

**“Nonstandard Work Arrangements in the Public Sector: Trends and Issues”**

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## **“Nonstandard” Work Arrangements in the Public Sector: Trends and Issues**

Item: In the early 1990s, the Los Angeles County Counsel created a nonprofit corporation called Auxiliary Legal Services as a means of obtaining additional personnel. The individuals whose services were procured through this arrangement were not technically employees of the county, were not protected by civil service laws and were not entitled to the benefits available to employees of the county ([www.bs-s.com](http://www.bs-s.com)).

Item: In March 2001, San Diego County Board of Supervisors passed an ordinance allowing the creation of up to 5,500 temporary positions to supplement its full-time workforce of approximately 18,000. Although the new Interim Temporary Worker position is subject to a six-month limit, there is no prohibition against serial reappointment. Compensation for these workers is lower than that of their Civil Service counterparts (Center on Policy Initiatives, 2001).

Item: A group of workers who worked for the city of Seattle for 17 years as “intermittent” janitors were found to have been incorrectly categorized by the city as temporary workers and improperly denied employee benefits (U.S. GAO 2000, 34).

Each item is a manifestation of developments relating to “nonstandard work arrangements” (NSWAs) in the public sector. As employed here, the term “nonstandard” refers to any work arrangement other than full-time, permanent work. Also counted as nonstandard are individuals whose services are acquired via a contractual arrangement with another organization. Examples of NSWAs include part-time, seasonal, and on-call workers, as well as temporary help agency and contract company personnel.

Recent interest in NSWAs derives from several sources. One is the Contingent Work Supplement (CWS) conducted biennially between 1995 and 2001 by the Bureau of Labor Statistics

(BLS). The CWS was conducted in February of each year as part of the monthly Current Population Survey. The CWS is the most extensive source of data on the extent to which NSWAs are being employed in the U.S.

Attention has also been brought to NSWAs by the worker rights community. There is growing apprehension among many in this community that a “dual labor market” is being created. According to Polivka and Nardone (1989),

Dual labor market theorists divide the labor market into primary and secondary markets. The primary market is characterized by jobs with relatively high wages, good working conditions, promotion potential, and employment security. In contrast, the secondary market is characterized by jobs with low pay, poor working conditions, and little advancement or job security

Workers rights advocates are concerned a) that the secondary labor market is growing, and b) that those participating in the secondary market are disproportionately from disadvantaged elements of the population, including minorities and women. BLS (2001) data show that both temporary help agency and on-call workers are disproportionately from these populations.

Interest in this phenomenon has also been forthcoming from the legal community. A number of recent court cases have centered on legal definitions of employment. Some firms have been accused of mis-categorizing employees as independent contractors, thereby evading their responsibilities as employers. By labeling individuals whose working conditions are in most respects the same as those of regular employees, as contractors, employers are exempted from various costs for which they would otherwise be obligated. Workers in such arrangements are also denied rights such as those available under the Family and Medical Leave Act to which they would otherwise be entitled. Perhaps the most

well-known case is *Vizcaino v. Microsoft*, where “perma-temps” worked in the same capacity as regular employees over an extended period of time, but were classified as independent contractors by Microsoft. The court found that Microsoft indeed misclassified these employees, who were regular employees in all respects except on the employer’s payroll.

Of particular interest in the public sector with regard to NSWAs is an expansion in the use of contract employees. The Brookings Center for Public Service (2003) recently estimated the employee equivalent of contracts entered into by the federal government at over 5.1 million, up by 700,000 in three years. However, interest here is less in investigating the “true size of government” (Light 1999) than in investigating the NSWA phenomenon in the context of human resource management in the public sector generally. We identify a host of issues related to NSWAs that warrant the attention of managers, policy makers, and academicians. First however, it is necessary to review alternative definitions of what constitutes a NSWA.

### **What Are Nonstandard Work Arrangements?**

A variety of definitions of what have alternatively been called, “nonstandard work arrangements,” “alternative work arrangements,” or “flexible staffing arrangements” have been offered. In the Contingent Work Supplement (CWS) the BLS used the term “alternative work arrangements;” in which were included independent contractors, on-call workers, temporary help agency workers, and contract company workers. BLS defined each as follows:

Independent contractors – “workers who were identified as independent contractors, independent consultants, or free-lance workers, whether they were self-employed or wage and salary workers.”

On-call workers – “workers who are called to work only as needed, although they can be scheduled to work for several days or weeks in a row.”

Temporary Help Agency workers – “workers who were paid by a temporary help agency, whether or not their job was temporary.”

Contract Company workers – “workers who are employed by a company that provides them or their services to others under contract and who are usually assigned to only one customer and usually work at the customer’s worksite” (BLS 2001).<sup>1</sup>

In her study of the “flexible staffing arrangements” used by private sector employers, Houseman (2001) included several of the same categories identified by the BLS including on-call workers, temporary help agency workers, and contract company workers but also “short-term hires,” and “regular part-time workers.” In reviewing these and other studies of “contingent workers,” the U.S. General Accounting Office (2000) identified a total of nine separate categories of nontraditional work arrangements including the four identified by BLS as well as “direct-hire temps,” “day laborers,” “self-employed workers,” “standard part-time workers,” and “leased workers.”<sup>2</sup>

The definition of NSWAs employed by each author or group is a function of that author’s or group’s particular interest. The BLS initiated the Contingent Work Supplement consistent with interests of policy makers in trends regarding the relative permanence or impermanence of work arrangements in the U.S. “Contingent” work is defined by the BLS as, “any job in which an individual does not have an explicit or implicit contract for long-term employment” (Polivka 1996, 4). Many of the questions on the BLS survey relate to the respondent’s expectations regarding the duration of his or her employment. Although a separate set of questions were asked about “alternative work arrangements,” the work arrangements covered were those regarded as potentially contingent. Thus alternative work arrangements are defined by the BLS to include, “individuals whose employment is arranged through an employment intermediary such as a temporary help firm, or individuals whose place, time, and quantity

of work are potentially unpredictable” (Polivka 1996, 7).

Houseman (2001) in contrast, was interested less in issues of job security from the worker’s perspective than in issues of workforce flexibility from the employer’s perspective. Her survey probed the use by private sector firms of the “flexible staffing arrangements” listed above. Consistent with this focus, Houseman included regular part-time work arrangements although such arrangements are not cited as “alternative work arrangements” by the BLS consistent with the focus of the CWS on “contingency.”

This discussion employs a broad definition of unconventional work arrangements consistent with the term “nonstandard,” i.e. work arrangements other than those involving full-time, permanent jobs. Consistent with BLS, we have included temporary help agency and contract company personnel in our definition of NSWAs. All the different categories identified by the GAO (2000) are considered nonstandard, as well as seasonal workers who are not listed in that or any of the other studies.

**Table 1: U.S. Workforce by Category of Worker, 1995, 1997, 1999, and 2001**

Category of worker	February 1995		February 1997		February 1999		February 2001	
	Number of Workers	Percentage of Workforce	Number of Workers	Percentage of Workforce	Number of Workers	Percentage of Workforce	Number of Workers	Percentage of Workforce
Temporary workers <sup>a</sup>	4,574,000	3.80	4,563,000	3.60	4,415,000	3.40	4,334,000	3.22
On-call workers and day laborers	2,014,000	1.60	1,977,000	1.60	2,180,000	1.70	2,342,000	1.74
Contract company workers	652,000	0.50	809,000	0.60	769,000	0.60	633,000	0.47
Independent contractors	8,309,000	6.70	8,456,000	6.70	8,247,000	6.30	8,574,000	6.37
Part year and seasonal	5,507,000	4.47	4,900,000	3.85	5,155,000	3.89	6,165,000	4.58
Self-employed workers	7,256,000	5.90	6,510,000	5.10	6,280,000	4.80	6,629,000	4.93
Regular part-time workers	16,813,000	13.60	17,290,000	13.60	17,380,000	13.20	17,902,000	13.30
Total NSWAs <sup>b</sup>	45,125,000	36.57	44,505,000	35.05	44,426,000	33.89	46,579,000	34.61
Regular full-time workers	83,589,000	67.80	87,135,000	68.80	92,222,000	70.10	92,877,000	69.00
Total in Workforce <sup>c</sup>	123,207,000		126,740,000		131,493,000		134,605,000	

<sup>a</sup> The original GAO table listed ‘Agency temps’ and ‘Direct hire temps’ separately; they are combined into one category here. For 2001, a portion of this number is estimated using a least-squares line fitted to previous years’ data

<sup>b</sup> ‘Total NSWAs’ equals Part Time plus Part Year/Seasonal plus the individual categories of nonstandard work identified in the table (Temporary workers, On-call workers, etc.)

<sup>c</sup> Percentages do not sum to totals due to rounding

Sources: Data for years 1995, 1997, and 1999, except the category ‘Part Year and Seasonal’, are from “Table 2: U.S. Workforce by Category of Worker, 1995, 1997, and 1999” (GAO 2000, 15). Data for 2001 and the category ‘Part Year and Seasonal’ in all years are based on authors’ calculations of CPS Contingent Work Supplement Data, 1995, 1997, 1999, and 2001.

## **NSWAs in the Economy as a Whole and in the Public Sector**

NSWAs in the Economy as a Whole. Table 1 summarizes the findings from 1995, 1997, 1999, and 2001 Contingent Work Supplements. As of 2001, individuals employed in nonstandard work arrangements account for a substantial one-third of the workforce. Regular part-time employees account for approximately 13.2% of the total workforce or 38.4% of all those in NSWAs. The next-largest category is that of independent contractors at 6.42% of all workers and 18.4% of those in NSWAs. Self-employed workers represent about 4.98% of all workers and about 14.2% of those in NSWAs. Temporary help agency workers represent 3.8% of all workers. Over this six-year period, the figures show a small decline in the proportion of the workforce in NSWAs.

NSWAs in the public sector. To examine the incidence of NSWAs in the public sector requires some adjustments to the data. Some categories of NSWAs are exclusively private-sector and hence are excluded from our analysis; day laborers, independent contractors, and self-employed workers. The CWS does permit the identification of “sector” for “direct-hire” NSWAs via the “class of worker” variable included in the CWS. The class of worker variable identifies whether a respondent works for a government, a private – for profit, or private – nonprofit organization. Within the government category, it further permits a determination of whether the respondent works for a federal, state, or local government entity. The categories to which the class of worker variable applies include on-call workers, part-year and seasonal workers, and regular part-time workers.

Contract company employees and temporary help agency employees often straddle the public and private sectors. Although they are technically part of the private sector, to the extent that they are working for public sector entities they become part of the public sector workforce. The “assigned job” variable included in the CWS allows the identification of those private sector employees in these

categories assigned to public sector customers.

**Table 2: Incidence of Direct-Hire NSWAs, Public and Nonpublic Sector, by Level of Government, 2001**

	Part-Time Workers		On-Call Workers		Part Year/Seasonal Workers	
	Percent of Workforce	Number of Workers	Percent of Workforce	Number of Workers	Percent of Workforce	Number of Workers
Federal	6.13	199,700	1.22	39,700	5.40	175,900
State	14.12	821,000	1.93	122,200	6.18	359,300
Local	14.44	839,700	4.16	437,300	3.57	375,300
Public Sector Overall	12.90	2,526,000	3.01	599,200	4.65	910,500
Nonpublic Sector Overall	16.24	18,679,000	1.53	1,742,800	4.56	5,254,500

Source: Authors' calculations of CPS Merged Outgoing Rotation Group Data and Contingent Work Supplement Data, 2001.

**Table 3: Occupational Mix of Part-Time Workers in the Public Sector, 2001**

Occupation (3-digit SOC Code)	Percent of Part-Time Public Sector Workforce	Number of Workers
Teachers' Aides (387)	9.94	251,100
Elementary School Teachers (156)	7.20	182,000
Secondary School Teachers (157)	4.06	102,500
Postsecondary Teachers (154)	3.73	94,200
Bus Drivers (808)	3.68	93,000
Misc. Food Preparation Occupations (444)	3.49	88,000
Child Care Workers (468)	3.17	80,000
Nursing Aides, Orderlies, Attendants (447)	2.89	73,000
Janitors and Cleaners (453)	2.75	69,500
Secretaries (313)	2.59	65,400

Source: Authors' calculations of CPS Contingent Work Supplement Data, 2001.

**Table 4: Occupational Mix of On-Call Workers in the Public Sector, 2001**

Occupation (3-digit SOC Code)	Percent of On-Call Public Sector Workforce	Number of Workers
Elementary School Teachers (156)	27.98	167,200
Secondary School Teachers (157)	14.91	89,300
Teachers' Aides (387)	2.98	18,000
Correctional Institution Officers (424)	2.57	16,000
Data Processing Equip. Repairers (525)	2.46	15,000
Police and Detectives, Public Svc. (418)	2.29	13,700
Bus Drivers (808)	2.15	13,000
Administrators and Officials, Pub. Admin. (005)	1.77	10,600
Secretaries (313)	1.73	10,400
Construction Trades, nec (599)	1.62	9,700

Source: Authors' calculations of CPS Contingent Work Supplement Data, 2001 ("nec" = not elsewhere classified).

**Table 5: Occupational Mix of Part Year/Seasonal Workers in the Public Sector, 2001**

Occupation (3-digit SOC Code)	Percent of Part Year/Seasonal Public Sector Workforce	Number of Workers
Elementary School Teachers (156)	6.14	56,000
Teachers' Aides (387)	5.68	52,000
Janitors and Cleaners (453)	5.50	50,000
Postsecondary Teachers (154)	4.65	43,000
Administrators and Officials, Pub. Admin. (005)	4.14	38,000
Secondary School Teachers (157)	4.08	37,000
Postal Clerks, exc. Mail Carriers (354)	3.64	33,000
Police and Detectives, Public Svc. (418)	3.06	28,000
Managers and Administrators, nec (022)	2.77	25,000
Computer Systems Analysts, Scientists (064)	2.67	24,000

Source: Authors' calculations of CPS Contingent Work Supplement Data, 2001 ("nec" = not elsewhere classified).

Direct hire NSWAs in the public sector. We have identified two types of nonstandard work arrangements: "direct hire" and "indirect hire". With direct hire NSWAs, employers interact directly with employees in the hiring process; such arrangements include part-time, on-call, and part year/seasonal workers. Indirect hire NSWAs involve another entity with which the employer interacts

in the hiring process. Such work arrangements include contract company and temporary agency workers. Tables 2-5 show the incidence of public sector worker in the three “direct hire” categories of NSWAs (regular part-time, on-call, and seasonal) for the public sector as a whole, for the nonpublic sector as a whole, and for the federal, state, and local sectors separately. Apparent from Table 2 is that the incidence of part-time work arrangements is lower in the public than in the nonpublic sector. Also apparent from the table however is that this is largely attributable to the limited use of part-time work arrangements in the federal government. As revealed in Table 3, the high proportion of part-time workers is largely attributable to their use in education. The occupational category with the greatest number of part-time workers in the public sector overall are teachers’ aides, followed by elementary and secondary school teachers.

Table 2 also reveals that the use of on-call workers in the public sector is higher than in the nonpublic sector with the use of workers in this category concentrated at the local level of government. From Table 4 it is apparent that, as in the case of part-time workers, the occupational groups most highly represented in this category are those related to education. Part year and seasonal workers are those whose employment is available only during certain times of the year, or who were hired for a specific project or to replace another worker for less than a year. Table 2 indicates that this is a significant category of NSWAs in terms of the numbers of workers in such arrangements, and that the federal and state levels of government make greater use of these arrangements than do local governments. Table 5 shows that these workers are employed mainly in education, but also in managerial positions and with the U.S. Postal Service.

**Table 6: Incidence of Temporary Agency Workers in Public and Nonpublic Sectors, 2001**

	Percent of Temp. Nonpublic Sector Workforce	Number of Workers
Public Sector Overall	0.29	57,000
Nonpublic Sector Overall	2.22	1,114,000
Total Temporary Agency Workers	2.51	1,171,000

Source: Authors' calculations of CPS Contingent Work Supplement Data, 2001.

**Table 7: Occupational Mix of Temporary Agency Workers in the Public Sector, 2001**

Occupation (3-digit SOC Code)	Percent of Temporary Agency Public Sector Workforce	Number of Workers
Elementary School Teachers (156)	14.75	8,400
Personnel, Training and Labor Relations Specialists (027)	11.01	6,275
Truck Drivers (804)	11.00	6,275
Data Entry Keyers (385)	10.99	6,275
Secretaries (313)	7.23	4,120
Cashiers (276)	6.25	3,560
Typists (315)	5.65	3,220
Accountants and Auditors (023)	5.41	3,080
Early Childhood Teachers' Assistants (467)	5.28	3,000
Secondary School Teachers (157)	5.15	2,935

Source: Authors' calculations of CPS Contingent Work Supplement Data, 2001 ("nec" = not elsewhere classified).

Indirect-hire NSWAs in the public sector. The CWS also provides data on the extent to which temporary help agency employees are assigned to public sector customers. Although the Supplement also includes information on "contract company workers," this category of workers has been defined in a way that distorts the true extent of contract company workers in the public sector. As noted above, BLS includes as contract company workers only those, "workers who are employed by a company that provides them or their services to others under contract and who are usually assigned to only one customer and usually work at the customer's worksite" (BLS 2001). This definition excludes, for example, those working for the Department of Defense at other than a DoD facility or a consultant

working on contract for a government agency. In light of these omissions, we have not included this category in our review of the use of NSWAs in the public sector.<sup>3</sup> With these variables, BLS is trying to identify indirect-hire employment relationships that are long-term in nature.

The CWS includes a question on “assigned job,” whereby temporary help agency workers are asked whether “place you were assigned to work” in the week preceding the survey was “a government agency, a private company, or a non-profit organization.” Unlike the “class of worker” variable above, this question did not segregate government workers by federal, state, and local levels. Nevertheless, some insights into the relative incidence of workers in these two categories can be gained from the data. By categorizing those assigned to work in a government agency as “public,” we were able to compare the proportions of temporary help agency employees by sector (public vs. nonpublic). Data in Table 6 indicate that employers outside the public sector make far greater use of temporary help agency workers compared to public sector employers. The number of temporary agency workers in government in 2001 is estimated at only 57,000. Table 7 shows the occupations in which these workers work, and like all the other nonstandard categories detailed in Tables 3-5, many temporary agency workers were employed in education, although other clerical and administrative jobs appear in this list as well.

### **What are the Trends in the use of NSWAs?**

Economy-wide trends. Data on most of the NSWAs are available only through the CWS and hence only available for the years 1995, 1997, 1999, and 2001. As summarized in Table 1 the total number of workers in all NSWAs decreased modestly from 1995 to 1999, with a slight increase between 1999 and 2001. As a percentage of the workforce, those in NSWAs declined from 36.6% to 34.6%.

Longer-term data is available for two of the NSWAs categories; part-time workers<sup>4</sup> and temporary help agency personnel. Questions on part-time work are part of the regular CPS and hence are available going back to 1968. Between 1968 and 2002, the proportion of the workforce in part-time arrangements rose from 14 to 18 percent (Schreft and Singh 2003). Data from the Current Economic Survey, which is a survey of payrolls rather than individuals, show long-term growth in the temporary help agency sector from only 0.3 percent of the workforce in 1972 to more than 2.4 by the end of 2002. Thus, although in the short-term the incidence of NSWAs has remained relatively stable, there has been long-term growth in selected categories.

One explanation for the slight decline in the incidence of NSWAs between 1995 and 2001 is offered by Belman (2000). Belman hypothesizes, “the share of temporary jobs may shrink as an economic expansion matures, initially because many of them are transformed into permanent positions and eventually because firms begin to eliminate such jobs first before laying off members of their regular staff on the onset of a recession.”

BLS did not conduct the Contingent Work Survey in 2003, making it difficult to assess what the trends in numbers of workers in NSWAs have been during a period of economic recession. However, data presented by Schreft and Singh (2003) show that there has been growth in both temporary help agency and part-time employment during the 12-month period since the economy hit bottom in 2001. The growth of employment in these two categories stands out in light of a substantial decline in the number of nontemporary jobs. Schreft and Singh (2003) observe that these “just-in-time” employment practices (i.e. NSWAs), “give firms more flexibility in employing labor, which is especially valuable early in recoveries.” This study lends support to the theory that variation in the incidence of workers in selected categories of NSWAs is countercyclical.

**Table 8: Direct-Hire and Indirect-Hire NSWAs in the Public and Nonpublic Sectors, 1995, 1997, 1999, and 2001 <sup>a</sup>**

	February 1995		February 1997		February 1999		February 2001	
	Number of Workers	Percent of Workforce	Number of Workers	Percent of Workforce	Number of Workers	Percent of Workforce	Number of Workers	Percent of Workforce
<b>Public Sector</b>								
Direct Hire NSWAs	4,086,000	21.55	3,836,000	20.66	3,955,000	20.27	4,026,200	20.56
Indirect Hire NSWAs	89,100	0.47	61,600	0.33	62,400	0.32	70,700	0.36
<b>Total Public Sector NSWAs</b>	<b>4,175,100</b>	<b>22.02</b>	<b>3,897,600</b>	<b>20.99</b>	<b>4,017,400</b>	<b>20.59</b>	<b>4,096,900</b>	<b>20.92</b>
<b>Nonpublic Sector <sup>b</sup></b>								
Direct Hire NSWAs	20,248,000	19.80	20,331,000	18.80	20,760,000	18.54	22,382,800	19.46
Indirect Hire NSWAs	20,639,300	19.42	20,220,700	18.69	19,607,600	17.51	20,021,300	17.41
<b>Total Nonpublic NSWAs</b>	<b>40,887,300</b>	<b>39.22</b>	<b>40,551,700</b>	<b>37.49</b>	<b>40,367,600</b>	<b>36.05</b>	<b>42,404,100</b>	<b>36.87</b>
<b>Workforce Overall</b>								
Direct Hire NSWAs	24,334,000	19.67	24,167,000	19.05	24,715,000	18.79	26,409,000	19.62
Indirect Hire NSWAs	20,791,000	16.90	20,338,000	16.00	19,711,000	15.10	20,170,000	14.99
<b>Total NSWAs</b>	<b>45,125,000</b>	<b>36.57</b>	<b>44,505,000</b>	<b>35.05</b>	<b>44,426,000</b>	<b>33.89</b>	<b>46,579,000</b>	<b>34.61</b>

<sup>a</sup> Direct-hire NSWAs are comprised of on-call, part year/seasonal, and regular part-time workers. Indirect-hire NSWAs are comprised of agency temporaries, contract company workers, and, for the nonpublic sector, independent contractors and the self employed.

<sup>b</sup> Nonpublic sector includes private and nonprofit sectors, as well as self-employed incorporated and unincorporated workers

Source: Authors' calculations of CPS Contingent Work Supplement Data, 1995, 1997, 1999, and 2001.

Public sector trends. As shown in Table 8, the use of both “direct-hire” and “indirect-hire” NSWAs in the public sector has remained relatively stable during the period 1995-2001, with indirect, or third-party, hires comprising a much smaller proportion of total NSWAs in the public sector compared to the nonpublic sector. This is expected, since indirect hires include independent contractors and self-employed workers – categories that are relevant only to the nonpublic sector.

### **Why Do Employers Use Nonstandard Work Arrangements?**

From her survey of a nationally-representative sample of private sector establishments, Houseman (2001) identified a number of reasons why firms make use of NSWAs.<sup>5</sup> The most commonly cited set of reasons had to do with staffing flexibility. For example, over 50% of the firms surveyed use workers in one or more categories of NSWAs to accommodate “unexpected increases in business” and/or to provide assistance “during peak time hours of the day or week.” A high percentage of firms also use workers in NSWAs to fill vacancies until a regular employee is hired, fill in for a regular employee who is sick or on vacation, and for special projects.

Another set of reasons for the use of NSWAs relate to wage and benefit costs. Houseman found that workers in NSWAs were much less likely to be offered health, retirement, and other benefits than were regular, full time workers. According to Houseman (161),

Whereas the overwhelming majority of employers offered paid vacation and holidays, paid sick leave, pension benefits, and health insurance benefits to regular full-time staff, few of them offered these benefits to short-term hires or on-call workers. Less than half of employers offered paid vacation and holidays to at least 50% of their part-time staff, and only about a third offered at least half of their part-time employees paid sick leave, pension benefits, and health insurance benefits.

Companies employing NSWAs may save on wage costs as well as on benefit costs. Temporary, short-term, or part-time workers are often not covered by the terms of collective bargaining agreements in firms with unionized workforces and hence can be paid at a lower wage.

NSWAs can be employed as a means of resisting unionization. duRivage (1998, 266) identifies as, “gaps in labor law coverage that severely limit the protective effects of existing labor law for part-time and contingent workers;” 1) that bargaining units often exclude workers in NSWAs, 2) [that] collective bargaining rights are ambiguous in situations of “joint employment” as experienced by both temporary help agency and contract company employees,<sup>6</sup> 3) [that] “subcontracting of public sector jobs creates a gray area between public and private employment where the legal protections associated with either often do not apply,” and 4) “current labor laws are inadequate for high-turnover workforces.” A related issue is that companies are less likely to face litigation as a result of laying off employees who are retained on a short-term or temporary basis than as a result of laying off full-time employees (Houseman 2001).

Additional reasons for the use of NSWAs in the private sector include, 1) as a means to “screen” individuals for full-time employment, 2) to access workers with special skills, and 3) to accommodate worker requests for more flexible work schedules (Houseman 2001). Finally, Kahn (2000, 243) references the use of temporary help agency personnel as a means of holding down “headcount,” stating, “The corporate policy with the most significant impact on temp use is head-count restriction, a common mechanism used by central management to control costs and keep major decisions in their own hands...”

### **Rationales for the Use of NSWAs in the Public Sector**

Many of these same reasons apply to public sector employers. For example, Light (1999), in

The True Size of Government, highlights as one reason for the extensive use of contract employees in the federal government, the perceived political importance of “holding down headcount.” Light identifies 35 separate “Head Count Ceilings, Freezes, and Thaws” imposed by Congress between 1940 and 1997.<sup>7</sup> A primary means by which agencies can evade these requirements is through contract personnel. According to Light, the number of contractor jobs funded by the federal government increased by approximately 110,000 positions between 1990 and 2002. During that same period, the number of “federal civil servants” declined by approximately 418,000 (Light 2003). In addition to the benefits offered with regard to headcount, contract employees allow agencies at all levels of government to mobilize to accomplish special projects and/or to access personnel with skills not readily available in the permanent work force.

As noted above, extensive use is made of NSWAs in the education sector at the state and local levels of government. School districts use substitute teachers, who qualify as “on-call” workers, to fill in when regular teachers are out ill or are absent for other reasons. Public colleges and universities at the state level of government have increasingly relied on part-time “adjuncts” and/or graduate assistants for teaching purposes. At the federal level, agencies with highly cyclical workloads such as the IRS, the Forest Service, and the National Park Service have a high proportion of seasonal jobs. Also, part-time and job sharing arrangements have increased as a result of the “family-friendly workplace” policies promoted by the Clinton Administration.

In 1978, Congress passed the “Federal Employees Part-Time Career Employment Act of 1978.” Section 2 of that law states,

“The Congress finds that –

1) many individuals in our society possess great productive potential which goes unused

because they cannot meet the requirements of a standard workweek; and

2) part-time permanent employment—

A) provides older individuals with a graduate transition into retirement;

B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

C) provides parents opportunities to balance family responsibilities with the need for additional income

D) benefits students who must finance their own education or vocational training;

E) benefits the Government as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations...”

Pursuant to this same law, benefits for permanent, part-time federal employees are prorated based on the number of hours worked.

### **Why do employees participate in NSWAs?**

The question of worker rights is central to the discussion of NSWAs. As discussed above with regard to the case of *Vizcaino v. Microsoft*, companies have been accused of utilizing NSWAs as a means of evading legal obligations to workers. However, CPS data show that a significant proportion of those in NSWAs prefer these arrangements. This is particularly true of both independent contractors and contract company workers. It is less true for on-call and temporary help agency workers although the data suggest that even many of the workers in these categories prefer their work arrangements to full-time, permanent employment. In the 2001 CPS survey, 49 percent of on-call workers and 44% of temporary help agency employees stated a preference for their current arrangements over those

associated with more traditional jobs.

Cohany (1996, 33) points out that that NSWAs provide the “flexibility needed to balance work with other commitments, such as family responsibilities, school, and even other employment.” The BLS found that almost 50% of on-call workers were enrolled in school suggesting that this arrangement is highly compatible with the schedules of students requiring a source of income. The federal government has promoted job sharing as part of its Family-Friendly Workplace Program. However, data from the Office of Personnel Management shows that only a small number of employees have taken advantage of these opportunities.<sup>8</sup>

Additional reasons why workers might prefer NSWAs include, 1) to serve as an income supplement, 2) to gain more diverse work experience by rotating through a variety of jobs, 3) as a means of exploring the labor market and or a particular job prior to making a long-term commitment, and 4) as a means for new labor-market entrants to gain job experience.

### **What are the Issues?**

Theoretical Issues – NSWAs and the Demise of Internal Labor Markets. The expansion in some categories of NSWAs is an element of what Carre et al. (2000) identify as a set of long-term changes in employment relationships in the U.S. At issue is whether important features of the American workplace throughout the post-war period associated with the concept of “internal labor markets,” are in flux. According to Doeringer and Piore (1971), these features include;

- 1) a long-term employment relationship; 2) wages that are sheltered from market wage fluctuations and are instead determined by administrative rules tied to job classifications and rank; 3) upward mobility within the firm, so that wages rise with seniority and promotions; and 4) company-sponsored benefits.

In support of the thesis that there has been an erosion of the traditional social contract between worker and employer, analysts point to an increase in the incidence of downsizing, subcontracting, and greater use of contingent workers. Bernhardt and Marcotte (2000) find some evidence of a decline in job stability, a reduction in benefit coverage, and externally-driven wage structures.

These studies have not generally investigated whether these trends characterize the public sector. Although, in many respects the federal government is the archetypal internal labor market, there is no evidence that fundamental changes in the central features of employment relationship at that level are underway. In fact, an analysis of the total work years in executive branch agencies (excluding the Postal Service) shows a slight decline in the use of part-time, temporary, and “intermittent” work arrangements over the ten-year period 1989-1999.<sup>9</sup>

Although no basic shifts are in evidence to date, this may be an element of the federal model that bears increased attention. Consistent with the current emphasis on increased managerial flexibility in hiring, pay, and dismissal, would be that associated with workforce mix via an increase in the use of NSWAs. This issue has already arisen with regard to the reemployment of annuitants on a part-time or temporary basis in some agencies. An expanded use of annuitants as well as others for whom NSWAs are preferable to full-time, permanent employment could help the government address the human capital “crisis” that purportedly looms.<sup>10</sup>

#### Management Issues – NSWAs vs. Human Capital Approaches to Personnel Management.

The concept of workers as “human capital” has been promoted heavily within the federal government by the General Accounting Office. According to the GAO (2000, 7), two principles underlie the human capital concept, 1) “people are assets whose value can be enhanced through investment,” and 2) “an organization’s human capital approaches must be aligned to support the mission, vision for the future,

core values, goals, and strategies by which the organization has defined its direction and its expectations for itself...” Implicit in the idea of workers as “capital” is that worker performance can be enhanced through investments in training.

This set of ideas becomes problematic when applied to workers in NSWAs. It is unlikely that organizations will invest in workers, 1) who are serving in a contract capacity or 2) whose jobs are temporary in nature. Thus, Belous (1989) observes that, “there may be a tendency to underinvest in human capital development...because employers may not be willing to make the same investments in contingent workers that they would be willing to make in core workers.” An alternative may be to adopt the “core-ring” model wherein investments are made in core workers but not ring workers. For example, Nolen and Axel (1998) describe Hewitt-Packard’s experiment with its “Flex-Force” project, intended to buffer permanent employees from lay-offs. The central idea was to create a “core” staff of permanent employees surrounded by a “ring” of workers in nonstandard arrangements. According to Nolen and Axel (131), the FlexForce,

consisted of on-call part-timers who worked as needed but less than full-time year-round, plus on-contract direct-hire temporaries who worked under short-term contracts renewable up to two-years maximum.

The similarities to segmented labor markets are clear: the primary tier, or core, contains jobs that, for the most part, are only available to current members of a firm. The secondary tier, or ring, contains mostly entry-level jobs or jobs with less employer attachment, which are accessible by individuals outside the firm as well as current workers holding secondary-tier jobs (Doeringer and Piore 1971; Gordon, Edwards, and Reich 1982). Reskin and Roos (1990) specify a model of the dual-queuing process that describes how certain workers are ranked by employers and must wait to gain

access to primary labor market occupations, and how those same workers have nearly free access to secondary labor market occupations. For example, some Microsoft perma-temps were hired eventually as regular employees, however, most were not. The prospect of obtaining regular employment sustained many of these long-term contingent employment relationships.

Moss et al. (2000) examined four companies in the electronics and insurance industries that substantially “deconstructed” internal labor markets in favor of expanded use of more contingent forms of employment. According to Moss et al, the managers interviewed at the four firms, “generally voiced negative opinions about the results of using temporary workers, including lower productivity, higher turnover, and lower morale.” Concerns about lower levels of employee commitment and a reduced capacity to innovate led all four firms to reconstruct their internal labor markets, at least in part. A conclusion is that a more contingent form of employment worked well for “routine” functions such as security, mail room, call center, and back-office tasks but not for core employees.

Policy Issues – Displacement of Support Costs onto Government. One concern about the growth in some categories of NSWAs such as temporary help agency employees is that a high proportion of these workers do not receive pension or retirement benefits from their employers. According to the 2001 Contingent Work Survey, only 13% of temporary help agency employees were eligible for employer-provided pension plans (BLS 2001). These benefits were available to only 37% of on-call employees. A concern identified by the GAO (2000) is that such workers will turn to “needs based” programs such as Supplemental Security Income and Medicaid to address their health and retirement needs. The GAO (p. 9) observes that, “to the extent that this occurs, costs formerly borne by employers and employees may be shifted to federal and state public assistance budgets.”

Policy Issue – Living Wage. Many municipalities that rely on contract workers have been

confronted in recent years by an effort to ensure that such workers earn a “living wage.” Living wage ordinances that have been passed by a number of municipalities in recent years require that those working on public contracts be paid a higher wage than is otherwise required by law. The Association for Community Organizations for Reform Now (ACORN), which has spearheaded this movement, presents its rationale as follows,

When subsidized employers are allowed to pay their workers less than a living wage, tax payers end up footing a double bill: the initial subsidy and then the food stamps, emergency medical, housing and other social services low wage workers may require to support themselves and their families even minimally. Public dollars should be leveraged for the public good -- reserved for those private sector employers who demonstrate a commitment to providing decent, family-supporting jobs in our local communities ([www.acorn.org](http://www.acorn.org)).

A total of 110 jurisdictions have now approved such ordinances and will, as a result, incur higher costs for some contracted services. In some cases the comparative cost advantage enjoyed by the private sector may be sufficiently eroded to warrant delivering the service in-house.

Policy Issues – Lost Tax Revenue. The misclassification of employees as independent contractors referenced above with regard to *Vizcaino v. Microsoft* (1992) has implications for the tax system. Widespread misclassification has resulted from 1) ambiguities about the definition of “employee,” and 2) economic incentives to misclassify employees as independent contractors that arise from the savings companies can accrue from reductions in Social Security, Medicare, and unemployment taxes. Whereas companies are required to withhold taxes from the earnings of salaried employees, no such withholding of taxes from payments to independent contractors is required. In the absence of withholding, the level of compliance drops. In 1984, the IRS estimated that 3.4 million

employees were misclassified as independent contractors with an estimated tax loss of \$1.6 billion in Social Security, unemployment, and income taxes (GAO 2000).

Policy Issue – Legal Definition of Employee. At the core of *Vizcaino v. Microsoft* was the question of what constitutes an employment relationship. The court in that case found that the independent contractors working for Microsoft were employees of the firm under the common law. In *Nationwide Mutual Insurance Company v. Darden*, 503 U.S. 318, 322-23 (1992), the Supreme Court summarized the common law test as follows:

In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is complete. Among the other factors relevant to this inquiry are the skill required, the source of the instrumentalities and tools, the location of the work; the duration of the relationship between the parties, whether the hiring party has the right to assign additional projects to the hired party, the extent of the hired party's discretion over when and how long to work, the method of payment, the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

In deciding the *Vizcaino* case, the Ninth Circuit Court of Appeals determined that, "Microsoft fully integrated [the workers] into its workforce: they often worked on teams along with regular employees, sharing the same supervisors, performing identical functions and working the same core hours."

(*Vizcaino v. Microsoft*, 97 F 3d 1187 (9<sup>th</sup> Cir. 1996), and the employees were accordingly deemed to be common law employees of the firm.

Although the court determined that the common law test applied in the *Darden* decision, there

are other legal tests for determining whether a worker is an employee including the “economic realities test” and the “hybrid” test (a combination of the economic realities and common law tests). Further contributing to the legal muddle are differences in the criteria incorporated into key laws designed to protect workers. The GAO (2000) identified 9 such laws including the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act, the Fair Labor Standards Act, and the National Labor Relations Act. In 1994, the Commission on the Future of Worker-Management Relations recommended that Congress adopt a single definition of employee that could apply across the board. The GAO (2000, 39) notes that, “a stringent and uniform definition of an employee could help increase benefits coverage for some contingent workers,” but also that, “a uniform definition might result in some laws [such as the Fair Labor Standards Act] being applied more narrowly.”

## **Conclusion**

Although little attention has been accorded the phenomenon of NSWAs in the public sector to date, there are reasons why this should change. First, long-term trends show a significant increase in temporary help agency workers and a more modest increase in part-time workers, the only two categories for which long-term data is available. Indicators are that an increased incidence of NSWAs may be a feature of the current “jobless recovery.” Important policy issues relating to this phenomenon warrant the attention of policy makers at all levels of government.

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<sup>1</sup> Note that the definition of contract company worker excludes those who move from customer to customer as for example, many management consultants. Polivka et al. (2000, 42) comment, “the requirements to have only one customer and to work on the customer’s premises were imposed to avoid counting individuals whose employers simply did business with other companies under contract (such as advertising agencies, military equipment manufacturers, law firms, or think tanks).”

<sup>2</sup> Since no data on leased workers was collected by the BLS, they were not included in the data reported in the GAO report.

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<sup>3</sup> See Light (1999) *The True Size of Government* for an estimate of the number of contract workers working for the federal government.

<sup>4</sup> Note that these part-time figures include those workers who are part-time and on-call, temporary help agency, independent contractor workers. The figures shown below for “regular part-time workers” exclude these groups of part-timers because the data used to calculate figures for the part-time workforce comes from the CPS merged outgoing rotation group data, which do not include information on NSWAs.

<sup>5</sup> Houseman uses the term “flexible staffing arrangements” which is defined to include temporary help agency workers, short-term hires, regular part-time workers, on-call workers, and contract workers.

<sup>6</sup> The collective bargaining rights of these workers are generally not guaranteed. Prior to the Sturgis decision in 2000, temporary help agency and contract company employees who worked side-by-side with the employees of the “user” employer “could be included in a bargaining unit with such ‘regular’ full-time employees only if both the user and supplier employers consented” (Schiffer 2002). With Sturgis, the National Labor Relations Board removed the requirement for employer consent. However, even with this change in policy, workers in NSWAs are often excluded from the bargaining units.

<sup>7</sup> See Appendix B, The True Size of Government (1999)

<sup>8</sup> Data from the Central Personnel Data File shows that as of December 2002, only 601 employees were in job sharing arrangements government-wide.

<sup>9</sup> According to the 2003 Fact Book published by the Office of Personnel Management, the total number of work years accounted for by those in part-time, temporary and intermittent work schedules declined from approximately 9% of the total to about 8% of the total between 1989 and 1999.

<sup>10</sup> See the report of the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia of the Senate Committee on Governmental Affairs entitled, “Report to the President: The Crisis in Human Capital” (December 2000).