct. 1996), pp. 3-9 for a description of how BLS defines and estimates the contingent workforce.

⁵ Current Population Survey, February 2005: Contingent Work Supplement File Technical Documentation CPS-05.

might have been drawn. Since each sample could have provided different estimates, confidence in the precision of the particular sample's results is expressed as a 95 percent confidence interval (for example, +/- 4 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples that could have been drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population.

For the CPS estimates in this report, we use the CPS general variance methodology to estimate the sampling error and report it as confidence intervals. Percentage estimates based on the total workforce have 95 percent confidence intervals of within +/- 1 percentage point of the estimate itself, unless otherwise noted.⁶ Percentage estimates for individual categories of contingent workers have confidence intervals of within +/- 10 percentage points of the estimate unless otherwise noted. Estimates of totals exceeding 1 million workers have 95 percent confidence intervals of within +/- 10 percent of the estimate itself unless otherwise noted. Estimates of totals exceeding 400,000 workers have 95 percent confidence intervals of within +/- 20 percent of the estimate itself unless otherwise noted. The 95 percent confidence intervals for other estimates are presented with the estimates themselves in the body of the report. Consistent with CPS documentation guidelines, we do not produce estimates from the February 2005 supplement for populations of less than 75,000.

In addition to the reported sampling errors, the practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted, the sources of information available to respondents, or the types of people who do not respond can introduce unwanted variability into the survey results. For the CPS, data are often collected from one household member for all household members. Nonsampling error could occur if a proxy responder was unable to provide correct pension or insurance information for household members not at home at the time of the interview.

Although we used data from the Contingent Work Supplement, we used a definition of contingent worker different from the one used by BLS in its

⁶ For example, an estimated 30.6 percent of the 2005 workforce are contingent workers; the 95 percent confidence interval for this estimate would be within 29.6 and 31.6 percent.

analysis of the data. As in our 2000 review of contingent workers, we did not restrict our definition to include only workers with relatively short job tenure, but rather provided information on a range of workers who could be considered contingent under different definitions. Although we believe that it is useful to consider the nature and size of the population of workers in jobs of limited duration as well as their access to benefits, we also believe that it is useful to provide information according to categories that are more readily identifiable and mutually exclusive.⁷ The categories we used to define the contingent workforce included direct-hire temporaries (workers hired directly by employers to work in temporary jobs), even though the Contingent Work Supplement did not contain a question that directly asked for this information.⁸ We also combined on-call workers and day laborers because the definitions and characteristics of these workers are similar and the number of day laborers alone was not large enough to be statistically significant. Information on leased workers was not included in our 2000 review of contingent workers because of a lack of data on these workers. For this reason, leased workers were not included in the definition of the contingent workforce used in this report.

To obtain information about the workforce protections that are offered to contingent workers, we reviewed key workforce protection laws, related court cases, and other studies on contingent workers.

To obtain information on DOL's actions to detect and address employee misclassification as part of FLSA enforcement, we reviewed FLSA and its corresponding regulations. We also reviewed DOL documents related to FLSA, including policies and procedures on conducting investigations, information on investigator training, and outreach efforts. We interviewed

⁷ See Susan N. Houseman, *Flexible Staffing Arrangements*, August 1999, and Anne E. Polivka, Sharon R. Cohany, and Steven Hipple, "Definition, Composition, and Economic Consequences of the Nonstandard Workforce," in *Nonstandard Work: The Nature and Challenges of Changing Employment Arrangements*, Industrial Relations Research Association Series 2000, edited by Francoise Carre, Marianne A. Ferber, Lonnie Goldman, and Stephen A. Herzenberg, for examples of the research used to model the different categories of contingent workers.

⁸ The category of direct-hire temps was constructed using several questions from the supplement. We included workers who indicated that although they did not work for a temporary employment agency, their job was temporary or they could not stay in their jobs as long as they wished for one of the following reasons: (1) they were working only until a specific project was completed, (2) they were temporarily replacing another worker, (3) they were hired for a fixed period of time, (4) their job was seasonal, or (5) they expected to work for less than a year because their job was temporary.

officials from the Wage and Hour Division headquarters office, 3 of the 5 regional offices, and 9 of the 51 district offices—3 district offices in each region. We selected a nonprobability sample of district and regional offices to target offices located in large cities and that provided geographic coverage across each region. Because this was not a probability sample, we did not generalize the results of our regional and district interviews to the regions and districts we did not contact. In each office, we interviewed regional and district management-level officials using a standard set of questions in order to obtain information related to employee misclassification as part of FLSA enforcement. The interview questions asked about (1) the extent and source of employee misclassification, (2) investigations related to employee misclassification, and (3) training and outreach efforts related to employee misclassification. We contacted the following offices:

- Northeast Regional Office
 - New York City District Office
 - Richmond District Office
 - Southern New Jersey District Office

- Midwest Regional Office
 - Columbus District Office
 - Detroit District Office
 - Springfield District Office

- Western Regional Office
 - East Los Angeles District Office
 - Phoenix District Office
 - Seattle District Office

In addition, we reviewed literature and interviewed researchers from four academic institutions and two nonprofit groups about employee misclassification issues.

We performed our work in accordance with generally accepted government auditing standards between July 2005 and June 2006.

Appendix II: Establishing the Employment Relationship of Workers

Establishing the employment relationship of workers under the Fair Labor Standards Act (FLSA) and the Employee Retirement Income Security Act (ERISA) can be complex and may result in litigation. FLSA requires that an employer-employee relationship exist for a worker to be covered by the act's provisions.¹ FLSA—which provides minimum wage and overtime pay protections—requires that employers pay those employees covered by the act at least the minimum wage and pay overtime wages when they work more than 40 hours a week.² The act defines “employee” broadly as an individual employed by an employer. The U.S. Supreme Court has identified certain factors that should be considered in determining whether a worker is an employee or an independent contractor under FLSA. In general, a worker who meets the FLSA definition of employee is one who is economically dependent on the business he or she serves. In contrast, an independent contractor is one who is engaged in a business of his or her own. The test used to determine whether an employment relationship exists for FLSA purposes is referred to as the economic realities test.³ The court has indicated that in applying this economic realities test under FLSA, such determinations must consider the circumstances of the whole activity and cannot be based on isolated factors or a single characteristic. In enforcing FLSA, DOL uses the following factors:

- **The extent to which the worker’s services are an integral part of the employer’s business**
 - Examples: Does the worker play an integral role in the business by performing the primary type of work that the employer performs for their customers? Does the worker perform a discrete job that is one part of the business’ overall process of production? Does the worker supervise any of the company’s employees?
- **The permanency of the relationship**
 - Example: How long has the worker worked for the same company?

¹ 29 U.S.C. 201 et. seq.

² FLSA also includes record-keeping and child labor provisions.

³ *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947).

- **The amount of the worker's investment in facilities and equipment**
 - Examples: Is the worker reimbursed for any purchases, materials, or supplies? Does the worker use his or her own tools or equipment?
- **The nature and degree of control by the employer**
 - Examples: Who decides on what hours to be worked? Who is responsible for quality control? Does the worker work for any other company(s)? Who sets the pay rate?
- **The worker's opportunities for profit and loss**
 - Examples: Did the worker make any investments such as insurance or bonding? Can the worker earn a profit by performing the job more efficiently or exercising managerial skill or suffer a loss of capital investment?
- **The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor**
 - Examples: Does the worker perform routine tasks requiring little training? Does the worker advertise independently through the Yellow Pages or business cards? Does the worker have a separate business site?

In some cases, employers misclassify workers as independent contractors when they should be classified as employees. Under FLSA, the courts have examined the issue of misclassification by applying the economic realities test and making case-by-case determinations as to whether the workers are employees and thereby covered by the act. For example, a federal district court recently determined that over 500 delivery workers for supermarket and drugstore chains had been misclassified as independent contractors.⁴ The court ruled that the companies that had hired these workers to make deliveries controlled their placement and pay, provided them with delivery carts to rent and uniforms to purchase, required little skill to perform the job, and that the work performed constituted an integral part of the companies' business. Therefore, the court ruled that they were employees and entitled to overtime wages under FLSA. In another case, DOL brought suit on behalf of cable installers against cable television providers and cable installation companies for overtime

⁴ *Ansoumana v. Gristede's Operating Corp.*, 255 F. Supp. 184 (2003).

compensation under FLSA. In this case, the court ruled that the employer did not exhibit the type of control needed to characterize the relationship as employee-employer, that the workers provided their own van and other equipment, and that the job required skilled labor. On the basis of these factors, the court denied the claim and held that the cable installers were properly classified as independent contractors and not entitled to protection under FLSA.⁵

The complexity of issues involving joint employment and misclassification of employees is illustrated by litigation involving the Microsoft Corporation. In the late 1980s, Microsoft began to hire what the company classified as independent contractors to fill many of its full-time employment vacancies. After the Internal Revenue Service (IRS) determined that these workers were common law employees in 1989 and 1990, Microsoft terminated the employment relationship, set up an employment agency, and converted these workers into temporary agency employees. The workers sued Microsoft, and in 1996 the court ruled that they were employees of the company rather than independent contractors or temporary agency employees.⁶ The court then considered whether or not the employees were eligible for the employer's saving and stock purchase plan benefits under ERISA. The determining factor was the language included in Microsoft's plan, which expressly made any common law employee on the U.S. payroll eligible for benefits. However, while the court determined that the workers were common law employees, it directed Microsoft to determine what rights these workers, as common law employees, had under Microsoft's ERISA plan. Eventually the parties entered into a settlement agreement in which Microsoft paid \$96.9 million.

Other cases have held that although workers may have been misclassified, they still did not qualify for benefits under ERISA plans because they did not qualify under the language of the plan that excluded certain types of employees, such as temporary or leased employees.⁷ Some employers amended their ERISA plans in response to the Microsoft decision to limit participation to workers that the employers classified as employees, whether or not the excluded workers may later be determined to be

⁵ *Herman v. Mid-Atlantic Installation Services, Inc.*, 164 F.Supp2d 667 (2000).

⁶ *Vizcaino v. Microsoft Corp.*, 97 F.3d 1187 (9th Cir. 1996).

⁷ *Wolf v. Coca Cola*, 200 F.3d 1337 (11th Cir.2000); *Bronk v. Mountain States Tel. & Tel., Inc.*, 140 F. 3d 1335 (10th Cir.1998); *Abraham v. Exxon Corp.*, 85 F.3d 1126 (5th Cir.1996).

employees by the IRS or courts. The IRS has approved the use of such language in ERISA plans.⁸

⁸ The IRS issued an unnumbered Technical Advice Memorandum on July 28, 1999, approving a clause excluding from participation in the plan individuals whom the employer had engaged and treated as independent contractors, even if they were later found to be employees.

Appendix III: Size and Characteristics of the Contingent Workforce

This table provides the following information on contingent workers: growth rates (percentage changes) and changes in the share of the total workforce (percentage point changes) for 1995-1999, 1999-2005, and 1995-2005.

Table 4: Changes in the Size of the Contingent Workforce

Category of worker	Feb. 1995—Feb. 1999		Feb. 1999—Feb. 2005		Feb. 1995—Feb. 2005	
	Percentage change (number of workers)	Percentage point change (percentage of total workforce)	Percentage change (number of workers)	Percentage point change (percentage of total workforce)	Percentage change (number of workers)	Percentage point change (percentage of total workforce)
Agency temps	+ 0.6*	- 0.1*	+ 2.4*	0.0*	+ 3.0*	- 0.1*
Direct-hire temps	- 4.9*	- 0.3	- 7.9*	- 0.4	- 12.4	- 0.7
On-call workers/day laborers	+ 8.2*	+ 0.1*	+ 25.5	+ 0.3	+ 35.8	+ 0.4
Contract company workers	+ 17.9*	+ 0.1*	+ 5.7*	0.0*	+ 24.7	+ 0.1*
Independent contractors	- 0.7*	- 0.4	+ 25.4	+ 1.1	+ 24.5	+ 0.7
Self-employed workers	- 13.5	- 1.1	- 2.5*	- 0.4	- 15.6	- 1.5
Standard part-time workers	+ 3.4*	- 0.4*	+ 5.6	0.0*	+ 9.2	- 0.4*
Subtotal: contingent workers	- 0.9*	- 2.3	+ 8.4	+ 0.7	+ 7.4	- 1.6
Standard full-time workers	+ 10.3	+ 2.3	+ 4.5	- 0.7	+ 15.3	+ 1.6
Total workforce	+ 6.7	-----	+ 5.7	-----	+ 12.8	-----

Source: GAO analysis of data from the CPS February 2005 Contingent Work Supplement.

Note: An asterisk (*) denotes that the change over this period was not statistically significant for this category of worker at the 95 percent confidence level.

**Appendix III: Size and Characteristics of the
Contingent Workforce**

Table 5: Characteristics of Contingent Workers (February 2005)

(Percentage unless indicated otherwise)

	Agency temps	Direct-hire temps	On-call workers and day laborers	Contract company workers	Independent contractors	Self- employed workers	Standard part-time workers	Standard full-time workers
AGE								
16-19 years	3	11	7	1	1	0	20	1
20-24 years	17	21	15	11	3	1	17	8
25-34 years	30	25	22	25	15	13	15	24
35-54 years	37	29	39	47	54	55	30	52
55-64 years	11	9	11	14	19	21	10	13
65 and older	3	5	7	2	9	9	8	2
Mean age (years)	37.4	35.2	38.9	40.3	46.4	47.9	36.2	40.8
GENDER								
Men	47	49	53	69	65	63	32	56
Women	53	51	47	31	35	35	37	68
RACE/ORIGIN								
White, non-Hispanic	50	63	68	62	80	81	76	69
Black, non-Hispanic	22	9	8	15	5	4	9	11
Hispanic	21	18	19	16	9	7	11	14
Other, non-Hispanic	8	9	5	7	5	9	5	6
EDUCATION								
Less than high school diploma	18	15	20	17	8	8	21	9
High school diploma, no college	29	21	29	22	28	28	27	31
Some college	32	33	28	29	29	26	35	28
College degree	19	17	16	18	22	23	12	21
Graduate school	2	14	6	14	13	15	5	11
DIVISION								
New England	4	6	3	3	5	3	6	5
Middle Atlantic	8	11	12	15	11	12	15	14
E. North Central	17	14	14	10	15	15	19	15
W. North Central	5	8	7	4	8	9	8	7
South Atlantic	19	17	15	30	19	17	16	19
E. South Central	7	6	7	4	5	5	5	6
W. South Central	12	9	13	15	10	11	9	11
Mountain	6	6	7	6	9	8	6	7
Pacific	22	23	23	13	19	19	15	15

**Appendix III: Size and Characteristics of the
Contingent Workforce**

INDUSTRY	Agency temps	Direct- hire temps	On-call workers and day laborers	Contract company workers	Independent contractors	Self- employed workers	Standard part-time workers	Standard full-time workers
Business services	28	4	5	5	7	5	4	3
Auto and repair services	0	1	1	0	4	4	1	1
Personal services								
—Private households	2	2	1	0	2	0	1	0
—Other personal services	1	1	2	2	5	6	3	2
Arts, entertainment, recreation services	0	3	4	1	3	2	3	1
Professional services								
—Hospitals	2	4	6	3	0	0	5	5
—Health services	7	3	6	5	3	7	7	5
—Educational services	1	28	18	8	2	2	10	10
—Social services	1	2	2	0	3	4	4	2
—Other professional services	5	9	4	5	15	8	6	7
Agriculture	0	1	2	0	2	11	0	1
Mining	0	0	1	0	0	0	0	1
Construction	3	9	14	17	22	6	3	7
Durable goods manufacturing	17	3	2	8	2	4	1	10
Nondurable goods manufacturing	12	2	3	6	1	3	2	5
Transportation and warehousing	2	2	7	2	4	3	3	5
Communications, information, Internet	2	2	2	4	2	1	2	3
Utilities and sanitation	1	1	1	2	0	0	0	1
Wholesale trade	6	2	2	3	2	5	1	4
Retail trade								
—Other retail trade	2	6	6	3	9	17	22	11
—Eating and drinking establishments	1	5	5	2	1	4	16	4
Banking and other finance	2	1	1	2	2	2	2	4
Insurance and real estate	2	2	2	5	8	7	2	4
Forestry and fisheries	0	0	0	0	1	1	0	0
Justice, public order, and safety	0	1	3	2	0	0	0	3
Admin of human resource programs	1	1	0	3	0	0	0	1
National security, international affairs	0	1	0	6	0	0	0	1
Other public administration	2	2	0	7	0	0	0	2

**Appendix III: Size and Characteristics of the
Contingent Workforce**

OCCUPATION	Agency temps	Direct-hire temps	On-call workers and day laborers	Contract company workers	Independent contractors	Self-employed workers	Standard part-time workers	Standard full-time workers
Management	2	5	3	4	16	29	3	10
Business and financial operations	6	3	2	6	6	2	2	5
Computer and mathematical science	3	2	1	13	2	1	1	3
Architecture and engineering	2	1	1	6	2	0	1	2
Life, physical, and social science	1	2	0	1	1	1	0	1
Community and social service	0	2	1	1	0	0	1	2
Legal	0	1	0	0	2	3	0	1
Education, training, and library	2	17	14	2	2	1	7	6
Arts, design, entertainment, sports, media	1	4	4	3	7	3	2	1
Health care practitioner and technical	3	3	7	2	3	6	6	5
Health care support	5	2	3	3	1	0	4	2
Protective service	0	1	3	12	0	0	1	3
Food preparation and serving	1	5	6	3	0	1	16	4
Building, grounds cleaning, and maintenance	5	3	6	7	5	3	4	3
Personal care and service	4	6	3	1	7	8	5	2
Sales and related occupations	2	6	5	2	17	21	18	10
Office and administrative support	25	15	9	5	3	5	18	15
Farming, fishing, and forestry	1	2	2	0	1	0	0	1
Construction and extraction	4	7	15	20	15	4	2	6
Installation, maintenance, and repair	3	4	4	2	4	3	1	4
Production	17	4	3	2	2	4	3	8
Transportation and material moving	13	5	10	3	4	3	6	7

Source: GAO analysis of data from the CPS February 2005 Contingent Work Supplement.

Appendix IV: Key Laws Designed to Protect Workers

This appendix provides a more detailed description of the key laws designed for workers' protection and their applicability to members of the contingent workforce. By definition, these laws apply only to employees— independent contractors and self-employed workers are not covered. However, no definitive test exists to distinguish whether a worker is an employee or an independent contractor. In determining whether an employment relationship exists under federal statutes, courts have developed several criteria. These criteria have been classified as the economic realities test, the common law test, and a combination of the two sometimes referred to as a hybrid test.

The economic realities test looks to whether the worker is economically dependent upon the principal or is in business for himself. The test is not precise, leaving determinations to be made on a case-by-case basis. The test consists of a number of factors, such as the degree of control exercised by the employing party over the worker, the worker's opportunity for profit or loss, the worker's capital investment in the business, the degree of skill required for the job, and whether the worker is an integral part of the business.

The traditional common law test examines the employing party's right to control how the work is performed. To determine whether the employing party has this right, courts may consider the degree of skill required to perform the work, who supplies the tools and equipment needed to perform the work, and the length of time the worker has been working for the employing party.

When the tests are combined in some type of hybrid, a court typically weighs the common law factors and some additional factors related to the worker's economic situation, such as how the work relationship may be terminated, whether the worker receives leave and retirement benefits, and whether the hiring party pays Social Security taxes.

Each of the laws is discussed in more detail below, including the tests used under each to determine whether a worker is an employee or an independent contractor.

Family and Medical Leave Act of 1993 (29 U.S.C. 2601)

The Family and Medical Leave Act of 1993 provides various protections for employees who need time off from their jobs because of medical problems or the birth or adoption of a child. The act requires employers to allow employees to take up to 12 weeks of unpaid leave for medical reasons related to the employee or a family member or to care for a newborn or

newly adopted child without reduction of pay or benefits when he or she returns to work. It also requires employers to maintain the same health care coverage for employees while they are on leave that was provided when they were actively employed. To be eligible for this coverage, employees must have been employed for 12 months by an employer that employs 50 or more employees who work 20 or more calendar weeks in a year and must have worked at least 1,250 hours during the past 12 months.

To determine whether a worker is a covered employee under the law, the courts have applied the economic realities test.

**Employee Retirement
Income Security Act (29
U.S.C. 1001)**

The Employee Retirement Income Security Act establishes uniform standards for employee pension and welfare benefit plans, including minimum participation, accrual, and vesting requirements; fiduciary responsibilities; and reporting and disclosure requirements. The act does not require employers to provide pension or welfare benefits to employees; it applies to any employer or employee organization engaged in commerce or any industry affecting commerce that maintains a covered employee benefit plan.

Contingent workers are covered by the act only if the employer allows them to participate in a pension or welfare benefit plan. Which employees are included in a plan depends on how the plan documents are drafted and interpreted. If an employer wishes to exclude some or all types of contingent workers from participating in a plan, the employer must clearly define the excluded groups of workers, and that definition must be properly applied. Otherwise, contingent workers whom the employer intended to exclude may be covered.

To determine whether a worker is a covered employee under the law, the courts have applied the common law test.

**Fair Labor Standards Act
(29 U.S.C. 201)**

The Fair Labor Standards Act establishes minimum wage, overtime, and child labor standards for employees. The act covers all employees of employers engaged in commerce or the production of goods that meet a dollar-volume-of-business requirement. The act also covers all employees engaged in commerce or the production of goods for commerce; all employees engaged in domestic service covered by the law; all employees of a hospital, residential care institution, or school; and all federal, state, and local government employees.

To determine whether a worker is a covered employee under the law, the courts have applied the economic realities test.

**National Labor Relations
Act (29 U.S.C. 151)**

The National Labor Relations Act guarantees the right of employees to organize and bargain collectively. The act applies to all employers and employees in their relationships with labor organizations whose activities affect interstate commerce. The act does not differentiate by firm size.

The coverage issue regarding temporary workers is whether they have a right to join the same bargaining units as permanent employees with whom they work. Generally, agency temps who work at one site on a fairly regular basis over a sufficient period of time can join the existing collective bargaining unit of permanent employees if the agency (or agencies, if more than one is involved) and the employer that hired the workers from the agency consent to this arrangement. However, temporary workers often do not work at one work site long enough to have an interest in joining a union.

To determine whether a worker is a covered employee under the law, the courts have applied the common law test.

Unemployment Insurance

The unemployment insurance system is a joint federal-state system funded by both federal and state payroll taxes. It was established by the Social Security Act of 1935 and was intended to provide temporary relief through partial wage replacement for workers who lose jobs for economic reasons, such as layoffs, and to help stabilize the economy during recessions. The system pays benefits to workers who become unemployed and meet state-established eligibility rules. To determine whether a worker is a covered employee under the law, most states use a different type of test than is used for other laws. This test is called the ABC test: workers are considered employees unless (a) they are free from direction and control over performance of the work; (b) the service is performed either outside the usual course of the business for which it is performed or is performed outside of all places of business of the enterprise for which it is performed; and (c) the individual is customarily engaged in an independent trade, occupation, profession, or business.

Workers' Compensation

State and federal workers' compensation programs provide benefits for wage loss and medical care to injured workers and, in some cases, their families. At the same time, employers' liabilities are limited strictly to

workers' compensation payments. Benefits paid depend on the nature and extent of the injuries and the ability of injured workers to continue working. For employees whose injuries are not serious, the only benefits received are of a medical nature. Employees with more serious injuries or illnesses may also be entitled to wage-loss benefits; vocational rehabilitation benefits; and schedule payments for the permanent loss, or loss of use of, parts or functions of the body. In addition, survivors of an employee may receive death benefits if the employee's death resulted from a job-related injury or illness. To determine whether a worker is a covered employee under the law, most states use the common law test.

**Occupational Safety and
Health Act (29 U.S.C. 651)**

The Occupational Safety and Health Act requires employers to maintain a safe and healthful workplace and provides employees with certain rights and responsibilities. Courts use either the economic realities test or the common law test to determine whether someone is an employee under the act. According to the law, the party responsible for ensuring safety is the employer that is in direct control of the workplace and the actions of those who work there, including contingent workers such as agency temps and contract company workers who are supplied by another party. Thus, if an accident occurs at the workplace, the employer that created the hazard, not the temporary help firm or contract company, is responsible.

**Title VII of the Civil Rights
Act (42 U.S.C. 2000e), the
Americans with
Disabilities Act (42 U.S.C.
12101), and the Age
Discrimination in
Employment Act (29
U.S.C. 621)**

Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act protect all employees and job applicants from various forms of discrimination, such as discrimination based on race, national origin, gender, disability, or age. The Civil Rights Act and the Americans with Disabilities Act apply to employers that have 15 or more employees for each of 20 or more calendar weeks in a year. The Age Discrimination in Employment Act applies to employers that have 20 or more employees for each working day in each of 20 or more calendar weeks.

Further, each of these laws explicitly covers temporary employment agencies. Title VII of the Civil Rights Act explicitly prohibits employment agencies from discriminating on the basis of race, color, religion, gender, or national origin in classifying or referring people for employment. The Americans with Disabilities Act explicitly includes employment agencies in the definition of entities covered by the law. The Age Discrimination in Employment Act explicitly prohibits employment agencies from discriminating on the basis of a person's age (if over 40) in classifying or referring a person for employment.

To determine whether a worker is a covered employee under federal antidiscrimination statutes, the courts have used all three tests—the common law test, the economic realities test, and the hybrid test. Independent contractors receive some protection from discrimination. Under a provision of the Civil Rights Act that protects contractual rights, independent contractors are protected against racial discrimination in both the termination of a contract and the creation of a hostile work environment. In joint employment situations, one employer may be liable for the discriminatory acts of the other employer if the employer that is being held liable controls some substantial aspect of the employee’s compensation or terms and conditions of employment.

**Consolidated Omnibus
Budget Reconciliation Act
(29 U.S.C. 1161)**

Continuation of group health plan coverage is generally required under this act for employees who otherwise would lose coverage as a result of certain events, such as being laid off by their employers. Individuals may continue coverage under their former employers’ group health plans at their own expense. Depending on the qualifying event, the duration of required coverage ranges from 18 to 36 months. In general, when a covered employee experiences termination or reduction in hours of employment, the continued coverage of the employee and the employee’s spouse and dependents must continue for 18 months. The act applies to all group health plans, except those maintained by employers with fewer than 20 employees. Workers who were considered employees under the group health plans are also employees for purposes of this act.

**Health Insurance
Portability and
Accountability Act of 1996
(Pub. L. No. 104-191)**

This act guarantees the availability and renewability of health insurance coverage for certain individuals. It limits, and in most cases eliminates, the waiting time before a plan covers a preexisting condition for group health plan participants and beneficiaries who move from one job to another and from employment to unemployment. The act also creates federal standards for insurers, health maintenance organizations, and employer plans, including employers who self-insure. The act does not require employers to offer health insurance to its employees or, if they offer health insurance, to cover part-time, seasonal, or temporary employees. The act increases the tax deduction for health insurance for self-employed workers, including independent contractors, to 100 percent of premiums and provides new tax incentives to encourage individuals and employers to purchase long-term-care insurance.

Appendix V: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



JUN 14 2006

Mr. Robert E. Robertson
Director, Education, Workforce, and
Income Security Issues
United States Government Accountability Office
Washington, D.C. 20548

Dear Mr. Robertson:

Thank you for the opportunity to comment on the draft report entitled "*Employment Arrangement: Improved Outreach Could Help Ensure Proper Worker Classification*" (GAO-06-655) (Job Code 130460).

The report contains two recommendations to address employee misclassification. Our comments follow a restatement of each recommendation.

Recommendation 1

To facilitate the reporting of FLSA complaints, we recommend that the Secretary of Labor instruct the Wage and Hour Division to revise the workplace poster to include national, regional and district office phone numbers and a Web site address that complainants may use to report alleged employee misclassification issues.

Response

The WHD is in the process of revising its workplace poster to add the WHD's toll-free number, 1-866-4US-WAGE (1-866-487-9243). Calls to the number are handled by call center staff who screen information, provide general guidance to employees and refer complainants to the appropriate WHD office. The call center currently has Spanish-speaking customer service representatives and an interpreter service that supports 150 languages. The WHD will also add the agency's web site address to the poster, which can be used to report alleged violations, including those that may be related to employee misclassification issues.

Recommendation 2

To facilitate addressing employee misclassification across federal and state programs, we recommend that the Secretary of Labor instruct the Wage and Hour Division to evaluate the extent to which misclassification cases identified through FLSA investigations are referred to the appropriate federal or state agency potentially affected by employee misclassification, and take action to make improvements as necessary. Referral of cases should include notifying the employer that the misclassification case has been forwarded to the appropriate agency. In

addressing its referral mechanism, the Wage and Hour Division officials should consider building upon efforts by district offices currently engaged in referrals.

Response

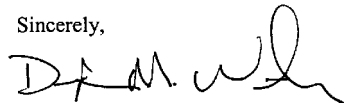
The WHD agrees with the value of sharing potential employee misclassification with appropriate federal and state programs. However, automatic referrals to multiple agencies that may make little or no use of the information provided may not be an efficient use of federal resources.

The WHD will review its internal processes to determine the extent and appropriateness of referring employee misclassification cases to other federal or state agencies. In evaluating the effectiveness of the current referral mechanism, WHD will consider building upon efforts by district offices currently engaged in referrals.

However, WHD does not agree with the recommendation that employers be notified when the WHD refers potential misclassification cases involving laws not enforced by the WHD to another agency. Such notification could place WHD staff in the untenable position of having to defend a referral based upon interpretations of laws, which WHD has no expertise or authority to interpret or enforce. As GAO notes, WHD investigators are specifically cautioned to “not interpret laws outside their authority.” Further, there is a strong possibility that the receiving agency will not react to the referral (which is correctly stated in the GAO report).

We appreciate the opportunity to provide comments in advance of the publication of the final report.

Sincerely,

 Victoria A. Lipnic

Victoria A. Lipnic

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Robert E. Robertson, (202) 512-7215 or robertsonr@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Brett S. Fallavollita, Linda L. Siegel, Janice L. Peterson, and Jason R. Campbell contributed significantly to all aspects of this report. Daniel A. Schwimer reviewed the coverage of contingent workers under laws designed to protect workers; Richard P. Burkard provided legal support; Paula J. Bonin, Evan B. Gilman, Mark F. Ramage, and Joan K. Vogel assisted in analyzing the BLS data; Thomas D. Short assisted with IRS issues; and Jonathan S. McMurray assisted in report development.

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