

# Pennsylvania Workers in Jeopardy:

## *The Hidden Problem of Temporary Employment*

REBECCA DAILY | TRACIE JOHNSON | HOLLY SMITH

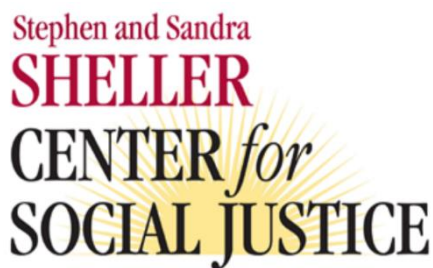


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## ABOUT THE CONTRIBUTORS

This report was researched and written by Rebecca Daily, Tracie Johnson, and Holly Smith, Temple law students in the Social Justice Lawyering Clinic. These students were supervised by Professor Jennifer J. Lee. This report was issued in September 2017.



### **Social Justice Lawyering Clinic**

#### **Sheller Center for Social Justice**

#### **Temple University Beasley School of Law**

The Social Justice Lawyering Clinic at the Stephen and Sandra Sheller Center for Social Justice is a student clinic at the Temple University Beasley School of Law. Students in the clinic learn firsthand about social justice issues that directly impact local communities through legal representation, community education, and policy advocacy.



### **The Philadelphia Area Project on Occupational Safety and Health (PhilaPOSH)**

PhilaPOSH has been working since 1975 for a safe and protected workplace as well as for the rights of injured workers. PhilaPOSH was the second organization formed in the United States that focused on health and safety issues faced by workers and their unions. Over the past 40 years, PhilaPOSH has assisted hundreds of unions and thousands of workers. PhilaPOSH works closely with international unions, federal agencies, and a national network of 25 coalitions on occupational safety and health.

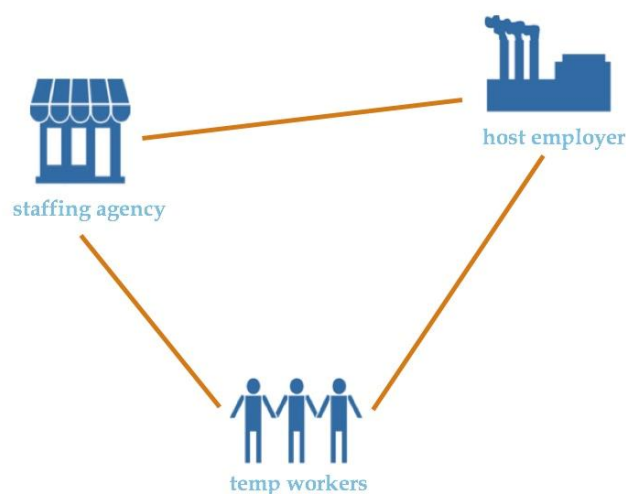
### **Acknowledgements**

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## EXECUTIVE SUMMARY

On a fall day just outside of Harrisburg, Douglas Bell was working on the back of a township garbage truck. Bell was not an employee of the township. Rather, he had been placed in the job by a staffing agency as a temporary (“temp”) worker. During his first day of work, Bell stepped off the truck while it was still moving and sustained a fatal head injury. Both the staffing agency and the township were aware that Bell had never ridden on the back of a garbage truck. Each expected the other to make sure Bell was prepared to perform the job that day.<sup>1</sup>

Bell’s tragic death highlights the problems with temporary work. In an employment relationship with three players, host employers and staffing agencies can “pass the buck” between one another, evading employer responsibilities to the detriment of the temp worker (see Figure 1). The Philadelphia Area Project on Occupational Safety and Health (PhilaPOSH) is familiar with stories like Bell’s. In recent years, PhilaPOSH has found itself increasingly assisting temp workers who may not have received adequate safety equipment and training or have been denied their proper wages.



**Figure 1.** Staffing agencies serve as the go-between to match temp workers with non-permanent jobs at host employers.

Yet some of our Commonwealth’s biggest industries rely on these workers. Pennsylvania temp workers sort our Amazon orders.<sup>2</sup> They package jewelry we buy at Kohl’s.<sup>3</sup> They prepare the food we eat from Wawa.<sup>4</sup> There are currently, however, no studies about temp work in Pennsylvania.

This report represents a first step in gaining a more comprehensive understanding about temp workers in Pennsylvania. By obtaining governmental data, conducting interviews with workers and advocates, and analyzing the applicable laws and policies, we demonstrate how temp work is a growing problem in Pennsylvania. In particular, this report finds that the increasing phenomenon of temp work has placed Pennsylvania workers in jeopardy by making them vulnerable to workplace injury and financial harm.

Overall, in Pennsylvania:

- Staffing agencies are increasingly placing temp workers in blue-collar jobs, especially in the production and transportation sectors.
- Fifty-eight percent of temp workers are low-wage workers.
- Temp workers earn less than direct-hire workers in comparable jobs.
- Local “mom and pop” staffing agencies frequently target vulnerable ethnic minorities.

Temp workers are at risk for workplace injury. Some reasons include:

- Temp workers receive inadequate training because of the lack of accountability between host employers and staffing agencies.
- Temp workers may fear reporting hazards as nonpermanent employees.
- Government enforcement is inadequate.
- Host employers shift the cost of workers’ compensation coverage onto staffing agencies, which reduces the incentive to maintain a safe workplace.



Temp workers have described being scared to ask for safety gloves.<sup>5</sup>

Further, temp workers are more vulnerable to financial harm because:

#### **Inadequate Information**

Temp workers in Philadelphia had to meet a temp agency representative every week in changing locations, such as parking lots, to get their pay. These workers never learned the names and addresses of the staffing agencies that worked with the host employer.<sup>6</sup>

- Host employers turn a “blind eye” towards staffing agencies that fail to pay temp workers minimum or overtime wages.
- Temp workers may lack adequate information about pay, the staffing agency, or host employer, frustrating their ability to complain.
- Staffing agencies’ call-in policies cause temp workers to lose out on unemployment compensation.

As the economy continues to shift away from traditional employment relationships, temp work is here to stay. Not only do staffing agencies need to be more closely regulated but the host employers that use them should also be held accountable. Pennsylvania, therefore, needs to proactively address these issues confronting temp workers. At the conclusion of this report, we offer various suggestions for how to better protect temp workers within our Commonwealth.



# PENNSYLVANIA TEMP WORKERS

Many industries within our Commonwealth rely on temp workers. The temp industry nationally experienced rapid growth over the 1990s, with the number of temp workers having almost tripled from 1990 to 2000.<sup>7</sup> Today, the temp industry employs close to 3 million workers nationwide.<sup>8</sup> Pennsylvania's temp industry mirrors some of the overall trends in the nationwide temp economy. Between 2001 and 2016, the number of temp workers in Pennsylvania grew by 66%.<sup>9</sup> Temp workers now comprise 2% of the overall workforce in Pennsylvania (120,660 workers).<sup>10</sup>

## WHAT IS TEMP WORK?

Temp workers are non-permanent workers who work at host employers through staffing agencies. A staffing agency serves as the middleman between a temp worker seeking work and a host employer seeking labor.<sup>11</sup> Staffing agencies attract host employers who are looking to easily gain or shed workers in line with business demands.<sup>12</sup>

Temp workers go to a staffing agency to find work at a host employer. Often, a temp job represents the only pathway for a worker to get a traditional blue-collar job.<sup>13</sup> While a temp worker works with and is supervised by a host employer, the staffing agency serves as a temp worker's employer of record. At any point, a host employer may decide that they no longer need certain temp workers. These temp workers return to the staffing agency for their next job assignment.



Astra Foods, a meat wholesaler in Upper Darby, PA, relies on temp labor.

This structure allows host employers to “run through” workers.<sup>14</sup> It also leads to instability for temp workers as they return to the staffing agency looking for the next assignment.<sup>15</sup> Because many temp jobs are low paying, temp workers may find themselves unable to take time off from temping to search for permanent work. This reality only exacerbates the unstable nature of temp work.<sup>16</sup>

While many temp workers return to their staffing agencies in a job-to-job cycle, there is now also a phenomenon called “permatemping,” in some segments of the industry. “Permatemps” are temp workers who work so long at a host employer they start to resemble

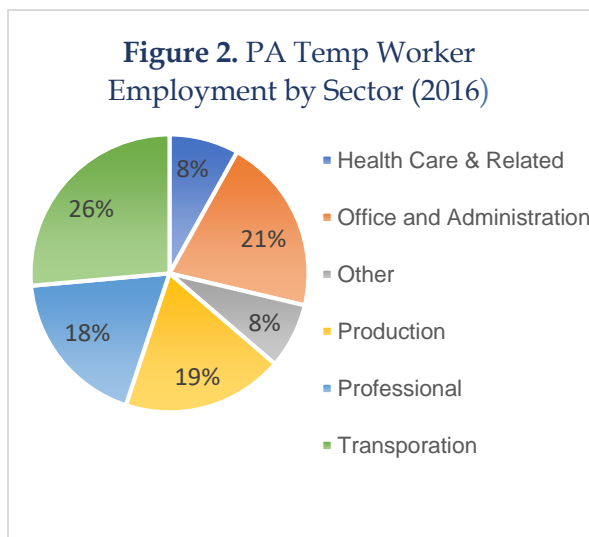
permanent employees.<sup>17</sup> Still, permatemps remain different than direct-hire employees because they lack the same wages, benefits, and training.

Further, temp workers are becoming a larger share of the workforce at host employers. Temp workers can make up anywhere from a third to almost all the rank-and-file workforce at a host employer.<sup>18</sup> As host employers factor temp workers into their core business models, questions arise over why host employers fail to directly hire temp workers for permanent positions.

## LOW-WAGE BLUE COLLAR WORK

Although the temp industry may conjure up images of the office “Kelly girl” of years past, the face of the industry has dramatically changed. An industry once marked by short-term office stints has moved to encompass many low-wage, blue-collar jobs.<sup>19</sup> In 1984, most temp work consisted of office and administrative positions.<sup>20</sup> By 2008, only a quarter of temp work was office and administrative work.<sup>21</sup> A ProPublica analysis found the share of jobs that were blue collar jobs in the temp industry grew, from 30% to 47%, between 1993 to 2012.<sup>22</sup>

Pennsylvania follows these national trends (see Figure 2).<sup>23</sup> Of the 120,660 temp workers accounted for in Pennsylvania in 2017, production and transportation work together comprised 45% of these jobs, while office work made up 21% of the PA temp economy. The production jobs, for example, involve assembling and packing consumer products. Transportation temp jobs may include packing and moving materials from warehouses and factories. The chief jobs in the office work sector are customer services representatives, office clerks, and secretaries and administrative assistants.<sup>24</sup>



Comparing the PA temp industry figures to the overall statewide economy shows that production and transportation play an outsized role in the Commonwealth’s temp economy. A worker in the PA temp economy is three times more likely to be in production or transportation sectors than a worker in the overall state economy. Pennsylvania, in fact, has three of the top ten nationwide metropolitan areas with the highest concentration of jobs in the transportation sector: Chambersburg-Waynesboro, York-Hanover, and Scranton-Wilkes-Barre-Hazleton.<sup>25</sup>

Pennsylvania temp work is also characterized by low wages. In Pennsylvania, a low-wage worker is defined as anyone earning \$14.99 or less in 2016.<sup>26</sup> Applying this standard, estimates show that 58% of Pennsylvania temp workers are low-wage workers.

Worker advocates argue that “temping out” jobs leads to depressed wages.<sup>27</sup> The median hourly wage for all Pennsylvania workers in 2016 was \$17.63.<sup>28</sup> For Pennsylvania temp

workers, it was \$15.04.<sup>29</sup> Moreover, directly comparing the median wages for certain occupations reveals a great disparity between direct-hire and temp jobs (see Figure 3).<sup>30</sup>

Occupation	Direct-Hire Median Wage/Hour	Temp Median Wage/Hour
Painters, Construction and Maintenance	\$18.51	\$8.99
Sheet Metal Workers	\$25.33	\$14.45
Mixing and Blending Machine Setters, Operators, and Tenders	\$18.18	\$14.08
Grinding and Polishing Workers	\$14.34	\$11.15
Packaging and Filling Machine Operators and Tenders	\$15.31	\$12.07

**Figure 3. Comparative Wages Between PA Direct Hire v. Temp Worker**

While some temp workers in Pennsylvania do earn comparable wages to their direct-hire counterparts, over 90% of temp workers do not have employer-provided health insurance and less than 4% have an employer-provided pension plan. When taking into account such benefits, temps in Pennsylvania are earning less than direct hires.<sup>31</sup>

As host employers farm out company jobs to staffing agencies, all workers lose individual or collective bargaining power to advocate for better wages or working conditions.<sup>32</sup> A direct-hire

employee, for example, may be scared to lobby for higher wages when he sees that his company’s workforce is hiring a significant number of temps. Any rocking of the boat may cause the employer to bring on even more lower-cost temps and further threaten job security. From another perspective, an employer who sees that many of her competitors are now using temps may be inclined to turn to temps or at least lower wages if they are becoming the industry norm.

## STAFFING AGENCIES

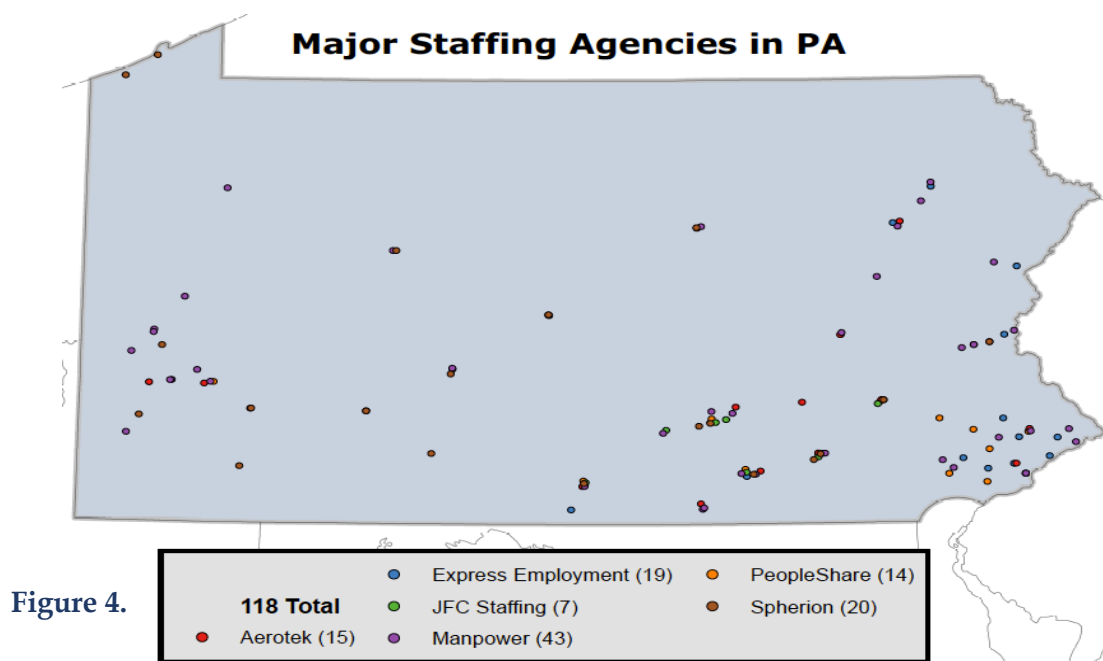
Staffing agencies have grown and adapted to meet industry needs and come in all shapes and sizes. Large corporate giants like TrueBlue, Adecco, and Manpower compete at the national level.<sup>33</sup> In 2010, the New York Times found a staffing agency named Kelly Services



to be the country's second-largest employer after Wal-Mart.<sup>34</sup> National level staffing agencies are rapidly consolidating,<sup>35</sup> with 2017 being an active year of staffing industry mergers and acquisitions.<sup>36</sup> It is not uncommon for host employers to pit these large-chain staffing agencies against one another by hiring workers simultaneously from different agencies.<sup>37</sup>

Because staffing agencies are subject to little regulation in our Commonwealth, there is limited information available on the staffing agencies that operate in Pennsylvania. Unlike other states,<sup>38</sup> Pennsylvania neither requires staffing agencies to register nor asks host employers to disclose that they are working with staffing agencies.

Some of the largest staffing agencies that operate across Pennsylvania include national chains such as Express Employment Professionals, PeopleShare (whose parent company is TrueBlue), Aerotek, Manpower, Spherion, and Adecco. Accu Staffing Services and JFC Staffing Companies represent mid-size statewide chains (see Figure 4).



Local “mom and pop” agencies also comprise a significant, yet harder-to-track, portion of staffing agencies. Competition among these agencies for local business is also intense. Because such competition can trigger cutting corners at the expense of workers, smaller local agencies are sometimes able to get away with unlawful behavior outside of public view.<sup>39</sup>

In Philadelphia, local staffing agencies are often informal, smaller storefronts. These agencies cater mainly to immigrant communities and may operate in extremely casual ways. Practices include paying workers in cash without documentation, withholding the name and contact

information of staffing agencies or host employers, and disappearing entirely without warning.<sup>40</sup>

Some of these local staffing agencies have clustered in communities where workers live creating “temp towns.”<sup>41</sup> ProPublica characterizes these “temp towns” as having a high number of staffing agencies per capita. They occur in neighborhoods where people with vocational training cannot secure factory work without first going through a staffing agency.<sup>42</sup> These “temp towns” can be found in Philadelphia. Demographic maps can provide key insight into the geography of the temp industry. Javier Garcia, an Organizer in Philadelphia, states: “Go anywhere where people are ethnically or racially concentrated; there you will find staffing agencies.”<sup>43</sup> Notably, clusters of staffing agencies in Philadelphia appear in the Olney/Juniata sections of the city, which contain “Hispanic, Black, and Asian” communities.<sup>44</sup>

Immigrant workers, who may face barriers to traditional employment because of limited English proficiency or immigration status often turn to staffing agencies.<sup>45</sup> In Philadelphia, niche agencies have developed and may either openly target or informally work with workers exclusively of a certain nationality or ethnicity.<sup>46</sup> Staffing agencies will message to host employers about the “sorts” of workers they offer.

A class-action lawsuit recently filed in Illinois, for example, alleges several major staffing agencies discriminated against African Americans in favor of hiring Latinos.<sup>49</sup> A former employee of one of the staffing agencies named in the lawsuit admits that management at the agency would use code words in emails to distinguish African American workers from Latino workers. Host employers would not only request Latino workers but they would also complain to the agency when non-Latinos were sent to work at their facility.<sup>50</sup>

### Targeting Ethnic Minorities

Staffing agencies will sometimes advertise to employers and employees about the “kind” of workers they hire.<sup>47</sup> Local Philadelphia staffing agency, Onsite Personnel, LLC, which has locations in eight other states, advertises its Asian and Hispanic workers on its Facebook page. It states: “We distinguish ourselves from other staffing agencies by providing you with a large pool of talented, motivated, efficient and reliable Asian and Hispanic and other minority workers.”<sup>48</sup>

THE PEOPLE COMPANY YOU CAN TRUST.

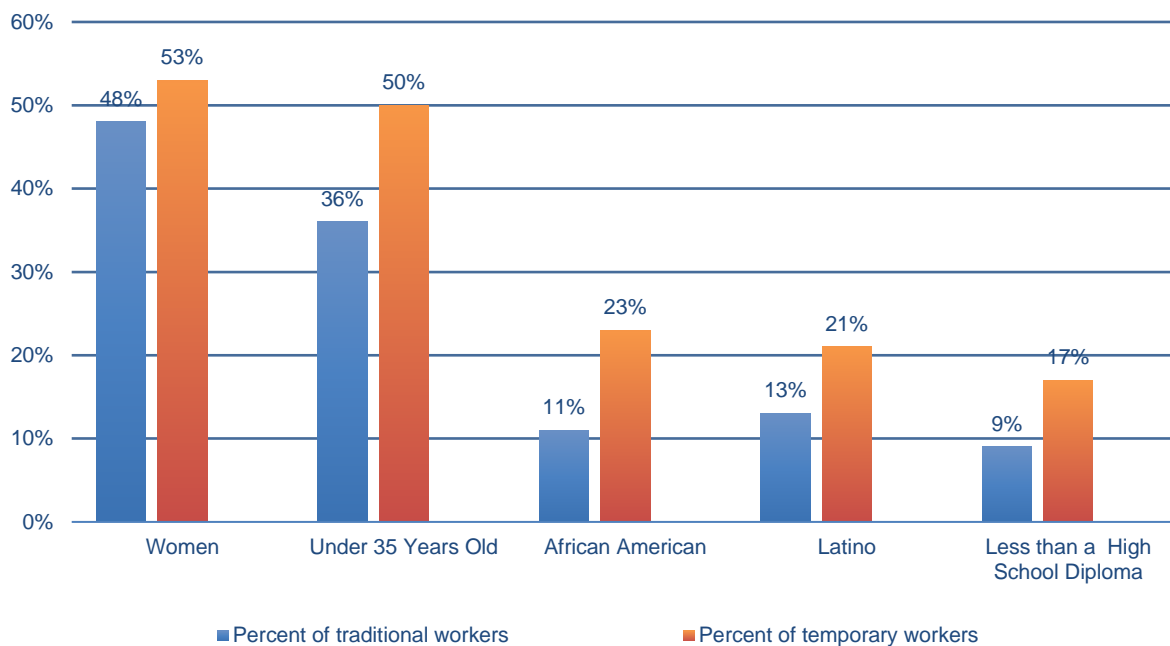


Picture on Onsite Personnel, LLC's Facebook page.

## TEMP WORKERS

There are no statistics on the demographics of temp workers specifically in Pennsylvania. Nationwide, temp worker demographics shows that they are more likely to be young, female, and African American or Latino. Temp workers were also generally less likely to have a high school degree. A 2005 U.S. Department of Labor Contingent Worker Supplement (CWS) represents the most recent national tracking of temp worker characteristics (see Figure 5).<sup>51</sup>

**Figure 5.** Comparison of Temporary Worker to Traditional Workers Demographics



# FALLING THROUGH THE CRACKS: WORKPLACE SAFETY

Consider the case of Janio Salinas, a temp worker who was buried alive in sugar at the CSC Sugar processing plant in Bucks County, Pennsylvania. CSC Sugar supplies sugar to multiple manufacturers, such as Snapple and Ben and Jerry's. Salinas died of asphyxiation when he fell into a sugar hopper at the plant after it became clogged. Just 13 days prior to his death, plant management removed a safety screen that was installed to prevent this very type of accident because it was slowing down productivity. At the time of Salinas' death, every single employee in the plant was a temp worker, including the warehouse manager.<sup>52</sup>

Temp workers encounter health and safety violations in the workplace because of the lack of accountability between staffing agencies and host employers for training temp workers. Temp workers are often assigned the most dangerous jobs within what are already the most dangerous sectors of the labor economy.<sup>53</sup> Yet staffing agencies and host employers both operate on the assumption that the other's compliance with workplace safety laws will deflect liability, while the temp workers pay the price for their employers' assumptions. Further, temp workers fail to report health and safety violations because they fear retaliation by host employers or staffing agencies.

## Special Vulnerabilities

Temp workers tend to be young or inexperienced. As they will be "new" workers far more frequently than the conventional worker, they often do not receive adequate safety training.<sup>54</sup> Further, employers generally have less financial incentive to invest in training resources for workers with a shorter tenure.<sup>55</sup>

The legal systems that address worker health and safety also fail to adequately protect them. While host employers have financial incentives to "temp out" their most dangerous jobs, they generally have no financial responsibility to an injured worker under the workers' compensation laws. The resulting scenario is one in which the party in the best situation to control the safety of the work environment is the party with the least incentive to invest in safety.<sup>56</sup> The stories of Pennsylvania temp workers who have fallen victim to these broken systems have revealed the devastating impacts of inadequately enforced workplace safety laws.

A 2013 ProPublica analysis of workers' compensation claims in five states revealed that temp workers were up to 72% more likely to suffer workplace injuries than their non-temp counterparts.<sup>57</sup> An even larger number of temp workers are either injured or exposed to serious workplace hazards on a daily basis.<sup>58</sup>

Sadly, the Pennsylvania temp industry has produced many similar stories to Janio Salinas.<sup>59</sup> The OSHA and workers' compensation systems are inadequate to address the health and safety of temp workers. As a result, serious injuries, amputations, and fatalities continue to occur when staffing agencies and host employers cut corners with workplace safety.<sup>60</sup>

## LACK OF ACCOUNTABILITY FOR TRAINING

In a traditional employment relationship, workplace safety roles are easily identifiable. In a temp employment relationship where the staffing agency and the host employer each fulfill employer duties, ensuring workers are adequately trained becomes more complicated. Poor communication between staffing agencies and host employers or deliberate evasion of safety laws create hazardous work conditions for temp workers.

One of the most basic employer responsibilities under the federal health and safety laws enforced by the Occupational Safety and Health Administration (OSHA) is the duty to train each employee to ensure that workers have the required skills and knowledge to safely perform their work.<sup>61</sup> For blue-collar jobs, the worker's ability to identify hazards and understand control and protective measures are a crucial piece of this training.<sup>62</sup>

The three-part relationship between temp workers, staffing agencies, and host employers, however, allows accountability to be passed around. When a host employer, for example, contracts away safety training duties to a staffing agency, the host employer washes its hands of responsibility for temp worker injuries. At the same time, the staffing agency, which is frequently competing in a crowded market, will look for ways to cut corners on temp workers' training.



Forklift that crushed temp worker  
Johen Clavey to death

An OSHA investigation report obtained through a Freedom of Information Act (FOIA) request vividly illustrates the perils of skimping on temp worker training. On February 5, 2016, temp worker Johen Clavey was crushed by the forklift he was operating at New England Motor Freight (NEMF) in Camp Hill, Pennsylvania. Mr. Clavey was assigned work at NEMF through a staffing agency called Spherion.

Upon OSHA's investigation, it became clear that Mr. Clavey's death was attributable to the fact that he was never trained to operate a



forklift. OSHA violation worksheets show very typical “buck-passing” between the staffing agency and host employer. Spherion contracted to provide “qualified workers” to the host employer, NEMF. NEMF expressed it did not want to train workers. Spherion, however, provided no formal training.

Relying on Spherion’s promise to provide “qualified workers,” NEMF never verified whether Mr. Clavey was in fact trained to operate a forklift despite the fact that his resume did not include any prior work experience that would indicate proficiency using heavy machinery. In the end, Spherion’s false assurances and NEMF’s unjustified ignorance left Mr. Clavey ill-equipped to deal with the workplace hazards he faced.

Both host employers and staffing agencies can fail to ensure that temp workers receive adequate training. By passing around responsibility for crucial hazard communication and safety training on-the-job, temp workers are at risk for being injured and killed.

## RETALIATION

Many temp workers cannot speak up about working conditions because they fear retaliation. Despite the federal health and safety law’s whistleblower protection provision that makes it unlawful for employers to retaliate against workers for reporting hazards, temp workers may be concerned that their staffing agency will not assign them future work.<sup>65</sup> A bad report from

### Immigrant Workers

Immigrant workers who do not speak English may not receive adequate training.<sup>63</sup>

Take Centrix Staffing. After receiving many complaints from temp workers who worked at Waste Management, organizer Javier Garcia applied for work through Centrix Staffing, which supplied a large proportion of Waste Management’s labor. Pretending to be a monolingual Spanish-speaker, Garcia was shown a 10-minute safety training video entirely in English. After the video at Centrix, he was instructed to initial a Waste Management form, also entirely in English, and was deemed prepared for assignment.<sup>64</sup>

Safety Orientation Training Topics (MUST BE COMPLETED PRIOR TO PERFORMING ANY JOB DUTIES)			
Training Topic	Initial	Training Topic	Initial
Access to Medical Records	JGH	Hearing Protection	JGH
Accident and Injury Reporting	JGH	Heat Stress	JGH
Bale Stacking	JGH	Housekeeping	JGH
Bloodborne Pathogens	JGH	Ladder Use and Inspection	JGH
Cold Stress	JGH	Lockout / Tagout - Affected	JGH
Confined Spaces	JGH	Machine Guarding	JGH
Conveyor Safety / Acknowledgement	JGH	Pushing / Pulling / Lifting	JGH
Drugs and Alcohol	JGH	PPE / Puncture Prevention Policy	JGH
Electrical Safety	JGH	Respiratory Protection (Dust Mask)	JGH
Emergency Management Plan	JGH	Safety Program / IIPP	JGH
Emergency Stops	JGH	Seat Belt Use	JGH
Ergonomics	JGH	Slips, Trips and Falls and Three Points of Contact	JGH
Fall Protection	JGH	Tipping Floor	JGH
Fire Safety / Fire Extinguishers	JGH	Visibility	JGH
Hand Safety	JGH		
Hazard Communication - MSDSs	JGH		
ORIENTATION DVD		THE GOLDEN RULES	JGH

Form displaying topics “covered” during Garcia’s safety training.

### Agency Transportation

Temp workers in Philadelphia frequently go to New Jersey or Delaware, and sometimes as far away as Maryland. Staffing agencies transport workers from Philadelphia in large passenger vans to more remote production and manufacturing facilities. Workers wake up early to catch a ride in the van that often can travel around for hours picking up other workers.<sup>69</sup> Workers are not only charged each way but these vans can also be unsafe because they are overcrowded and fail to meet basic safety standards. One such van with faulty brakes flipped over on I-95 when bringing temp workers from South Philadelphia to a nursery in Delaware. According to a temp worker, there were too many passengers in the van and not everyone had a seatbelt. He was reluctant to speak up to the staffing agency about the incident because he feared that the staffing agency would report him to immigration authorities.<sup>70</sup>



Flipped van carrying immigrant temp workers from South Philadelphia to a nursery in Delaware.

the host employer to the staffing agency, for example, might cause a staffing agency to stop assigning workers who complain. Workers also may not voice concerns so as not to jeopardize the jobs of friends and families who work for the same staffing agencies and host employers.

Temp workers at one frozen appetizer producer in Northeast Philadelphia described a hectic and dangerous work environment in which they were scared to speak up over conditions. Workers at the assembly line expressed fear over the slicer used to cut cocktail sausages that would often be set to an alarmingly high speed. The workers who took stacks of hot trays out of the oven often did not have heat protection and would burn their arms and hands.<sup>66</sup>

One temp worker at this facility seriously injured her hand in the slicer. After reporting the injury to her host employer, she was fired with no explanation. A fellow temp worker confirmed, however, that she was certain that the worker was “fired for her injury.”<sup>67</sup> Another temp worker fainted on the job from extreme heat. When her co-worker called an ambulance, both women were reprimanded by the host employer, who later required them to pay for the \$500 ambulance ride.<sup>68</sup>

These stories illustrate how fear of retaliation makes it difficult for temp workers to hold their employer(s) responsible.

## INEFFECTIVE ENFORCEMENT

Existing state and federal workplace safety laws are inadequate to address the problems faced by vulnerable temp workers. When temp workers are injured or killed, recovery is seriously limited and typically paid out by the party with less ability or incentive to prevent future accidents. Without sufficient federal and state oversight, the buck is passed between host employers and staffing agencies, with temp workers paying the ultimate price.

### Occupational Safety and Health Act

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor is the key agency responsible for protecting worker health and safety through the Occupational Safety and Health Act. Employers have a general duty to provide a workplace free from serious recognized hazards and comply with standards, rules, and regulations issued under the Act.<sup>71</sup> However, the resources of OSHA are insufficient to carry out this ambitious mandate.

According to the AFL-CIO's 2017 workplace safety report, a mere 54 OSHA inspectors are tasked with regulating the safety conditions for Pennsylvania's nearly 5.7 million workers, a ratio of just 1 inspector to cover 105,400 workers.<sup>72</sup> Based on this data, it would take 149 years for OSHA to inspect each jobsite once.<sup>73</sup>

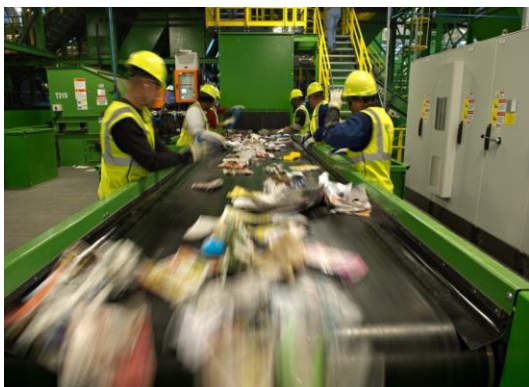
An investigation into Janio Salinas' death from falling into the sugar hopper at CSC Sugar revealed that OSHA had fined the company in 2010 for failing to train temp workers. At the time, CSC claimed that it depended on the staffing agencies to train its workers. Despite these prior OSHA warnings, many of the employees at the Pennsylvania plant reported that neither CSC nor the staffing agencies had trained them.<sup>74</sup>

Even though CSC had removed the safety guard on the machine that killed Salinas, as well as previously received citations, OSHA refused to find CSC "willfully in violation." In justifying this finding, the OSHA director reasoned that the violations didn't show a "total disregard" for OSHA standards. Following Salinas' death, CSC was fined \$25,855. This fine was later reduced to \$18,098, after the plant installed the safety guard. The staffing agency,



OSHA is within the U.S.  
Department of Labor.

Randstadt, that served as the intermediary between Salinas and CSC was never cited or fined.<sup>75</sup>



Workers, like those above, who sorted garbage at the Waste Management facility in Northeast Philadelphia complained about respiratory issues and a lack of protection masks.<sup>77</sup>

When OSHA finds worker injuries and hazardous conditions, the penalties to be imposed are weak and lack the sort of teeth to compel staffing agencies and host employers to make substantive changes to protect workers. Employers found to have previously violated the law will generally receive a citation and fine for each offense. Individual fines may not exceed \$7,000 unless it is classified as a willful or repeat violation, in which case the fines range from \$5,000 to \$70,000.<sup>76</sup>

As seen in the Salinas case, employers are seldom found to have willfully violated OSHA, even if they have been previously cited for the same exact offense. It is also customary for cited

employers who promptly bring their operations up to OSHA standards to have their fines reduced or waived entirely.<sup>78</sup> In all too many cases, the host employer receives a slap on the wrist from OSHA and the worker's sole mechanism for recovery is workers' compensation paid by the staffing agency's coverage. The slight chance of an OSHA inspection coupled with relatively small fines cannot truly deter host employers and staffing agencies from cutting costs in hazardous ways. In sum, the overburdened OSHA system makes non-compliance cost-effective for both staffing agencies and host employers.

Yet the dangerous climate of the temp industry has caught the attention of the federal government. In 2013, OSHA launched the Temporary Worker Initiative (TWI).<sup>79</sup> The TWI explicitly recognized that temp workers are at an increased risk of workplace injuries and fatalities because staffing agencies and host employers skirt around and violate workplace safety laws.<sup>80</sup> To address these issues, the TWI set forth two critical strategies to protect temp workers: revamping the OSHA inspection protocol and designating staffing agencies and host employers as "joint employers."

The purpose of this revamped inspection protocol was to train OSHA compliance officers to take steps to learn if the aggrieved employee is a temp worker, or if there are temp workers at the facility.<sup>81</sup> However, this strategy fails to address the issue of underreporting by temp workers themselves due to fears of retaliation.<sup>82</sup> Further, it is difficult to see how successfully

these procedures can be carried out by overburdened OSHA officers in an underfunded agency.<sup>83</sup>

Joint employment is a legal concept recognizing that in some situations two or more employers share the key attributes of the traditional employer-employee relationship.<sup>84</sup> As joint employers under OSHA, the staffing agency and host employer each bear responsibility for compliance with statutory and regulatory requirements, and thus, can be held jointly liable.<sup>85</sup>

However, the vagueness of the TWI's "joint employer" designation has led to questionable results.<sup>86</sup> While there are occasional instances where the staffing agency and the host employer have been held jointly responsible, the overwhelming trend is for the host employer to receive the vast majority of fines and citations stemming from a temp worker injury.<sup>87</sup>

The TWI represents an important step forward by the Department of Labor in recognizing the magnitude of the temp worker problem. However, the unclear allocation of workplace safety responsibilities and scarce agency resources available to enforce the initiative create barriers to its successful implementation. As a result, temp workers continue to be endangered because of their staffing agency and host employers' failure to comply with OSHA.

### **Workers' Compensation**

The Pennsylvania workers' compensation system has proved unable to sufficiently address temp worker issues. When Pennsylvania temp workers are injured, they must confront a state workers' compensation system that neither strikes at the root cause of temp injuries nor clearly defines host employers' and staffing agencies' responsibilities to temp workers.

The compensation system created by the Pennsylvania Workers' Compensation Act (WCA) is financed by employers' insurance payments. An important quid pro quo defines the workers' compensation system: workers injured from work-related injuries can receive payments to make up for lost wages in exchange for giving up the right to sue their employers.<sup>88</sup> The WCA aims to relieve workers from bearing the costs of work-related injuries and to make such costs a part of an employer's business operations.<sup>89</sup> Employer payments into the system are calculated from an experience rating, meaning employers with high accident rates will pay more than employers with little to no workplace accidents.<sup>90</sup> When employer payments are based on their accident rates, employers should be financially motivated to take measures to reduce accidents.

Temp workers do not reap these benefits, however, because host employers contract away their workers' compensation coverage to the staffing agencies.<sup>91</sup> When a host employer



passes the obligation for workers' compensation onto a staffing agency that pays into the workers' compensation system, the financial incentive to make host employer workplaces safer go with the shifted costs. As a result, a host employer might be encouraged to put temps in the most dangerous jobs because the staffing agency is footing the bill. The host employer then potentially reduces its own payments by artificially deflating its own workplace injury rate among permanent workers.

## ADDING INSULT TO INJURY: FINANICAL HARM



J&J Snack Foods Inc.'s products  
include SuperPretzel.

In October of 2015, the Department of Labor's Wage and Hour Division (WHD) announced that J&J Snack Foods, food manufacturer of SuperPretzel, Icee, Minute Maid Juice Bars, and Luigi's Italian Ice, would pay out over \$3 million to temp workers who were cheated out of minimum wage and overtime pay at its Swedesboro, NJ and Chambersburg, PA facilities. Despite fines that included punishment for repeat violations, J&J Snack Foods Chief Financial Officer Dennis Moore stated the company was "completely unaware that the staffing agencies were not paying the employees properly."<sup>92</sup>

Such a statement reflects the dangers of what can happen when host employers pass the buck on basic employer responsibilities like payroll. It also reflects the "not-my-problem" attitude of host employers toward a workforce integral to their businesses' livelihoods. Unfortunately, J&J Snack Foods is not an outlier in Pennsylvania. Low-wage temp workers experience financial harm because employers engage in practices such as failing to pay minimum or overtime wages or keeping workers from obtaining unemployment benefits.

### PAY VIOLATIONS

While federal and state law guarantee a minimum wage of \$7.25 per hour and overtime wages after 40 hours worked in a workweek (1.5 times their regular rate of pay),<sup>93</sup> staffing agencies employing low-wage temp workers often flout these basic requirements. Investigations from WHD obtained through a Freedom of Information Act (FOIA) request illustrate how Pennsylvania's staffing agencies have failed to pay workers their minimum wages and overtime.

As with J&J Snack Foods, host employers often turn a blind eye to the failure of staffing agencies to pay lawful wages. Northeast Staffing in Philadelphia, for example, supplied temp workers to Asendia USA, "one of the largest international mail consolidators for the U.S. Postal Service." Asendia's customers included Victoria's Secret, Urban Outfitters, and Wells Fargo. WHD found that Northeast-Asendia temp workers were paid, on average, \$6.69 per hour in cash. Their calculations found 634 employees due nearly \$186,000 in minimum wages and 358 employees due nearly \$15,000 in overtime. Asendia's owner, however, claimed to be

unaware of the unlawful wages. Yet temp workers at Asendia were typically paid by the staffing agency in Asendia's lunchroom or parking lot.<sup>94</sup>

Further, many staffing agencies that provide low-wage temp workers to host employers operate on very thin profit margins. One such example involves International Labor, a Philadelphia staffing agency, and a jewelry importer-manufacturer called Stanley Creations, which supplies jewelry to Kohl's, JCPenny, Target, and Macy's. Stanley Creations paid International Labor a rate of \$8.15 an hour per worker plus a service charge of \$1 per every hour invoiced. In turn, WHD found that the staffing agency, International Labor, owed hundreds of thousands of dollars to its workers because it was paying 224 of them sub-minimum wages of \$6.00 per hour and failing to pay overtime to an additional 89 temp workers.<sup>95</sup>

In its report, WHD noted that Stanley Creations, the host employer, seemed to drive the price setting.<sup>96</sup> When host employers can dictate prices in a flooded temp market, staffing agencies find themselves bending rules and ultimately stealing from workers and the government to maximize profit. Dr. David Weil, former WHD Administrator noted, "[a]s profit margins get squeezed along the labor supply chain, there is a greater likelihood of wage violations."<sup>97</sup> Take for example Heng Heng, a staffing agency that supplied workers living in Philadelphia to Medford Nursery, Inc. in Medford, NJ. WHD investigators found that Heng Heng paid 125 temp workers performing agricultural work below minimum wage at \$6.50 per hour in cash. Heng Heng in turn falsified wage statements that it provided to the host employer, Medford Nursery, which inaccurately showed Heng Heng paying workers \$7.25 and taking tax deductions, when instead Heng Heng pocketed the difference.<sup>98</sup>

While some host employers may try to shift blame to the staffing agency for wage and hour violations, sometimes staffing agencies and host employers collude over unlawful payment schemes. In a WHD investigation into a Philadelphia mailing services provider ICS, ICS used temp agency New Century Integrity to avoid paying workers overtime. ICS paid workers for their first 40 hours. New Century then paid workers at their regular rate for any hours worked in excess of 40 hours. With two different paychecks, workers would appear to have two different jobs, but in reality were being cheated out of overtime.<sup>99</sup> Sheller Center worker interviews uncovered a similar payment scheme at a food manufacturing facility in Northeast Philadelphia. Temp workers at this facility were paid by two separate agencies, which was part of a scheme to deny them overtime.<sup>100</sup>

### **Lack of Adequate Information**

Keeping fundamental information from temp workers allows staffing agencies and host employers to more easily get away with pay violations. Many low-wage temp workers lack key information about their employers, such as the name of the staffing agency, name of the host employer, and names of supervisors. Often temp workers refer to the host employer

simply by what is made or packaged on site.<sup>101</sup> None of the workers in the Stanley Creations investigation, for example, could name the staffing agency, its location, or its owner. The worker who first tipped off WHD thought the staffing agency, International Labor, was called “Abeng Agency.”<sup>102</sup>

Another way host employers and staffing agencies keep temp workers out of the loop is by inadequate recordkeeping. When workers are paid in cash and not by check, they do not receive any formal documentation to provide them with their hours worked, their rate of pay, or deductions taken from their pay. Further, without such documentation, they may not know the name, address, or location of the staffing agency or host employer. Temp workers who worked for a Philadelphia staffing agency, for example, were paid in cash in an unmarked envelope. These workers never learned the names and addresses of the staffing agencies that worked with the host employer. Hours would often be missing from the workers’ weekly envelopes. Workers described the sheer hassle of going back and forth for weeks between the host employer and staffing agencies over missing hours, only to have each entity blame the other for the error.<sup>103</sup> One worker stated that her employer was trying



Eggs rolls to be sold at Wal-Mart were prepared by temp workers in Northeast Philadelphia.<sup>104</sup>

to save money through this routine by wearing out outspoken employees and intimidating undocumented employees. Without adequate information, temp workers, therefore, face difficulties fighting for owed wages.

Further, some staffing agencies’ fly-by-night nature makes it hard to trace who a temp worker’s employer truly is. Staffing agencies, particularly smaller ones, can change names and addresses frequently and are even registered under false names. WHD investigators have noted that staffing agencies often disappear and become impossible to track down once a wage and hour investigation is launched.<sup>105</sup> In the ICS

investigation, two staffing agencies used by ICS each changed names twice during a three-year period. One of the agencies also had three different addresses within this period.<sup>106</sup>

## DENYING UNEMPLOYMENT BENEFITS

Staffing agencies may work hard to keep temp workers from securing unemployment compensation. By vigorously defending claims and instituting stringent policies, staffing agencies prevent temp workers from getting benefits to which they should be entitled. Like most states, the Pennsylvania unemployment system is funded by employer contributions and designed to be a safety net for workers unemployed through no fault of their own.<sup>107</sup>

Pennsylvania is one of three states in which a tax on workers' wages also contributes to the state's unemployment system.<sup>108</sup>

An employer's contribution rate is based on its rate of unemployment. Host employers mostly pass unemployment compensation (UC) responsibilities onto staffing agencies. In turn, staffing agencies must seek ways to keep their own rates down and remain competitive.<sup>109</sup> By fighting against temp workers' unemployment claims, both host employers and staffing agencies can save millions in unemployment contributions.<sup>110</sup>

Many staffing agencies have draconian policies that if a temp worker does not call in by a certain time every morning, he will be deemed to have voluntarily quit. Workers who call in for weeks without there being any work may miss calling in one day. That mistake will seriously jeopardize the worker's unemployment claim. A staffing agency representative simply has to point to its contractual language and argue the worker voluntarily quit when he did not call in.<sup>111</sup>

Another way staffing agencies keep their UC rates down is by taking advantage of temp workers' lack of knowledge about the process. Often, after the UC system has found a temp worker eligible for benefits, the staffing agency will appeal the decision, which sends the case before a referee. While many employers use this tactic, staffing agencies have been increasingly making up a significant portion of the UC appeals in Pennsylvania. Staffing agencies send human resources specialists or even attorneys to these hearings.<sup>112</sup> These representatives can frequently outmaneuver a worker unfamiliar with UC law.<sup>113</sup>



# POLICY PRINCIPLES

In the coming years, temp workers will almost certainly continue to sort our Amazon orders, package our Kohl's jewelry, and prepare our favorite snacks from Wawa. As the temp industry continues to grow, so too will the number of temp workers who find themselves vulnerable to workplace injuries or financial harm. Here in Pennsylvania, we can devise ways to counteract this problem. In particular, the Pennsylvania legislature can enact a series of laws that better protect temp workers.

We suggest the following policy principles as a starting place for considering how we might work towards a solution to address the growing problem of temp work in Pennsylvania.

## 1. STUDYING THE ISSUE

This report presents the tip of the iceberg of the temp worker problem here in Pennsylvania. Future research efforts could broaden the scope of understanding by better measuring the scale and magnitude of the problem.

## 2. MANDATING TRANSPARENCY

A lack of information is prevalent within the temp industry, which provides an enormous challenge to workers and enforcement agencies responsible for ensuring fair treatment. Mandatory registration, verification, and disclosure measures between host employers, staffing agencies, and temp workers could increase transparency and accountability.

## 3. CLARIFYING OBLIGATIONS

Many of the fundamental flaws of the three-part employment relationship are fueled by either a misunderstanding or deliberate "passing of the buck" about the joint responsibility of both host employers and staffing agencies. Clarification of the "joint employer" obligations would help hold both host employers and staffing agencies accountable.

## 4. PROMOTING SUPPLY CHAIN RESPONSIBILITY

Large companies are able to "wash their hands" of responsibility for workers by contracting out to staffing agencies for temp workers. Host employers at the top of the supply chain need

to be held publicly accountable for this practice. The accountability for such employers may come from increased worker organizing, consumer awareness, or governmental oversight.

## **5. ADDRESSING RETALIATION**

In a temp economy marked by language barriers, information asymmetry, and unequal bargaining power, increased education of workers about whistleblower protection laws could help encourage reporting. More importantly, enforcement agencies must proactively investigate industries where temp workers are least likely to speak up about workplace violations.

## METHODOLOGY

The Sheller Center for Social Justice at Temple University Beasley School of Law started studying temp workers in Pennsylvania in September 2016. Our research included a combination of interviews with stakeholders, data analysis, and legal and policy research.

We interviewed worker advocates, government officials, employment attorneys, and temp workers. These interviews provided us with an initial context for understanding the issues faced by temp workers. We then examined government data and reports. Through the Freedom of Information Act, we requested reports from federal agencies concerning temp worker investigations. Additionally, we analyzed data publically available through the Department of Labor's Bureau of Labor Statistics (BLS). BLS provides quarterly and annual employment statistics by state and annual research estimates that cover temp workers. We also conducted searches over the Internet for staffing agencies' locations throughout Pennsylvania. Finally, we investigated how the overall legal and policy landscape impacted temp workers. In particular, our investigation included examining the applicable case law, statutes, and regulations. We supplemented this work with an examination of government reports, policy papers, and news articles.

## ENDNOTES

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<sup>1</sup> Nagle v. Trueblue, Inc., No. 1369 C.D.2013, 2014 WL 1327611, at \*1 (Pa. Commw. Ct. Apr. 2, 2014).

<sup>2</sup> Interview with former Staff Management SMX employee (Jul. 25, 2016) (name withheld) (worked in an Amazon packing facility in Carlisle, Pa.); Spencer Soper, *Inside Amazon's Warehouse: Lehigh Valley Workers Tell of Brutal Heat, Dizzying Pace at Online Retailer*, THE MORNING CALL (Sept. 18, 2011), [http://articles.mcall.com/2011-09-18/news/mc-allentown-amazon-complaints-20110917\\_1\\_warehouse-workers-heat-stress-brutal-heat](http://articles.mcall.com/2011-09-18/news/mc-allentown-amazon-complaints-20110917_1_warehouse-workers-heat-stress-brutal-heat).

<sup>3</sup> U.S. Dep't of Labor, Wage and Hour Division, Narrative Report for Stanley Creations, Inc., Case ID 1733037 (Mar. 20, 2015) (on file with authors) [hereinafter Narrative Report for Stanley Creations].

<sup>4</sup> Interview with Taylor Farms employee (Oct. 21, 2016) (name withheld) (worked for Swedesboro, NJ food packager) [hereinafter Taylor Farms Interview].

<sup>5</sup> Interview with Temp Worker B, Former Employee of Frozen Foods Manufacturer, (Apr. 1, 2017) (name withheld).

<sup>6</sup> *Id.*; Interview with Temp Worker A, Former Employee of Frozen Foods Manufacturer (Mar. 20, 2017) (name withheld).

<sup>7</sup> Tian Luo, Amar Man, and Richard Holden, *The Expanding Role of Temporary Help Services from 1990 to 2008*, MONTHLY LABOR REV. 4 (Aug. 2010). Whereas 1 million temp workers accounted for 1% of overall U.S. employment in 1990, by 2000, the number of temp workers had grown to 2.7 million, or 2% of the overall workforce.

<sup>8</sup> Quarterly Census of Employment and Wages, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, [https://data.bls.gov/cew/apps/data\\_views/data\\_views.htm#tab=Tables](https://data.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables) (under "Industry" select "Temporary help services" for the "First Quarter" of "2017") (last visited Sept. 27, 2017).

<sup>9</sup> Quarterly Census of Employment and Wages, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, <https://data.bls.gov/cgi-bin/dsrv?en> (create customized table by selecting "56132" and "561320," "42000," "3" and "5," "1-5," "0," retrieve data and change output options to "2001" to "2016" and locate Series ID ENU4200010556132) (last visited Sept. 27, 2017).

<sup>10</sup> OES Data, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, <https://www.bls.gov/oes/tables.htm> (last visited Jul. 18, 2017); OES Research Estimates by State and Industry, Pennsylvania, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, [https://www.bls.gov/oes/current/oes\\_research\\_estimates.htm](https://www.bls.gov/oes/current/oes_research_estimates.htm) (last visited Jul. 18, 2017).

<sup>11</sup> Jessica R. Nicholson, *Temporary Help Workers in the U.S. Labor Market*, Issue Brief #03-15, DEP'T OF COMMERCE, ECONOMICS AND STATISTICS ADMIN. 2 (Jul. 1, 2015).

<sup>12</sup> REBECCA SMITH & CLAIRE MCKENNA, *TEMPERED OUT: HOW DOMESTIC OUTSOURCING OF BLUE-COLLAR JOBS HARMS AMERICA'S WORKERS* 7 (2014).

<sup>13</sup> Michael Grabell, *The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed*, PROPUBLICA (Jun. 27, 2013, 7:00 AM), <https://www.propublica.org/article/the->

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expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed [hereinafter Grabell, *Expendables*].

<sup>14</sup> Karla Murthy, *The New Temp Economy*, MOYERS & COMPANY (Sept. 2, 2013), <http://billmoyers.com/content/the-new-temp-economy/> (last visited Jun. 13, 2017).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> SMITH & MCKENNA, *supra* note 12, at 7; see also Narrative Report for Stanley Creations, *supra* note 3, where some temp workers had worked for one Philadelphia staffing agency at the same host employer for up to 14 years.

<sup>18</sup> Michael Grabell, *Sugar Plant Removed Safety Device 13 Days Before Temp Worker's Death*, PROPUBLICA (Jul. 6, 2014, 6:00 PM), <https://www.propublica.org/article/sugar-plant-removed-safety-device-13-days-before-temp-workers-death> [hereinafter Grabell, *Sugar Plant*]; DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* 175 (2014); Taylor Farms Interview, *supra* note 4; Lydia DePillis, *This Is What a Job in the U.S.'s New Manufacturing Industry Looks Like*, WASH. POST (Mar. 9, 2014), [https://www.washingtonpost.com/news/wonk/wp/2014/03/09/this-is-what-a-job-in-the-u-s-new-manufacturing-industry-looks-like/?utm\\_term=.7c307c0d4d56](https://www.washingtonpost.com/news/wonk/wp/2014/03/09/this-is-what-a-job-in-the-u-s-new-manufacturing-industry-looks-like/?utm_term=.7c307c0d4d56).

<sup>19</sup> Steven Greenhouse, *The Changing Face of Temporary Employment*, N.Y. TIMES (Aug. 31, 2014), <https://www.nytimes.com/2014/09/01/upshot/the-changing-face-of-temporary-employment.html>.

<sup>20</sup> Luo et al., *supra* note 7, at 5.

<sup>21</sup> *Id.*

<sup>22</sup> Grabell, *Expendables*, *supra* note 13.

<sup>23</sup> OES Data, *supra* note 10; OES Research Estimates by State and Industry, *supra* note 10.

<sup>24</sup> Occupational Employment Statistics, May 2016 Occupation Profiles, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS (March 31, 2017), [https://www.bls.gov/oes/current/oes\\_stru.htm#51-0000](https://www.bls.gov/oes/current/oes_stru.htm#51-0000) (last visited Sept. 10, 2017).

<sup>25</sup> Occupational Employment and Wages, May 2016, 53-0000 Transportation and Material Moving Occupations (Major Group), U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, <https://www.bls.gov/oes/current/oes530000.htm> (last visited Sept. 5, 2017).

<sup>26</sup> An accepted metric for defining low-wage work is 85 percent or below the median hourly wage. According to OES Data, the median hourly wage in Pennsylvania was \$17.63 in 2016. See *supra* note 10.

<sup>27</sup> SMITH & MCKENNA, *supra* note 12, at 13.

<sup>28</sup> Occupational Employment Statistics, May 2016 State Occupational Employment and Wage Estimates Pennsylvania, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, [https://www.bls.gov/oes/current/oes\\_pa.htm](https://www.bls.gov/oes/current/oes_pa.htm) (last visited Jul. 18, 2017).

<sup>29</sup> OES Research Estimates by State and Industry, *supra* note 10.

<sup>30</sup> Like in Pennsylvania, temp workers nationwide also appear to be earning less than direct-hires. In 2016, temp workers made up part of the largest industry within the national production sector. These production temp workers earned a mean hourly wage of \$13.34, compared to overall transportation workers' mean hourly rate of \$17.88. Occupational



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Employment Statistics, Occupational Employment and Wages, May 2016 51-0000 Production Occupations (Major Group), U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS <https://www.bls.gov/oes/current/oes510000.htm>; In 2016, in the transportation sector, nationally transportation temp workers earned on average \$12.46 an hour, while overall transportation workers earned \$17.34 an hour. Occupational Employment Statistics, Occupational Employment and Wages, May 2016 53-0000 Transportation and Material Moving Occupations (Major Group), U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS <https://www.bls.gov/oes/current/oes530000.htm>.

<sup>31</sup> Press Release, U.S. Dep't of Labor, Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements* (Jul. 27, 2005), <https://www.bls.gov/news.release/pdf/conemp.pdf> [hereinafter *Contingent and Alternative Employment Arrangements*].

<sup>32</sup> Lydia DePillis, *supra* note 18.

<sup>33</sup> SMITH & MCKENNA, *supra* note 12, at 7.

<sup>34</sup> Amanda Cox et al., *The iPhone Economy*, N.Y. TIMES (2013), [http://www.nytimes.com/interactive/2012/01/20/business/the-iphone-economy.html?\\_r=1&ref=business&](http://www.nytimes.com/interactive/2012/01/20/business/the-iphone-economy.html?_r=1&ref=business&).

<sup>35</sup> SMITH & MCKENNA, *supra* note 12, at 6.

<sup>36</sup> *Staffing Industry M&A Landscape - Q1 2017*, DUFF & PHELPS (Apr. 2017), <http://www.duffandphelps.com/insights/publications/m-and-a/staffing-industry-ma-landscape-april-2017> (last visited Sept. 10, 2017).

<sup>37</sup> SMITH & MCKENNA, *supra* note 12, at 7.

<sup>38</sup> See, e.g., MASS. GEN. LAWS ch. 140 §§ 46A-46R (2017); 820 ILL. COMP. STAT. 175/1-175/99 (2017).

<sup>39</sup> Interview with Dave DeSario, Executive Producer, *A Day's Work* (Sept. 29, 2016).

<sup>40</sup> *Id.*

<sup>41</sup> Grabell, *Expendables*, *supra* note 13.

<sup>42</sup> *Id.*

<sup>43</sup> Interview with Javier Garcia Hernandez, Owner, MEXCON (Feb. 8, 2017) (former PhilaPOSH Organizer).

<sup>44</sup> See Dustin A. Cable, *2010 Census Block Data*, UNIV. OF VA., WEDLON COOPER CTR. FOR PUB. SERV., available at <https://demographics.virginia.edu/DotMap/index.html>.

<sup>45</sup> Interview with Garcia Hernandez, *supra* note 43.

<sup>46</sup> *Id.*

<sup>47</sup> Interview with Michael Hollander, Staff Attorney, Community Legal Services, in Philadelphia, Pa. (Mar. 3, 2017).

<sup>48</sup> On-Site Personnel, LLC Facebook Page, <https://www.facebook.com/pg/onsitepersonnel/about/> (last visited July 18, 2017).

<sup>49</sup> Liam Stack, *Black Workers' Suit Accuses Job Agency of Favoring Hispanic Applicants*, N.Y. TIMES (Dec. 6, 2016), [https://www.nytimes.com/2016/12/06/us/lawsuit-alleges-discrimination-against-blacks-at-national-job-agency.html?\\_r=0](https://www.nytimes.com/2016/12/06/us/lawsuit-alleges-discrimination-against-blacks-at-national-job-agency.html?_r=0).

<sup>50</sup> *Id.*

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- <sup>51</sup> *Contingent and Alternative Employment Arrangements*, *supra* note 31. The Contingent Worker Supplement will be revived in 2017, after a 12-year hiatus. E-mail from Robin Hildick, Economist, U.S. Bureau of Labor Statistics (Oct. 14, 2016) (on file with author).
- <sup>52</sup> Grabell, *Sugar Plant*, *supra* note 18.
- <sup>53</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., ADDING INEQUALITY TO INJURY: THE COSTS OF FAILING TO PROTECT WORKERS ON THE JOB 8-9 (Jun. 2015).
- <sup>54</sup> Memorandum from Thomas Galissi, Dir., Directorate of Enforcement Programs, Occupational Safety & Health Admin., to Regional Adm'rs (Sept. 5, 2013), [https://www.osha.gov/temp\\_workers/Policy\\_Background\\_on\\_the\\_Temporary\\_Worker\\_Initiative.html](https://www.osha.gov/temp_workers/Policy_Background_on_the_Temporary_Worker_Initiative.html).
- <sup>55</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., ADDING INEQUALITY TO INJURY: THE COSTS OF FAILING TO PROTECT WORKERS ON THE JOB 9 (Jun. 2015).
- <sup>56</sup> *Id.*
- <sup>57</sup> Olga Pierce et al., *How We Calculated Injury Rates for Temp and Non-Temp Workers*, PROPUBLICA (Dec. 18, 2013), <https://www.propublica.org/nerds/item/how-we-calculated-injury-rates-for-temp-and-non-temp-workers> (last visited Jun. 13, 2017). Collectively, the analysis revealed that the incidence of temp worker workplace injuries was 36-72% higher than that for non-temp workers. In Florida, for example, temp workers in the "blue-collar sector" were six times more likely to be injured than non-temp workers.
- <sup>58</sup> *Id.*
- <sup>59</sup> See, e.g., *Nagle v. TruBlue, Inc.*, 148 A.3d 946, 961 (Pa. Commw. Ct. 2016).
- <sup>60</sup> *Protecting Temporary Workers*, OCCUPATIONAL SAFETY & HEALTH ADMIN., [https://www.osha.gov/temp\\_workers/index.html](https://www.osha.gov/temp_workers/index.html) (last visited Aug. 26, 2017).
- <sup>61</sup> Occupational Safety and Health Admin., *Temporary Worker Initiative: Safety and Health Training*, TWI Bull. No. 4, <https://www.osha.gov/Publications/OSHA3859.pdf> (last visited Aug. 26, 2017).
- <sup>62</sup> *Id.*
- <sup>63</sup> A DAY'S WORK (Alliance for the American Temporary Workforce 2015) (on file with authors).
- <sup>64</sup> Interview with Garcia Hernandez, *supra* note 43.
- <sup>65</sup> Under OSHA, workers are entitled to "whistleblower protection" which prohibits employers from retaliating against workers who report injuries or safety concerns. 29 U.S.C. § 660(c).
- <sup>66</sup> Interview with Temp Worker B, *supra* note 5.
- <sup>67</sup> Interview with Temp Worker B, *supra* note 6.
- <sup>68</sup> *Id.*; Interview with Temp Worker B, *supra* note 5.
- <sup>69</sup> Interview with Michael Hollander, Staff Attorney, Community Legal Services, in Philadelphia, Pa. (Mar. 3, 2017).
- <sup>70</sup> Javier Garcia Hernandez, *Immigrants, Refugees and African Americans Working Through Temporary Agencies in Philadelphia* 34 (Apr. 2013) (on file with authors).
- <sup>71</sup> 29 U.S.C. § 654. OSHA regulations that are important for blue-collar industries include: the employer's duties to regularly examine workplace conditions to ensure that they comply with OSHA standards; ensure that employees use and properly maintain safe tools,

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equipment, and protective gear; provide safety training to each employee using language that is readily understood; report serious injuries and fatalities promptly; and keep records of work-related injuries and illnesses.

<sup>72</sup> AFL-CIO, *DEATH ON THE JOB: THE TOLL OF NEGLECT* 133 (Apr. 2017).

<sup>73</sup> *Id.* at 19.

<sup>74</sup> Grabell, *Sugar Plant*, *supra* note 18.

<sup>75</sup> *Id.*

<sup>76</sup> 29 U.S.C. § 666 (2017).

<sup>77</sup> Garcia Hernandez, *supra* note 70, at 37.

<sup>78</sup> Grabell, *Sugar Plant*, *supra* note 18.

<sup>79</sup> Press Release, Occupational Safety & Health Admin., *OSHA Launches Initiative to Protect Temporary Workers*, No. 13-800-NAT (Aug. 29, 2013), [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=23994](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23994).

<sup>80</sup> *Protecting Temporary Workers*, *supra* note 60.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Interview with Jim Touey, Labor Liaison, OSHA Region III (Oct. 17, 2016).

<sup>84</sup> *Boire v. Greyhound Corp.*, 376 U.S. 473, 481 (1964)

<sup>85</sup> *Protecting Temporary Workers*, *supra* note 60.

<sup>86</sup> Interview with Jim Touey, *supra* note 83.

<sup>87</sup> Matt Deffebach et al., *OSHA's Temporary Worker Initiative Two Years Later*, HAYNESBOONE (Jun. 11, 2015), <http://www.haynesboone.com/~media/files/alert%20pdfs/2015/oshastemporaryworkinitiative2yearsater.ashx>.

<sup>88</sup> Nagle, 148 A.3d at 956.

<sup>89</sup> *City of Erie v. W.C.A.B. (Annunziata)*, 838 A.2d 598, 602 (Pa. 2003).

<sup>90</sup> *PA Workers' Compensation Employer Information*, Pa. Dep't of Labor & Industry, <http://www.dli.pa.gov/Individuals/Workers-Compensation/publications/Documents/libc-200.pdf> (last visited Aug. 26, 2017).

<sup>91</sup> SMITH & MCKENNA, *supra* note 12, at 18.

<sup>92</sup> Jane M. Von Bergn, *N.J. Snack Food Maker Paying \$2.1 million to Temp Workers Shorted Overtime Wages*, PHILA. INQUIRER (Oct. 28, 2015, 1:08 AM), [http://www.philly.com/philly/business/labor\\_and\\_unions/20151028\\_N\\_J\\_snack\\_food\\_maker\\_paying\\_2\\_1\\_million\\_to\\_t\\_emp\\_workers\\_shorted\\_overtime\\_wages.html](http://www.philly.com/philly/business/labor_and_unions/20151028_N_J_snack_food_maker_paying_2_1_million_to_t_emp_workers_shorted_overtime_wages.html).

<sup>93</sup> 29 U.S.C. §§ 206-207 (2017); 43 PA. CONS. STAT. § 333.104 (2017).

<sup>94</sup> U.S. Dep't of Labor, Wage and Hour Division, Narrative Report for Asendia USA, Inc., Case ID 1748035 (Feb. 16, 2016) (on file with authors) [hereinafter Narrative Report for Asendia].

<sup>95</sup> Narrative Report for Stanley Creations, *supra* note 3.

<sup>96</sup> *Id.*

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<sup>97</sup> Press Release, U.S. Dep't of Labor, Wage & Hour Division, *J&J Snack Foods pays more than \$2.1M in Back Wages, Damages to 677 Temporary Workers in New Jersey, Pennsylvania* (Oct. 27, 2015), <https://www.dol.gov/opa/media/press/whd/WHD20151976.htm>.

<sup>98</sup> U.S. Dep't of Labor, Wage and Hour Division, Narrative Report for Medford Nursery Inc., Case ID 1668140 (Aug. 13, 2013) (on file with authors).

<sup>99</sup> U.S. Dep't of Labor, Wage and Hour Division, Narrative Report for ICS Corp., Case ID 1727083 (Jul. 15, 2015) (on file with authors) [hereinafter Narrative Report for ICS].

<sup>100</sup> Interview with Nadia Hewka, Supervising Attorney, Community Legal Services. (Feb. 21, 2017); Interview with Johanna Greenberg, Paralegal, Community Legal Services. (Feb. 21, 2017).

<sup>101</sup> Murthy, *supra* note 14.

<sup>102</sup> Narrative Report for Stanley Creations, *supra* note 3.

<sup>103</sup> *Id.*; Interview with Temp Worker B, *supra* note 5.

<sup>104</sup> Interview with Temp Worker B, *supra* note 5.

<sup>105</sup> Narrative Report for Asendia, *supra* note 94.

<sup>106</sup> Narrative Report for ICS, *supra* note 99.

<sup>107</sup> PA. DEP'T OF LABOR & INDUSTRY, OFFICE OF UNEMPLOYMENT TAX SERVICES, EMPLOYER'S REFERENCE GUIDE TO UNEMPLOYMENT COMPENSATION, <http://www.uc.pa.gov/Documents/UCP%20Forms/ucp-36.pdf> (last visited Aug. 26, 2017).

<sup>108</sup> Interview with Julia Simon-Mishel, Staff Attorney, Philadelphia Legal Assistance (Oct. 21, 2016).

<sup>109</sup> Soper, *supra* note 2.

<sup>110</sup> *Id.*

<sup>111</sup> Interview with Julia Simon-Mishel, *supra* note 108.

<sup>112</sup> Soper, *supra* note 2.

<sup>113</sup> *Id.*; Interview with Julia Simon-Mishel, *supra* note 108.

## IMAGE CREDITS

(p. 3) Safety Gloves Required Floor Sign [Online image]. Retrieved Sept. 7, 2017 from <https://www.incomdirect.com/product-page/safety-gloves-required-floor-sign>.

(p. 4) Daily, R. (2017). Astra Foods [Digital image] (on file with authors).

(p. 8) On-Site Personnel, LLC, The People Company You Can Trust [Online image]. Retrieved Jul. 18, 2017 from <https://www.facebook.com/pg/onsitepersonnel/about/>.

(p. 11) Image of forklift involved in deadly worker accident [Digital image]. Retrieved Mar. 1, 2017 from Occupational Safety and Health Administration Inspection No. 1123857 (on file with authors).

(p. 12) Javier Garcia Hernandez, Waste Management Recycling Orientation Training Checklist (photo report 2011) (on file with authors).

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(p. 13) Garcia Hernandez, J. (2013). Van Accident [Digital image] (on file with authors).

(p. 15) Garcia Hernandez, J. (2013). Image of workers in wage management facility [Digital image] (on file with authors).

(p. 18) Image of SuperPretzel [Online image]. Retrieved Jul. 5, 2017 from <https://www.couponsherpa.com/superpretzel/>.

(p. 20) Image of egg rolls [Online image]. Retrieved Sept. 6, 2017 from <http://damndelicious.net/2016/06/10/shrimp-egg-rolls/>.

## **COVER CREDIT**

Designed by Alex Ely Ginsberg. Image of a forklift (2012) [Online image]. Retrieved Sept. 1, 2017 from [https://pixabay.com/p-24394/?no\\_redirect](https://pixabay.com/p-24394/?no_redirect).

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