Nonstandard Jobs, Substandard Benefits

Peter S. Fisher
Elaine Ditsler
Colin Gordon
David West

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The Iowa Policy Project
318 2nd Avenue North, Mount Vernon, Iowa 52314
319-338-0773 (phone) – 319-354-4130 (fax)
www.iowapolicyproject.org

Preface

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The authors of this report are:

- Peter Fisher, Ph.D. (economics), Research Director of the Iowa Policy Project and Professor of Urban and Regional Planning at the University of Iowa, where he has taught since 1977. Dr. Fisher is Principal Investigator for this report.
- Elaine Ditsler, M.S. (urban and regional planning), Research Associate at the Iowa Policy Project.
- Colin Gordon, Ph.D. (history), Professor of History at the University of Iowa and author of *Dead on Arrival: The Politics of Health Care in Twentieth-Century America*.
- David West, M.P.A., Executive Director of the Center for a Changing Workforce (CFCW) since 1999. The CFCW conducts research and policy analysis on issues facing low-wage and nonstandard workers, and was a partner with the Iowa Policy Project in this research project.

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Nonstandard Jobs, Substandard Benefits

Table of Contents

Executive Summary vii

Introduction 1

1. A Changing Workforce 3
    - The Prevalence and Types of Nonstandard Employment 6
    - Who are Nonstandard Workers? 8
    - Misclassification of Workers and Workforce Segmentation 10
    - Conclusions 14

2. Fringe Benefits in a Nonstandard Job 15
    - Health Insurance Coverage and Sources 15
    - Access to Employment-Based Insurance 17
    - Health Insurance Coverage of Family Members 18
    - Substandard Health Insurance 19
    - Non-insurance Alternatives: Medical Discount Cards 19
    - Other Fringe Benefits 21
    - The Future of Fringe Benefits 22

3. Nonstandard Work and Public Policy 23
    - Improving Measures of Health Insurance Coverage and Nonstandard Work 23
    - Policies to Prevent Employee Misclassification 24
    - Policies to Improve Access to Health Insurance 26
    - Conclusions: Health Insurance and Nonstandard Work 34

Endnotes 35

Appendix A: The Contingent Work Supplement 39

Appendix B: The IPP Survey of Fringe Benefits and Nonstandard Work 41

Executive Summary

Over the last 15 to 20 years, more and more employers have turned to part-time, temporary and contract employees to do the work once done by their regular workforce. In 2001, at least 25 percent of workers — and probably more — were in one of these “nonstandard” jobs. In this report, we examine recent trends in nonstandard work, identify the ways in which nonstandard employment is undercounted, document the characteristics of nonstandard workers, and estimate the extent of misclassification of workers by employers. We then review existing and new survey data on the fringe benefits typically provided to nonstandard vs. standard workers. Finally, we make recommendations regarding ways to survey and measure nonstandard work and health insurance coverage, we identify policies to remove the incentive for employers to deliberately misclassify employees, and we critique alternative approaches to address the special problems that nonstandard work poses for health insurance policy.

The nonstandard workforce in 2001 included 18.3 million part-time workers, 7.6 million self-employed independent contractors and 3 million direct-hire temporaries. The remaining 5.4 million nonstandard workers fell into four categories: on-call workers and day laborers; temporary help agency workers; wage and salary independent contractors; and contract company workers.

Temporary and contract employment have surged since 1985. The recession of 2001, however, temporarily halted that growth. Since 2002, rapid growth has resumed once again as firms seek to expand production under tentative conditions and a soft labor market. Between January 2002 and January 2005, the temporary help industry added 336,300 jobs — 20 percent of all private sector job growth during that period. Those numbers grow to 434,000 new jobs and 26 percent of all private-sector job growth when job gains in the employee leasing industry are included. Employment in such firms is projected to continue growing rapidly in the next several years.

Undercounting Nonstandard Work

Nonstandard employment data come primarily from two sources: the Bureau of Labor Statistics’ Contingent Work Supplement (CWS), a household survey, and the Bureau of Labor Statistics Current Employment Statistics’ (CES) survey of employers. We find evidence that the extent of nonstandard work is understated in both surveys. The CWS is almost certainly undercounting the extent of nonstandard work, especially temp agency and contract employment, in part because it ignores a worker’s second and third jobs. Furthermore, the CWS is not exhaustive in identifying all the possible types of nonstandard work arrangements. In particular, it does not identify employee leasing arrangements.

Neither does the Current Employment Statistics (CES) survey capture the full scope of nonstandard employment. The CES tracks only three types of nonstandard workers (temp agency, contract and leased employees) and it does not track them very well. We found evidence that at least 660,000 employees of staffing firms, and quite possibly more than 1 million, are not picked up by the CES, largely because the firms do not identify themselves in the survey as part of the “employment services” industry.

Industry classification guidelines used by some state agencies to better measure economic activity and to stop unemployment fraud have the unintended effect of distorting the way the CES counts employment in those industries. For example, if a staffing firm that supplies work-

ers only to the aerospace industry must identify itself as an aerospace firm rather than a staffing firm, the firm's workers will not be counted as part of the staffing industry in employment surveys. This would account for some of the underreporting of employees in the staffing firm industry.

Worker Misclassification

In some cases, workers are nonstandard in name only: Temporary workers, independent contractors (ICs) and contract workers may simply be misclassified by their employer. Such workers may be indistinguishable from a company's regular workforce yet are hired as "independent contractors" or labeled "temporary." This workforce segmentation allows the employer to reduce taxes and fringe benefit costs.

The 2001 CWS provides evidence of the extent of "perma-temping," where workers are employed at the same job over long periods yet remain classified as "temporary." For example, 27 percent of temporary help agency workers (323,000 workers) and 55 percent of contract workers (333,000 workers) reported that they had worked at their current job assignment for one year or more. In addition, 50 percent of direct-hire temporaries, or 1.5 million workers, had worked for their current employer for one year or more. In total, at least 2.14 million workers were hired as temps or contract workers but appear to actually be permanent employees.

Misclassification of workers as independent contractors is another way that employers avoid conferring employee status and the responsibilities that go along with it. The widespread misclassification of employees as independent contractors has been documented in many studies. In the 2001 CWS, about 1.2 million workers identified themselves as independent contractors but also as employees of another private or public firm (all those called "wage and salary independent contractors.") These independent contractors may in fact be regular employees in all practical respects.

One policy approach to the misclassification problem is to specifically amend the Employee Retirement Income Security Act (ERISA) to require that benefit eligibility be based on the actual facts of employment, not labels. Under this proposal, regular full-time employees could no longer be denied participation in ERISA-qualified plans by putting them on the payrolls of a staffing agency. Another option is to change definitions of employment in state law in order to specify that workers who are paid through labor intermediaries (staffing firms) or hired as independent contractors shall be considered employees of their "common law employer" after no more than 2,080 hours (1 year full-time) of service for the same employer.

Nonstandard Work and Fringe Benefits

The increasing use of nonstandard workers has significant implications for the provision of employee benefits, including health insurance and retirement plans. Survey data from the 2001 CWS and a new national survey — the IPP Survey of Fringe Benefits and Nonstandard Work — reveal that nonstandard workers are more likely to be uninsured than to be covered by their employer's plan. While 1 in 4 nonstandard workers is uninsured, only 1 in 5 has health insurance from his employer. The low wages and insecurity of nonstandard jobs are thus compounded by lack of access to job-based health insurance and retirement plans. As a result, many families of nonstandard workers rely on health insurance provided by a standard job held by the spouse. A decline in access to job-based health insurance is the primary cause of the increase in the number of uninsured Americans, up from 43.6 million in 2000 to 45 million in 2003, accord-

ing to the Census Bureau. Yet, new evidence from the IPP Survey reveals that the Census Bureau figures may actually understate the number of uninsured Americans. The IPP Survey found that a surprisingly large share of nonstandard workers — almost 1 in 5 — had a medical discount card without any health insurance. Before the IPP Survey cross-checked whether respondents differentiated between health insurance coverage and medical discount cards, nearly all of those workers had reported they had health insurance.

The IPP Survey raises the distinct possibility that other surveys have overstated the extent of health insurance coverage by failing to identify those who think of themselves as insured but in fact possess only a discount card. We recommend that future household surveys, including the Current Population Survey, incorporate new "follow-up" questions in order to cross-check that respondents are not mistaking their medical discount card for health insurance. While many surveys, including the Current Population Survey, have follow-up questions to verify that individuals who report being uninsured are indeed uninsured, no questions have been added to verify that individuals who report having health insurance are actually insured (and not mistaking a medical discount card for health insurance). Questions should also be added to track more precisely the incidence of "substandard" coverage such as limited-benefit plans and supplemental insurance.

Not surprisingly, access to job-based health insurance in the United States has declined over the same period that the use of nonstandard workers has risen. These concurrent and interrelated trends are threatening to unravel the employment-based health insurance system in the United States and swell the ranks of the uninsured and underinsured.

Health Insurance Policy

Policies to secure health coverage for nonstandard workers are not markedly different from policies to secure health coverage for all workers, except that they must meet the added challenge of defining the "employer" and the "employee." The very nature of nonstandard work makes it inherently difficult for these workers to either take advantage of group-based solutions or buy into non-group options.

Short of such far-reaching reforms as single-payer national health insurance, the dilemma of jobs without health insurance must be addressed through a variety of public policy initiatives. These initiatives should be combined in bold and inventive ways to provide nonstandard workers with access to group-based health insurance and to avoid such pitfalls as further fragmenting coverage or shuffling the already-insured from one program to another. Specifically, we recommend:

- Modernizing, simplifying and standardizing the definition of employee in labor, employment, and tax law – from basic DOL reporting standards, to the terms of ERISA and other federal laws, to state laws.

- Expanding access to employment-based insurance through the use of employer mandates that explicitly recognize nonstandard workers as "covered employees," and/or explicitly target employers using nonstandard work arrangements to avoid paying benefits.

- Opening "on ramps" to existing group coverage (such as the Federal Employees Health Benefits Program) for individuals, nonstandard workers, and small firms and their employees; such options should be fully covered by ERISA or state insurance laws (unlike proposed "Association Health Plans").

- Expanding and standardizing public programs, such as Medicaid and the State Children's Health Care Insurance Program (SCHIP), in such a way as to "round out" near-universal coverage without inviting employers to dump work-based coverage.

- Using the tax system to identify the uninsured and ease their enrollment into group plans through income-based, refundable tax credits.

Seamless access to group-based health coverage — for nonstandard workers and others — depends upon a transparent employment relationship, secure and portable employment-based insurance, and tax-subsidized access to alternative (public and private) insurance pools for those left behind.

Introduction

Over the past 15 to 20 years, the traditional employer-employee relationship has been giving way to a variety of nonstandard work arrangements. These nonstandard jobs — sometimes referred to as “alternative” or “flexible” employment — include temporary help agency work, on-call labor, day labor, independent contracting, contract company work, self-employment, direct-hire temporary work, employee leasing, payrolling, and part-time work. (See Chapter 1 for definitions.)

Over this same period, employment-based fringe benefits have been on the decline, particularly employment-based health insurance. Since employer-sponsored coverage is the foundation of the U.S. health insurance system, this paring back of coverage means greater numbers of uninsured. This report tells a story about changing work arrangements and the implications for access to employer-sponsored benefits. While employer-sponsored health insurance has garnered much attention due to rising health care premiums and decreases in coverage for employees, there is little empirical evidence of health insurance trends among workers in nonstandard work arrangements. This report fills some of that gap by documenting differences in coverage rates and in other health insurance characteristics between standard and nonstandard workers and within different categories of nonstandard workers.

We rely on two data sources for information on fringe benefits and nonstandard work. The first is the U.S. Census Bureau’s monthly Current Population Survey (CPS). As part of the February CPS, a survey of nonstandard workers — the Contingent Work Supplement (CWS) — was administered in 1995, 1997, 1999 and 2001. The second source for our analysis is a survey that The Iowa Policy Project (IPP) conducted in late 2003 and early 2004. This is a new, national survey aimed at learning more detail about the fringe benefits and health insurance coverage of nonstandard workers.

In Chapter 1 we document the changing nature of work, including the prevalence of various sub-categories of nonstandard work, as identified in the CWS. We also describe new kinds of work arrangements not always captured by the CWS, and provide evidence on the frequency with which workers who are in all respects traditional, full-time employees are misclassified as independent contractors and temporary workers.

Chapter 2 investigates the state of fringe benefits for nonstandard workers. We rely on the CWS to provide a “point in time” estimate of insurance coverage and the source of that insurance. We rely on the IPP Survey to document the coverage of other family members, to provide full-year estimates of insurance coverage, and to identify a new type of health plan used by nonstandard workers. We also use the IPP Survey to examine the prevalence of pension and other benefits in nonstandard jobs.

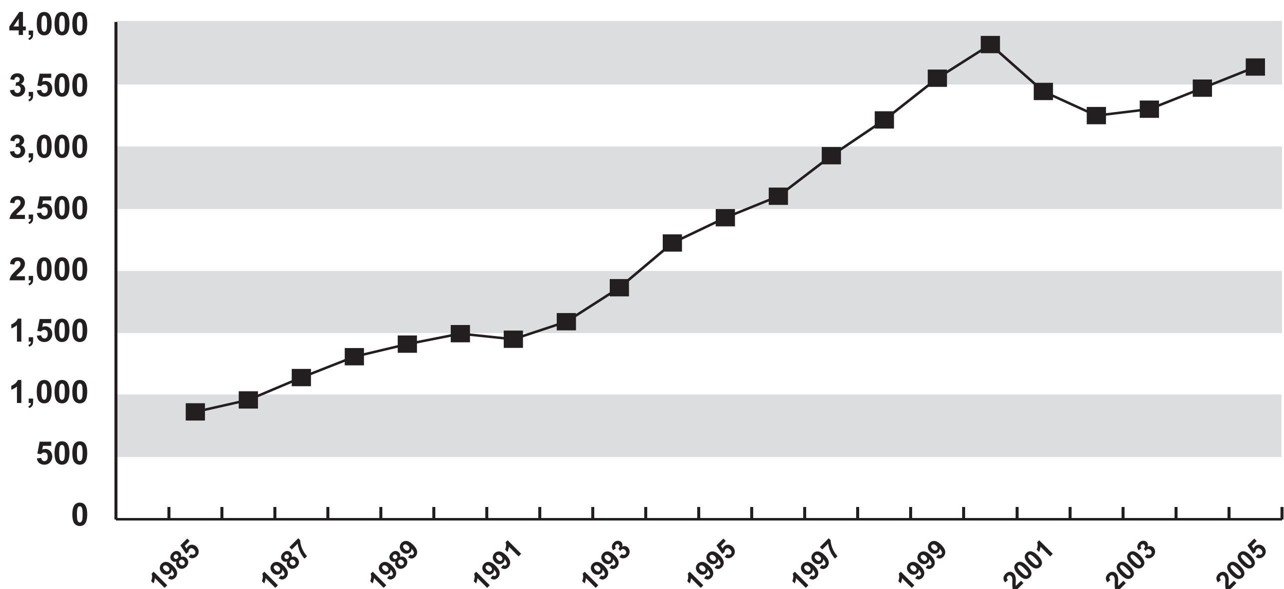
In the final chapter, we evaluate various public policy responses to the challenges that nonstandard work arrangements pose for the provision of adequate health insurance and other important employment benefits. These policies involve regulating the employment relationship, extending access to existing health insurance coverage, and other measures to increase insurance coverage of this population and to ensure that insurance is adequate and affordable.

1. A Changing Workforce

Over the past two decades, the traditional employer-employee relationship has given way to a variety of "nonstandard" work arrangements. In this report, the term "nonstandard" is used to encompass temporary help agency work, on-call labor, day labor, employee leasing, payrolling, independent contracting (IC), contract company work, direct-hire temporary work, and part-time work. (For definitions of these categories, see the box on the following page.) The term "standard" is used interchangeably with "regular full-time" to refer to workers who are not paid by a staffing firm and who have full-time, permanent, wage and salaried employment.[1]

Nonstandard work arrangements have come under scrutiny because of concern that these jobs are inferior to standard jobs in terms of wages, job security, and benefits. Reports on non-standard workers — including this one — have corroborated these concerns, but at the same time demonstrate that not all nonstandard jobs are created equal. Contract company work, for example, pays better than a standard job, but provides fewer benefits and less job security.[2] According to the BLS, men working full time as contract workers in 1999 earned $770 per week compared to $613 for standard workers. For women, the difference was even greater: $690 vs. $474. On the other hand, temp agency workers, direct-hire temporaries and on-call workers earn less, receive fewer benefits and have less job security compared to standard workers (even after controlling for age, education, industry, work hours, union status, and other job and worker characteristics).[3] According to the BLS, men working full time as temp agency workers in 1999 earned only $367 per week and women earned only $331 per week. These differences in earnings between categories of nonstandard work are largely due to the types of occupations that are found in each type of arrangement. For example, contract company work-

Figure 1.1. Job Growth in the Employment Services Industry (in thousands), 1985-2005



Source: Bureau of Labor Statistics, Current Employment Statistics Survey.
Notes: In 2005, about 68 percent of jobs in the Employment Services sector were temp help industry (temp agency and contract company workers) and another 24 percent of jobs were in the employee leasing industry (leased employees).

ers are more likely to hold professional specialty jobs while temporary help agency workers are more likely to be in administrative and laborer occupations.

Trends in nonstandard employment can be identified in two ways: by surveys of employers and by household surveys. Both have important uses and limitations. The employer surveys are useful in identifying the number of jobs in what are called "staffing firms," officially known as the "employment services" industry. While this industry consists primarily of temporary help agencies such as Manpower and Kelly Services it also includes contract companies and employee leasing firms. But other forms of nonstandard work, such as independent contracting, direct-hire temporary work and regular part-time work, can be identified only through household surveys.

The Bureau of Labor Statistics' Current Employment Statistics (CES) program is one such employer survey that allows us to identify trends in the staffing industry. The CES data reveal that staffing firm employment has quadrupled since 1985. This trend was briefly interrupted by the recession of 2001, as employers laid off contract and temp agency workers first (Figure 1.1). But the growth has resumed once again as firms seek to expand production under tentative conditions and a soft labor market. Since the end of the recession in October 2001, job growth in the employment services industry has been much stronger than in others. Between January 2002 and January 2005, the temporary help industry added 336,300 jobs — 20 percent of all private-sector job growth in that stretch. Those numbers grow to 434,000 new jobs and 26 percent of all private-sector job growth when including job gains in the employee leasing industry.

DEFINITIONS

Contract Company Workers: Workers who are on the payroll of a contract company, a type of staffing firm that provides workers or their services under contract. Workers are usually assigned to only one customer and usually work at the customer's worksite. Contract company firms tend to provide staffing in a specific industry (automotive, aerospace, public administration, etc.).

Day Laborers: Workers who wait at a place where employers pick up people to work for the day. A type of on-call worker.

Direct-hire Temporaries: Workers who are hired directly by the company where they work (as opposed to temp agency workers), and who are in a temporary work arrangement (e.g. job is seasonal, lasts only until a project is completed, etc.).

Independent Contractors (ICs): Someone who obtains customers on their own to provide a product or service. Independent contractors can have other employees working for them and should have opportunities for profit. In the Contingent Work Supplement, two types of independent contractors are identified.

Wage and Salary ICs: These ICs identified themselves as employees of a government, private company or non-profit organization in the basic Current Population Survey. And in the supplement answered affirmatively to the question "Were you working as an independent contractor, an independent consultant, or a freelance worker?" These ICs are likely to be standard employees that were misclassified by their employer as independent contractors.

Self-employed ICs: These ICs identified themselves as self-employed in the Current Population Survey and answered affirmatively to the question in the supplement, "Are you self-employed as an independent contractor, independent consultant, or freelance worker?"

Leased Employees: Workers who are on the payroll of an employee leasing company or Professional Employer Organization (PEO). In some cases, a small company uses a leasing firm in order to benefit from the PEO's ability to provide cheaper human resource services. In other cases, the leasing firm is used merely as a "payrolling" service for employees that a company does not want on its own payroll. ▶

While employment in the Employment Services industry appears small (it accounted for just over 3 percent of the private sector workforce in June 2005), the authors believe that the actual number of workers is almost certainly much higher. Further, the Employment Services industry is projected to continue growing rapidly in the next several years, adding 1.8 million jobs between 2002 and 2012, more than any other industry.[4]

Since 1995, social scientists have had a new source of information on nonstandard work arrangements thanks to the addition of the Contingent Work Supplement (CWS) to the Bureau of Labor Statistics' Current Population Survey (CPS). The CPS is a monthly survey of about 60,000 households, which is used to obtain national labor force statistics, including the official unemployment rate. The CWS has been fielded every other February since 1995, except for February 2003. Since the 2005 survey data will not be available until later in the year, the most recent year currently available is 2001. (The authors plan an update with the new data when available.) The CWS attempts to identify all kinds of nonstandard work arrangements.

The authors of this study also developed a new survey of nonstandard workers. The IPP Survey of Fringe Benefits and Nonstandard Work was fielded in late 2003 and early 2004. That survey collected more detailed data on access to health insurance and fringe benefits for nonstandard workers and their families than the CWS. In Chapter 2, the major findings from the IPP Survey serve to supplement basic health insurance data collected in the 2001 CWS and provide some startling new information on why national estimates of health insurance coverage may be overstated.

DEFINITIONS (continued)

Nonstandard Work Arrangement: Any job that differs from a standard job in at least one of the following ways:
(1) The job is temporary;
(2) The employer is distinct from the company for whom the person actually works (worker is placed by a staffing firm);
(3) There is no employer (self-employed independent contractors); or
(4) Hours worked per week are usually fewer than 35.

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 (persons who work a regular schedule, but are also on-call — such as doctors, electricians, and plumbers — are not included in this category).

Part-Time Workers: Workers who usually work fewer than 35 hours per week in an otherwise standard job.

Payrolled Employees: Workers who are recruited by the worksite employer and are instructed to sign up as employees of a staffing firm and are therefore on the payroll of the staffing firm. Contract company workers, leased employees, and temp help agency workers who are recruited by their worksite employer are also "payrolled" employees.

Staffing Firms: Companies that provide staffing services to client firms. Workers are on the payroll of the staffing firm but work at the client firm's worksite. Staffing firms may recruit workers and assign them to a client firm or, as in the case of payrolled employees, the client firm may recruit workers directly and instruct them to sign up with the staffing firm. This report identifies four types of staffing firm employees: temporary help agency workers, contract company workers, payrolled employees, and leased employees.

Standard Worker: Full-time workers (usually working more than 35 hours per week) in a permanent, wage or salaried position who are not paid by a staffing firm.

Temporary Help Agency Workers: Workers who are on the payroll of a temporary help agency. A temporary help agency is a business that supplies workers to other companies on an as-needed basis or supplies workers to other companies primarily for short-term assignments. "Day laborers" who are on the payroll of a staffing agency (i.e. Labor Ready) are included here.

The increasing use of nonstandard workers also has implications for the broader labor market because it shifts more bargaining power to the employer. As a result, the ability of all workers to negotiate higher wages and better benefits is eroded. Some have tried to argue that increasing numbers of workers — particularly working mothers, young workers, and re-entering retirees — prefer "flexible" jobs, and that this has been the predominant reason for the increase in this category of nonstandard jobs. However, studies have demonstrated that in fact businesses are the driving force behind the increase, not worker preferences.[5] Several employer surveys have found that companies use nonstandard work arrangements to sidestep the costs of benefits for their employees.[6] This cost-saving component appears to be a primary reason why nonstandard work arrangements have increased in each major American industry except the public sector.[7] Chapter 2 of this report sheds further light on this shift by examining the lack of fringe benefits in nonstandard employment.

The Prevalence and Types of Nonstandard Employment

According to CWS, which is the most comprehensive source of data on nonstandard employment, nonstandard workers make up roughly 25 percent of the U.S. workforce (Table 1.1 and Figure 1.2). Regular part-time workers, defined as workers who usually work fewer than 35 hours per week in an otherwise "standard" job, are the largest category of nonstandard workers. In 2001, there were 18.3 million part-time workers, representing approximately 13.3 percent of U.S. employment. Self-employed independent contractors were the second largest group, representing about 5.5 percent of total U.S. employment in 2001 (7.6 million workers). The third largest group consisted of direct-hire temporaries, who represented 2.2 percent of total employment in 2001 (3 million workers). The rest of the nonstandard workers (on-call/ day laborers, temporary help agency workers, wage and salary independent contractors and contract company workers) totaled 5.4 million workers, or 4 percent of total U.S. employment in 2001.

Table 1.1. Number of Workers in Each Category, 2001 (thousands)

Category		
All Temporary Workers		6,566
Temp Agency Workers	1,198	
On-Call Workers	2,395	
Direct-Hire Temporaries	2,973	
Independent Contractors – W&S		1,184
Independent Contractors – SE		7,598
Contract Company Workers		606
Part-Time Workers		18,335
All Nonstandard Workers		***34,288***
Standard Workers		97,386

Source: Authors' analysis of 2001 Contingent Work Supplement.

The CWS is almost certainly undercounting nonstandard work, especially temp agency and contract employment. According to the Bureau of Labor Statistics Current Employment Statistics (CES) survey — a national survey of employer payrolls that is used to estimate employment levels — there were about 2.3 million temp agency and contract company positions in the U.S. in 2001. In comparison, the CWS estimated only 1.8 million (606,000 + 1,200,000) temp and contract workers. Furthermore, the CWS reported no change in the number of temp and contract workers between 1995 and 2001. Yet, the CES reported an increase of 600,000 temp and contract jobs. It is also generally believed that on-call workers and day laborers are undercounted in the CWS since the homeless and transients, who often work in these arrangements, are not reached by a household survey.

Part of the reason for the discrepancy between the CPS and CES is that the former is a count of workers while the latter is a count of jobs or positions. The CWS reports only the primary job

of each worker, so that a person whose second job is for a temp agency is not counted as a temp agency worker; that temp agency position would be counted, however, in the CES.

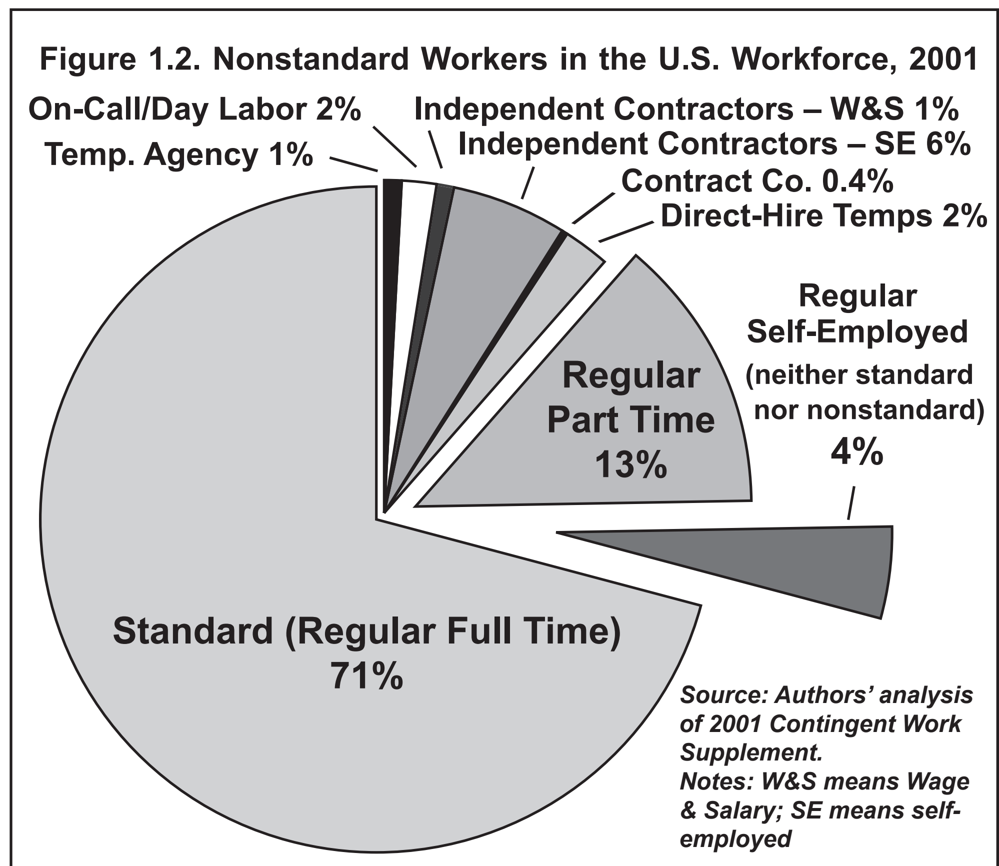
A complete and accurate counting of all nonstandard workers is inherently difficult. Some workers may simply fail to report their work status accurately in the survey. Others may not be aware of their nonstandard work arrangement. For example, many workers do not realize that their employer has labeled them as “independent contractors” until they are laid off and denied unemployment benefits.[8] Furthermore, the CWS work definitions may not be entirely clear to survey participants.[9] Finally, the CWS is not exhaustive in identifying all the possible types of nonstandard work arrangements; in particular, the CWS does not attempt to identify leased employees, while the CES counted 778,000 jobs in leasing firms in 2001.

Neither does the Current Employment Statistics (CES) survey capture the full scope of non-standard employment. In fact, that survey tracks only three types of nonstandard workers (temp agency, contract and leased employees) and it does not track them very well. Because these workers are on the payroll of staffing firms, it is logical to expect them to be counted in the Employment Services industry (NAICS[10] code 561300). However, it appears that some workers are counted in a different industry, with the result that employment in staffing firms is underreported in the CES. The explanation for why these workers are not included in the Employment Services Industry lies at least partially with state employment agencies.

The CES survey is derived from the ES 202 database used by state employment agencies to administer the unemployment compensation system. In some states, according to BLS and state officials, staffing firms that primarily serve one industry (construction, for example) are assigned that industry’s NAICS code. This is done to more accurately measure economic activity and to prevent unemployment compensation fraud.

To estimate how many workers may be misclassified in the CES, the authors analyzed a database of Department of Labor Form 5500 Annual Reports filed in 2002 (the most recent year available). These forms report the number of employees covered by benefit plans and the industry codes used by employers. The Form 5500s identified staffing firms reporting under at least 20 different NAICS

Figure 1.2. Nonstandard Workers in the U.S. Workforce, 2001



Source: Authors’ analysis of 2001 Contingent Work Supplement.
Notes: W&S means Wage & Salary; SE means self-employed

codes in 2002. In one industry, Payroll Services, 17 out of the 21 largest firms were actually staffing firms. Based on an analysis of a small sample of firms reporting in 11 industries, there are at least 660,000 temporary, contract and leased employees – and quite possibly more than 1 million – who should be counted in the Employment Services sector but were misclassified in other industries (Table 1.2). If those 660,000 workers were correctly classified and counted in the Employment Services sector, the number of workers in that industry sector would increase by 20 percent, from 3.3 million to 3.9 million, using January 2005 numbers. Since Form 5500s report only employees covered by benefit plans (and not all staffing firm employees are covered by company benefit plans), the actual number is stil probably much higher. The authors also analyzed whether there are some firms that *are* classified in the Employment Services industry but should not be. With the exception of one firm, this does not appear to be an issue.

Table 1.2. Temporary, Contract and Leased Employees Misclassified in Other Industries, 2002

NAICS Code	Industry Description	No. of Employees*
541990	All Other Professional, Scientific, Technical Services	383,100
541214	Payroll Services	108,211
812990	All Other Personal Services	48,569
561110	Office Administrative Services	31,839
524210	Insurance Agencies and Brokerages	19,801
541330	Engineering Services	18,759
541511	Custom Computer Programming Services	18,122
561490	Other Business Support Services	15,346
541519	Other Computer Services	6,196
335900	Electrical Equipment Manufacturing	4,727
236200	Nonresidential Building Construction	4,420
	Total	**659,090**

Source: Authors' analysis of DOL/IRS Form 5500 Reports from 2002.
****Number of benefit plan participants of large employers (more than 1000 employees).***

Further evidence of undercounting in the CES is found when comparing estimates of the number of leased employees in the March 2002 Economic Census, a comprehensive survey of firms conducted every five years, and the March 2002 CES. During that month, the CES reported 761,000 leased employees, while the March 2002 Economic Census counted 1.7 million — more than twice as many. (It should be noted, however, that the BLS expressed concerns about the accuracy of the Economic Census in counting leased employees.) The undercount in the CES can at least partially be attributed to industry misclassification. The analysis of Form 5500 filings revealed that 15 of the largest leasing firms reported in *at least five* different industry codes, and two-thirds of their 373,000 employees were reported in industries other than Employment Services.

Who are Nonstandard Workers?

The race and ethnicity of nonstandard workers varies as much within groups of nonstandard workers as it does between standard and nonstandard workers (Table 1.3). For example, only 52 percent of temp agency workers are white (compared to 72 percent of all standard workers) while 83 percent of self-employed independent contractors and 78 percent of part-timers are white. Black workers make up particularly large shares of temp agency workers (25 percent), and contract company workers (15 percent). Hispanic workers make up large shares of agency

temps (18 percent), on-call/day laborers (14 percent), and direct-hire temps (17 percent).

Nonstandard workers are also more likely to be female (Table 1.4). The larger percentage of female nonstandard workers is primarily explained by their high prevalence in the part-time worker category (69 percent female). Females also make up a larger share of temp agency workers (59 percent). In all other groups, males make up a larger or equal share.

Table 1.3. Workers by Race/Ethnicity, 2001

	White	Black	Hispanic
All Temporary Workers	65.7%	13.8%	16.0%
Temp Agency Workers	52.4%	24.6%	17.6%
On-Call/Day Laborer	70.1%	12.7%	14.2%
Direct-Hire Temporaries	67.4%	10.3%	16.8%
Independent Contractors – W&S	74.1%	11.3%	10.5%
Independent Contractors – SE	82.5%	6.1%	6.7%
Contract Company Workers	66.6%	14.6%	10.3%
Part-Time Workers	78.0%	9.3%	9.0%
All Nonstandard Workers	***76.3%***	***9.6%***	***9.9%***
Standard Workers	71.8%	11.9%	11.6%

Source: Authors' analysis of 2001 Contingent Work Supplement.
Notes: Omits a small share of workers reporting Asian or American Indian.

Finally, industry data also reveal interesting differences within groups of nonstandard workers (Table 1.5). Among temp agency and contract workers, 22 percent were employed in manufacturing. While this is only slightly higher than the 19 percent of all standard workers in manufacturing, it is an important indicator of how the labor market is changing. Historically, manufacturing jobs have provided "career" jobs that pay high wages and provide good benefits. The use of nonstandard workers in that industry implies a fundamental change in the U.S. labor market.

Table 1.4. Workers by Sex, 2001

	Male	Female
All Temporary Workers	50%	50%
Temp Agency Workers	41%	59%
On-Call/Day Laborer	55%	45%
Direct-Hire Temporaries	50%	50%
Independent Contractors – W&S	54%	46%
Independent Contractors – SE	66%	34%
Contract Company Workers	69%	31%
Part-Time Workers	31%	69%
All Nonstandard Workers	***44%***	***56%***
Standard Workers	56%	45%

Source: Authors' analysis of 2001 Contingent Work Supplement.

Another 12 percent of contract company workers were in public administration, twice the share of standard workers. The reason for the large share of contract company workers, but not other types of nonstandard workers, in public administration is that governmental agencies often have authorization to spend money on contracted services, but not on employees.

Part-time workers were largely in retail trade (37 percent) and self-employed independent contractors were mostly in construction (21 percent), both at more than twice the rate of standard employees. A good share of on-call/day laborers (13 percent) and wage and salaried independent contractors (12 percent) were also in construction — again, at twice the rate of standard employees. The largest share of on-call workers were in educational services (19 percent) — presumably substitute teachers. Direct-hire temps were also predominant in education services at a rate three times that of standard workers (32 percent vs. 9 percent).The largest

share of wage and salaried independent contractors — 17 percent — was in personal services at a rate eight times that of standard workers.

Table 1.5. Workers by Industry, 2001

	Const.	Mfrg.	Retail Trade	Personal Services*	Educ. Services	Public Admin	All Other Industries	Total
All Temporary Workers	9%	9%	10%	5%	22%	5%	41%	100%
Temp Agency Wkrs	3%	22%	4%	1%	2%	3%	65%	100%
On-Call/Day Labor	13%	6%	12%	4%	19%	5%	41%	100%
Direct-Hire Temps	8%	6%	11%	7%	32%	5%	30%	100%
Ind. Cont. – W&S	12%	6%	6%	17%	5%	1%	53%	100%
Ind. Cont. – SE	21%	3%	9%	6%	1%	0%	60%	100%
Contract Co. Wkrs	5%	22%	2%	2%	5%	12%	52%	100%
Part-Time Workers	2%	5%	37%	4%	13%	2%	38%	100%
All Nonstd. Workers	***8%***	***5%***	***24%***	***5%***	***12%***	***2%***	***44%***	***100%***
Standard Workers	6%	19%	14%	2%	9%	6%	45%	100%

Source: Authors' analysis of 2001 Contingent Work Supplement
Notes: For all workers, the industry of the worksite employer is reported (for example, temporary agency workers are classified according to the industry of the client to whom they are assigned as opposed to the industry of the temp firm, which is the "employment services" industry). *Includes private HH services.

Misclassification of Nonstandard Workers and Workforce Segmentation

So-called "nonstandard" work may in fact be no different from the work of any "standard" employee. But how the employer classifies — or labels — a worker can have major implications for the provision of employment benefits, including health insurance and retirement plans, as described in Chapter 2. The work arrangement also has implications for whether a worker is covered by unemployment insurance, workers' compensation, and wage and hour laws. Employers may deliberately misclassify employees so that a worker who does the same work as a full-time, permanent employee is hired as an independent contractor or is put on the payroll of a staffing firm. This workforce segmentation allows the employer to reduce taxes and fringe benefit costs.

Employers are not required to provide health insurance, retirement and paid leave to employees, although most employers customarily offer all three benefits to at least some employees. While employers can deny benefits to some regular employees and not others, this creates morale problems. Instead, employers use nonstandard workers. These independent contractors and temporary, contract and leased workers often do the same job as a company's regular employees but are not included as part of the regular workforce.

There are also legal reasons for such nonstandard employment arrangements. To qualify for tax-deductible status, "self-insured" employers[11] must comply with IRS code requirements that employee health plans be "nondiscriminatory" in coverage and benefits.[12] "Nondiscriminatory" means the plan must cover approximately 70 percent of the employer's workforce.[13] By hiring some employees under nonstandard arrangements, employers can reduce the number of

“regular” employees, making compliance with the 70 percent rule easier. For employers who are not self-insured, nonstandard work arrangements provide one way of circumventing “minimum participation” rules that require employers to have all or most workers on one health plan.

Nonstandard work includes many types of employment arrangements and labels that determine how an employee is treated, regardless of the work the employee actually does. Whichever label is used, there are clear methods to determine the actual employer. For over 100 years, courts have been applying an objective test under which a worker is an employee of the firm that exercises control over the work, including the power to hire and fire.[14] This “common law” test also looks at the length of employment, location of employment, whether the work is ongoing or temporary and other factors.[15] The IRS uses the common law test to determine liability for payroll taxes.

Perma-temps

When employers use temp agencies and contract companies to provide staffing, it is often thought of as short-term work — employees work on a single project and then move on — but this is not always the case. Temporary agency and contract workers are often an essential part of the company’s workforce, working side by side with regular employees and doing the same work for long periods of time. The highest-profile example of this type of employment misclassification — also called “perma-temping” — was the Microsoft case, in which the company paid $97 million in 2000 to settle a lawsuit brought on behalf of more than 10,000 contract workers.

The 2001 CWS provides evidence of perma-temping among some “temporary” and “contract” workers. In 2001, 27 percent of temporary help agency workers, or 323,000 workers, had worked at their current job assignment (the employer to whom they were assigned by the staffing firm) for one year or more; 55 percent of contract workers, or 333,000 workers, had worked at their current job assignment for one year or more; and 50 percent of direct-hire temporaries, or 1.5 million workers, had worked for their current employer for one year or more (Table 1.6). In total, at least 2.14 million workers were hired as temps or contract workers but appear to actually be permanent employees. Furthermore, when asked if they expected their jobs to last indefinitely, 84 percent of contract company workers and 45 percent of temp agency workers said yes.

Table 1.6. Share of Workers Employed One Year or More in Current Job/Assignment, 2001

Temp Agency Workers	27%
On-Call Workers	57%
Direct-Hire Temporaries	50%
Independent Contractors – Wage & Salary	61%
Contract Company Workers	55%
Part-Time Workers	63%
Standard Workers	79%

Source: Authors’ analysis of 2001 Contingent Work Supplement.
Notes: For temp agency workers, on-call workers and contract company workers, length of employment is based on the length of time the individual has worked for the customer or firm to whom they are assigned. For direct-hire temporaries, wage and salary independent contractors, regular part-time and regular-full time (standard) workers, length of employment is based on the length of time the individual has worked for the current employer. Day laborers and self-employed independent contractors are excluded from this analysis.

Vendor on Premises (VOP) staffing is a variation on temporary/contract staffing that has emerged as employers replace permanent employees with temporary and other nonstandard workers. In this model, the vendor (the staffing

firm) places one or more staff people in the employer's facility, ostensibly as the "supervisor" of the workers on the staffing firm payroll. In some instances, the VOP staff fulfills some of the duties of an actual supervisor, including hiring and supervision. More often, the employer's own supervisors provide supervision to the staffing firm employees, and the VOP staff serve only as a liaison between the staffing firm and the employer.

Payrolling

Many large employers use an employment practice called "payrolling," which can misclassify regular workers as employees of a staffing firm. Payrolled employees are distinct from temp agency workers because they are not recruited by the staffing firm. Instead, they are recruited by the company for whom they will actually work and are instructed to sign up as "employees" of the staffing firm, who assigns them back to the real employer. In return, the employer pays the staffing firm a fee for the payrolling service.

Payrolled employees can also be labeled as "contract," "leased," "1099" or "temporary" workers. These employees are not eligible for the worksite employer's fringe benefits, including pension plans, health insurance, vacations, sick leave, holidays and many other benefits.[16] Payrolling is common among employers who offer comprehensive benefit plans to their regular employees, either because of tradition, collective bargaining or the high skill level of the employees. With payrolling, it is possible to reduce or eliminate benefits to a portion of the workforce for whom a good benefit package is not deemed essential. This practice is engaged in by complex manufacturing companies in aerospace, transportation, energy, utilities, telecom, electronics and high-tech, among others. Payrolling is also found in banking and finance, biotech and pharmaceutical, and publishing and media sectors. The practice is used in the government sector to get by full-time equivalent (FTE) caps placed by elected officials. Payrolling is less prevalent in service and retail sectors where comprehensive, employer-paid benefit plans are not common.

Employee Leasing and Professional Employer Organizations

Employee leasing firms began in the 1960s as a form of payrolling to allow employers to place less favored employees on the payroll of a leasing firm, where they received fewer benefits. Professional employer organizations (PEOs) are the modern-day version of such firms. There are also several newer variations on the PEO theme, including Business Process Outsourcing (BPO) and Human Resource Outsourcing (HRO). Some PEOs offer legitimate human resources and benefits functions to small employers. In other cases, the PEO is used merely as a "payrolling" service for certain employees that a company does not want on their own payroll. These "payrolled" workers are not necessarily different from the regular staff, thus creating another form of employee misclassification.[17] A 2004 PEO industry survey estimated that only 29 percent of PEOs provide benefits to all or most leased employees.[18] An analysis of the 2002 Department of Labor Form 5500s (reports on employees covered by benefits plans) filed by the 15 largest PEOs revealed that only 20 percent of leased employees were enrolled in PEO-sponsored health insurance plans.

Independent Contractors

Misclassification of workers as independent contractors is another way that employers avoid conferring employee status and the responsibilities that go along with it. Workers labeled as

independent contractors are the second largest group of nonstandard workers, with an estimated 8.7 million workers in 2001 (6 percent of all workers). The widespread misclassification of employees as independent contractors has been documented in many studies. In the 2001 CWS, about 1.2 million independent contractors — all those called “wage and salary independent contractors” — may be misclassified. These workers originally reported that they were employees of a private or public firm. Upon follow-up, they reported that they were actually working as independent contractors. These “independent contractors” may be misclassified. That is, it appears they may be paid as independent contractors but not exercise control over their job or have opportunities for profit. There are likely to be many more workers who do not even realize that they are classified as independent contractors — at least not until they are laid off and denied unemployment benefits.

One of the most common ways of misclassifying workers as independent contractors is to create the impression the employees are really independent businesses. Recent lawsuits have challenged this practice at Federal Express and other large employers. Employees most affected include construction workers, couriers/drivers and high-tech workers.[19] The IRS routinely audits many employers for independent contractor compliance and requires them to reclassify employees labeled as independent contractors. Employers can circumvent this requirement with a service offered by some payrolling firms, who provide “an employer of record” for employees who would otherwise be labeled independent contractors by the employer. This service allows the employer to specify that the employee pay all taxes and benefits.

The misclassification of workers as independent contractors has been around for a long time. An IRS model in 1988 identified a range of 187,000 to 1,618,000 misclassified independent contractors.[20] A GAO report in 1989 found that 38 percent of the employers examined had misclassified employees as independent contractors.[21] That study found construction, home health care, trucking and high-tech industries were most likely to misclassify employees.

In 2000 a DOL report estimated that 80,000 workers who become unemployed each year do not receive unemployment benefits because their employer has misclassified them as an independent contractor instead of conferring employee status. That same study estimated that between 10 percent and 30 percent of employers misclassify workers as independent contractors.[22] In the fourth quarter of 2001, a DOL audit of less than 2 percent of employers identified 30,135 workers who were misclassified by their employers as independent contractors.[23] This misclassification resulted in $436 million dollars in unreported wages — and millions in avoided unemployment insurance taxes. Finally, a Harvard study in 2004 estimated 4.5 percent of all employees in Massachusetts were mislabeled as independent contractors — as many as 248,000 workers in that state alone.[24]

The use and misclassification of independent contractors may also be a major factor in the discrepancies between two different estimates of employment provided by the CPS and CES. The gap between the employment levels reported by the CPS and CES for the November 2001-October 2003 post-recession period was the largest on record, with the CES counting 2.7 million fewer jobs than the CPS. The CPS is a household survey, counting all people doing paid work, while the CES is an employer payroll survey, counting all jobs on official company payrolls. A recent analysis by Paul Harrington, Ishwar Khatiwada and Andrew Sum[25] concluded that much of that discrepancy is from the number of employees who are labeled as independent contractors but who “are employed in the same settings as regular employees.” These employees are counted in the CPS, but do not show up on the CES because they are not on official company

payrolls. The study estimates that this trend has added 1.0 to 1.5 million jobs to the economy, pushing the number of independent contractors to at least 9.8 million in 2003, up from 8.8 million in 2001 (CWS Survey).

Misclassification has real consequences for workers. Independent contractors have no fringe benefits from the employer, nor are they covered by workers' compensation or by the unemployment insurance system. They also face systematic violations of workplace safety, and wage and hour laws. Employers may hire independent contractors directly, or pay them through labor brokers or subcontractors. Both methods eliminate the employer's share of Social Security, Medicare, workers' compensation and unemployment taxes. An investigation of construction labor brokers by the Denver Post in 2003 found widespread violations of federal and state laws, including nonpayment of overtime, failure to withhold and pay taxes, and illegal pay deductions.[26] The Post investigation estimated that labor brokers may provide as many as 1 million workers, or one-sixth of the construction industry's labor force.

Conclusions

There is little doubt that the American workplace is being changed by the increasing numbers of "nonstandard" work arrangements, but arriving at an accurate estimate of the number of nonstandard workers is difficult. It appears that the two most relied-upon sources of data on nonstandard employment may be less than accurate. Both the U.S. Census Bureau's contingent Work Supplement (CWS) and the Bureau of Labor Statistics Current Employment Statistics (CES) survey, for different reasons, are undercounting nonstandard workers.

Employers' misclassification of employees as nonstandard also serves to blur the employment picture. Practices such as "payrolling" and "perma-temping" allow employers to deny workers fringe benefits and/or more easily comply with IRS code requirements regarding health coverage and benefits. Misclassification of workers as independent contractors is a particular (and long-standing) problem.

Developing better methods of identifying nonstandard workers is important to understanding exactly how the labor market is changing and how policies should be crafted to address these changes. The next chapter moves beyond issues of counting to examine some of the challenges posed by nonstandard jobs — in particular, the lack of employment-based health insurance.

2. Fringe Benefits in a Nonstandard Job

Chapter 1 described how the traditional employer-employee relationship is giving way to a variety of "nonstandard" work arrangements. In this chapter, we present survey findings that show workers in these nonstandard jobs are far less likely to have health insurance and other fringes that are traditionally tied to employment in the United States. This is not a surprising finding given that the employer-employee relationship is quite tenuous in some of these jobs, and that the pay is below that of standard jobs.

In some instances, companies that have historically provided good jobs and benefits have segmented their workforce by employing more temporary and part-time workers who are ineligible for fringe benefits. And in the case of payrolling and employee leasing, and some uses of independent contractors, employers have designed the work relationship for the explicit purpose of eliminating or reducing fringe benefit responsibilities.

This chapter focuses primarily on health insurance coverage among nonstandard workers[1]: the extent and source of coverage, access to employer-provided insurance, coverage of family members, and the quality of insurance. It concludes with some evidence on the availability of other fringe benefits (pensions and paid sick leave).

Again, these findings come from the authors' analysis of survey data from the U.S. Census Bureau's 2001 Contingent Work Supplement (CWS) and the IPP Survey of Fringe Benefits and Nonstandard Work. The latter survey was commissioned by the Iowa Policy Project and fielded in late 2003 and early 2004.

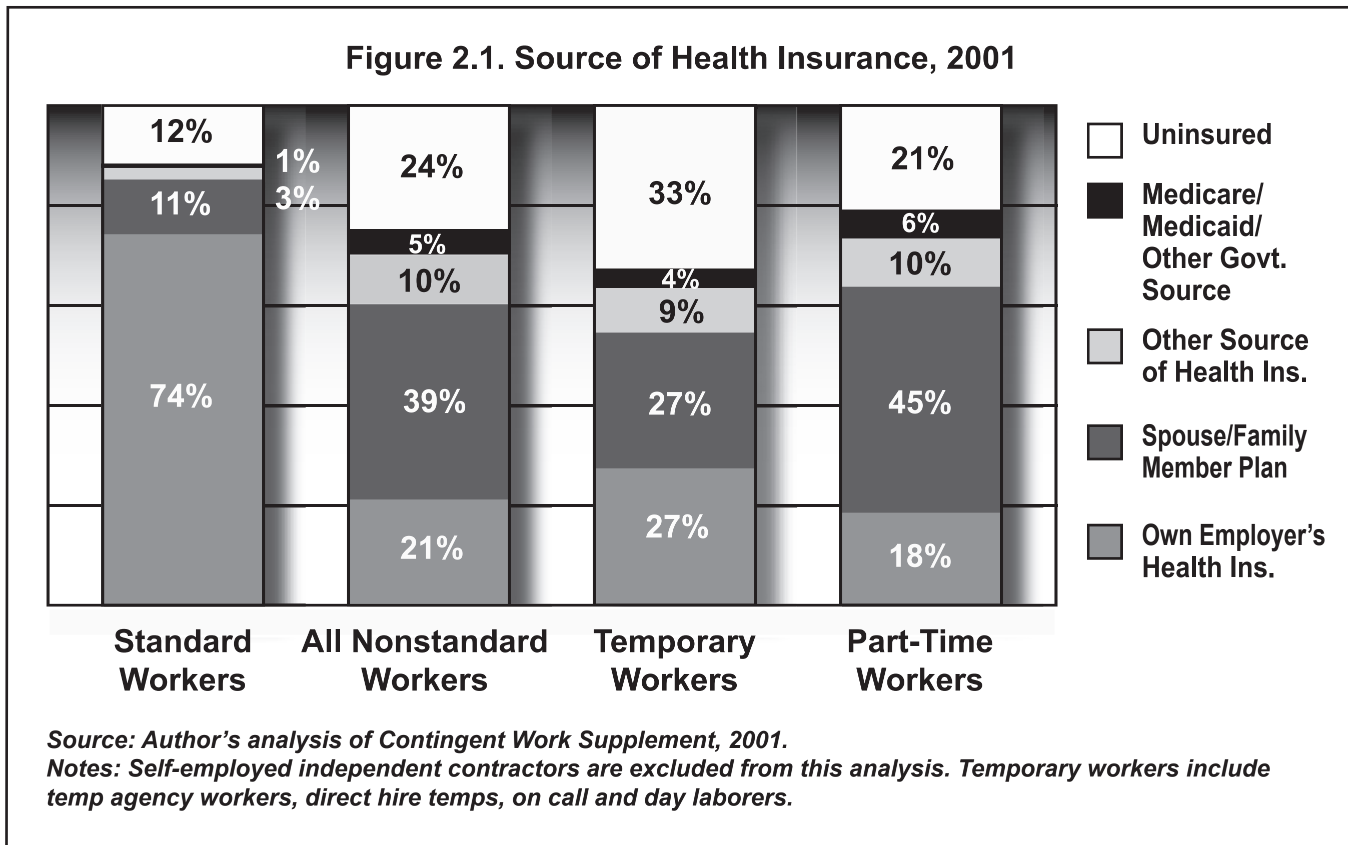
Health Insurance Coverage and Sources

Access to affordable, employer-sponsored health insurance is not only an important measure of job quality, it is the foundation of the American system of health insurance. Cracks are appearing in this foundation, however. Between 2000 and 2003, the share of the population covered by an employment-based health insurance plan (offered through one's own or a relative's employment) declined from 63.6 percent to 60.4 percent, the lowest level since 1993.[2] According to the U.S. Census Bureau, this decline in employment-based coverage is responsible for the increasing ranks of the uninsured, up from 14.2 percent of the population in 2000 to 15.6 percent in 2003. The 2003 Census "snapshot" estimates the number of uninsured Americans at just under 45 million, but the number lacking insurance at some point in the year was over 80 million.[3]

More than 80 percent of the uninsured are working Americans and their families, and more than half (56 percent) are members of families with at least one full-time worker.[4] Workers who are fortunate enough to have employment-based insurance find their costs are increasing dramatically. Annual premiums for job-based health insurance rose 13.9 percent between 2002 and 2003, the highest rate of increase since 1990.[5] Premiums rose again by 11.2 percent in 2004, making four consecutive years of double digit premium growth. And since a worker contribution is almost universally required, these costs are passed on, reducing the take-home pay of workers whose wages are growing much more slowly.[6]

While lack of access to employer-sponsored health insurance is an emergent problem for all workers, it is especially acute for nonstandard workers (Figure 2.1). About 74 percent of all standard workers had employer-provided coverage in 2001, compared to just 21 percent of nonstandard workers. As a result, a much larger share of nonstandard workers — 39 percent vs. 11 percent — relied on a spouse or other family member for health insurance.

Figure 2.1. Source of Health Insurance, 2001



Source: Author's analysis of Contingent Work Supplement, 2001.
Notes: Self-employed independent contractors are excluded from this analysis. Temporary workers include temp agency workers, direct hire temps, on call and day laborers.

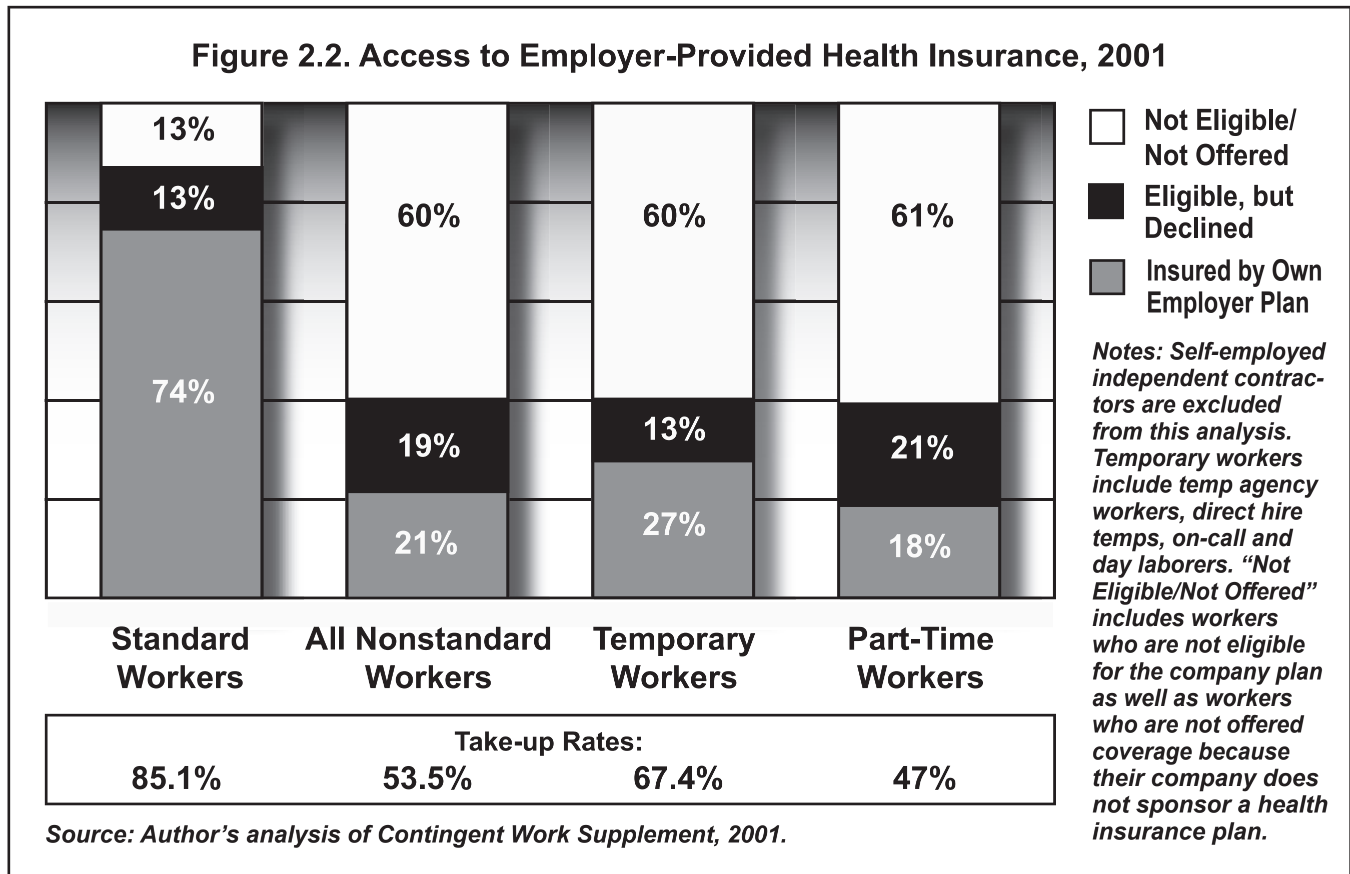
Access to coverage through other family members was not enough to compensate for the lack of employer-provided coverage, however; nonstandard workers were twice as likely as standard workers to be uninsured (24 percent vs. 12 percent). In fact, more nonstandard workers were uninsured than were insured through their employer. Public health insurance is an important piece of the puzzle for nonstandard workers — keeping about 5 percent from being uninsured. Another 10 percent were insured through a variety of other sources, such as from a previous job (e.g. COBRA), a second job, or a plan purchased in the individual market.

The Contingent Work Supplement (CWS) asks workers about their insurance status during the previous week, which provided the point-in-time estimates presented in Figure 2.1. But what about the consistency of coverage? The IPP Survey of Fringe Benefits and Nonstandard Work provides some answers. In that survey, conducted in late 2003 and early 2004, about 41 percent of nonstandard workers reported a lapse in health insurance coverage during the 12 months previous to the time of the survey. In comparison, only 26 percent of working-age Americans (not just nonstandard workers) reported in a 2003 survey that they lacked health insurance at some point during the year.[7]

Access to Employment-Based Insurance

The lack of employer-provided health insurance for nonstandard workers is largely a problem of access. While 87 percent of standard workers were eligible for insurance from their own employer, only 40 percent of nonstandard workers were eligible (Figure 2.2). Take-up rates also differed dramatically: of those who were eligible, 85 percent of standard workers chose to enroll in their employer's plan, while only 54 percent of nonstandard workers did so.

Figure 2.2. Access to Employer-Provided Health Insurance, 2001



Notes: Self-employed independent contractors are excluded from this analysis. Temporary workers include temp agency workers, direct hire temps, on-call and day laborers. "Not Eligible/Not Offered" includes workers who are not eligible for the company plan as well as workers who are not offered coverage because their company does not sponsor a health insurance plan.

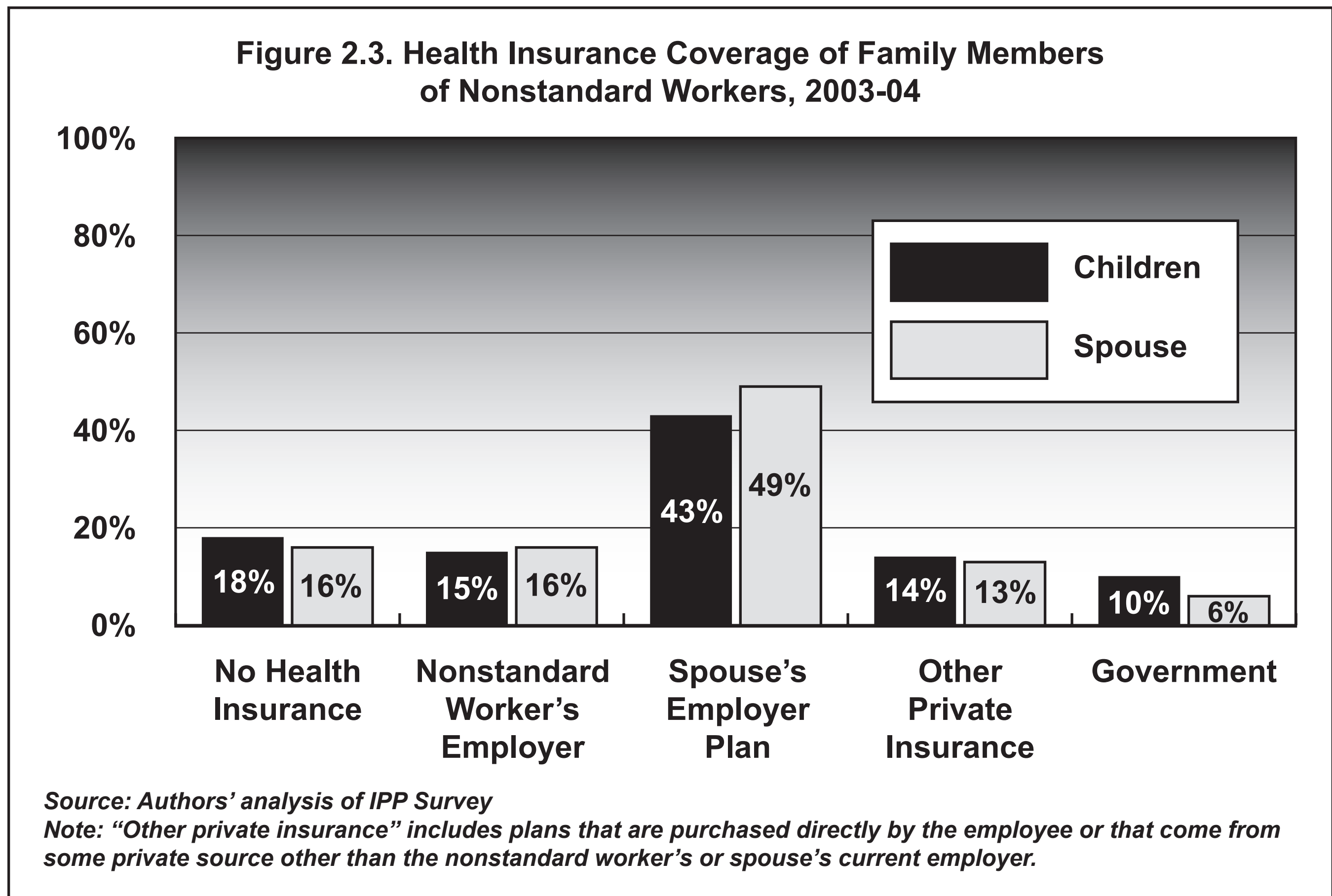
Source: Author's analysis of Contingent Work Supplement, 2001.

The principal reasons nonstandard workers gave for not enrolling in the employer's plan were that the worker had insurance from another source (most often the spouse's coverage, which is presumably better or cheaper) or that the employer's insurance plan was too expensive.[8]

Why were nonstandard workers so often ineligible for employer-provided insurance? According to the CWS, three-quarters of them said they did not work enough hours per week. Another 9 percent reported that their temporary or contract status made them ineligible. And about 8 percent said they had not worked long enough for their employer (were still in the waiting period). These answers provide evidence that workers are excluded from company benefits because of their work arrangement (part-time or temporary status). In an environment of spiraling health insurance costs, self-insured employers can use these types of work arrangements to deny access to health insurance and still meet federal Employee Retirement Income Security Act (ERISA) and IRS rules regarding access to employer-based plans.

Health Insurance Coverage of Family Members

In response to escalating health care costs, employers are reducing coverage and raising worker contributions. In particular, changes are being made to family coverage. Worker contributions for family coverage are rising faster than for single coverage, leading some workers who are themselves insured to forgo or discontinue family coverage.[9] Since a high proportion



Source: Authors' analysis of IPP Survey
Note: "Other private insurance" includes plans that are purchased directly by the employee or that come from some private source other than the nonstandard worker's or spouse's current employer.

of nonstandard workers (39 percent) currently rely on a family member's insurance, this trend of cutting family coverage will leave more nonstandard workers without any access to health insurance.

The IPP Survey found that only about 15 percent of children — and about the same proportion of spouses — of nonstandard workers had health insurance through the nonstandard worker's employer (Figure 2.3). In fact, children and spouses were three times more likely to be covered by the spouse's employer than by the nonstandard worker's employer. With that better chance of having employer-based coverage through the spouse's job, family members were less likely to be uninsured than the nonstandard worker: 18 percent of children and 16 percent of spouses were uninsured compared to 21 percent of nonstandard workers. Again, public health insurance was an important source of coverage, keeping 10 percent of children and 6 percent of spouses from being added to the rolls of the uninsured.

Substandard Health Insurance

As health insurance costs rise, some employers and individuals are turning to low-cost alternatives, including high-deductible insurance, limited-benefit insurance that provides only a few thousand dollars of coverage, and supplemental insurance that covers only limited health problems or expenses. While often more affordable than comprehensive health insurance, these types of coverage are severely limited. With the employer's permission, insurers often sell these policies at the worksite and premiums are automatically deducted from paychecks. These substandard insurance policies appear to be particularly prevalent among nonstandard workers.

Limited-benefit health insurance plans are the only health plan offered by several major staffing firms. One such plan, called "Benefits in a Card," has a premium of $16/week ($832/ year) for single coverage and $44/ week ($2,288/year) for family coverage.[10] Rather than providing a maximum out-of-pocket expense for the employee, these plans are limited to a maximum annual payment from the insurer. The Benefits in a Card plan offers a maximum benefit of $4,000 per year, with a separate inpatient limit of only $1,000, an outpatient limit of $2,000, and only $200 per day for hospital room and board. A routine surgery could easily leave an employee with $20,000 to $30,000 in uncovered expenses, and possible medical bankruptcy.

It is difficult to obtain estimates from household surveys of the extent of these kinds of limited-benefit policies for the simple reason that a large proportion of policy holders do not understand the details of their insurance policy. In the IPP Survey, for example, 30 percent of nonstandard workers said their plan limited the amount of payment for a specific illness or injury (had a benefit cap), but another 25 percent said they did not know. Similarly, about 16 percent did not know if they had a plan limited to coverage for specific illnesses or diseases.

High-deductible ("catastrophic") insurance is probably the most recognized type of limited health insurance plan. Increasing enrollment in these plans, particularly in combination with a savings account, has become the main health insurance strategy advocated in some circles. They also appear to be growing in popularity among employers due to their low costs. The 2004 Kaiser Family Foundation's annual survey of employers found that 27 percent of firms (employing almost 40 percent of covered workers) were somewhat or very likely to offer these plans in the next two years.[11]

Another form of limited insurance is the "supplemental" policy. These plans were originally developed to provide additional coverage — like cancer insurance or hospital "per diem" payments — as an add-on to a basic comprehensive insurance plan. Yet some workers are purchasing supplemental insurance as an alternative to comprehensive insurance, presumably because the cost of comprehensive insurance is prohibitive.[12] American Family Life Assurance Company (AFLAC), the largest supplemental insurer and the sixth largest publicly-traded insurer, is well-known to television viewers with its AFLAC "duck" ads.

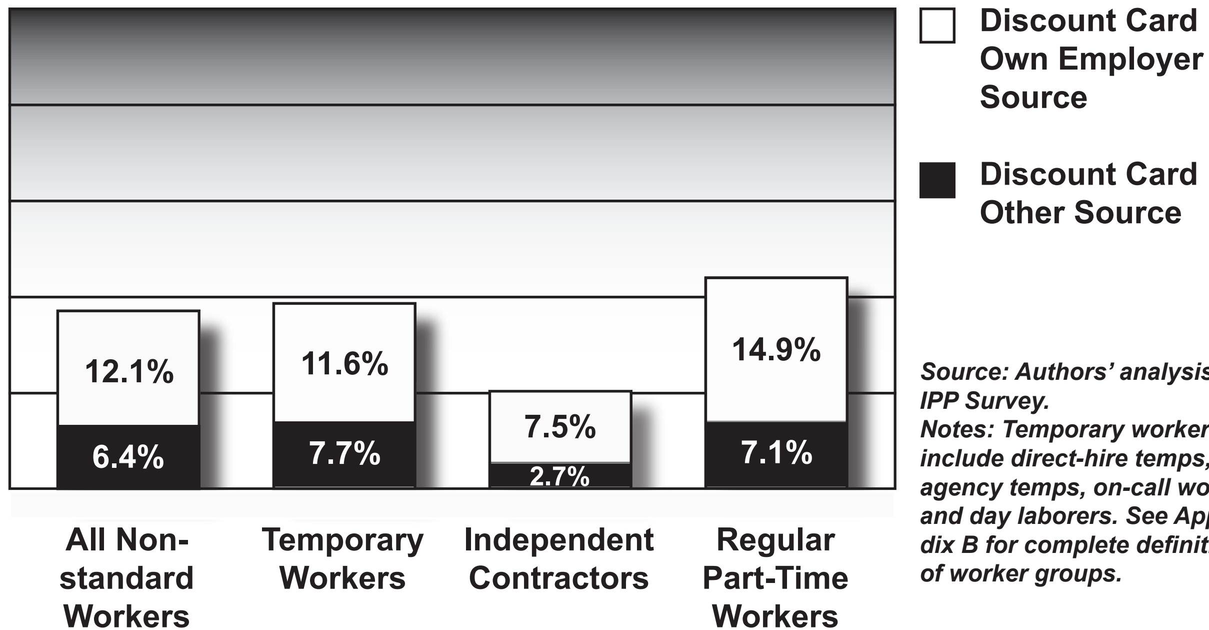
Non-insurance Alternatives: Medical Discount Cards

There is limited empirical, but strong anecdotal, evidence that nonstandard workers are purchasing medical discount cards as a substitute for health insurance. Discount card companies

and their re-sellers are also marketing directly to consumers via TV commercials, direct mail and telemarketing. At least 20 states have reported an increase in discount card plan activity and about the same number have recently passed limited regulations on discount cards.[13]

For a weekly or monthly premium, discount cards provide their users with discounts, generally in the range of 5 percent to 35 percent, at participating health care providers and pharmacies. The cardholder is responsible for paying any claims and usually must pay the full cost of services up front. Discount cards do not pay hospital bills, doctor visits, or provide any insurance against illness or accident, and thus they are not actually health insurance. Discount cards are most useful as a supplement to health insurance — not as an alternative. With only a discount card, persons have very limited coverage and are at risk of major out-of-pocket costs and medical bankruptcy.

Figure 2.4. Nonstandard Workers with Only a Discount Card, 2003-04



Source: Authors' analysis of IPP Survey.
Notes: Temporary workers include direct-hire temps, agency temps, on-call workers, and day laborers. See Appendix B for complete definitions of worker groups.

Discount card providers have come under scrutiny for a variety of deceptive marketing practices, such as overstating savings, failing to disclose important information and administrative fees, and exaggerating the number of participating providers.[14] In the most fraudulent cases, the annual cost of the card (premiums plus administrative fees) exceeds the maximum annual card benefits. Since discount cards are not insurance however, they are not subject to state or federal insurance regulations. In an attempt to provide oversight of discount card plans, several states have issued Consumer Alerts, and passed consumer protection laws and regulations directed specifically at discount card programs.[15]

The IPP Survey is the first household survey to estimate the prevalence of discount cards and to cross-check whether respondents differentiated between health insurance coverage and medical discount cards. Nonstandard workers were first asked the standard set of questions

on health insurance status. Then, workers were asked if they had a discount card that gave them discounts from certain health care providers. If so, a follow-up question checked if that discount card was their only form of health "insurance." About 19 percent of all nonstandard workers reported they had a discount card that was their only form of "insurance" (Figure 2.4). Another 6 percent had one as a supplement to their health insurance. About one-third of workers with only a discount card received it through their own (nonstandard) employer. Discount cards were particularly prevalent among part-time workers, 22 percent of whom had only a discount card.

Almost every worker with only a discount card had reported earlier in the IPP Survey that they were insured, which suggests that significant numbers of workers may be reporting they have health insurance and in fact do not. To our knowledge, no other survey has verified health insurance coverage in this way. The net result in the IPP Survey was that the share of uninsured workers doubled from 18 percent when we counted only those responding "no" to the question "Do you have health insurance" to 35 percent, when we added workers with an "insurance" policy that was only a discount card. (The uninsurance rates for nonstandard workers presented in Figure 2.1 are based on the CWS, not the IPP Survey, because of the larger sample size in that survey).

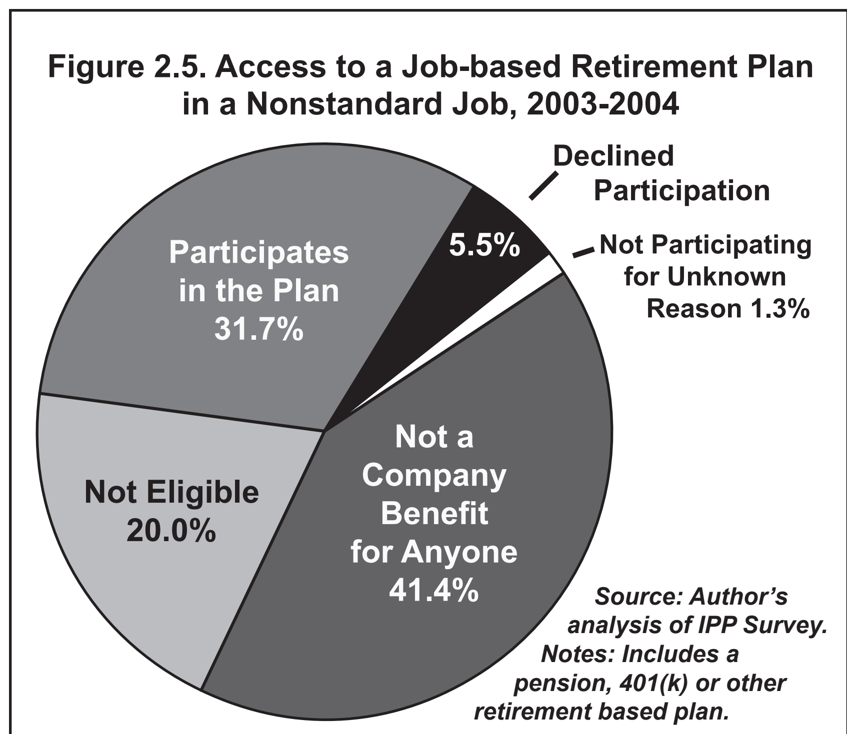
It should not be that surprising that discount cardholders confuse the discount plan with health insurance. Some discount plans are deliberately marketed using insurance terminology to encourage such confusion.[16] Furthermore, discount cards have produced many complaints to state insurance departments and attorneys general, and a leading complaint has been that the consumers thought they were purchasing health insurance.[17] Twenty states have passed laws requiring that discount card plans expressly state that the discount card is not health insurance.[18]

Other Fringe Benefits

Like health insurance, other fringe benefits are harder to come by for nonstandard workers. The IPP Survey found that 38 percent of nonstandard workers were offered a retirement plan and about 6 percent declined to participate (Figure 2.5). Overall, 32 percent of workers were covered by the retirement plan.[19]

For most nonstandard workers, the lack of a retirement plan was a question of access. Almost 42 percent worked in a job where no employees were provided with a retirement plan, and another 20 percent were not eligible for the employer's plan.[20]

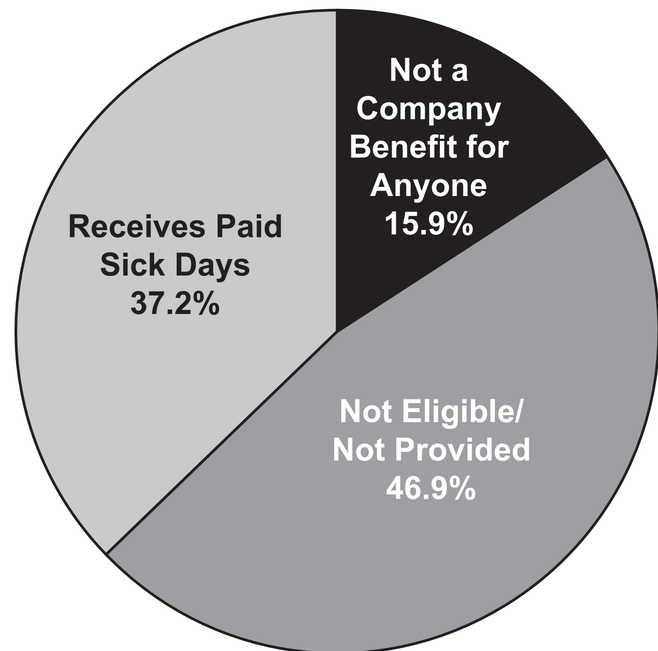
Figure 2.5. Access to a Job-based Retirement Plan in a Nonstandard Job, 2003-2004



Source: Author's analysis of IPP Survey. Notes: Includes a pension, 401(k) or other retirement based plan.

The benefit of paid sick days was slightly more common for nonstandard workers than retirement benefits. In the IPP Survey, 37 percent of nonstandard workers received paid sick days (Figure 2.6). Most employers provided sick days to at least some employees. However, almost 47 percent of nonstandard workers were not eligible for this fringe benefit, mostly due to their temporary or part-time status. Neither the IPP Survey nor the CWS provides comparisons with standard workers.

Figure 2.6. Access to Paid Sick Days in a Nonstandard Job, 2003-2004



Source: Authors' analysis of IPP Survey.

The Future of Fringe Benefits

Workers in nonstandard jobs face the insecurity of lower wages and less job stability. In addition, nonstandard workers are far less likely to have employer-provided health insurance and are far more likely to be uninsured. They are also less likely to participate in a job-based retirement plan. The lack of economic security is therefore compounded by the inadequacy of fringe benefits and the concomitant risks of inadequate retirement income and financial loss or bankruptcy through illness or injury.

Many families rely on the health insurance provided by a standard job held by the spouse. But access to employment-based insurance — especially to comprehensive, family coverage — is also declining for regular full-time workers. Worker contributions are rising and plan quality appears to be declining. Some employers, especially staffing firms, are offering limited-benefit insurance plans or non-insurance alternatives like medical discount cards instead of comprehensive health insurance.

All of these trends are threatening to unravel the employment-based health insurance system in the U.S., and to increase the ranks of the uninsured and the underinsured. In the final chapter of this report, we turn to policy options that can help us cope with these trends.

3. Nonstandard Work and Public Policy

The increasing prevalence of nonstandard work arrangements and the creativity of employers in re-defining the employer-employee relationship have created a variety of problems. One is simply an issue of measurement: It has become difficult to identify a worker's real employer and that employer's responsibility for the provision of health insurance, pensions and other fringe benefits. A second problem is that many employers have found ways to "misclassify" their workers, in some cases a substantial segment of their workforce, to avoid responsibility for benefits traditionally tied to employment. Chapter 2 of this report focused on the lack of health insurance benefits associated with most forms of nonstandard work and the resulting incentive employers have to reduce fringe costs by increasing their use of nonstandard work arrangements.

In this final chapter we discuss public policies to address the problems identified in this report. First we make some recommendations regarding surveying and measuring nonstandard work and health insurance coverage. Then we identify policies needed to remove the incentive for and the ability of employers to deliberately misclassify employees. Finally, we critique alternative approaches to address the special problems that nonstandard work poses for health insurance policy.

Improving Measures of Health Insurance Coverage and Nonstandard Work

At least partly in response to the escalation in health care costs over the past two decades, U.S. firms have been creating both new work relationships and new health insurance (and non-insurance) products. It has been difficult for researchers to keep up with these changes and to revise survey methods and questions to adequately identify the ever-evolving forms of nonstandard work. The ability to accurately estimate health insurance coverage has become more difficult due to new types of non-insurance health plans. In our research, we identified two measurement issues of potential significance, and we present some recommendations to address those issues.

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Overestimating Health Insurance Coverage in Household Surveys

Perhaps the most startling finding in the IPP Survey of Fringe Benefits and Nonstandard Work was the large proportion of nonstandard workers — almost one in five — whose only health plan was a medical discount card. Discount cards, as we explained in Chapter 2, are not health insurance but it appears that their users may confuse them with health insurance. The IPP Survey contained questions that cross-checked whether respondents differentiated between health insurance coverage and medical discount cards. After adding the individuals with only

a medical discount card to the ranks of the uninsured, the share of uninsured workers nearly doubled from 18 percent to 35 percent.[1]

The IPP Survey raises the distinct possibility that other surveys have overstated the extent of health insurance coverage by failing to identify those who think of themselves as insured but in fact possess only a discount card. We recommend that future household surveys, including the Current Population Survey, ask two additional follow-up questions when respondents reply that they have health insurance. The first question would ask whether or not the respondent had a discount card, with a clear description of discount cards incorporated into the question. The second would determine if that discount card was the only health plan covering the respondent.

A second trend in the health insurance industry presents more difficult problems for survey research. There is evidence from firms and from the insurance industry that limited-benefit plans are becoming more common. Such policies may limit particular kinds of benefits (hospital room charges, inpatient or outpatient care) as well as the total annual benefit payable, leaving the consumer vulnerable to large out-of-pocket costs. Household surveys have not successfully identified this erosion of health insurance quality, and the IPP survey was no exception. We are not confident that further experimentation with question format would yield better results on an issue about which households are simply uninformed. Yet this trend is likely to become increasingly important as health care costs continue to rise and limited benefit plans provide employers with another mechanism for shifting costs to employees.

Undercounting Nonstandard Workers in Employer Surveys

In the first chapter we noted a measurement problem in the Current Employment Statistics (CES) survey regarding how staffing firm employees are counted (or not counted). A large number of staffing firms are counted in industry codes other than the Employment Services industry. These firms either use the industry code for their client firms (i.e. Construction) or miscellaneous business codes (i.e. Payroll Services). As a result, employment in staffing firms — a type of nonstandard work — is underreported in the CES.

As noted previously, one of the reasons for some of the industry misclassification is that CES data are gathered from a state database that is used to administer unemployment compensation (UC) programs. Some states intentionally assign a different industry code in order to better measure economic activity and to prevent employers with high UC tax rates from using staffing firms to take advantage of lower UC tax rates for new firms.

Because the primary purpose of the state ES 202 employment database used in the CES is to administer the unemployment compensation system, it would be difficult to convince states to change the coding procedures to accurately count employment by staffing firms. Still, the DOL should investigate whether industry classification guidelines used by state agencies to stop fraud may have the unintended effect of distorting the way the CES counts nonstandard workers.

Policies to Prevent Employee Misclassification

This report has identified three major types of employment misclassification: (1) standard employees who are kept on the payroll of a staffing firm, (2) standard employees who are hired as temporary workers (either directly or through a temp agency) and (3) standard employees who are hired as independent contractors.

Because the first problem results from provisions in the tax code and ERISA (Employee Retirement Income Security Act), one policy approach is to specifically amend ERISA to require that benefit plans meet objective eligibility criteria based on the actual facts of employment, not labels. Under this proposal, regular full-time employees could no longer be denied participation in ERISA-qualified plans by putting them on the payrolls of a temp, leasing or staffing agency.

ERISA pre-empts state or local laws which “relate to” employee health benefits. However, states can regulate definitions of “employer” and “employment,” especially as they relate to state administration of such programs as unemployment compensation, state wage and hour regulations, and workers’ compensation. Interest in state regulation of employment and of staffing firms has grown in recent years because of numerous cases of health insurance, unemployment tax, and workers’ compensation fraud involving staffing firms.

At the state level, one option is to change definitions of employment in order to specify that, for the purposes of regulating employment, workers who are paid through labor intermediaries (staffing firms) or hired as independent contractors shall be considered employees of their “common law employer” after no more than 2,080 hours (one year full-time) of service for the same employer. Identifying the correct common law employer and setting limits on how long employees can remain in temporary status would reduce the ability of employers to misclassify employees. From the perspective of public policy, this requirement would also improve equity and enforcement of state programs such as workers’ compensation and unemployment insurance.

Addressing the problem of misclassification of public sector employees requires a different solution. To prevent public sector employers from misclassifying regular, permanent employees as “temps,” the state of Washington recently passed legislation clarifying state law on nonstandard employment. The law makes it illegal for a public employer to misclassify an employee to avoid providing employment-based benefits, or to include language in an employment contract requiring an employee to forgo employment-based benefits.[2]

The second misclassification problem involves labeling employees as independent contractors. The laws governing independent contractors are based on the common law economic control test, which the IRS uses to distinguish between employees and independent contractors. In 1978, Congress made it more difficult for the IRS to enforce the law on independent contractors by enacting Section 530 of the Revenue Act of 1978.[3] Under Section 530, a worker will not be deemed a company’s employee if the company had a “reasonable basis” for not treating the worker as an employee. The IRS is bound by how the employer classifies the employee, provided the employer (1) filed all necessary tax returns; (2) consistently treated the worker as an independent contractor; and (3) had “any reasonable basis” in determining that the worker was an independent contractor. Congress directed that the reasonable basis standard should be “construed liberally in favor of the taxpayer.”[4] This “safe harbor” provision also provided limited relief from IRS fines and penalties for past infractions. At a minimum, Congress should reform Section 530 to permit the IRS to require employers to reclassify employees the agency determines have been misclassified.

As the law now stands, the narrow definition of employer found in most employment and labor statutes gives firms incentives to create nonstandard relationships not for the sake of flexibility, but to reduce the number of workers with access to pensions, health insurance and paid leave, as well as protections such as minimum wage and overtime laws.

A more comprehensive solution comes from the recommendations of a 1995 DOL report:[5]

1. The definition of employee in labor, employment and tax law should be modernized, simplified and standardized. Instead of the control test borrowed from the old common law of master and servant, the definition should be based on the economic realities underlying the relationship between the worker and the party benefiting from the worker's services.
2. The definition of employer should also be standardized and grounded in the economic realities of the employment relationship. Congress and the National Labor Relations Board (NLRB) should remove the incentives that now exist for firms to use variations in corporate form to avoid responsibility for the people who do their work.
3. Congress should reform Section 530 to permit the IRS to require an employer to reclassify an employee for the future any time the agency discovers an improper classification, regardless of past audits, if the employer's classification cannot be justified on the basis of accepted industry practice or tax law precedent. In addition, the IRS should be able to reclassify the employee for a limited period, such as up to three years into the past, if the agency has not audited the employer on the classification issue during that period.

To answer the question "Who is the real employer?" an "economic realities" test looks beyond the contracts and paperwork used by employers, labor brokers and staffing firms to label employees as non-employees. It examines where the money comes from and who controls the work and the employees, regardless of the presence of labor intermediaries who may claim to be the employer.

Policies to Improve Access to Health Insurance

Employment-based health care in the U.S. has been on the decline, a consequence of both spiraling health costs and economic change. In 2002, only two of five workers (38.5 percent) had health insurance all year, in their own name, from their employer – and barely half of these workers had coverage of at least one dependent.[6] The terms of coverage have also deteriorated: higher premiums, co-payments, deductibles and restrictions on provision have become the rule.[7] A health-care system rooted in the "old economy" (family-wage career employment in big manufacturing firms) is falling apart in a "new economy" characterized by job churning, service employment and small firms — and by the increasing prevalence of temporary, part-time and other nonstandard work arrangements.[8] As a consequence, about 45 million Americans were uninsured in 2003, and over 80 million lacked insurance at some point in the year.[9]

For reasons and in patterns we explore below, nonstandard workers play a key role in this story. Their uncertain employment status undermines access to employment-based health care coverage and increases out-of-pocket costs. They are much more likely to be uninsured or to rely on insurance through their spouse's employer or through the public sector.

Improving access to health coverage for nonstandard workers lies at the intersection of three closely related streams of public policy: (1) The employment relationship should be regulated to ensure that these workers enjoy the same individual and collective rights as conventional employees, (2) The foundation of employment-based care should be strengthened, making it easier for employers to offer coverage and for workers to afford coverage when offered, and (3) Alternatives to employment-based care should be expanded, including existing public programs such as Medicaid and the State Children's Health Care Insurance Program (SCHIP). Policy options, in turn, hinge not only on identifying this cohort of the uninsured or underin-

sured, but on identifying the obstacles to stable coverage that they face, and their eligibility (according to income, job tenure, or firm size) for prospective reform.[10] The task, in short, is to provide nonstandard workers an “on-ramp” to existing group-based insurance — either by opening access to conventional job-based coverage or expanding the reach of public programs.

Expanding Access to Employment-Based Health Insurance

Of the roughly 200 million people claiming private health coverage in 2003, 175 million had employment-based coverage. Business, private insurers and labor unions share an immense investment in this system, and our most important federal health policy remains the tax subsidy (totaling just under $200 billion annually) for employment-based plans.[11] For these reasons, state and federal reform efforts (especially since the 1970s) have focused on shoring up this foundation.

However, we offer employment-based policy recommendations with some ambivalence. In the economy and labor markets of the 1940s and 1950s, job-based health coverage was an attractive and viable option. Health costs were modest, and most workers enjoyed stable and sustained employment in large firms — but we don’t live in that world anymore. In the last generation, firm size and union density have plummeted, while health costs — especially for individuals and small firms — have spiraled steadily upward.[12]

The overarching problem with employment-based reforms is that they ultimately depend on that which is most elusive to nonstandard workers: a stable and transparent employment relationship. Both employment-based care, and the reforms and regulations that surround it, are premised on clearly defined and (in actuarial terms) substantial employee groups. These are the groups from which nonstandard workers are typically excluded. Therefore, efforts to secure or build upon employment-based health coverage are likely to produce meaningful results only under certain conditions. They must be accompanied by labor law reforms that accord temporary and part-time workers the same status as “regular” wage and salary employees. And they must explicitly identify nonstandard workers (long-term temps, contract workers, on-call workers and part-time workers) as “covered employees.”

Since the early 1970s, one of the most popular political options for expanding health insurance coverage has been the employer mandate. First floated in the federal health care debate of 1971-1974, an employer mandate promises expanded coverage at little public cost and avoids compromising the larger political commitment to private coverage. Most of this debate has been taken up at the state level, especially after the collapse of national reform efforts in the early 1970s and again in the early 1990s. Hawaii has mandated employment-based health care since 1974. Massachusetts, Oregon and Washington all considered the option in the 1980s and 1990s, although each of those plans was either stalled or abandoned before implementation.[13] In 2003, California proposed a “pay or play” mandate (SB-2) that required firms employing 200 or more to provide coverage to employees and dependents by January 2006 and firms employing between 50 and 199 to provide employee coverage by January 2007. California voters pulled the plug on this experiment in the November 2004 election, but a number of state and local variations on “SB-2” are in the works. The proposed New York City Health Security Act would establish a similar “pay or play” mandate for the city’s major service industries (hotel, grocery, building services, construction).[14] A plan drafted by the Wisconsin AFL-CIO would phase in coverage of all employees (regardless of firm size or hours worked) and their dependents through a per-worker, community-rated assessment on payrolls.[15]

Such mandates offer some hope for nonstandard workers. California's SB-2 explicitly identified temporary agencies and farm labor contractors as employers under the law. The California mandate would have immediately secured family coverage for those working in large firms — 99 percent of California firms employing 200 or more already provide job-based plans — while extending coverage to many part-time and seasonal workers (those working as few as 100 hours in a month or three months a year). While workers in small firms of 50 to 199 employees would have been eligible only for employee coverage, SB-2 could have both increased coverage among this group and leveraged a higher employer share of health costs.[16] Given that proposals such as SB-2 mandate health plans for large, nonstandard employers and remove much of the "benefit avoidance" incentive for nonstandard employment, it is not surprising that temporary employment agencies and other low-wage, no-benefit employers are among the fiercest opponents of such changes.[17]

Following recent efforts by a number of states to identify the major employers of their SCHIP- and Medicaid-eligible populations, proponents of the "play or pay" mandate have taken more direct aim at nonstandard employers. Maryland's "Wal-Mart" bill, for example, imposes an 8 percent payroll tax on large employers (over 10,000 employees in the state) who do not spend at least that amount on private health coverage.[18] Legislators in New Jersey, New Hampshire, Pennsylvania and Illinois (Chicago) are considering variations on this theme.[19]

Efforts to expand employment-based coverage invariably raise a tangle of regulatory issues. Employment-based health care is effectively (if imperfectly) regulated in three ways: (1) The federal Employment and Retirement Income Security Act (ERISA) of 1974 sets standards for employment benefits, (2) Federal law (COBRA [1985] and HIPPA [1996]) gives individuals the right to continue employment-based coverage beyond the term of employment, and (3) The states regulate the sale and terms of insurance. For its part, ERISA lays out fairly comprehensive federal standards for private pensions but is largely silent on the substance of health plans. In fact, ERISA explicitly pre-empts state or local laws which "relate to" employee health benefits. Consequently, a regulatory chasm exists between federal standards and state authority over the business of insurance: States can regulate insurers but not the firms to which they sell group policies, and they cannot touch self-insured firms at all.[20] ERISA has been used to challenge state and local employer mandates, although recent legal history suggests that it should not pose an obstacle to state laws that reward employment-based care or tax health care providers – as long as they stop short of requiring coverage and impose the same costs and obligations on ERISA and non-ERISA plans alike.[21]

Put another way, ERISA effectively prohibits states or localities from enacting "hard" mandates that compel employment-based coverage and specify its terms. It does leave room for "soft" mandates, however, that allow employers options such as paying into a state pool. Meanwhile, the courts have yet to rule on the potential conflict between ERISA and state "pay or play" laws. There is also room in ERISA's pre-emption clause for health coverage under (1) local "living wage" ordinances, many of which require public employers, public contractors, and firms receiving public subsidies to offer either health care or a wage premium,[22] and (2) state-level disclosure laws, which make public the terms of employment in all firms receiving public subsidies.[23] While such measures reach only discrete segments of the workforce, they nevertheless offer a clear benchmark for responsible employment. Living wage laws that require health coverage of public employees and those working on public contracts act as a disincentive to the outsourcing (often to temporary agencies) of public services. These laws have dramati-

cally improved compensation and conditions for pockets of high-turnover, often nonstandard, employment in areas like airport services, home health care and janitorial services. Wage and benefit guidelines, in turn, focus state and local economic development efforts on high-wage, full-benefit employment.[24]

One of the few standards specifically set for health plans under ERISA is the "portability" provision of COBRA and HIPPA. As a means of sustaining or expanding coverage, however, this provision has proven of limited value. Only about one in five eligible workers takes up the option of continuing coverage, largely because the costs are so prohibitive (averaging almost $800/month for family coverage in 2003).[25] In addition, the continuation rights granted by COBRA and the protection against "pre-existing condition" exclusions extended by HIPPA both rest on a foundation of employment-based insurance which remains elusive to increasing numbers of workers and their dependents. Any effective mandate, therefore, would also need to make the continuation of previous employment-based coverage much simpler, and participation in COBRA much less onerous.[26]

In summary, expanding nonstandard workers' access to employment-based care rests on a series of closely related initiatives:

- Encourage, through ERISA waivers, state and local experimentation with employer mandates.
- Ensure, under any such waiver, that nonstandard workers are explicitly identified and targeted as "covered employees."
- Expand access to existing portability options by subsidizing participation in COBRA.

Pooling Nonstandard Workers

The challenge posed by nonstandard workers is not only one of access or affordability, but also of assembling actuarially viable employee groups. A number of competing strategies have been proposed: open enrollment in existing public programs, purchasing cooperatives for individuals or small groups, new regulatory status for multi-employer health plans, and the establishment of new public authorities as "employers of record" for certain employees (such as home health care or child care workers). In assessing these options, we should be attentive to their costs (and who bears them), their regulatory framework or standards, and their ability to expand coverage.

One option for covering nontraditional workers (small firm, nonstandard, or self-employed) is to provide them with an "on ramp" to existing group-based public coverage.[27] The most popular candidate, for practical and political reasons, is the Federal Employees Health Benefits Program (FEHBP) – an option raised most recently by Senator John Kerry's presidential campaign.[28] Under the Kerry plan, individuals and small businesses (under 50 employees) could open-enroll in a separate FEHBP pool. It is unclear how much new coverage might be leveraged by this option. For their part, small employers are generally attracted to the opportunities offered by tax credits and coverage pools, but leery of relinquishing control over standards and premiums. Small business enrollment might do more to secure existing coverage than expand it.[29] The individual enrollment option would probably prove of more direct benefit for nonstandard workers.

Also promising on this front are state-level efforts to pool those excluded from employment-based health insurance. Maine's "Dirigo Health" plan, for example, creates an actuarial pool

composed of uninsured individuals, the self-employed, and firms employing fewer than 50 workers. Insurance for this group, jump-started the first year with state revenues, would be paid for by a combination of employer and employee contributions and a tax on insurance premiums. It is expected that the cost of these new contributions and taxes would be offset by savings to employers and employees following from the administrative simplification and early intervention accompanying near-universal coverage.

Another option for pooling coverage is the multi-employee welfare agreement (MEWA). These employer-initiated plans mimic the multi-employer welfare funds (so-called "Taft-Hartley plans") that have long existed in employment settings characterized by strong unions but fragmented employment (like construction and mining). MEWAs have been employed in industries characterized by self-employment (accountants, auto dealers) and transitory employment (agriculture), and the experience with them is mixed. ERISA gives states some regulatory authority over such agreements, but they have nevertheless been plagued by insolvency and instability.[30]

Current federal proposals, including the Bush health platform and the Small Business Health Fairness Act passed by the House in 2003,[31] would introduce a variation on the MEWA idea, known as the "Association Health Plan" (AHP). Although there has been no sustained experience with such plans, prospective studies are less than encouraging. Because AHPs would face minimal federal standards and would be largely freed from state insurance regulation, they would be as attractive to firms already providing insurance as to firms currently reluctant to offer it (because of high costs or regulatory burdens). In all likelihood, lower benefit and lower cost AHPs would end up covering the healthiest and lowest-risk portion of the existing job-based market, which would raise costs and premiums for those left behind, but would yield no net increase in coverage.[32] The result, in other words, would be regulatory relief for firms already providing coverage but little expansion of that coverage to the currently uninsured.

Yet another option, especially promising for workers on public contracts or public funds, is the establishment of public "employers of record" for otherwise fragmented employee groups. In Washington (2001), Oregon (2000) and California (1999), for example, state legislation has created public authorities to serve (at the state or county level) as employers of record for home health-care workers.[33] These public authorities grant collective bargaining rights to workers who had previously been considered independent contractors.[34] In each example, home health care workers have been able to claim conventional employment-based health insurance as one of the fruits of collective representation. Unlike MEWAs, such agreements are sustained by the legitimacy of collective bargaining and the regulatory security of relevant state and federal law (including insurance regulation, ERISA and public employee labor law).

In summary, the effective creation of new employment pools, like the employment-based options, rests on a combination of open access for small businesses and individuals and clear regulatory standards.

- Build on existing group plans (such as the FEHBP) rather than trying to devise new ones (as in MEWA or AHP-based reforms).
- Limit enrollment to small businesses and individuals, in order to minimize "crowding out" (the incentive to dump existing group coverage into the new pools).
- Ensure, under any plan, that nonstandard workers are explicitly identified and targeted as "covered employees."

Expanding Access to Public Programs

At least since the mid-1960s, public health programs have helped sustain private coverage by mopping up around its edges, a crucial if often under-appreciated role. Public programs cover the poor (Medicaid), the elderly (Medicare), children (SCHIP), and a variety of discrete populations (veterans, the disabled, etc). In fact, nearly half of national health spending comes from public sources (46 percent in 2002). These programs are especially important to two groups: (1) People with very low incomes for whom the out-of-pocket costs (deductibles, co-payments, exclusions) of even group health plans remain onerous, and (2) Workers with tenuous ties to the labor market for whom job-based coverage and portability provisions cannot guarantee stable and unbroken coverage. Many nonstandard workers qualify on both counts.

To reform or recast public programs, the gaps in private provision must be filled in ways that do not offer employers the opportunity or incentive to avoid or abandon employment-based plans. We already know, for example, that many employers routinely refer low-wage, part-time and temporary workers to public sources of individual or family health coverage, relying on those sources as an effective subsidy of low-wage employment.[35] In just the last five years the number of households claiming both employer-provided insurance and Medicaid has increased steadily (from 4.4 percent of low wage workers in 1992 to 8.7 percent in 2002). Between 1999 and 2002 alone, the share of child Medicaid recipients living in a family where other members had employer-provided health insurance more than doubled to 11.1 percent.[36] In light of this information, the expansion of public coverage should complement, not be an alternative to, the employment-based reforms suggested above.

Perhaps the most commonly-touted (and tried) approach to increasing non-group access to health insurance is to expand the reach of existing public programs, especially Medicaid and SCHIP. These state-level efforts depend upon federal waivers: Either “Section 1115” demonstration waivers that allow states to expand Medicaid and SCHIP coverage or Health Insurance Flexibility and Accountability waivers that allow states to introduce reduced benefits or cost-sharing for selected groups. States can, for example, push Medicaid and SCHIP eligibility to a higher poverty threshold (150 or 200 percent) or enroll the parents of SCHIP-eligible children. The principal condition set by the federal government for these experiments is that the experiments make no new demands on the federal treasury, at least in terms of federal cost-sharing.[37]

Given the fiscal woes of the states and the constraints of the waiver system, efforts to expand SCHIP and Medicaid have shown uneven results. Since federal policy requires states to finance program expansion without new federal spending, new coverage must be paid for with internal savings or new state spending, a constraint that leaves the states holding the bag for any future (especially inflationary) burdens.[38] Also, Medicaid and SCHIP are essentially “pro-cyclical” programs: They do well when the economy is booming and suffer when it is not. The first waiver-based efforts to expand coverage grew out of state-level reforms in the mid- and late-1990s, an era of rising employment-based coverage, flush state budgets, and controlled health inflation. Since the onset of the recession, nearly as many states have moved in the other direction, either paring eligibility and spending when demands on state health programs increased or sustaining programs on the backs of rainy-day funds, tobacco settlement income, or tax increases.[39]

But these conditions should not distract us from the larger promise of public programs, especially given the historical success of Medicaid, Medicare and SCHIP in dramatically reducing

poverty and uninsurance rates among target populations. Much of the regional unevenness and fiscal uncertainty of public program expansion could be erased by simple and uniform eligibility criteria. SCHIP, for example, could be made the default coverage for all uninsured families and individuals reporting income below 150 percent of poverty.[40] SCHIP-eligible families and individuals could make up a parallel pool, alongside small group and individual enrollees in the FEHBP, which could accommodate virtually all of those excluded from job-based coverage.

In summary, the expansion of existing public programs could, without stigma or fiscal stress, "round out" near-universal coverage under certain conditions:

- Adopt a simple and nationally uniform standard of income eligibility
- Establish a new federal budgetary commitment to SCHIP and/or Medicaid coverage
- Insulate public programs from "dumping" by employers through an accompanying employer mandate and small-group/individual enrollment in the FEHBP.

Tax Policies for Group and Non-Group Coverage

A final, and increasingly prominent, set of reforms looks beyond both employment-based provision and public programs. Tax-based health reform, which includes tax credits and tax deductions for the purchase of non-group coverage and tax-privileged health care savings accounts, is often based on a view of health coverage as just another consumer good and uninsurance as the choice not to consume (and therefore, a less-than pressing problem). Accordingly, these reforms show little promise of increased coverage. But, as part of a broader strategy for expanding coverage, the tax system could help identify the uninsured and ease their enrollment in group plans through income-based tax credits.

Tax-based plans fall into three categories, although most reform proposals (notably that of the Bush Administration) typically combine elements of each. The first type is a tax credit, which is usually refundable. The current Bush proposal would pay a sliding-scale percentage of a health premium: up to 90 percent, but limited to an annual credit of $1,000 for an adult and $3,000 for a family of two children and two adults. The credit would phase out at some income level (e.g., $60,000 for a four-person family).

Second, deductions from taxable income, rather than a credit against taxes owed, could be offered as an alternative to all individuals, regardless of income and whether they itemize deductions (existing rules allow a deduction for health expenses only when they exceed 7.5 percent of taxable income and only if the person itemizes deductions). Under the Bush proposal, such deductions would be allowed only for high-deductible ("catastrophic") health plans purchased in combination with a medical savings account.

The third option is the tax-advantaged medical saving account (MSA). Its history began with the creation (under the tax code) of the flexible spending account (FSA) within "cafeteria plan" benefit packages funded jointly by employers and employees. The FSA experiment was extended in 1996 by the creation of "Archer" MSAs, an IRA-like fund that avoided the "use it or lose it" feature of the FSAs but were available only to those in high-deductible health plans. The Archer MSA, a pilot program expiring in 2003, was effectively made permanent by the Health Savings Account (HSA) title of the 2003 Medicare legislation. Like the other tax provisions, HSAs are part of a long-standing effort to recast health coverage as an individual responsibility by removing the tax advantage of employment-based plans, and recasting the insured as cost-conscious consumers.

At first glance, these options would seem to hold some promise for nonstandard workers shut out of both job-based group insurance and means-tested public programs. But the record (and prospects) suggests otherwise. The Administration's tax-based reforms are designed for a relatively young and healthy population willing to shoulder high deductibles in exchange for tax breaks on premiums.[41] They rely on a non-group health insurance market characterized by very high costs and pervasive underwriting (the insurance rating system that disqualifies higher risks).[42] Prospective analyses of these plans suggest that new coverage will be largely offset by losses in existing coverage, either from employers abandoning coverage or younger, healthier workers choosing tax credits over job-based coverage. As a result, tax-based reforms will crowd out existing coverage as well as raise its costs by encouraging adverse selection, whereby the lowest-risk workers leave group coverage for tax-subsidized private insurance, leaving behind a pool of higher-risk, higher-cost workers.[43] This prognosis has been supported by the experience of pilot tax-credit programs, which have been marked by high costs and marginal enrollment.[44]

A more promising alternative would be to couple income-based tax credits with enrollment of the uninsured in a new public insurance pool, modeled on or an extension of the FEHBP. Tax credits could (and should) be used by the uninsured to buy into group coverage, rather than by the young and healthy to buy out of group coverage. Under one such proposal, an income-based tax credit would operate alongside an annual enrollment period based on income tax filings. Tax filers would report their health insurance coverage and qualify, depending on insurance status and income, for enrollment in the FEHBP and a tax credit toward premiums.[45]

In summary, income-based tax credits, offered along with an accessible "on ramp" to group coverage, might offer an effective means of expanding — and paying for — the coverage of those left behind by employment-based insurance.

- Health insurance tax credits should be refundable, targeted at the uninsured, and income-based.
- Tax credits or deductions for the purchase of health insurance should be offered only in conjunction with a broader set of reforms that provide the option of buying into an employment- or FEHBP-based group plan.

Conclusions: Health Insurance and Nonstandard Work

Since the last push for more comprehensive health reform in 1992-1994, the conditions that sparked that effort have deteriorated even further. After slowing briefly in the mid-1990s, health costs have risen sharply (driven in most recent years by high drug prices). The foundation of employment-based health insurance has continued to crumble, as fewer employers offer coverage and those who do shuffle more of the costs (especially for family coverage) onto the backs of workers. The ranks of the uninsured continue to grow. And a persistent fiscal crisis has pressed many states to constrain public coverage even as the need grows. The circumstances are particularly dire for nonstandard workers. Their employment relationship offers little security, and their access to other coverage (public programs or spousal benefits) is more and more elusive. Indeed, the very character of nonstandard work — low wages and an "arms-length" employment relationship — makes it inherently difficult for these workers to either take advantage of group-based solutions or buy into non-group options.

In the current discussion of health reform, a single-payer system is the one option largely unspoken, although the arguments for it are familiar. Few disagree that, once in place, a single-payer system could accomplish universal coverage by rearranging existing spending — using the savings generated from preventive care and administrative simplification to extend coverage to the currently uninsured. The benefits to nonstandard workers would be dramatic. By severing the link between employment and health provision, single-payer health care would both give non-traditional workers equal access to coverage, and remove one of the key incentives for employers to evade a conventional employment relationship.

Short of such far-reaching reform, we remain on the horns of a familiar dilemma. Our health insurance system expects employment-based provision but does not require it. Most employers, facing smaller employee groups, rising health costs, and persistent competitive pressures, have powerful incentives to avoid this burden and have done so by dropping coverage, making it more expensive, leaving employees to fend for themselves, or shirking the conventional employment relationship altogether. Incremental political solutions are needed to address each of these problems, and they should be combined in bold and inventive ways to avoid further fragmenting coverage or simply shuffling the already-insured from one program to another. Seamless access to group-based health coverage — for nonstandard workers and others — depends upon a transparent employment relationship, secure and portable employment-based care, and tax-subsidized access to alternative (public and private) insurance pools for those left behind.

Endnotes
Chapter 1

1 Self-employed workers (e.g. small business owners) who do not identify themselves as independent contractors are considered neither standard nor nonstandard, and are excluded from most of these analyses.
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8 Planmatics Inc. "Independent Contractors: Prevalence and Implications for Unemployment Insurance Systems."2000. http://wdr.doleta.gov/owsdrr/00-5/00-5.pdf.
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10 NAICS (North American Industrial Classification System) – system of classifying businesses in industry categories, which replaced the older SIC (Standard Industrial Classification) code system used by BLS.
11 Self-insured employers take on the primary risk of their employees' health care costs, and use insurers only to administer their employees' health coverage.
12 Title 26 USC Section 105(h).
13 Employers are allowed to exclude (1) employees with less than three years of service; (2) employees under age 25; and (3) part-time and seasonal employees, before applying the 70 percent test.
14 See the following: Community for Creative Non-Violence v. Reid, 490 U.S. 736, 751-52 (1989); Nationwide Mutual Ins. Co. v. Darden, 503 U.S. 318, 322-23 (1992); Professional and Executive Leasing, Inc. v. CIR, 862 F.2d 751, 753-54 (9th Cir. 1988); Daughtrey v. Honeywell, Inc., 3 F.3d 1484, 1492-93 (11th Cir. 1993); Rev. Ruling 87-41, 1987-1 Cum. Bul. 296, 298-99; U.S. v. Garami, 184 BR 834, 837-38 (M.D. Fla. 1995).
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Chapter 2

1 See Chapter 1 for complete definitions of worker categories.
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4 Kaiser Commission on Medicaid and the Uninsured, "The Uninsured: A Primer" (December 2003), 4.
5 Gabel, J., et al. "Health Benefits in 2003: Premiums Reach Thirteen-Year High as Employers Adopt New Forms of Cost Sharing," Health Affairs 22 (September/ October 2003): 117-26; Employer Health Benefits: 2003 Summary of Findings. The Kaiser Family Foundation and Health Research and Educational Trust.
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7 Collins, S.R., et al., "The Affordability Crisis in U.S. Healthcare: Findings from the Commonwealth Fund Biennial Health Insurance Survey," The Commonwealth Fund, March 2004.
8 According to the 2001 CWS, 65.5 percent of nonstandard workers were covered by another plan and 16 percent said the employer's plan was too expensive. The IPP Survey found similar results.
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11 "Employer Health Benefits: 2004 Summary of Findings." The Kaiser Family Foundation and Health Research and Educational Trust. Accessed May 31, 2005: http://www.kff.org/insurance/7148/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=46287.
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16 See Maryland Discount Plan report (cited above).
17 See Kofman et al. (cited above).
18 Chart from the National Association of Insurance Commissioners, 2004, reproduced in the Maryland Discount Plan report (cited above).
19 One reason for declining could be that the employer's plan consisted only of a 401k match, and the employee did not choose to contribute.
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Chapter 3

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3 26 USC Sec. 3401.
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5 Report of the Commission on the Future of Worker-Management Relations, U.S. Dept. of Labor, 1995.
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a family health plan grew from 66 to 92 percent, and the workers' monthly premium cost (family coverage) increased almost four times, from $52 to $201.

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Appendix A: The Contingent Work Supplement

Source for Tables 1.1, 1.3 - 1.6 and Figures 2.1 - 2.3

The authors analyzed data from the 1995, 1997, 1999 and 2001 Contingent Work Supplement (CWS). The CWS data are collected through a February supplement to the Census Bureau's Current Population Survey, a monthly survey of approximately 50,000 households. All employed persons, except unpaid family workers, are included in the Supplement. Only data from the 2001 Contingent Work Supplement are included in this report. Health insurance status is determined based on the worker's coverage during the reference week (the week before the survey).

All persons who worked during the reference week (the week before the survey) and who were at least 16 years old were classified into one of nine mutually exclusive worker categories. Regular full-time workers are the only group of "standard" workers. All other workers, except the regular self-employed, are considered to be in "nonstandard work arrangements." The definitions constructed in this report follow those developed by Houseman and Polivka (2000), except that independent contractors were separated into two distinct categories. Independent contractors (ICs) who identified themselves as employed by the government, a private company or a non-profit organization in the basic CPS were classified as wage and salary ICs. Independent contractors who identified themselves as self-employed in the basic CPS were classified as self-employed ICs.

Nonstandard work differs from regular full-time work in at least one of the following ways:

1. the temporary nature of the job;
2. the employer is distinct from the company for whom the person actually works;
3. lack of an employer (independent contracting- SE); or
4. hours worked per week are usually less than 35 hours.

Persons with two or more jobs are classified in the job at which they worked the most hours during the reference week. The definitions for each type of work arrangement are described in Chapter 1.

Appendix B: The IPP Survey of Fringe Benefits and Nonstandard Work

Source for Figures 2.4 – 2.6

This new survey was made possible with generous support from The Department of Labor. The survey was fielded in October and November of 2003, and in February of 2004. (December 2003 and January 2004 were passed over in order to not bias our findings due to the high levels of seasonal employment over the holidays). This survey was conducted by Lake, Snell, Perry & Associates and consisted of 20-minute telephone interviews among a random, nationally representative sample of 4,573 workers living in the United States. Researchers at the Iowa Policy Project designed the survey and analyzed the findings.

Statistical results are weighted to correct for the oversample of nonstandard workers. The resulting weighted sample is representative of the approximately 130.1 million workers in the United States during the survey period. The response rate was 25 percent for the original sample and 26 percent for the oversample.

The survey has an overall margin of sampling error of 1.5 percentage points at the 95 percent confidence level. For nonstandard workers, the margin of error is 2.5 percentage points.

Workers were divided into five categories based on a series of survey questions: (1) temporary workers, (2) independent contractors, (3) regular part-time workers, (4) small business owners and (5) regular full-time workers. A nonstandard worker was defined as being a member of one of the first three categories. Temporary workers were workers who described themselves as temp agency workers, contract company workers, leased employees, on-call workers, day laborers, or direct-hire temporary workers. Independent contractors were workers whose main job was not as a small business owner and who labeled themselves as an independent contractor. Independent contractors who later said that they were paid by the job, had multiple customers, and worked at their own place of business were re-classified as small business owners. Regular part-time workers were people who usually worked less than 35 hours per week in an otherwise standard job.