

# **Day labor, low-wage work, and immigrant employment opportunities in Chicago**

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## **Introduction: Day Labor and Immigrant Employment Opportunities**

In the literature on the employment opportunities available to recent U.S. immigrants, there has been a tendency to view immigrant labor markets as being highly localized, bounded by the rather limited reach of workers' social networks and centered on port-of-entry neighborhoods. Hiring practices of employers (which rely on word-of-mouth recruitment) closely correspond to workers' reliance on social ties, and together these search and recruitment mechanisms along with workers' skills and the character of the local opportunity structure have channeled immigrants into a select number of industries, occupations, and worksite locations (see Powers and Seltzer, 1998; Reskin, 1999). On balance, research has shown that immigrants tend to be employed in low-paying, low-skilled occupations, often working under difficult conditions and with few opportunities for advancement (for reviews see Borjas, 1999; Browne, 1999; DeFreitas, 1991).

In explaining the generally low quality labor market outcomes of many recent immigrants, research on the dynamics of immigrant employment has, with a few exceptions, overlooked the role various labor market intermediaries play in shaping local opportunity structures and in actually *creating* identifiable labor markets. Labor market intermediaries, such as workforce development agencies, community organizations, educational institutions, and employment contractors are positioned between employers and job seekers. The services provided by intermediaries vary, but typically include worker recruitment, screening, job matching, and placement. In short, labor market intermediaries have become a key component of processes of exchange in labor markets, a mediator between labor demand and supply.

This paper explores the role of one such labor market intermediary—day labor temp agencies—in helping to define the employment opportunities available to many immigrant workers in the Chicago metropolitan area. In the case of day labor, a temporary staffing agency assumes some of the responsibilities of an employer, in effect creating a triangular employment relationship. Agencies hire workers onto their payroll, assign them to the worksites of their business clients, and, when necessary, bear the costs of unemployment insurance and workers' compensation. The business client, for its part, retains some of the responsibilities of an employer. The business client actually generates the job vacancy, supervises the work, and determines whether the day laborer will be requested the following day. In this paper, we

examine the ways in which day labor agencies—as an institutionalized presence in immigrant labor markets—have become an integral component of immigrant employment networks and in the process have become a key factor responsible for shaping the characteristics of the local opportunity structure encountered by many recent immigrants. The focus here is on immigrants who are tend to find themselves employed in low-wage occupations. In the Chicago area these workers are predominantly from Mexico and Central America as well as from Asian and Eastern European countries. We begin in section one by reviewing immigrants’ job search patterns, emphasizing the position of day labor temp agencies within immigrants’ employment networks. Section two describes the day labor employment relationship and how the rise of day labor agencies has altered traditional immigrant job search behavior. In section three we provide a description of the temporary staffing industry and day labor in particular through an examination of issues arising on the three sides of this employment relationship (e.g., the worksite employer, the day labor agency, and the workforce). Our focus here is on the dynamics of labor market intermediation through day labor agencies and how these dynamics result in given labor market outcomes. We conclude with a review of state policies aimed at improving the working conditions of day laborers.

## **I. Job Search Strategies in Immigrant Labor Markets**

An important theme in the research literature on the employment patterns of immigrants has been that job search closely follows the labor market information and employer contacts contained in social networks that are established through kinship, neighborhood relations, and other associational ties with co-ethnics (Sassen, 1995; Waldinger, 1999; Waters, 1999). As this research shows, immigrants, like others in low-wage segments of urban economies, rely on word-of-mouth recruitment, often carried out within narrow geographical parameters, as the primary job search strategy. It has also been shown that word-of-mouth networks operate within a fairly narrow geography which in turn limits the number and types of jobs that are effectively open to immigrants. The employment opportunities available to recent immigrants are often described as being largely confined to either businesses serving ethnic enclaves or low-road manufacturing and service establishments seeking cheap labor.

In this context, however, the problem facing immigrants is not that their labor markets are spatially constrained, since all low-wage labor markets are similarly bounded and in many respects are necessarily so given the sprawling nature of large urban economies. Rather than the existence of spatial constraints, then, the primary labor market problem facing many immigrant job seekers is the existence of patterns of occupation segmentation which seem to channel workers into jobs paying low wages and offering only limited opportunities for advancement. It is well understood that the social networks of immigrant workers present both opportunities and limitations to job seekers. On the one hand, it is through such networks that recent immigrants are able to move with relative ease into jobs in both ethnic enclaves and in the wider economy. Job seekers are able to secure employment within ethnic economies or to follow “pioneers” who have opened up certain occupations for penetration by recent immigrants. On the other hand, the range of occupations—and therefore the earnings and advancement prospects—available to most recent immigrants with modest levels of employment preparation is narrow, meaning that these job seekers are channeled into segments of local labor markets that are both low paying and detached from career ladders and advancement pathways. It is as if the immigrant enclave becomes reproduced within the labor market—occupational segregation arises as occupational specialization gives way to occupational closure (Waldinger, 1996, 1999) which in turn sees these new “immigrant jobs” being closed off from both competition from native workers and, more importantly, from opportunities in the wider economy. Seen in this way, immigrant labor markets offer a degree of insulation from the competitive forces that characterize entry-level segments of urban labor markets, but this insulation comes at a high price: most immigrant job seekers face depressed wages and few routes for advancement.

The view that urban economies can be understood as being comprised of a single labor market operating according to a universal set of rules based entirely on levels of human capital, objective measures of worker productivity, and meritocracy has been thoroughly discredited (Hanson and Pratt, 1992, 1996; Peck, 1989, 1996; Wilkinson, 1982; Sassen, 1995; Villa, 1985). Instead, it is now widely understood that urban economies are comprised of multiple, overlapping labor markets that offer groups of workers qualitatively different opportunities in terms of pay, conditions, and advancement potential. In many cases these labor markets assume a distinct gender, racial, or ethnic character. In other words, processes of labor market segmentation channel groups of workers into specific occupational segments, especially in labor

markets such as Chicago’s that exhibit such strong race and gender structuration (see Kirschenman and Neckerman, 1981; Peck and Theodore, 2001; Rees and Schultz, 1970; Theodore and Taylor, 1992; Wilson, 1996). This is not to say that the composition of these occupational segments is somehow static or entirely rigid—new trajectories of industrial restructuring, changing immigration patterns, macroeconomic shifts, and public policy reforms all can have an impact on the nature and make up of these segments. Nevertheless, identifiable patterns of occupational distribution do form through the practices of employers and job seekers, and the occupational clusters that are created through these practices generally come to be associated with distinctive reward systems and working conditions. In the case of immigrant job seekers, the dominant mode of labor market entry is into a select number of low-wage occupations in manufacturing and services, occupations that increasingly are cut off from career paths and advancement opportunities (see Bernhardt et al., 2001; Cappelli et al., 1996; Jenkins, 1999; Osterman, 1999). Many immigrants appear to be consigned to such labor markets and therefore have few opportunities for rising out of poverty. A recent survey of immigrant workers in the Chicago metropolitan area found that these workers are concentrated in a relatively small number of low-wage occupations (Mehta, Theodore, Mora and Wade, forthcoming), including several light industrial occupations (Table 1).

**Table 1: Distribution of Immigrant Employment Across Occupational Segments**

<u>Occupation</u>	<u>Share of total employment</u>
Food Preparation and Service Occupations	12.5%
Cleaning and Building Service Occupations, except Household	8.0%
Freight, Stock and Material Handlers	7.0%
Miscellaneous and Not Specified Machine Operators	6.4%
Machine Operators, Metal and Assorted Materials, Except Precision	6.0%
Private Household Occupations	6.0%
Construction Trades, Except Supervisors	5.5%
Sales Workers, Retail and Personal Services	4.5%
Fabricators, Assemblers, and Hand Working Occupations	4.3%
Material Recording, Scheduling, and Distributing Clerks	3.3%
Total	<u>63.5%</u>

Source: Mehta, Theodore, Mora and Wade, forthcoming.

That many immigrants in Chicago have turned to day labor agencies as a source of employment opportunities should not be surprising since, as a labor market intermediary, these agencies control large numbers of job vacancies. A recent survey of 1,645 immigrants of various nationalities living in the Chicago area asked respondents to identify past and present employers. Findings show that 16.2% of immigrants surveyed reported that their current employer is a temp agency, a figure that is more than five times greater than the 3.2% of Chicago metropolitan area employment (Mehta, Theodore, Mora and Wade, forthcoming). Many day labor agencies actively recruit immigrants by advertising in languages other than English, by hiring bilingual office staff, and through the location of agency offices in port-of-entry immigrant neighborhoods. Map 1 (see appendix) shows the location of day labor agencies within the Chicago metropolitan area. A clear pattern is in evidence which shows that numerous day labor agencies locate in areas with concentrated Latino populations. These agencies are using site location as a way to tap into localized labor pools of recent immigrants. This pattern is clear in the city of Chicago as well as in inner-ring suburbs such as Cicero and outlying areas such as Aurora, Elgin, and Waukegan.

For many immigrant job seekers, day labor agencies offer several benefits. Through day labor agencies, immigrants are able to overcome several obstacles typically encountered in the labor market. Agencies identify job opportunities, mediate workers' English language difficulties, help to transport workers to job sites, and represent workers to worksite employers.

In this role as labor market intermediary, day labor agencies supplement, and in some ways even supplant, traditional immigrant employment networks by performing functions such as identifying employment opportunities and assuring the quality of workers' abilities to employers. As day labor agencies have become integrated into immigrant employment networks, the geographic scope of immigrant labor markets has expanded. Yet, in many respects, immigrant employment prospects have not improved and, for some, in fact may have worsened. Although day labor agencies' employer contacts are far more numerous than those of any worker and extend far beyond the limited range of ethnic enclaves and the limited number of employer contacts held by a given immigrant social network, the types of jobs actually available to job seekers differs little from those ordinarily open to them (Table 2). Assembly, material moving, hand packing, and other entry-level blue collar jobs are those traditionally secured by immigrants through social networks, and day labor agencies seem to have simply reinforced

historic patterns of secondary sector employment among immigrants in urban labor markets. For some workers, securing employment through day labor agencies may actually diminish their long-run employment prospects since, in a day labor arrangement, workers' principal relationship is with the temp agency rather than the worksite employer. Given that temp jobs are, by definition, detached from job ladders within the firm, workers' prospects of upward advancement are further diminished.

**Table 2: Distribution of Temporary Agency Employment across Major Occupation Groups**

<u>Occupation</u>	<u>Share of temp agency employment</u>	<u>Share of total employment</u>
Production Occupations	30.6%	19.2%
Transportation and Material Moving Occupations	22.5%	10.8%
Building and Grounds Cleaning and Maintenance	9.9%	11.1%
Office and Administrative Support Occupations	4.1%	5.3%
Construction and Extraction Occupations	3.2%	5.5%
Personal Care and Service Occupations	2.3%	5.7%

Source: Mehta, Theodore, Mora and Theodore, 2001.

## **II. Day Labor and the Changing Contours of Immigrant Labor Markets**

Analyses of the labor market opportunities available to immigrants seeking entry-level jobs typically point to the neighborhood-work site nexus as being the foundation of workers' employment-related social networks. Although in many respects immigrants' social networks span considerable distances (many if not most immigrants are drawn to major U.S. cities through familial connections or other social relationships) that cross national borders and traverse vast geographic space, within urban areas where employment opportunities are typically identified and secured, these networks are substantially more circumscribed, both spatially and occupationally. Appropriately, recent research on immigrant employment often focuses on the opportunity structures encountered by these job seekers. Opportunity structures are understood as arising from complex interactions between the industrial structure of the local economy, the needs and perceptions of local employers, the established racial/ethnic/gender division of labor

within the local economy, and the skills, work experience, and expectations of immigrant job seekers. Together, these factors, which manifest themselves in locally specific ways, shape patterns of job entry and advancement as well as determine the nature and extent of the labor market competition encountered by immigrant job seekers.

Overlooked in the literature on the employment prospects of immigrants is the role that temporary staffing agencies increasingly are playing as labor-market intermediaries responsible for sorting workers and allocating jobs in urban labor markets. For job seekers without reliable or effective labor market contacts—whether they are recent immigrants or long-term residents—temp agencies offer a ready source of employment opportunities. Temp agencies employ sales staffs that aggressively call on local employers in an effort to secure additional work assignments. Staffing services that have been in business for even a short period of time develop a track record of service with employers and eventually win repeat clients and establish a brand name. With the success of staffing agencies in servicing the needs of worksite employers, greater shares of the job vacancies that arise in the economy have been turned over to the staffing industry to be filled, and temp agencies have become important “gatekeepers” in local labor markets. And although, at any point in time, only 3.2% of workers in the Chicago area are employed in the temp industry, certain occupations are disproportionately being “temped out” and an even larger number have been filled through temp-to-perm hiring. In the Chicago metropolitan area, 21% of workers in the hand packers and packagers occupation (OES 98902); 20% of workers in the other freight, stock and material handlers, hand occupation (OES 98799); and 17% of workers in the other helpers, laborers and material movers, hand occupation (98999), for example, are directly employed through temp agencies (Illinois Department of Employment Security, 2000), an indication of the importance that temp agencies now play in certain segments of Chicago labor markets. As employers have increasingly come to rely on temp agencies as a source of the workers for such occupations, securing jobs through temp agencies has become the most viable option available to many immigrant job seekers. In many neighborhoods in Chicago, Waukegan, Aurora, Elgin, West Chicago, and elsewhere, the largest local employers are now day labor agencies.

While agency-supplied day labor has been in existence in Chicago since at least the 1920s, in recent years it has expanded dramatically and now constitutes an important source of labor supply for factory and warehouse jobs in the Chicago area. Chicago’s transformation from

a Rust Belt city to a revived industrial center has coincided with the emergence of temping on a large scale (Peck and Theodore, 1998). Chicago's restructured economy is among the largest and most diverse temp markets in the nation, and as temping has spread across an ever wider range of industries and occupations, day labor has been integrated into the Chicago economy, becoming an important growth sector in its own right. Chicago's day labor industry, comprised of more than 70 temporary staffing agencies (Illinois Department of Labor, 2001), supplies thousands of workers to area job sites to fill orders for assemblers, hand packers, material movers, machine operators, and numerous other blue collar occupations in factories and warehouses. This "light industrial" segment of the temporary staffing industry is large and growing, comprising an estimated 30% of temp employment nationwide (Brogan, 2001). In Chicago, this segment of the staffing industry has enjoyed phenomenal growth, increasing from approximately 40 agencies in the mid-1980s to 70 in 2001. In the Chicago metropolitan area as a whole there are now 245 day labor agencies (establishments) registered with the State of Illinois (Illinois Department of Labor, 2001). With continued high levels of foreign immigration to the Chicago area, day labor agencies have found a ready supply of job seekers in search of employment opportunities. Agencies have been able to capitalize on their established contacts with local businesses and on a legal-regulatory environment within which the provision of flexible, contingent labor offers viable business opportunities for agencies, needed employment opportunities for workers, and significant cost savings for worksite employers.

Seen in this light, day labor temping can be examined as an identifiable labor market in its own right, one that operates according to a set of rules governing hiring, wages, working conditions, and advancement opportunities—and one that is associated with a particular set of labor market outcomes. To understand how these rules are created and enforced and to identify the contours of this labor market while also understanding the connections between day labor and other employment opportunities in the wider economy, it is necessary to isolate factors that lie on each side of this triangular relationship—in other words those arising with the worksite employer, the temp agency, and the worker. It is to such an analysis that we now turn.

## **Worksite Employers: The Demand for Day Labor**

The growing demand for day laborers and other temp workers is part of ongoing processes of workplace transformation that are altering the terms and conditions of employment for large numbers of workers. Historically, the use of contingent staffing arrangements has been viewed as something of an anomaly. Businesses' use of contingent workers has been explained as a reaction to market pressures, a necessary short-term strategy for competing during tough economic times. Only recently has consensus formed that contingent work is more than a short-run deviation from "regular business practices." Recent survey evidence indicates that the use of contingent workers is part of a broader reworking of standard employment arrangements. According to the National Association of Temporary Staffing Services (now the American Staffing Association), 90% of U.S. companies use temporary help services (NATSS, 1999). A survey of large companies conducted by OfficeTeam found that 82% have permanent line items for temporary workers in their human resources budgets (cited in *CPA Journal*, 1998). And a survey by Olsten Corp. found that 49% of manufacturers now use "blended" workforces, work systems designed to make use of temporary, outsourced, and part-time workers employed alongside regular, full-time workers (cited in *Quality*, 1998). Manufacturers reported that the leading reason for using blended workforces is to control labor costs—71% of manufacturers responding indicated that cost control was one of the benefits of workforce blending.

The findings from several national employer surveys have shed light on many of the reasons behind the growing use of contingent employment arrangements (Abraham, 1990; Houseman, 1997; Osterman, 1994, 1999). The findings from these surveys suggest that worksite employers make use of contingent workers for four primary reasons: (1) to lower labor costs; (2) to staff positions in volatile periods or in industries where demand is unpredictable; (3) to reduce expenses incurred through employment laws and related regulations (e.g., unemployment insurance and workers' compensation); and (4) to screen prospective regular employees.

Importantly, the reasons for hiring contingent workers identified above are not mutually exclusive. Rather, the decision to employ temp workers at a worksite is likely to be made as a result of several self-reinforcing factors: it lowers labor costs, it is convenient, it is relatively risk free, it reduces the need for cumbersome employee screening processes, it reduces unemployment insurance costs, it diminishes exposure to risks of employee grievances, and so

forth. Therefore, for many manufacturers in the Chicago area, day labor agencies resolve multiple problems. Agencies identify, recruit and screen prospective employees; they deal with the “hassles” associated with worker termination; they verify legal status; they process wage, tax, and other employment forms; they assist in figuring out transportation arrangements; and they allow worksite staffing levels to be better calibrated to production needs. Add to this the fact that employment through a day labor agency exerts a disciplining force on workers, not through direct supervision, but through the realities of labor contingency which serve to remind workers of the costs of dips in work effort. These are tangible benefits to manufacturing firms and especially to those establishments that are lower tier suppliers and onto which cost pressures are constantly being exerted by buyer firms and end users. For such establishments, opportunities to rein in costs are usually taken.

The competitive pressures facing many manufacturers that have given rise to the use of contingent staffing strategies exert a strong influence on the labor market opportunities and outcomes of low-wage immigrant workers. The nature of labor demand for temp workers drives heightened levels of instability and insecurity in the immigrant day labor market. Day labor is utilized as a cyclical buffer to guard against swings in the economy or fluctuations within product markets. For example, the temporary staffing industry shed more than 387,000 workers between September 2000 and April 2001 (Staffing Industry Analysts, 2001a, 2001b). Furthermore, in this latter month, job losses in the temporary employment sector accounted for nearly half of all job losses nationwide. For workers, this results in periodic spells of unemployment and disjointed work records which limit advancement opportunities.

The low level job requirements in most day labor assignments and large number of agencies competing in the Chicago area for this work reinforce the substitutability of workers and conspire to place inordinate leverage in the hands of worksite employers. In most markets for day laborers, worksite employers use their leverage to drive down billing rates and to demand greater services from day labor agencies (see Theodore and Peck, 2001). These price pressures translate into cost pressures on day labor agencies and ultimately wage and compensation pressures for workers.

## **Day Labor Agencies: Brokering Day Labor Demand and Supply and Managing Costs**

Industrial sectors of the Chicago area economy have turned to day labor agencies to assist them in implementing strategies of labor flexibility, calling on agencies to remove several constraints that otherwise limit the ability of employers to independently carry out flexible staffing strategies on a large scale. The first constraint is on the efficient recruitment and immediate deployment of workers on an as-needed basis. Whereas some firms maintain lists of on-call workers and direct-hire temps who can be recalled on short notice, in a tight labor market, the costs associated with recruiting direct-hire temps increases dramatically and additional costs may be incurred on the production side if job orders languish while awaiting needed workers. Day labor agencies help remove this constraint by performing the recruitment function and providing a ready source of labor for their clients.

A second constraint concerns the navigation of legal-regulatory responsibilities and costs associated with employing workers. In the vast majority of cases, day labor agencies are the legal employers of the workers they supply to business clients. Consequently, agencies assume responsibilities for paying wages and payroll taxes as well as ensuring compliance with many of the regulatory safeguards meant to protect employees from workplace abuses. Of particular importance in the role day labor agencies play in relieving their business clients of the responsibility for contributing unemployment insurance (UI) and workers' compensation taxes for their temporary workforces. Day labor agencies contribute UI and workers' compensation taxes for all of the workers supplied to business clients and, consequently, states hold the agencies responsible when those workers claim benefits. On the one hand this becomes a cost savings to business clients, while on the other it is a cost that must be borne by agencies. In a day labor situation, these costs can be significant. First, day labor is associated with dramatic seasonal, weekly, and even daily swings in employment. These swings stem in large part from the volatile nature of production in the current era where the most uncertain and least profitable aspects of production are often outsourced to suppliers, many of which turn to day labor agencies to provide labor flexibility. Second, given that day labor agencies by and large staff production sites and warehousing operations, the work is relatively dangerous and can result in mounting workers' compensation claims.

In the Chicago metropolitan area, like most major urban labor markets in the U.S., severe price competition between day labor agencies prevents agencies from passing increasing costs “upstream” onto clients in the form of higher billing rates. As is the case for the majority of temporary staffing agencies that supply low-wage workers, the dramatic increase in the number of agencies serving local markets has led to the creation of a highly price-competitive environment that has forced staffing agencies and their workforces to bear an increasing share of the costs of worker flexibility (Froud, Johal and Williams, 2001; Theodore and Peck, 2001). Price competition in the day labor and light industrial segments of the staffing industry has driven billing rates, and subsequently gross margins, to surprisingly low levels (Staffing Industry Analysts, 2000). Table 3 presents estimates for billing rates and average gross margins (the bill rate per hour for day laborers less total labor costs) for two light industrial occupations—shipping and receiving clerk and helper/production worker. In these calculations, gross margin figures do not account for agency operating expenses outside of the direct costs of compensating workers, so agency profit margins will be even thinner than the 12%-16% indicated in Table 3. Given the high degree of price competition in the day labor segment of the temporary staffing industry, day labor agencies have few avenues through which to recover costs (and to maintain or grow profits). Agencies’ cost-recovery strategies therefore must rely on reducing the costs of doing business by containing administrative overhead, holding down wages paid to day laborers, and reining in employment taxes such as unemployment insurance and workers’ compensation. Other strategies include charging workers for the cost of transportation to job sites or for the use of safety equipment. One national chain of day labor agencies began distributing paychecks via automated teller machines and charging workers a fee for the use of the machine. This innovative practice increased company revenues by 1.5%

**Table 3: Estimated Billing Rates and Gross Margins in the Temporary Staffing Industry, Selected Occupations**

<b>Shipping &amp; Receiving Clerk</b>			
Bill Rate			\$12.20
Wage		\$8.99	
Legally Required Benefits		\$1.30	
Total Labor Costs			(\$10.29)
Gross Margin (Bill Rate - Total Labor Costs)			\$1.91
<i>16% of Bill Rate</i>			
<b>Helper – Production Worker</b>			
Bill Rate			\$9.35
Wage		\$7.19	
Legally Required Benefits		\$1.04	
Total Labor Costs			(\$8.23)
Gross Margin (Bill Rate - Total Labor Costs)			\$1.12
<i>12% of Bill Rate</i>			

Source: authors' calculations based on Bureau of Labor Statistics Occupational Employment Survey, 2000; Institute of Management and Administration Inc., 1999; and Wiatrowski, 1999.

### **Immigrant Job Seekers: The Supply of Day Labor**

For immigrant job seekers, especially those with limited skills, poor English-language fluency, and modest work experience, the Chicago labor market may seem large, fragmented, and difficult to navigate. Following decades of employment decentralization, job opportunities in the Chicago metropolitan areas are not always easy to identify and transportation may be difficult to arrange (see Immergluck and Wiles, 1998). For these workers, day labor agencies offer a point of entry into the labor market. These agencies cultivate relationships with worksite employers which allow them to “capture” a certain number of job vacancies which in turn can be allocated to workers on a daily or weekly basis. To have an opportunity to be assigned to one of

these jobs workers are rarely required to demonstrate prior work experience nor must they possess specialist credentials or produce verification of educational attainment. For most, the willingness to accept a low-wage assignment and to wait until one becomes available is all that is required. Day labor agencies will arrange work assignments, dispatch workers to worksites, help with transportation, and represent workers to employers. In other words, many of the tasks associated with job search are assumed by the agency and employment with a temp agency allows job seekers to enter a pre-defined relationship between agencies and worksite employers.

As shown in Table 4, the top light industrial occupations filled by temp agencies in Illinois tend to be low-wage jobs, with most paying entry-level wages below \$7.00 an hour. The occupations with the highest temp industry penetration are (1) hand packers and packagers; (2) other freight, stock and material handlers, hand; (3) other helpers, laborers material movers, hand; and (4) machine forming operators (metals). These positions involve routine, yet hard work and usually are not linked to defined career ladders. Both the skills required for these jobs and the skills learned on the job are basic, meaning that there are few obvious routes of advancement to better employment. Add to this the instability that is associated with day labor and it is clear that this form of temporary employment has many drawbacks, not least of which is the low monthly earnings of day laborers.

**Table 4: Light Industrial Temping in Illinois, 2000**

Occupation	Mean Wage Entry Level	Mean Wage Experienced	Temp Agency Workers in Occupation	Temp Agency Penetration Rate
<i>Hand Packers &amp; Packagers</i>	\$6.05	\$8.91	12,132	21%
<i>Other Freight, Stock &amp; Material Handlers, hand</i>	6.65	11.08	7,815	20%
<i>Other Helpers, Laborers and Material Movers, hand</i>	6.18	12.93	15,395	17%
<i>Machine Forming Ops Metal</i>	7.22	11.90	1,640	11%
<i>Other Hand Workers</i>	5.84	8.92	2,232	9%
<i>Industrial Truck &amp; Tractor Operators</i>	8.62	15.43	1,987	9%
<i>Other Machine Operators</i>	6.67	12.52	2,072	9%
<i>Packaging &amp; Filling Machine Operators</i>	7.51	12.39	801	4%
<i>Stock Clerks: Stockroom and Warehouse</i>	6.84	11.84	1,326	3%

The low wages paid to day laborers and the instability in work schedules that is inherent to temporary employment in many respects stem from conditions present on the demand side of the labor market. The intermittent nature of most temporary job assignments means that temporary-agency workers spend a significant amount of time involuntarily unemployed. A recent study of UI reciprocity rates for workers in nonstandard employment arrangements found that temporary-agency workers were unemployed at a rate of 40 percent compared to 10 percent for all adult workers (Vroman, 1998). An Upjohn Institute study on job stability among workers in flexible staffing arrangements found that the probability of being unemployed was anywhere from 1 to 4.5 percent higher for temporary-agency workers compared to workers in standard employment relationships (Houseman and Polivka, 1999). The Upjohn Institute study also found that the unemployment rate among temporary-agency workers was 12 percent compared to 2.4 percent for full-time workers in standard employment relationships. As noted above, many of the worksite employers that now rely on day labor are positioned in the most cost-competitive segments of their respective industries. Cost pressures and risk flow downward in these supplier relationships and, with the advent of large scale day labor temping, these pressures are, to a large degree, being transferred onto the labor force. What this means for workers is that worksite employers are using temping as an important mechanism of labor force adjustment and cost containment. As long as there are a sufficient number of day labor agencies operating in the Chicago metropolitan area, the competitive dynamics in the day labor industry will hold wages down and maintain existing high levels of employment insecurity.

### **Policy Proposals**

State policy could most efficiently address the instability and inadequate wages and compensation created by the day labor industry by:

1. shifting costs and liabilities associated with employing temporary workers upstream onto worksite employers; and
2. re-internalizing costs of doing business within the joint-employer relationship that staffing agencies have shed onto the day labor workforce.

Worksite employers in a day labor staffing arrangement exert the greatest influence over the wages, working conditions, and employment opportunities for day laborers. However, most employment and labor policies relevant to the staffing agency-business client relationship

consider the staffing agency the primary employer and therefore hold the agency primarily responsible for maintaining adequate working conditions for its workforce. In some cases, such as federal discrimination and wage and hour laws, the worksite employer and the staffing agency are considered jointly liable for compliance. However, in practice, worksite employers have shed legal liability for their temporary workforces, despite the fact that they are directly responsible for assigning job tasks, supervising work, and determining working conditions.

Some may argue that job instability is by definition a built-in outcome of the day labor market and any attempts to regulate the market to reduce instability would only result in a decline in employment opportunities for day laborers. However, instability carries costs for workers and society. Therefore, it is acceptable for government to define instability that is a direct outcome of even the most credible of flexible staffing strategies a cost of doing business and subsequently ensure that employers internalize the cost of adopting such strategies. Furthermore, while some instability is an unavoidable outcome of broader changes in the labor market, evidence indicates that all of the demand for day labor is a result of a truly flexible staffing strategies. Some worksite employers outsource permanent job slots to day labor agencies, churning different workers with short-term assignments through the same job slots with the almost sole purpose of cutting unemployment insurance and workers compensation related costs. In a recent study of homeless day laborers in Chicago, close to 80% said they worked alongside permanent workers (Theodore, 2000). While the survey was unable to explore the question of whether the jobs worked by day laborers would otherwise be performed by regular, full-time workers, the regularity with which most day laborers work as well as anecdotal evidence suggests that this is certainly the case. There is a role for employment policy to eliminate destructive employment instability created by this type of strategy.

Most policy to date relating to the wages and compensation of day laborers has focused on eliminating abuses that lead to the underpayment of workers and these efforts should continue. Cost pressures, largely driven by the demands of worksite employers, influence agency business strategies which in turn involve pushing some of the costs of doing business—such as costs associated with transporting workers, providing safety equipment, offering meals, and check-cashing—onto day laborers in an effort to grow or maintain profit margins. Policy should ensure that these costs are shared by the worksite employer and temp agencies rather than being incurred by day laborers.

Illinois lawmakers will find that there are several policy options at their disposal to accomplish these goals. Indeed, lawmakers already began to address problems associated specifically with the day labor industry when they passed the Day Labor Services Act in 1999. The law establishes registration procedures, limits fees that can be charged to workers, and provides other moderate protections for day laborers. The following policy proposals will suggest options for amending current workers' compensation and unemployment insurance rules to improve the outcomes of workers in the day labor industry and strengthening the Day Labor Services Act.

### **Workers' Compensation**

Workers' compensation is not only central to maintaining a safe workplace, but also central to many worksite employers' decisions to outsource work to day labor agencies. Nearly all employers are required to carry workers' comp insurance on their employees. In return for carrying this insurance, employers are extended protection from any legal action taken by injured workers. Workers' comp rules only allow injured workers to collect workers' comp benefits to pay for the medical and related costs associated with their injury—the “exclusive remedy” for injuries that occur as a result of the job.

Workers' comp insurance accounts for nearly 2% of the total cost of employing labor and its share of employers' total labor costs is steadily rising. This cost is often cited as the most significant cost-related reason employers' choose to “temp out” production work. The actual cost incurred varies by the number of claims filed against the employer. By maintaining a safe workplace that limits the number of claims made by employees, employers can limit their costs.

A worksite employer using day laborers obtained from a staffing agency, however, has little *cost incentive* to ensure that the day laborers have a safe working environment because the cost-related impact of any claims made will fall on the staffing agency, not the worksite employer. Furthermore, the current application of workers' comp rules in all but two states extends the benefits of “exclusive remedy” to worksite employers even though they do not directly pay into the workers' comp fund. Therefore, in Illinois and most other states, even if a worksite employer does not provide a safe working environment for temporary workers procured through a day labor agency, the worksite employer is protected from legal liability under the

“exclusive remedy” provisions. As a corrective measure, states should hold the entity that is responsible for supervising temporary workers responsible for workers’ compensation contributions to cover those workers. In a day labor arrangement, this almost always would mean that the worksite employer would be responsible for insuring their temporary workforce obtained through a staffing agency.

California recently enacted a law that could serve as a model for Illinois. The law, an amendment to the Contractors' State License Law, defines licensed contractors as the employer of any workers supplied by temporary staffing agencies for the purposes of applying workers’ compensation rules and other areas of employment law. This law offers two improvements over existing laws. First, the employer responsible for supervision is now held accountable for the costs of insuring workers and, therefore, creates stronger incentives for adequate worksite supervision. Second, the law eliminates existing problems of accountability (worksite employers supervises the work but does not pay into the workers’ comp fund yet is still protected from lawsuits).

## **Unemployment Insurance**

Addressing the problem of job instability and chronic unemployment in the day labor population will require an overhaul of UI laws that in their current form do little to discourage employers from chronically laying off their temporary workforces. Temporary staffing agencies contribute UI taxes for all workers they supply to their business clients and, consequently, states hold the agencies responsible when those workers claim UI benefits. Generally, states will penalize employers that layoff workers who go on to claim UI benefits by increasing their UI tax rates. The system of calibrating employers’ tax rates to their layoff experience is commonly known as “experience-rating.” In part, the states’ intent in experience-rating UI tax rates is to deter employers from engaging in chronic, temporary layoffs.

The effectiveness of the deterrence, however, is potentially compromised when staffing agencies become the legal employer of their clients’ temporary workforces. When a worksite employer cancels an order for temporary workers and these workers become unemployed and claim UI benefits, the costs associated with these benefits are directly borne by the staffing agency. Thus, the UI tax in such cases does not operate as a disincentive to worksite employers

intending to layoff their temporary agency workers. This is of particular importance from a policy standpoint considering that temporary workers disproportionately experience unemployment arising from patterns of temp-worker use by worksite employers (Mehta and Theodore, 2001).

To remedy this failure of UI policy and to adequately respond to rising unemployment rates of workers placed by day labor agencies, states should revise UI policy instruments to internalize the UI-related costs of laying off temporary-agency workers into the operating budgets of worksite employers. For example, states could require worksite employers to contribute UI taxes for all procured temporary agency workers. Under such a policy, states would charge UI claims made by temporary workers to the accounts of worksite employers where workers held their last or primary job assignment. Temporary staffing agencies could continue to perform all payroll functions for their clients and shoulder the legal and financial responsibility for other areas of employment and labor law. However, worksite employers would carry the responsibility for insuring procured temporary- agency workers against involuntary unemployment.

Some states regulate employee-leasing (long-term staffing) arrangements in this manner. Currently, only Kentucky defines the business client as the legal employer of leased employees for the purpose of determining liability for UI contributions (Lenz, 1997). Similarly, although less explicit in their intent, several other states hold the entity that supervises, controls the work of, and has the authority to terminate leased employees—most often the worksite employer—responsible for UI tax contributions. In these cases, states experience-rate worksite employers' UI tax rates for the benefit claims of its leased employees.

Rather than requiring worksite employers to make UI contributions for procured temporary agency workers, states could instead weight UI tax rates of worksite employers that use temporary staffing agencies to account for the UI claim experience of the TSI. States may prefer the weighting option rather than holding worksite employers directly accountable for UI tax contributions because it requires fewer changes to current payroll arrangements between temporary staffing agencies and their clients. Some states weight employers' UI tax rates to account for the UI claims experience of the industry in which they operate, the reason being that the risk of unemployment within an entire industry is reflected to some degree upon all the firms that comprise that industry. Comparably, worksite employers are responsible for a significant

share of the risk of unemployment within the TSI. Therefore, states should weight worksite employers' UI tax rates to reflect the layoff experience in the TSI.

Minimally, states should address the low UI reciprocity rates faced by temporary-agency workers by altering eligibility requirements. States should target inherent biases against unemployed temporary agency workers in UI rules that relate to earnings thresholds, benefit levels, and the definition of a voluntary quit (see NELP, 1997 and NELP, 2001 for a thorough discussion of policy alternatives for restoring the UI safety net for contingent workers).

1. Reduce earnings thresholds to expand eligibility

Reducing both the aggregate base period earnings and high quarter earnings thresholds would expand eligibility to temporary-agency workers. Studies indicate that earnings thresholds significantly impact the rate of UI reciprocity among low-wage workers. For example, a General Accounting Office (2000) study found that a \$1,000 increase in minimum earnings requirements, holding other policy factors constant, decreases UI reciprocity rates by nearly five percentage points.

Temporary workers face disadvantages under most UI eligibility rules related to base period earnings partly because they tend to earn less than their counterparts in standard employment relationships. Analysis of the 1999 contingent worker supplement to the Current Population Survey (CPS) indicates that part-time and full-time contingent workers consistently earn less per week compared to their counterparts in standard employment relationships (Hipple, 2001). Furthermore, examination of earnings characteristics of unemployed temporary-agency workers from the March supplement to the CPS from 1993-2000 indicates that median hourly wages is significantly and positively correlated to the incidence of receipt of unemployment compensation benefits.<sup>1</sup>

The other disadvantage low-wage temporary agency workers face in securing eligibility is the difficulty in obtaining consistent work assignments. According to the GAO, current average base period earnings thresholds are attainable for minimum-wage workers in all states if they work 20 hours per week for 40 weeks during the base period (GAO, 2000). However, the

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<sup>1</sup> The correlation coefficient of -.129 was significant at the .01 level.

study found that eligibility of minimum-wage workers becomes less attainable if they work fewer than 40 weeks over the course of one year.

Lowering earnings requirements may also increase the share of unemployed temporary-agency workers applying for UI benefits. According to results from a 1993 supplement to the CPS designed to examine the characteristics of UI recipients, 15 percent of job losers (involuntarily unemployed persons) did not even file for benefits because they believed they had not worked or earned enough to be eligible—the most common reason for non-filing among job losers (Wandner and Stettner, 2000).

## 2. Increase benefit levels

Increasing benefit levels may also increase the rate of UI application among low-wage temporary-agency workers. On average, state UI programs replace 33 percent of claimants' average weekly earnings (Wenger, 2001). Based on this estimate, a typical full-time temporary-agency worker that earns \$470 per week, the national average weekly earnings for temporary agency workers, could only expect to receive \$155 per week in unemployment compensation (authors' calculations based on Hipple, 2001).<sup>2</sup>

Existing research on recipiency rates indicates that increasing benefit levels would positively impact the number of unemployed persons claiming UI benefits. Anderson and Meyer's (1997) model of UI take-up rates found that increasing benefit levels by 10 percent would increase the UI recipiency rate for all workers by 2 to 2.5 percent. The GAO (2000) estimates a 4 percent decline in UI recipiency for every 10 percent drop in replacement of earnings.

## 3. Change voluntary quit rules to allow search for full-time work rather than returning to staffing agency for assignment.

In the interest of helping temporary agency workers move from unstable to more permanent employment, states should allow temporary agency workers the opportunity to seek permanent work and still claim unemployment compensation even if temporary assignments are

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<sup>2</sup> Also at issue is the negative impact on UI application rates of the average four-week time lag between application for benefits and payment of benefits.

available. In most states, however, a voluntary quit or refusal of new assignments would disqualify temps from eligibility. According to a survey conducted by the U.S. Department of Labor in 1994, of our target states, only Massachusetts and New York allow workers under some circumstances to voluntarily quit temporary work assignments in order to search for permanent work (Chasanov, 1995). California, Illinois, Texas, and Washington will only sometimes allow workers with a history of temporary work to refuse new temporary work assignments to search for permanent work and remain eligible to collect UI. Texas and Florida disqualify temporary workers from UI eligibility if they do not return to their staffing agency upon completion of job assignments prior to filing claims for UI.

Appropriately, states should not charge temporary staffing agency accounts for claims by temporary agency workers refusing suitable temporary assignments if the agency was able to offer the worker another suitable job assignment. States allow some UI benefits to go uncharged because of the reason for job separation. For example, a person who involuntarily leaves their job because their spouse was forced to move out of town for work may still remain eligible for UI compensation. In such cases, states will not charge the claimant's benefits to their previous employer(s). Similarly, states could encourage temporary workers to seek permanent work without punishing temporary staffing agencies by providing uncharged UI benefits to temporary workers for the length of their job search.

### **Illinois Day Labor Services Act**

When state lawmakers enacted the Day Labor Services Act, which became effective in January 2000, they instituted a new set of rules specifically designed to track and regulate staffing agencies engaged in the business of providing day laborers to work for a contractor. Currently, nearly 250 establishments in the Chicago metropolitan area have registered as day labor agencies under the law's registration provisions.

Key provisions in the law include the following:

- *Transparency*

Day labor agencies must provide day laborers with information detailing the name and nature of work to be performed, wages, destination of the work assignment, terms of

transportation, and whether a meal or equipment will be provided, and the cost of the meal and equipment, if any. Agencies must also notify day laborers if they are sending them to a workplace where a strike, lockout, or other labor trouble exists. Finally, agencies must provide day laborers with an itemized statement of wages and deductions with each paycheck.

- *Fees/Deductions*

If a meal is provided, agencies cannot charge day laborers more than the cost of the meal and agencies cannot force day laborers to buy the meal after you accept the job assignment. Agencies cannot charge day laborers more than the actual cost of transportation (no more than 3% of their total wages for the day). Agencies cannot charge day laborers for the cost of equipment or clothing unless they fail to return the equipment or clothing at the end of the assignment. Finally, agencies cannot charge day laborers a check-cashing fee.

- *Work Conditions*

Agencies must provide adequate seating and bathroom facilities at the day labor hall and agencies cannot restrict the right of day laborers to seek permanent employment.

- *Enforcement*

The Illinois Department of Labor (IDOL) is in charge of enforcing the Day Labor Services Act. IDOL established a toll-free number for day laborers to call-in complaints about their day labor agencies and work assignments. All day labor agencies are required to register with IDOL. If an agency fails to comply with any of the provisions of the Act, IDOL has the authority to temporarily revoke their registration until the breach is corrected.

The Act is significant in that it prevents day labor agencies from engaging in some of the more common strategies for recovering costs from workers such as, charging exorbitant fees for transporting workers to job sites, and charging fees for cashing checks and for the use of miscellaneous equipment or clothing necessary to perform the job. The registration provision of the Act is also significant in that it, for the first time, distinguishes between day labor agencies and other staffing agencies that engage in the business of supplying longer-term temps to

business clients. The poor working conditions for day laborers is unique and requires, therefore, a unique set of rules to address the problem.

The Act, however, has its limitations, the most significant being the lack of adequate enforcement provisions. The maximum penalty for violating provisions in the Act is only a temporary suspension of the registration that prevents a day labor agency from legally operating. To date, it is unknown whether the IDOL has ever suspended the registration of a day labor agency for violation(s) of the Act. While in recent months, the IDOL has responded greater urgency to complaints filed by day laborers, anecdotal evidence provided by community organizations working with day laborers suggests that day labor agencies continue to engage in practices that violate the Act with few if any repercussions. Lawmakers should amend the Act to provide the Illinois Department of Labor with stronger enforcement mechanisms such as the power to invoke fines and the power to suspend a day labor agency's registration for longer periods of time. Such provisions would provide a greater incentive for agencies to abide by the law.

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