



University of
New Haven

American Business Review

Volume 20 | Number 2

Article 1

6-2002

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Recommended Citation

(2002) "The Contingent Workforce: Challenges and New directions," *American Business Review*. Vol. 20 : No. 2 , Article 1.

Available at: <https://digitalcommons.newhaven.edu/americanbusinessreview/vol20/iss2/1>

The Contingent Workforce: Challenges and New Directions

Peter Allan

INTRODUCTION

Businesses and not-for-profit enterprises have come to rely on workers who are hired on a temporary or contingent basis, for periods lasting from a few days to years. In fact, many organizations regard temporary workers as a critical part of their personnel strategies. It has been estimated that about 90 percent of U.S. employers use temporary workers (Von Hippel, Mangum, Greenberger, Heneman & Skoglund, 1997). These differ from permanent or core workers, who typically have full-time, long-term jobs, and who enjoy benefits such as pensions, health insurance, and vacations that are usually not available to temporary workers (Segal & Sullivan, 1997). Contingents have sometimes been called "disposable workers". Use of contingents has been referred to as "just-in-time staffing", a term derived the Japanese just-in-time system of automobile production (Bureau of Labor Statistics, 1999).

The temporary workforce consists of workers who are traditionally thought of as temporary: those brought in to deal with unexpected increases in workload, to cover employee absences, to handle special assignments, or to work on projects of short-term duration. Some may work as temporaries that supplement the regular workforce and some positions have been staffed only with temporaries. They may be hired directly by an employer or through a temporary-help firm. Other types of contingent workers include part-time workers who work less than a regular workweek on an ongoing basis, and self-employed independent contractors hired to handle specialized tasks and who are paid on a fee basis (Von Hippel, Mangum,

Greenberger, Heneman & Skoglund, 1997).

The independent contractors have been called "free agents" (Pink 2001). According to Pink, free agents are highly skilled workers who prefer working independently on projects for a variety of clients. Pink estimates that there are about 16 million such contractors in the American workforce, a number that has grown in recent years. In response to the increase in independent contractors, firms have been established to serve as agents for them, providing them with billing and collection services, group insurance rates, job listings and other types of assistance and support (Workplace Visions, 2000). It has been estimated that more than five percent of independent contractors earning more than \$ 75,000 a year have their employment contracts negotiated by agents (Pink, 2001).

Estimates of the size of the contingent workforce vary widely, partly because of the way contingents are defined. Some estimates have placed contingent workers as high as 35 percent of the U.S. workforce; others have estimated only 4.9 percent (Barker & Christensen, 1998; Hershey, 1995). What is clear is that contingent workers are a large and important component of the U.S. workforce. Some observers go further and predict that the temporary workforce will grow faster than the permanent one for years to come (Feder, 1995). Additional evidence of the growing importance of the temporary workforce is that Manpower, a temporary staffing company, is now recognized as one of the largest employers in the U.S (Schellhardt, 1995). Furthermore, there has been an enormous increase in the number of tem-

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porary employment agencies: from 100 agencies 15 years ago to about 1500 agencies today (Von Hippel, Mangum, Greenberger, Heneman & Skoglund, 1997).

Although the temporary workforce as a whole has grown greatly, the most rapid growth in recent years has been in professional, technical, and managerial temporary workers. Some estimates place the number of these types in the hundreds of thousands, constituting perhaps 20 percent of the total contingent payroll in the U.S. (Aley, 1995). The dramatic increase in the demand for temporary professional and technical workers has led to the formation of temporary employment companies that specialize in supplying these types of workers.

A survey of more than 400 vice presidents and human resource management directors throughout North America by the Olsten Corporation, a large staffing services company, revealed that almost a third of the companies were using contingent professional staff for a variety of departments, including marketing, human resources, and other functional areas. High tech firms and fast-growing companies were most likely to employ professionals (Mc Shulskis, 1996).

Other areas in which the use of temporary professionals and technical workers have been increasing include: temporary reporters and photographers in large metropolitan newspapers, law school graduates as temporary attorneys in law firms, accountants, nurses, physicians, substitute school teachers, adjunct college faculty, executives, chief executive officers, and college presidents (Barrett, 1997; Berry, 2001; Bryant, 1998; Calamba, 1996; Freudenheim, 2001; Lancaster, 1998; Tejada, 2001; and Thompson, 1998).

There has been explosive growth in the use of temporary professionals in the high-tech area — highly educated workers skilled in new technologies (Egan, 1996; Wysocki, 1996). High-tech companies, such as Microsoft and Silicon Graphics, as well as telecommunications giants AT&T and Northern Telecom, have been relying more and more on temporary staff to work as computer systems analysts, computer programmers, engineers, and technical writers (Gallaga, 1996).

The U.S. is not alone in its reliance on contingent workers. Large Japanese firms have long used them to buffer their core employees from unemployment. Furthermore, the use of contingent workers is increasing in Canada and Mexico, and in Europe, especially in the Netherlands, Great Britain, Spain, Sweden and France (Andrews, 1999; Andrews 1997; Cooper & Kamm, 1998; Frazee, 1997; French, 1999; Gunderson, 2001; Simons, 1997; Strom, 2000; Strom, 1998; and Thaler-Carter, 1999).

Although the temporary workforce has grown in recent years, is this only a transitory phenomenon likely to disappear in coming years? Will the need for contingent workers decrease in years to come or will the temporary workforce continue to be an important

factor in modern economies? Eight major forces and trends suggest that the contingent workforce will remain an important part of modern economies.

FORCES AND TRENDS FAVORING THE USE OF A TEMPORARY WORKFORCE

1. Global Interdependence of Economies

Businesses and national economies have become increasingly interdependent. What affects business and employment in one country or geographic region may have repercussions in other parts of the world. Economic shocks in eastern Asia will likely be felt in the U.S., Europe, Latin America, and elsewhere. Accordingly, businesses need to be vigilant and be ready to respond quickly to sudden, unexpected, or unforeseen changes in far away places.

Sudden downturns in economic activity abroad may require companies to make rapid adjustments in production, with accompanying changes in levels of employment. Companies with large numbers of permanent, full-time employees may find it difficult to reduce their head counts quickly, especially if they are concerned about the pain such cuts would inflict on their people. Therefore, it behooves employers to maintain a lean workforce of core employees and to have a body of contingent workers who could be more readily cut back as the need arises. Hence the use of contingents gives employers the flexibility to meet sudden changes in business arising in the global marketplace.

Paralleling the rise of the global company has been the globalization of temporary help firms that are major suppliers of temporary workers. In order to be able to continue to provide temporary employees to their clients that are operating or expanding internationally, temporary staffing companies have also been expanding beyond their borders by opening branches abroad or by acquiring temporary-help firms in other countries (Rose & Dubois, 1996).

2. Increasing Flexibility in European Work Rules

Traditionally, West European governments and labor unions have imposed strong job-protection rules, which made it extremely difficult and costly for employers to lay off full-time workers during business slowdowns. Because of inflexible workplace rules, employers have been reluctant to add full-time workers, even when business was good. To staff their businesses, many employers began turning to contingent workers, even though governments mandated that contingents be paid as much as full-timers. Employers have been finding that contingents are an attractive alternative because they can be let go when business slows without the restrictions of laws covering hiring and firing of full-time workers (Cooper & Kamm, 1998).

In many European countries, the numbers of temporary and part-time jobs have increased dramatically

over the past 15 years. In fact, they have become the most important source of new jobs, partly because some governments have actively encouraged the use of contingents to combat unemployment. This trend is likely to continue as governments strive to promote economic growth and to attain high employment levels (Andrews, 1997).

3. *Competitive Pressures*

Intensifying competitive pressures have been caused at least in part by global interdependence. Such pressures may require firms to maintain or increase productivity at least partly by cutting variable and fixed labor costs. Downsizing has been a popular strategy for shaving costs by reducing head counts and then maintaining a lean organization. This sometimes has meant working downsizing survivors harder and for longer hours. Costs have also been cut by reducing wages and benefits, cutting back on training, and lowering recruiting and hiring costs. Temporary workers who typically are paid less and have fewer benefits than regular workers, and who are recruited, hired, and trained by temporary-staffing firms, can help employers achieve their cost-cutting goals. Also, temporaries may work harder than permanents because they may be trying to become full-timers (Von Hippel, Mangum, Greenberger, Heneman & Skoglund, 1997).

Firms are experimenting with different ways to keep a lid on labor costs while maintaining flexibility in production. For example, some companies use what is called "accordion scheduling" to prevent overstaffing and thereby hold costs down. The numbers of temporary and part-time workers are adjusted day-to-day and even in the middle of a work shift in order to use only the absolute minimum number required (Uchitelle, 1999).

4. *Growth in Numbers of Small Businesses*

The strong U.S. economy in the 1990s, the increase in corporate outsourcing of functions, round after round of corporate downsizing, and the lure of being one's own boss, helped spur an increase in the number of small businesses. Unwilling or unable to handle functions such as recruiting and selecting workers, benefits, payrolls, workers' compensation and unemployment insurance claims, and reluctant to employ a permanent workforce to handle these activities, some small businesses outsourced these functions to temporary staffing firms that provide their services for a fee.

In addition to relieving the business owner of onerous paper work and administrative burdens, such arrangements may bring cost savings because the staffing firms can capitalize on economies of scale. Further, the small employer is not saddled with the fixed costs of a permanent workforce because the arrangement with the staffing firm may be terminated at the end of the contract period (Trottman, 1998).

5. *Rapid Technological Change*

This has been one of the hallmarks of the U.S. economy, especially in the 1990s and into the 21st century. New industries have developed almost overnight in a new information age. Companies have had to employ highly trained and skilled workers in order to keep up with changing technologies or run the risk of being left behind. Knowledge workers on the cutting edge of technology are highly prized and sought after. However, employers may not always have needed talent on board or may not have the human or financial resources to develop it. Therefore, they must go outside the firm to recruit it. One source of workers with new and current knowledge is the contingent workforce — especially independent contractors or consultants who have up-to-date and relatively scarce expertise obtained by working in a variety of other firms. Consultants can be brought in as technical experts for important projects, such as new product development, and the design and installation of complex new information systems (Matusik & Hite, 1998).

6. *Proliferation of Mergers and Acquisitions*

The 1990s was a decade of numerous corporate mergers and acquisitions in a wide variety of industries. Consolidations were consummated to gain entry into new markets, to achieve greater efficiencies, to expand geographically, and for other reasons. The booming stock market probably facilitated some of these mergers. Many were between very large corporations and involved complex transactions.

While mergers and acquisitions frequently lead to layoffs because duplicate work and jobs are eliminated, they also provide some temporary job opportunities while the merger is being worked out. To lay the groundwork for the merger, a team of highly skilled workers, including attorneys and accountants, typically must be assembled rather quickly to conduct analyses and prepare necessary documents in a relatively short period of time. This type of project is short term, lasting for weeks or months, depending on the complexity of the transactions. Once the merger is completed, the job is ended and the team disbanded. Some temporary staffing firms, particularly those handling attorneys, get the bulk of their assignments from merger activity (Work Week, 1999).

In view of continuing competitive pressures and global interdependence of business, mergers are no longer confined to companies operating within any one country. Mergers and acquisitions across borders are becoming commonplace. Mergers between firms in different European countries, once a relatively rare occurrence, take place much more often today.

7. *Changes in the Relationship Between Employers and Employees*

The longstanding implicit social contract between

employers and employees seems to have come to an end in recent years. Lifetime careers with a single employer are becoming rarer; the notion of life-long employment with an employer is being replaced by life-long employability, whereby employees assume responsibility for developing knowledge and skills that will enable them to market themselves to other employers.

In an era exacerbated by continued downsizing, long-term commitments to employees and reciprocal employee loyalty to the employer may be things of the past. Employees may be less reluctant to leave for greener pastures because of uncertainty about the permanence of their employment. In any case, many employees who have left their employers have become independent contractors, marketing the knowledge and skills they acquired working for their previous employer. By working as contingents, they also may be able to add to their stock of knowledge and skills, thereby enhancing their employability.

The change in the employment relationship has had another, unintended effect: removal of the stigma of having a history of working for many firms during a lifetime. In the past, employees who worked for a single firm in their careers were deemed to be reliable, capable, and dedicated workers. Those who lacked a history of single-firm employment were seen as job-hoppers, suspect and unreliable, and therefore, poor hiring risks. Widespread downsizing has helped to change these views. People with varied work histories may be seen as desirable in that they may have gained additional skills and knowledge and have been exposed to different conditions, processes, and technologies, which may be useful to potential employers. This might be especially true of candidates who have worked for competitors. This is also likely to be true for people who have been downsized and have taken on a variety of temporary jobs either as contractors or as direct employees.

8. Changes in Employee Needs, Expectations, and Lifestyles

In addition to changes in the social contract between employers and employees, far-reaching changes in employee needs, expectations, and lifestyles have come to alter relations in the workplace. The dramatic increase in the number of working mothers and the rise of the two-career family have led to the demands for flexible working arrangements. Employees with family responsibilities have a need to devote time to their children and have come to expect their employers to help them by offering flexible working hours.

Another important trend affecting employees' needs has been the aging of the population. Many employees feel responsible for helping their parents in handling health and financial problems. Employees with responsibilities both for children and parents have been called the "sandwich" generation—feeling

pressures to help both the young and the old. Contingent work, especially part-time, is often seen as a solution to providing child and parental care because of the flexibility in hours and days worked.

The aging of the population has affected the contingent workforce in another way. Older workers who have retired sometimes want to work on less than a full-time basis in order to keep active and to earn extra income while leaving themselves time for leisure pursuits.

Swelling the ranks of retirees have been the numerous early retirement programs of companies that have downsized in recent years. Early retirees are usually younger than the typical retiree and are eager to find work. Again, contingent work (including part-time) is well-suited to meet their needs. Some employers, eager to capitalize on the skills and knowledge their retirees have accumulated over many years, offer them the opportunity to continue working at reduced hours.

Temporary work is also increasingly being seen as a way of life for some professional, technical, managerial, and executive people. They not only accept it, but even enjoy making a career out of working "on assignment." They prefer to work as contingents because they gain a sense of freedom by not having to make a commitment to remain with one employer long term. Others prefer the variety and challenge of working on different assignments for different employers. Still others like the flexibility in the number of hours and days worked because they are often free to pursue other interests.

CHALLENGES TO THE TEMPORARY WORKFORCE

The preceding forces tend to support the continued need for contingent workers. However, challenges have arisen in recent years which are likely to change the way the contingent workforce is deployed in the future.

1. Increased Labor Union Interest in Contingent Workers

Some labor union efforts have been directed at improving contingents' pay and benefits. For example, the International Brotherhood of Teamsters' strike of the United Parcel Service company in 1997 involved, among other issues, narrowing the gap in pay and benefits between full-time employees and contingents (Uchitelle, 1997). Other union efforts have sought to cover contingents in collective bargaining contracts. In 1999, the National Association of Broadcast Employees and Technicians reached agreement with three major television networks (ABC, CBS, and NBC) to cover contingents in their labor contracts (MacFarquhar, 1999).

Union organizing drives were bolstered considerably in August 2000 by a National Labor Relations

Board (NLRB) decision authorizing temporary workers referred by a staffing agency to join the same union as a company's permanent workers. Unions hailed the decision because by joining unions contingent workers' wages and benefits would be improved. Employers, on the other hand, believed the decision would result in increasing the cost of hiring contingents and would, therefore, discourage the use of temporary workers (Dreazen, 2000; Bryant & Gilson, 2000; Greenhouse, 2000; and Kulish & Tejada, 2000).

Unions have also been spurred to increase their efforts to organize the unorganized because of the long-term decline in union membership in the U.S. Contingents are being viewed as a neglected but potentially receptive source of new union members and unions have shown an interest in organizing them (Karr, 2000; Treasler, 2000). Unions have also been urged to meet the needs of nonmember contingents by offering them affiliate membership to enable them to buy low-cost health insurance coverage. Eventually affiliate members might become full union members (Barker & Christensen, 1998).

Taken together, the developments cited above could well have a chilling effect on employers' use of contingents.

2. Application of Equal Employment Opportunity Law to the Contingent Workforce

Both the staffing agencies that supply contingent workers and employers must comply with equal employment opportunity (EEO) laws and regulations that prohibit discrimination against applicants and employees on the basis of their race, sex, religion, national origin, age, or disability. In December 1997 the U.S. Equal Employment Opportunity Commission (EEOC) issued its Guidance on Contingent Workers addressing how the key federal EEO laws (Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans With Disabilities Act, and the Equal Pay Act) apply to contingent workers. The Guidance also describes the factors which determine whether the employer, the staffing agency, or both will be held liable for discriminating against contingents (Greble & Kirsh, 2000).

It is clear, then, that staffing agencies and employers must comply with EEO laws and EEOC regulations: Yet there is evidence that staffing agencies have discriminated against minorities (Guynn, 1999).

In view of the increasing attention of EEO regulatory agencies (Federal and state), employers must review their potential liabilities under EEO laws and reassess the benefits and costs of employing contingents.

3. Increased Legislative Protections for the Contingent Workforce

In most cases, contingents earn less pay and are far less likely to receive health or retirement benefits

than their permanent counterparts. Most contingents who have health insurance obtain it on their own rather than through an employer-sponsored plan. In addition, contingents generally do not have access to employer-provided pension plans and must take personal responsibility for retirement financial planning.

This disparity in wages and benefits between contingents and permanent workers may lead to demands for legislative protections for the contingents (Workplace Visions, 1999). Other proposals have called for amending the Fair Labor Standards Act and the Family and Medical Leave Act to make contingents eligible for coverage (Barker & Christensen, 1998). Since one of the advantages of using contingents is that they are less costly than permanent workers, government action to establish wage and benefit guidelines and other protections for contingents to reduce the disparity may discourage employers from hiring them.

4. Limitations on Employment of Independent Contractors

Deciding whether a worker is an employee or an independent contractor is not as simple as it may seem. Even courts have admitted that the distinction between the two is not always clear (Mc Dermott, 1999). Yet an employer has the responsibility of making a correct decision; making an erroneous one could be costly for the employer. The problem was highlighted in a class action lawsuit filed in 1992 against the Microsoft Corporation, in which individuals classified by Microsoft as independent contractors claimed they were actually regular employees and therefore entitled to the same benefits as the regular ones.

The lawsuit followed a ruling by the U.S. Internal Revenue Service (IRS) that Microsoft's free lancers and temporary employees were not independent contractors, but rather regular employees. The ruling was based on a 20-factor test that the IRS used to determine if a worker is an employee or an independent contractor.

The court ruled that Microsoft had indeed incorrectly classified some workers as independent contractors. Even though they had been hired for specific projects, some had been left on, working on successive projects for years. They worked on teams along with regular employees, had the same supervisors, performed identical functions, and worked the same basic hours as regular employees; further, the contractors were provided with office equipment and supplies. However, as independent contractors they were deemed not eligible for employee benefits as were regular employees (McDermott, 1999).

Subsequently, Microsoft agreed to pay \$97 million to thousands of temporary employees who had worked for the company from January 1987 to June 2000. The awards to individual employees, which averaged about \$10,000, were based on the amount of Microsoft common stock they would have been able to buy in

the company's discount stock purchase program if they had been allowed to as regular employees (Greenhouse, 2000).

As a result of the lawsuit Microsoft has sought to make it clear to the temporary workers it hires that they are not regular ones by limiting the length of their contracts to 365 days and then by requiring them to leave the company for at least 100 days. In addition, the company adopted a policy favoring temporary staffing agencies that provide more generous benefits to their temporary referrals (Greenhouse, 2000).

The problem is not confined to Microsoft. Other employers have wrongly classified as independent contractors thousands of full-time workers who should have been considered regular employees. Lawsuits have been filed against many employers by workers hired as temporaries who claimed that they were really regular employees entitled to the same benefits as the regular ones (Fray-Witzer, 2001).

The Microsoft settlement has sent a clear message to employers that it could be very expensive to misclassify workers and could well bring about important changes in the employment of contingents. It is too early to tell if the Microsoft decision will have a dampening effect on employer uses of contingents.

5. Promotion of Code of Conduct for Temporary Staffing Agencies

Non-profit groups of temporary workers have developed a code of conduct for temporary staffing agencies that calls for the agencies to give their lowest-paid workers a "living wage" and to provide health insurance, job training, paid holidays and other benefits (Pink, 2001). More than 35 such groups, some with labor union backing, have sprung up to promote the code in California, Massachusetts, New Jersey, New York, South Carolina and Wisconsin. These groups have sought to persuade dozens of city councils and county boards, as well as state legislatures, to use only agencies that subscribe to the code, thereby pressuring agencies to sign on.

While some agencies have signed the code, the overwhelming majority of the 7000 agencies in the U.S. have not, claiming that their costs (and those of their client companies) would skyrocket. The American Staffing Association, the group representing staffing agencies, has urged them not to sign the code, contending that it is a union-backed plot to make the industry look bad, raise costs, and drive workers into unions (Greenhouse, 2000; Trend Watch, 2000). If this movement spreads, it could lead to important changes for the contingent workforce.

In addition to the code of conduct, proposals have been made for states to consider adopting a certification process for temporary agencies that would ensure that the compensation and training provided by staffing agencies would equal that provided by the em-

ployers of contingents to their regular employees. Employers could be required to give preference to staffing agencies that were certified by the state. Such a requirement would in all likelihood drive up the costs of temporaries (Barker & Christenson, 1998).

6. Questions About the Cost Effectiveness of Contingents

One of the major reasons that employer cite for using contingent workers is to control or cut labor costs. Unlike regular employees, contingents are hired and paid only when needed. Contingents also typically are paid lower wages and are given few or no benefits (Hudson, 1999). However employer expectations about cost savings may not be realized. Employers typically lack information about how well contingents perform and whether or not they are a cost-effective resource (Barker & Christensen, 1998).

Questions have been raised about the productivity of contingents compared with that of regular employees. There are also training costs (including the time of supervisors) which are incurred when a new contingent is hired, an investment which may not be recovered because of the shorter job tenure of contingents. Further, in a period of downsizing and hiring freezes, understaffed managers may circumvent hiring restrictions by employing temporary and contract workers as replacements for downsized employees without counting them as payroll additions. Intended cost savings of downsizing are thereby lost. If employers come to experience doubts about the cost-effectiveness of contingents, then contingent employment may be curtailed or even eliminated

CONCLUSION

The forces and trends described in the first part of this paper make it likely that contingent workers will remain a significant component of the workforce. It is also quite likely that there will be significant changes in the contingent workforce and its deployment. The use of independent contractors will be greatly affected by the Microsoft decision and by litigation against other employers of independent contractors. The use of contractors may be curtailed and the ways in which they are employed will be modified.

Some writers have proclaimed the end of "free agency", that the "free agent nation" is obsolete. People who had previously relished the thought of being free agents, and who were downsized, have begun to look for regular employment that provides a steady income and employer-paid benefits (Elling, 2001). Others have reported that, as independent contractors, they felt isolated and missed being part of an organization. Some have chosen to return to regular employment because employers have become more flexible in accommodating employee needs (Leonhardt, 2000).

Pressures may be expected to increase to improve the wages of contingents, possibly approaching some

degree of parity with regular employees, and to extend health and pension benefits to contingents. Pressures will be exerted for voluntary changes by employers and staffing agencies or for governmental legislation. Other pressures may be brought to amend the Fair Labor Standards Act and the Family and Medical Leave Act to expand coverage to include contingents.

The trends described here present important challenges to the contingent workforce and point to probable new directions it will take. While it is impossible to predict the actual changes that will occur, what is certain is that the contingent workforce of the future and employer use of contingents will be different from what they are today.

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