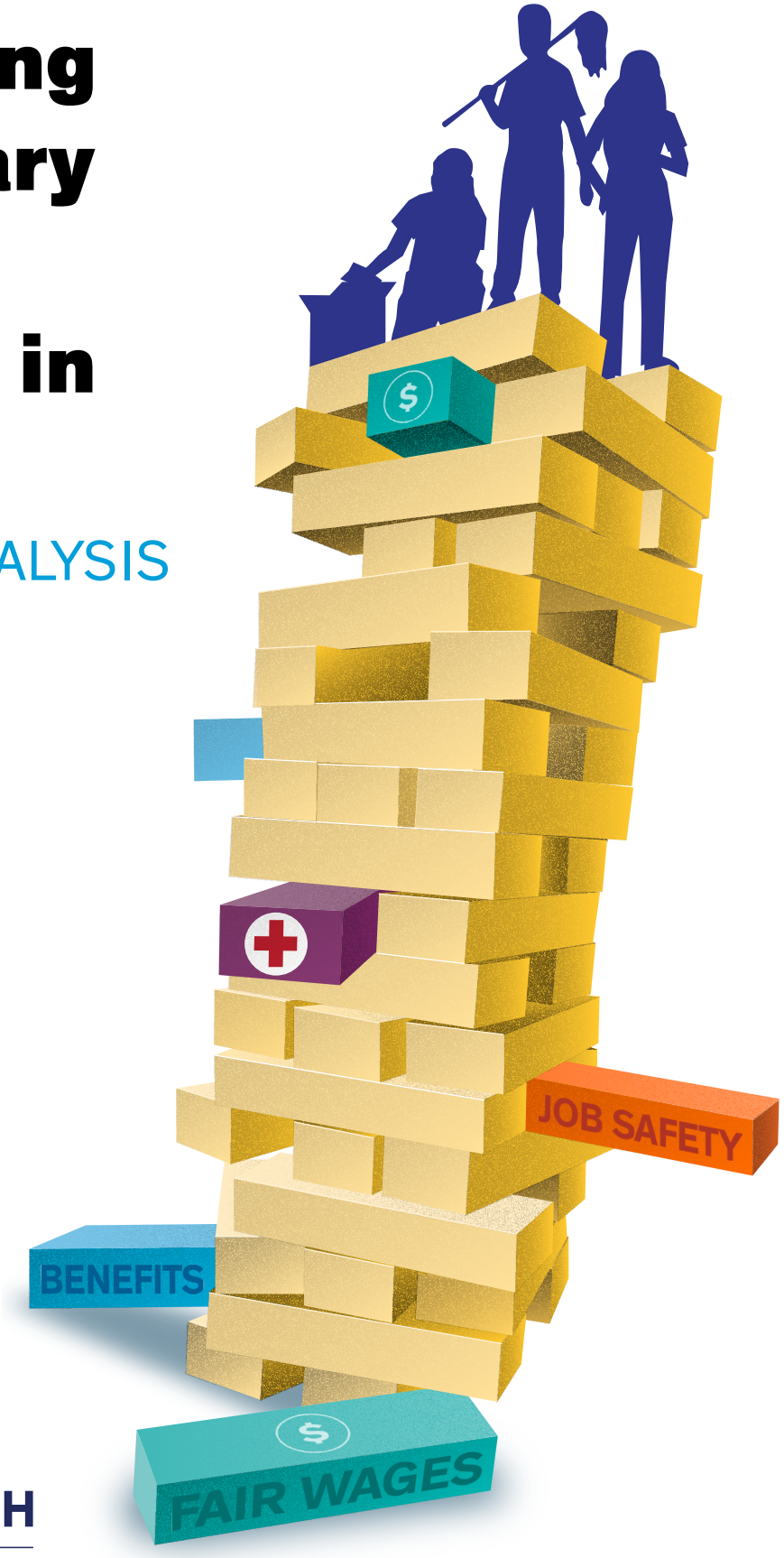
Protecting Temporary Staffing Workers in Illinois

A POLICY ANALYSIS



This work was supported by the National Institute for Occupational Safety and Health

Illinois Occupational Surveillance Program, NIOSH #U60OH010905-06-01

Greater Lawndale Healthy Work Project, Center for Healthy Work, NIOSH #U19OH011232

Great Lakes Center for Occupational Health and Safety, NIOSH #T42OH008672

UIC PUBLIC HEALTH

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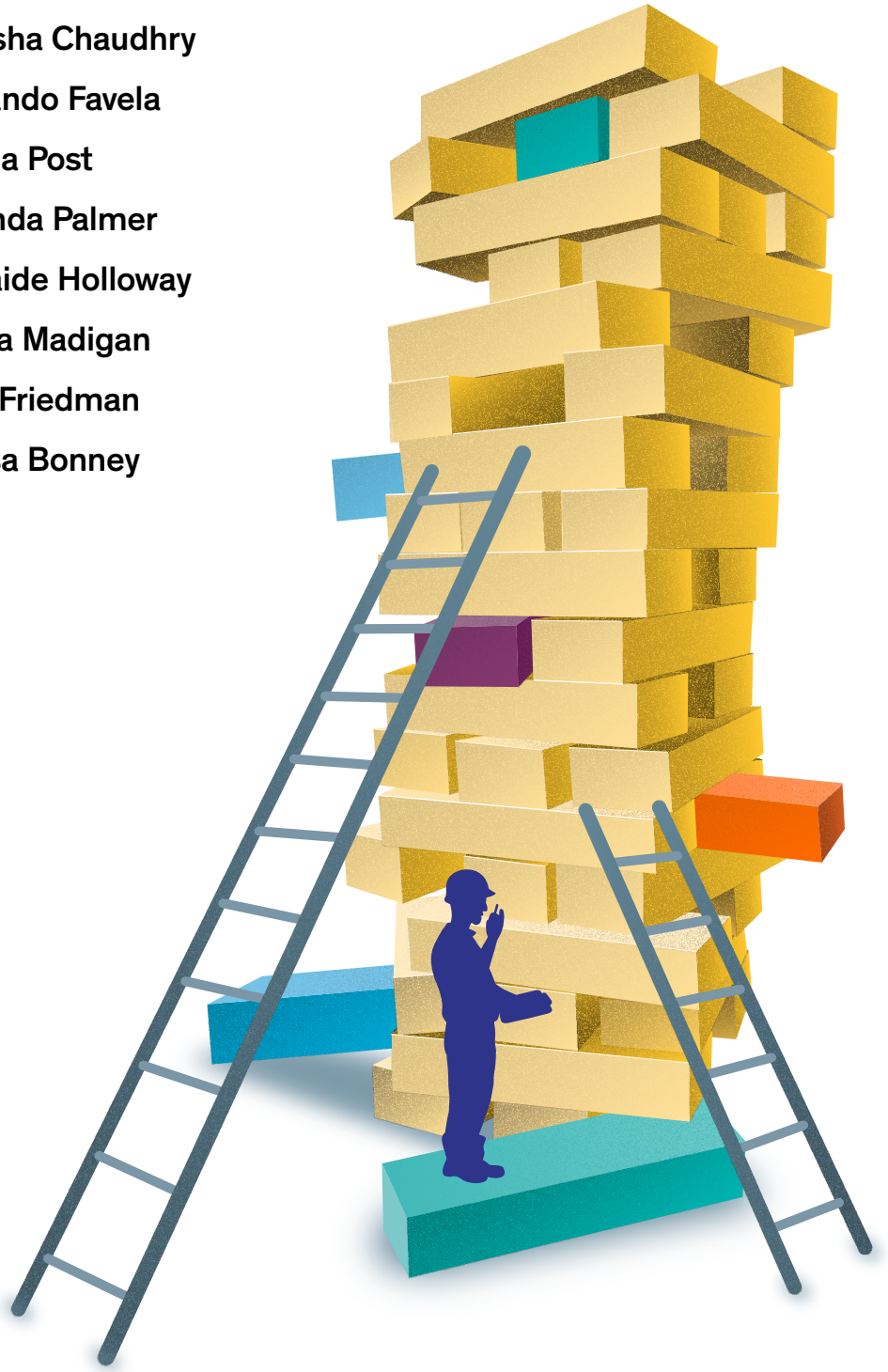


Introduction

Approximately, 200,000 Illinois workers are employed through temporary (temp) staffing companies, with over 800,000 "temp gigs" per year, making Illinois the third highest among the states in temp staffing employment.[1] Temp workers generally earn 50-67% of the wages of workers who are directly hired by the client or host companies, and generally, they are not offered social benefits.[2] Employment in temp staffing jobs is unstable by nature—workers can be let go at any time and without cause. Conversely, some people remain in "temp" status for decades, a lifetime of low wages and no social benefits.

Another feature of temp employment is that temp workers often do not know the identity of the employers where they are doing the work, or their employment rights, overall.[3] Likely, this is because they do not work at the company that pays their wages. Moreover, the unstable nature of temp employment means that temp workers may change jobs and companies frequently, further obscuring these relationships.

Temp workers in Illinois are dispatched to work across economic sectors, but mainly in transportation and warehousing, and manufacturing (see Figure 1 and Tables 1 and 5).[4-6] In general, these are hazardous work sectors with high rates of work-related injury, illness, and fatality.[7] Being hired through temp staffing may put them at even higher risk of injury compared to direct hires in the same jobs, a phenomenon that led the Occupational Safety and Health Administration (OSHA) to develop the Temporary Worker Initiative in 2015.[8]

Disinvestment in certain populations is no more obvious than in the temp staffing scenario. People who seek work through temp staffing companies tend to be those who have difficulty finding employment—people who have been out of the workforce for an extended time, people with few employment connections, workers with low skills, previously incarcerated individuals, and community members coming back from drug addiction. Thus, temp staffing offices tend to be located in high economic hardship neighborhoods.[9] In Illinois, temp workers in the manual labor jobs are mainly from the African American, Latinx, and immigrant communities.[6] They often hold low skill jobs with low wages, no social benefits, a lack of upward mobility and a high risk of severe injury.[10] They also are exposed to sub-optimal housing, poor schools, and, generally, limited economic opportunities.[11,12]

Temporary Employment Discourages Reporting and Prevention

1. **Temp workers often do not know who their employer is** or what their employment rights are.
2. **Wage theft is common,** perpetrated through hidden fees, unexpected cancellations, charges for transportation and meals, background checks, and a lack of clarity about the terms of the temp contract.
3. **Temp workers have extremely limited employment options** and can be discharged with a moment's notice at the will of the temp or the host employer; this incentivizes placement in hazardous jobs, discourages use of resources to provide safety training and deters injury reporting.
4. **Workers' compensation insurance is not purchased by the company** where the temp employee works and gets injured. This unhitches healthcare costs and lost time payments from the employer responsible for the injury.
5. OSHA requires that both the temp company and the host/client company ensure requisite safety training. This shared responsibility **blurs employer accountability** and **creates confusion** for the worker.
6. The temp company is the employer of record, but injuries are recorded, by law, on the client/host company's OSHA 300 log. The BLS Survey of Occupational Illnesses and Injuries (BLS SOII), our national occupational health surveillance system, uses a stratified sample of OSHA logs to calculate numbers, rates and trends of injury. **BLS cannot detect injuries in temporary staffing** because of this split in recording.
7. In the case of an investigation, the lack of recording temp status on the OSHA 300 log means that **OSHA does not automatically know if the worker is directly hired by the company** or hired through a temp staffing company. Both accurate citation and a focus for preventive measures are obscured.

This document arises out of several projects conducted at UIC SPH:

1. **A community based survey of workers** hired through temporary staffing was conducted in Chicago and suburbs. This survey showed that many workers are exposed to the most hazardous machinery and work environments.
2. **An analysis of Illinois workers' compensation injuries** in the temporary staffing sector (NAICS 561320). This showed that temp staffing workers are paid 50-67% of the wages of their directly hired counterparts.
3. **A community "windshield survey" of businesses** in 2 high economic hardship community areas of Chicago identified 6 temp staffing offices in these neighborhoods.
4. **A street-level survey of precarious workers** in the same 2 community areas found that 25% of interviewees had been employed through temporary staffing companies during the prior year.

Occupational safety and health (OSH) is an integral component of worker justice and health equity. Strengthening the legal mandates and practices of the workers' compensation statute and OSHA legislation are critical to protecting the health and ensuring the rights of temp workers in Illinois. In consultation with community experts, we present a policy analysis looking at workers' compensation statutes and case law as it applies to temporary staffing in Illinois and other states. We also present data that characterize the gaps in OSHA law and public health surveillance. Based on these findings, we provide a policy agenda to protect temp workers, a vulnerable segment of the Illinois workforce.

Temporary Staffing Arrangements

Temp companies find and staff short-term jobs in client/host companies. The temp company recruits, hires, assigns workers to worksites, pays wages, removes taxes, and pays workers' compensation insurance. The client/host contracts with the temp staffing company for workers and pays a set amount of money per worker. In summary, the temp staffing company takes on the Human Resources (HR) responsibility and allows the client/host to easily increase or shrink its workforce; as the economy waxes and wanes, or during seasonal surges, temp workers are an attractive alternative to stable employees. Another advantage for a host company is the transfer of all HR obligations to the temp staffing employer. Paradoxically, some workers stay in the employment of a temp staffing company for lengthy periods, even decades, even though they continue to work at a single host/client company the whole time.

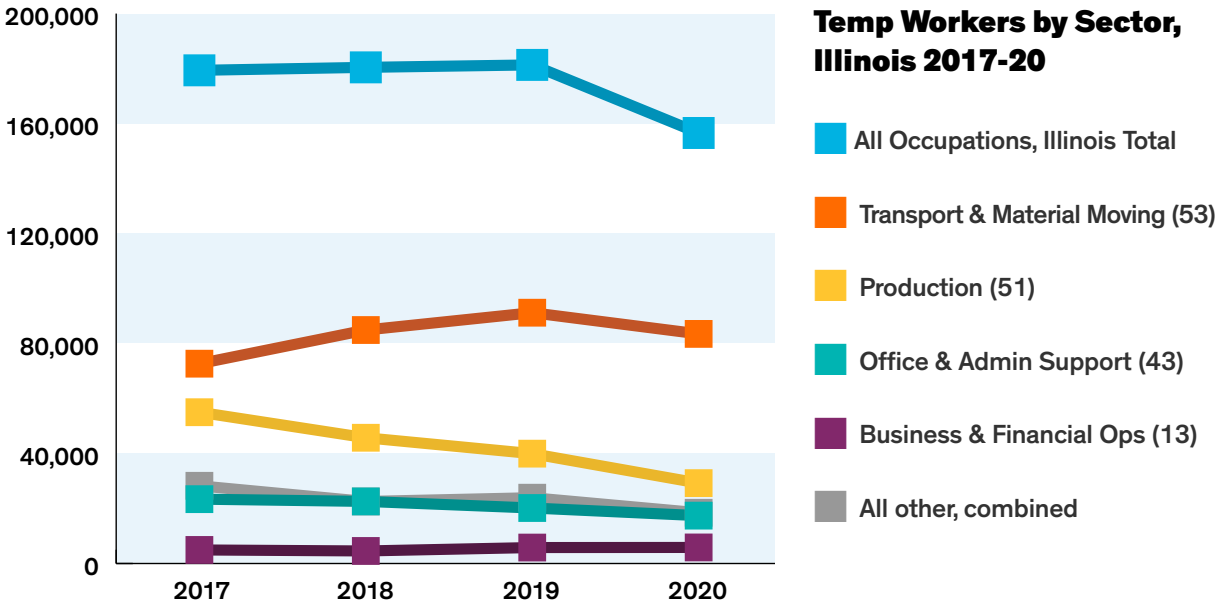
Working years in temp status at one host is called "permatemping."

While most temp workers work at the low- and manual-skilled end of the employment spectrum, very high skilled workers—in nursing, IT, finance—are also employed through temp staffing.

Temporary Staffing Workers in Illinois

According to the Illinois Department of Labor, there are over 250 registered day and temporary labor agencies with almost 730 branch offices in Illinois.[13] The number of individuals hired through temporary staffing is difficult to determine because it is counted differently by each entity. According to the American Staffing Association, there is an average of 245,700 temp workers each week in Illinois, with an annual employment of 1,265,500.[14,15] The US Bureau of labor Statistics reports 2,610,890 workers across the U.S. employed through temporary staffing companies (NAICS code 561320) in 2020.[1] In Illinois during 2019, BLS reported 181,330 temp workers in a quarterly census, comprising 3.2% of the total Illinois workforce (5,627, 660) in May 2020.[5]

FIGURE 1 Highest 4 job categories for temp workers and "all others combined," Illinois, 2017-20, USBLS.



Demographics of Workers in Sectors that Employ Temp Workers

According to the BLS Current Population Survey (Table 1) African American and Latinx workers are over-represented in most of the occupations that use temporary staffing workers; women are overrepresented in office/admin support and food preparation sectors, ranked third and fifth in the number of temp workers employed.[5]

TABLE 1 Proportion of women and minorities in commonly temp-staffed occupational categories in the US, 2020. (BLS Current Population Survey, 2020).

Occupational categories	Total employed (in 1000s)	Percent of total employed				
		Women	White	Black or African American	Asian	Hispanic or Latino
Total employees ≥ 16 years	147,795	46.8	78.0	12.1	6.4	17.6
Transportation and material moving occupations	10,625	20.5	72.3	19.4	4.2	23.9
Production occupations	7,590	28.3	77.8	13.1	5.6	23.6
Office and administrative support occupations	15,558	72.7	77.4	14.3	4.7	17.4
Building and grounds cleaning and maintenance occupations	5,084	40.3	78.2	14.2	3.1	37.9
Food preparation and serving related occupations	6,556	54.4	74.8	13.9	6.4	27.3

Note: temp worker employment is reported quarterly by the Bureau of Labor Statistics and exact numbers vary. Gray boxes show over representation of demographic groups in the particular economic sectors compared to the (top line) proportion of women, African Americans and Latinx individuals working in the US economy, overall.

Wages of Temp Workers vs. Directly Hired Workers in Same Sectors

Table 2 depicts wage comparisons for the occupations most populated by temp workers in Illinois.[5] Median and hourly wages for temp workers, overall, ranged from 72-80% of the median, mean, hourly, and annual wages of workers who were hired directly in jobs in transportation and material moving and in production (manufacturing). In "cleaning" and "grounds maintenance" and business operations, temp workers made around 90% of the wages of directly hired workers. In food preparation and serving, temp workers made 106% of non-temp workers, though the wages in those occupations are extremely low. (For the US in 2020, the poverty level was $26,500 for a family of four).[16]

TABLE 2 Comparison of wages of temp and non-temp workers in six occupations with highest number of temp workers, Illinois 2020.[5]

Occupation (SOC)	Number of temp workers	Number of non-temp workers	Percent workers employed by temp	Temp mean hourly wage	Non-Temp mean hourly wage	Temp/non-temp mean hourly wage	Temp mean annualized wage	Non-temp mean annual wage	Temp/non-temp mean annual wage
Transportation/ Material Moving (53)	83,500	581,380	14.4%	$14.40	$20.11	71.6%	$29,960	$41,830	71.6%
Production (51)	29,230	405,280	7.2%	$15.53	$20.05	77.5%	$32,290	$41,710	77.4%
Office/Admin Support (43)	17,410	760,560	2.3%	$18.30	$20.87	87.7%	$38,070	$43,400	87.7%
Business/ Financial Ops (13)	5,840	345,970	1.7%	$35.94	$38.65	93.0%	$74,750	$80,390	93.0%
Food Preparation and Serving Related (35)	1,870	418,400	0.4%	$13.35	$12.63	105.7%	$27,770	$26,270	105.7%
Building/Grounds Cleaning/Maint (37)	1,530	161,000	1.0%	$14.45	$16.06	90.0%	$30,050	$33,410	89.9%

KEY: Temp Non-temp

Work Related Injuries among Temp Workers

There are several studies demonstrating an association between status as a temp worker and increased risk of hazardous work: paced work, repetitive work, awkward postures, intensive use of vibrating tools and machinery, lack of autonomy in applying skills at work, lower self-rated health, report musculoskeletal symptoms of the upper extremity, and suffering from mental health conditions, such as, depression.[17-22] Temp workers have a demonstrated increase in the rate of occupational injuries;[2,17,22-30] and are less likely to return to work following an injury.[31] Temp workers in manufacturing had injury rates that were two to three times higher than their directly hired peers.[27]

Workers' Compensation Claims among Temp Workers

Several studies have shown that temp workers have higher rates of disputed claims in the workers' compensation system compared to the general workforce.[24,28,32] In Illinois there were around 1500 lost time claims filed between 2007 and 2012, or one claim per hundred temp workers per year.[2] These workers are more likely to be male, single, have more dependents, be injured at a younger age, and earn about half the wages, as compared to workers who are directly hired (Table 3).

TABLE 3 Characteristics of workers filing disputed workers' compensation claims in Illinois, 2007-2012

	Workers hired through temp agencies (n=8,936)	Direct hire employees (n=303,263)	p-value
Gender			<0.01
Male	6139 (68.7%)	198,885 (64.6%)	
Marital status			
Single	5015 (56.1%)	130,868 (43.2%)	
Married	3,827 (42.8%)	168,458 (55.5%)	<0.01
Widowed/divorced	1 (0.0%)	219 (0.1%)	
Unspecified	93 (1.0%)	3,718 (1.2%)	
Mean no. of dependents (s.d.)	1.3 (1.5)	0.9 (1.3)	<0.01
0	3993 (44.7%)	175,501 (57.9%)	
1	1625 (18.2%)	50,090 (16.5%)	
2	1569 (17.6%)	43,377 (14.3%)	
3	997 (11.2%)	21,872 (7.2%)	
4	496 (5.6%)	8,397 (2.8%)	
5 or more	256 (2.9%)	4,026 (1.3%)	

(Continued)

TABLE 3 Characteristics of workers filing disputed workers' compensation claims in Illinois, 2007-2012

	Workers hired through temp agencies (n=8,936)	Direct hire employees (n=303,263)	p-value
Mean age at accident (s.d.)	38.0 (11.3)	44.2 (11.7)	<0.01
Under 18 years	17 (0.2%)	988 (0.3%)	
18-24 years	1,230 (13.8%)	16,658 (5.5%)	
25-34 years	2,559 (28.6%)	53,563 (17.7%)	
35-44 years	2,494 (27.9%)	79,469 (26.2%)	
45-54 years	1,911 (21.4%)	94,558 (31.2%)	
55-64 years	579 (6.5%)	49,354 (16.3%)	
65 years and older	78 (0.9%)	6,989 (2.3%)	
Attorney representation used	7,974 (89.2%)	244,886 (80.8%)	<0.01
Weekly wage			
Mean (s.d.)	$420.35 (206.88)	$825.68 (466.92)	<0.01
Median	$367.20	$727.60	
Days between			
Accident and filing, mean (s.d.)	139.4 (305.2)	284.9 (573.9)	<0.01
Accident and filing, median	54.0	153.0	
Accident and decision, mean (s.d.)	688.3 (499.1)	841.9 (709.1)	<0.01
Accident and decision, median	558.0	689.0	

Policies Protecting Temp Workers

Five policies designed to protect workers and details related to temporary staffing workers are outlined, below.

1. Workers' Compensation

The history of workers' compensation is instructive for understanding its dimensions and constraints. During the industrial revolution of the 18th and 19th centuries, there was a transition to mass manufacturing using new technologies and methods, including assembly lines and automated machines.[33] This led to a substantial risk of severe injury and even death on the job, in a milieu of limited safety regulation.[33] There was a notable absence of a requirement for disability accommodations at work. Injured workers had little chance of returning to the work force because of impairment or, simply, the ease of replacing the disabled worker in, largely, unskilled jobs.

Following an injury, a factory worker's best legal remedy for disability or job loss was a lawsuit. An industrial revolution era lawsuit was unlikely to end in favor of the worker; companies had more resources than did workers and lengthy and costly legal proceedings effectively starved out workers and their families.[34] When legal action was brought, the three most common defenses used by companies were:

1. **"Contributory negligence,"** where the worker's own actions were claimed to cause the injury;
2. **The "fellow servant" doctrine,** where a co-worker's action contributed to the injury; and
3. **"Assumption of risk,"** which assumed that the employee knew and accepted the risks associated with the job.

Some employers required a signed contract to that effect, which was informally known as a "death contract".[34] On the other hand, employees had a low chance of winning lawsuits, but when they did win, the industry's payout could be enormous.[34]

The concept of the "grand bargain" of workers' compensation emerged in Europe at the end of the 19th century. In the US, workers began to win tort cases and disasters like the Triangle Shirtwaist Factory fire focused the public's attention on working conditions.[35] Workers' compensation statutes were enacted by each state starting in 1911, with Illinois being among the first (820 ILCS 305/). Under the statute, employers are required to purchase insurance to cover lost wages, medical care, job re-training, and either a settlement for permanent partial/total disability or death benefits; this, in exchange for workers losing the right to sue. Workers' compensation became the **exclusive remedy** for a work-related injury, with a "no fault," state-based, administrative system replacing the court system. While employer negligence still shields the employer from tort liability (i.e., upholds workers' compensation as the exclusive remedy for the injury), a tort action can be taken if there is an intention to injure or the belief that there was substantial certainty on the part of the employer that an injury would occur.

In Illinois, most workers are covered by workers' compensation, though sole proprietors, business partners, corporate officers, and members of limited liability companies may exempt themselves. Certain agricultural workers also are not covered. The workers' compensation insurance cost is based on payroll wages--for every $100 the average employer in Illinois spends on payroll wages, the employer pays $2.23--modified by a "class code" (based on risk of injury in that sector) and "experience rating" (increased assessment based on individual employers' experience with injury).[36]

How Workers' Compensation Applies to Temp Workers in Illinois

In a typical workers' comp case, when a worker is injured on the job, s/he reports the injury to the supervisor and is sent for medical attention. If s/he needs time off of work to recover from the injury, a workers' compensation claim may be filed and both the health care and the lost work time (at 67% of the earnings) are covered in an accepted claim. If there is a "permanent partial impairment," like a hand amputation, there is a disability settlement that is based on the injury (diagnosis is on a list that designates a number of weeks as the value of that injury) multiplied by the average weekly wage of the individual. If the worker dies, there is an estate settlement. If the worker cannot return to the prior job, job retraining may be included.

In the "temp" scenario, the worker often reports an injury to the supervisor at the host/client company. The supervisor records it on the OSHA 300 log. The host/client employer may report it to the temp staffing employer, or the worker may report to temp staffing, directly. The temp staffing company then notifies the workers' compensation insurance carrier. The temp company also files a First Report of Occupational Injury (FROI) to the Illinois Workers' Compensation Commission. If approved/accepted by the temp company (or its insurer), the worker's medical care and lost earnings are remunerated by the workers' compensation carrier through the temp company's insurance policy. If contested, there is an administrative process within the work comp system to have higher level reviews.

The loaning employer—the temp staffing company—is responsible for covering the worker's injury with their workers' compensation insurance policy, under the statute. However, both employers—the loaning/temp employer and the borrowing/host employer—are "joint and severally liable" if the worker wants to seek additional legal action against the host/client employer. A "joint and several liability" situation is when two or more persons covered under the same contract will "jointly" promise to do the same action, and also "severally" make separate promises to do the same action. This type of liability then gives rise to one joint obligation and to as many several obligations as there are joint and several promisors. This means that an injured employee could theoretically file a claim against either the loaning (temp) or borrowing (host/client) employer and the employers can negotiate coverage amongst themselves. Notably, the purchase of workers' compensation insurance by the temporary staffing employer is generally spelled out in the contract between the temp staffing company and the host/client company and so the injury is generally covered by the temp company's insurer.

Case Law that Sheds Light on the *Exclusive Remedy* Provision

In Illinois, the "grand bargain" stipulates that workers' compensation is the exclusive remedy for a work-related injury, and that the worker has no right to sue the employer – neither the temp employer nor the host/client employer (Illinois workers' compensation Act 820 ILCS 305/) The courts have interpreted the statutes via case law. Illinois case law interpreting the workers' comp statute confirms the exclusive remedy principle. For example, **in a case filed by an employee who was injured driving a forklift, related to the borrowing employer's negligence, the courts found that the borrowing employer was still entitled to exclusive remedy protection (*Holten v. Syncreon North America, Inc.,* 2019).**

NOTE: Table 4 provides a summary of the case law described in this section. Each decision is listed by State.

In a legal action where a temp worker's role was described as an "independent contractor," the host/client employers argued against this description: **in the case of *Chaney v. Yetter Manufacturing Co., 2000,* the Supreme Court of Illinois held that two factors determine whether a loaned-employee relationship exists: "(1) whether the borrowing employer had the right to direct and control the manner in which the plaintiff performed the work; and (2) whether a contract of hire, either express or implied, existed between the employee and the borrowing employer. Of these two factors, the right to control is primary."** On a host's worksite, a temp worker is in the status of a "loaned" employee, working under the direction of the host. As a loaned employee, Chaney was found by the courts to be bound by the exclusive remedy provision.

A recent case in Illinois upheld that opinion. In *Torrijos v. International Paper Co.,* 2021 IL App (2d) 191150, 2021 Ill. App. LEXIS 321 (June 22, 2021) **a temp worker placed at a paper packaging company experienced a hand crush injury while working on a machine that prints, folds, glues, and packages corrugated cardboard boxes.** The employee received workers' compensation coverage through her temp staffing employer for medical care entailing multiple surgeries, lost work time, and permanent partial disability. **The court (citing *Holten v. Syncreon*) held that this worker's acceptance of an assignment from a temp staffing company and her awareness that she worked for the borrowing host employer implied consent to the borrowed-employee relationship** and that the borrowing-host employer is protected under the exclusive remedy provision.

All 50 states, including Illinois, shield borrowing-host employers from tort liability (i.e., states accept workers' compensation as the exclusive remedy for a work-related injury). Analyzing case law from other states can be instructive in showing how it has evolved into several "doctrines," some of which are common across states and many of which are unique to particular states. A doctrine can be thought of as a simple rule or principle which is established in law. A court might then reference a doctrine to explain a complex situation in a few words. A few of these doctrines, as applies to workers' compensation's exclusive remedy provision, are the economic reality test, borrowed employee test, particular employee/employer test and loaned employee test.

Wisconsin

Wisconsin had the first workers' compensation law in the country, enacted in 1911. It has evolved and covers the "allowances, recoveries and liabilities" of workers in the state (Wis. Stat. § 102.01). "Temporary help agency" is defined in Wisconsin as an employer that places its employees with, or leases its employees to another employer who controls the employee's work activities and compensates the first employer for the employee's services,..." (Wis. Stat. § 102.01). Wisconsin differentiates between temporary employees hired through a temporary help agency and "loaned employees" (Wis. Stat. Ann. § 102.29(6)(b)1). A loaned employee could be a crane operator sent to operate a crane at a construction site and would be different than a temporary worker sent to do general tasks on the site. There is even a category called a "leased employee" which means "a nontemporary, ongoing employee whose services are obtained by a client under an employee leasing agreement" (Wis. Stat. § 102.315(1)(g)). These workers may be employed through a Professional Employer Organization (PEO). Traditionally, a temporary help agency, PEO, or loaning company would be responsible for an injured employees' workers' compensation insurance. There would be no room for a tort action under the **exclusive remedy** provision. For example, a temporary help agency is liable under section 102.03 for all compensation and other payables.

The statute does have exemptions for third party actions such as "an assault intended to cause bodily harm" by another employee and against another employee for an accident with a non-employer owned vehicle. The courts have found that lawsuits may proceed against third party tortfeasors even if there are claims made for workers' compensation (*Nelson v. Rothering,* 1993).

The Wisconsin courts completed an in-depth analysis of these issues in the case, *In re Estate of Rivera v. West Bend Mutual Insurance Company and Alpine Insulation.* The estate of Carlos Rivera, a temp staffing worker, sued in lieu of filing a workers' compensation claim after he died in a company vehicle accident, the borrowing employer owned the vehicle (*In re Estate of Rivera,* 2018). Based on the statute, the court found that the employee was barred from bringing tort claims against the borrowing company ***only*** if the employee also filed a lawsuit under the Workers' Compensation Act (*In re Estate of Rivera,* 2018). The court used a plain reading of the statute's language that "no employee of a temporary help agency claims for compensation may make a claim or maintain an action in tort" (Section 102.29(6)(b)(1)). The court also found no difference if Rivera was a "loaned" employee instead of a temporary employee, which describes workers hired through a PEO. The court in Rivera clearly states, "we conclude the **exclusive remedy** provision does not bar a temporary employee from bringing tort claims…" (*In re Estate of Rivera,* 2018). The Rivera court allows a worker to choose between taking workers' compensation benefits from the staffing company or sueing the borrowing employer. A lawsuit against the borrowing employer replaces the right to claim any workers' compensation benefits.

Before Rivera, the most relevant doctrine was the "loaned employee test" which put a temporary worker under the **exclusive remedy** provision if there was:

a **Consent** on the part of the employee to work for a special employer;

b **Actual entry** by the employee upon the work of and for the special employer pursuant to an express or implied contract so to do;

c **Power of the special employer to control the details of the work** to be performed and to determine how the work shall be done and whether it shall stop or continue. (*Seaman Body Corp. v. Industrial Comm'n,* 1931).

The shift from *Seaman* to *Rivera* allows a worker to determine how to exercise a right to sue (i.e., either under the workers' compensation system ***or*** the tort system, but not both) instead of having the court determine this. The Rivera case has concerned business owners in Wisconsin concerning issues of liability. Governor Walker signed Wisconsin Act 139 into law in 2018, which changes the language of section 102.29 from "makes a claim" to "has a right to make a claim." (Wis. Stat. § 102.29). This language from a plain text reading seems to make no difference to the *Rivera* court's decision. There is currently ongoing litigation on the issue of the **exclusive remedy** provision for temporary workers in the state of Wisconsin.

Michigan

The Michigan Workers' Compensation Act of 1969, 418.101 to 418.941, states that "the right to the recovery of benefits as provided in this act shall be the employee's **exclusive remedy** against the employer." (M.C.L. § 418.131). The courts have looked at the statute as allowing for multiple employers to be the employer, and the term "co-employer" is the key term of the Act. If the temp agency and borrowing company are deemed "co-employers" or "dual employers" per the economic realities test, the employee is bound by the **exclusive remedy** provision.

The economic realities test is found in many court cases. It has the following four prongs:

1. Control of a worker's duties,
2. The payment of wages,
3. The right to hire and fire and the right to discipline,
4. The performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal (*Smith v. Martindale,* 1978).

In the case of *Kidder v. Miller,* the plaintiff was a construction worker loaned to a borrowing employer that had defective scaffolding at the construction site. Plaintiff Kidder had a fall and severe injury (*Kidder v. Miller,* 1997). Kidder attempted to sue the borrowing employer for negligence and the case had a unique fact. Kidder had a contract which stated that he was not an employee of the borrowing employer. He argued that this meant his case did not come under the **exclusive remedy** provision. The Michigan Supreme Court took up the case on appeal and decided that, regardless of the contract, the economic realities test should be applied. The test determined that Kidder was an employee of both employers and that the **exclusive remedy** provision applied. The economic realities test may be a lengthy analysis that results in the same conclusions. It is important to note that in this case, ***both a borrowing employer and PEO were required to maintain separate workers' compensation policies*** since, as co-employers, both businesses could be held liable.

This test has been applied to many other cases. In *Smith v. Martindale,* an employee (Smith) was injured by a crane operator (Martindale) who brought a rented crane to a construction site. The court wrestled with the question to determine if the crane operator was a "loaned servant" (*Smith v. Martindale,* 1978). While construction sites can have multiple layers of subcontractors, the economic realities test demonstrated, to these adjudicators, that the crane operator was not a co-employee. The crane operator, was not controlled by the general contractor, not paid wages by the general contractor and the general contractor did not have a right to fire the crane operator, Martindale (*Smith v. Martindale,* 1978). This meant that Smith was allowed to sue and the **exclusive remedy** was found not to apply.

The economic realities test can yield different results. In *Bolen v. Marada,* Michigan Supreme Court Justice Ryan noted that

> ...two wholly separate entities are both granted immunity from suit under MCL 418.131 of the Worker's Disability Compensation Act (WDCA), even though only one of them has obtained applicable worker's compensation insurance, without which immunity is improper.
>
> My colleague's approach suggests that if two companies can divide the attributes of employment equally enough, both will be entitled to the **"exclusive remedy"** bar of the statute, even though only one set of workers' compensation insurance premiums must be paid. In short, my colleague's opinion advertises "two bars for the price of one."
>
> It seems clear that the Legislature contemplated that either total liability or higher workers' compensation insurance rates would provide an economic incentive for every company to care about worker safety. It now appears that the labor broker scheme may be an expedient method of avoiding either type of liability. [Farrell, 416 Mich at 286-287 (RYAN,J.,dissenting in part).]

Michigan has a unique case law involving the **exclusive remedy** provision for temporary workers.

Iowa

Iowa covers workers' compensation in Iowa code in Title III, Chapter 85, with the **exclusivity** provision in section 85.20. The temporary/loaning employer is often called the "general employer" in Iowa case law. The borrowing employer is termed the "special employer" (*Quiles v. Johnson,* 2018). The question the court asks is if the borrowing (host/client/special) company can be considered the temporary worker's employer (Sager v. Innovative, Lighting, 2016). Other cases have framed the question as "an employee of a general (temp) employer simultaneously served as the employee of a special (host) employer" (*Quiles v. Johnson,* 2018). If the temporary worker is also an employee of the special (host) employer, then the **exclusive remedy** applies. This makes Iowa a fact- dependent jurisdiction. In the *Sager* case, the employee was injured while loaned to an injection molding plant. The employee had previously asked to become a full-time employee but was told in writing that he was not an employee of Innovative Lighting (*Sager v. Innovative, Lighting,* 2016). During the court case, the special (host) employer attempted to argue that the employee was theirs, in order to trigger the **exclusive remedy** shield of workers' compensation. The courts, however, weighed the facts and determined that Sager was not the host's employee and he was allowed to sue.

Iowa may also, simply, be viewed to determine if a worker entered into an express or implied employment agreement with the borrowing employer. The Iowa court will also view situations through the borrowed servant doctrine. In this complex doctrine, a borrowed servant (employee) is considered to work for the special (host) employer when they are "not only leant but surrendered full control [of]" (*Bride v. Heckart,* 1996). In *Bride v. Heckart,* Bride was a heavy equipment operator. The borrowed servant doctrine states that "[a] servant (worker) directed or permitted by his [or her] master to perform services for another may become the servant of such other in performing the services. He [or she] may become the other's servant as to some acts and not as to others" (*Bride v. Heckart,* 1996). A key component of this doctrine is that "complete control" must occur. Bride, as a specialized heavy equipment operator, was making decisions on how best to do his job and could refuse orders from his employer. This demonstrates the intersection of highly specialized labor with the borrowed servant doctrine and the **exclusive remedy.**

The question of whether gross negligence may supersede the exclusive remedy protection was decided in a summary judgement in a court of appeals filing in Iowa in January 2021, In *Oppedahl v. Various Employees of Iowa Department of Transportation* (No. 19-1851), Jeffrey Oppedahl drilled for soil samples as a soils party chief for the Iowa Department of Transportation (DOT). Oppedahl sustained injuries from "operating a truck-mounted drill and auger on a platform located approximately eighteen inches from the drilling mechanism." Oppedahl sued DOT employees who were working on the drilling mechanism on behalf of himself, his wife and minor children. Oppedahl alleged co-employee gross negligence based on Iowa Code section 85.20(2) (2017).

In Iowa, there is an exception to the **exclusive remedy** rule when an injury is "caused by the other employee's gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another." *Id.* § 85.20(2). It must be proven that the employer (or employees supervising a job on behalf of the employer) knew that "peril" was probable and they had a conscious failure to avoid it. In this case, the supervising employees were not on the jobsite at the time of the injury and did not have personal knowledge of the circumstances or nature of the incident. The Iowa appellate court found that the gross negligence exception did not prevent the employer from being shielded from liability by the **exclusive remedy** protection.

Massachussetts

In Massachusetts, ALM GL ch. 152, § 18 (1993) specifically requires the borrowing employer to pay workers' compensation, and thus extends the **exclusive remedy** to borrowing employers. But in a case where the borrowing employer tried to avoid this responsibility by claiming that it was not an "insured person liable for payment of compensation," the court found that the employer was not immune from tort liability (*Numberg v. GTE Transport, Inc.,* 34 Mass. App. Ct. 904). However, in *Molina v. State Garden, Inc.* (2015), Molina, a temporary staffing worker was injured the first day on the job. She claimed that, while the temp staffing employer had paid workers' compensation benefits, State Garden, the host employer, should not be protected by the exclusive remedy clause. She explained that the host did not pay for workers' compensation insurance and did not have a policy that paid out the work comp costs. The state of Massachusetts pointed out that an Alternate Employer Endorsement form was attached to the temp agency's workers' compensation policy, naming the host as additionally insured (regardless of who paid the premium). Based on those facts, Molina was denied permission to sue.

Pennsylvania

In an important decision in Pennsylvania, "an assault intended to cause bodily harm" by another employee and against another employee for an accident with a non-employer owned vehicle, the courts have found that lawsuits may proceed against third party tortfeasors even if there are claims made for workers' compensation (*Nelson v. Rothering,* 1993).

Summary of Legislation by States

There are several other states that take unique approaches to the **exclusive remedy regarding temporary workers** provision of workers' compensation. The ones analyzed above are displayed in Table 1 and the applicability to Illinois are discussed in Table 2. It is important to note that a challenge in analyzing state policy involves the fact that many states use their own, unique jargon to describe the relationship. Many states also use similar tests but analyze them differently or have slightly different prongs. Finally, many states have different case law that they follow. This leads to similar fact patterns yielding disparate results. Despite the "loaned employee test" in Wisconsin or the "economic realities test" in Michigan, all legal tests most often lean in favor of the employer.

2. Language and Legal Protections

In a purely legal reading, two distinctions which are common across various states may be instructive. The first is the difference between two types of relationships—"lent employee and borrowing employer" vs. the "statutory employer." A "statutory employer" usually refers to the general contractor/subcontractor relationship (construction trades are the prototype). This relationship is sometimes indistinguishable from a "borrowing employer," but legal decisions are based on blurring these distinctions. Second, temp staffing agencies and professional employer organizations (PEOs) are essentially the same, and the differences cited in legal arguments seem arbitrary. The presumed difference is the extent to which the job placement is permanent or temporary; however, PEOs do not necessarily guarantee long-term employment. The fact that PEOs more often assign workers to white-collar jobs creates an appearance that blue-collar workers are not entitled to the same protections, even though their jobs are more hazardous.

Today, the terminology of "loaned" and "borrowed" "servant" resonates with the apparent status of temp workers in society. In fact, it is in line with the statutes and case laws regarding the workers' compensation and exclusive remedy protections in the temporary staffing industry. The lack of agency, autonomy, economic security, access to social benefits and job stability characterize the employment arrangement of temp workers in the U.S. The treatment of work-related injury in temp staffing further highlights the structural and systematic disadvantage of temp workers, who comprise a critical component of the Illinois workforce. Workers' compensation was originally intended as a no-fault insurance system. However, it has become contentious, with public health and social science publications using "burden of proof" terminology (i.e., removing the "no fault" assumption), and approaching workers' compensation hearings in the same way as tort cases. [37-39]

3. Illinois Day and Temporary Labor Services Act

On the federal level, all the laws that protect permanent workers apply equally to temporary workers. Because of egregious violations of labor rights of temp workers—wage theft, hiring discrimination, violation of health and safety protections—Illinois passed The Day and Temporary Labor Services Act (DTLSA) in 2005.[13] The law was amended and expanded in 2018 with the Responsible Jobs Creation Act, which again passed first-in-the-nation protections against discrimination, wage theft, and "permatemping." Key provisions of the Illinois DTLSA are:

Notification in writing of

- the workers name, schedule, length of assignment, nature of the work to be performed
- the wages name and address of each host/client company
- personal protective equipment (PPE) and training requirements for the job task

- the terms of transportation, including costs to the worker; return transportation is required
- the cost of meals and PPE if being charged; deducted costs for transportation, PPE, meals may not cause the hourly rate to fall below minimum wage
- On the paycheck: a detailed, itemized statement of wages with the name, address and telephone number of each third-party client where the temp worker worked, the number of hours and rate of pay, itemized deductions from the paycheck

Temp staffing company

- cannot charge for the conduct of a background check or drug test
- must pay a day's wages if the client/host does not actually employ the worker
- must register with the Illinois Department of Labor or face a penalty
- must file an annual report to IDOL to show statistics on race and gender

Host/client company must pay the staffing company for temp labor based on the contractual agreement between the two parties.

Importantly, under the Illinois DTLSA (820 ILCS 175/95 Sec 95), workers have a private right of action in the case of a health and safety or notice of violation, for : "[a]ctions may be brought by one or more day or temporary laborers for and on behalf of themselves and other day or temporary laborers similarly situated." (820 ILCS 175/95 Sec 95). Furthermore, a day or temporary laborer whose rights have been violated under the DTLSA may collect:

> Amount of any wages, salary, employment benefits, or other compensation denied or lost to the day or temporary laborer or day and temporary labor service agency by reason of the violation, plus an equal amount in liquidated damages; . . . compensatory damages and an amount up to $500; . . . all legal or equitable relief as may be appropriate; and attorney's fees and costs.

A recent survey of temp workers' experiences during the pandemic suggests that IDTLSA has not solved the problems it was meant to address: training, workplace safety measures, and distribution of requisite personal protective equipment were not provided among temp workers in the food supply chain.[40]

4. OSHA's Temporary Worker Initiative

In response to the high number, rate, and severity of injuries among temp workers, OSHA launched the Temporary Worker Initiative in 2015.[8] Fundamentally, OSHA holds both temp staffing companies and host/client companies responsible for assuring a safe work environment. This responsibility pertains to all hazards and OSHA has written specific guidance for temporary agencies and host employers in the following categories: injury and illness recordkeeping; PPE; whistleblower protection rights; safety and health training; hazard communication; bloodborne pathogens; powered industrial truck training; respiratory protection; noise control; hazardous energy control (lockout-tagout), and shipyard employment; and temporary workers' rights. There is shared responsibility for providing required safety training of workers as well as health and safety precautions. Many OSHA standards require specific and generic safety training. If the temp company provides the training, it tends to be general, since workers are placed at different companies for work. There is a tacit understanding, if not specified in the contract, that the host/borrowing employer will provide the specific required training. Training takes time and costs an hourly wage. This serves as a disincentive for training. Indeed, there are many cases of severe injuries and fatalities that occur on the first day of a temp worker's job.[41] The state of Washington now requires training by the host prior to beginning work; confirmation must be sent to the staffing company within three business days (Washington State Legislature RCW 49.17.490. https://app.leg.wa.gov/RCW/default.aspx?cite=49.17.490)

5. Occupational/Public Health Surveillance

Public health surveillance—the tracking of occupational hazards, exposures, injuries and illnesses with the goal of prevention—is problematic in the U.S., as described in a National Academies report.[42] Occupational health surveillance faces a particular conundrum in the temp employment scenario. In the US, the major source of occupational surveillance data is the Bureau of Labor Statistics.[43] For the Survey of Occupational Illnesses and Injuries, the BLS solicits OSHA 300 logs from a representative sample of workplaces, stratified by state, industrial sector, and size. By law, the company where the worker performs the work tasks is required to record occupational injuries (requiring more than first aid) on its OSHA 300 log. In the case of temp employment, it is the host/client company that is required to list the injury, not the temp employer. Importantly, there is no variable (data element) on the log to indicate whether a worker is employed directly or through a temp staffing company and a recent study showed a poor understanding among host employers about the recording requirement.[44] Since temp staffing employers are not required to list temp workers on their OSHA 300 log, counting injuries and fatalities among temp workers cannot be done using our nation's occupational surveillance system for work-related illnesses and injuries.

Knowledge of injuries among temp workers is integral to addressing health and safety in this employment arrangement. Evaluating changes in numbers, rates, and trends are only possible if these injuries are identified and characterized. Systematic surveillance for occupational illness and injury among temp workers is critical to focusing employers, workers, worker advocates, enforcement agencies, insurance companies, and public health on the need for, and effectiveness of, legislation and workplace mitigation efforts. This is a problem that could be easily remediated (see recommendations, below).

Summary and Recommendations

Currently, in most states, including Illinois, a workers' compensation policy for temp workers is purchased by the loaning/temp employer. Joint and several liability—the shared status of "employer of record" —is either explicitly written into the contract between the loaning/temp company and the borrowing/host, or it is baked into doctrine/case law. This approach shields negligent companies from responsibility for the health and safety of its workers. It also pre-determines outcomes of legal challenges, despite negligence or egregious misjudgment on the part of borrowing/host employers. Informal interviews of temp staffing companies, insurers, and workers have elucidated the problems of temp staffing companies operating in a competitive market that punishes them for canceling contracts with hosts. At the other end, there is a practice of temp companies dissolving when their workers' compensation experience rating goes up, only to reappear as a new staffing company with a clean experience rating.

Occupational Health Surveillance in the U.S. is deficient, overall.[42] These deficiencies are particularly problematic in the temp employment scenario because of high hazards, blurred responsibilities, and overall disadvantage of this workforce. OSHA's Temporary Worker Initiative would be aided by identifying injuries and the conditions under which they occur.

Most telling is the language defining temp workers as "loaned and borrowed servants." This terminology starkly, but accurately, portrays the violation of human rights among a population that sits at the intersection of structural and systemic policies and practices that cause tremendous disadvantage in American society.

There are 3 overarching approaches to protecting the health and safety of workers hired through temporary staffing companies. These approaches are not mutually exclusive and are likely to reinforce the weak safety net provided temporary staffing workers, at a minimum bringing them to parity with their direct-hire counterparts.

Approach 1

Alter protocols for workers' compensation coverage.

Recommendation 1:
Require the borrowing/host company to directly purchase workers' compensation insurance for all workers, including loaned/temp employees.[10]

- Work comp insurance should cover loaned/temp workers to the same degree as the directly hired employees
- Disallow contractual obligations/language that list the loaning/temp company as the purchaser of workers' comp insurance (it automatically falls to the borrowing/host and any language that states otherwise is disallowed in legal proceedings)

Recommendation 2:
Require borrowing/host employers to report loaned/temp employees to the borrowing/host employer's workers' compensation insurance carrier (even if Recommendation 1 is not met—i.e., the borrowing/host does not carry work comp insurance for loaned/temp employees)

- These should be reported, at minimum, on a quarterly basis

Recommendation 3:
If the loaning/temp company purchases the workers' comp insurance policy, do not allow exclusive remedy protection for the borrowing/host company

- Require that liability for a workplace injury reside at the employer/workplace where the loaned/temp worker works
- Do not allow "dual employer" consideration

Approach 2

Require safety training by the borrowing/host employer.

At present, OSHA obliges both the temp/loaning employer and the host/borrowing employer to share the responsibility of providing safety training for temp workers. Temporary work is done at an array of work settings, from low to high hazard sectors. Individual temp companies often place workers at host companies across the hazard spectrum. If a worker is placed at a particular machine, it is unlikely that the temp company would be qualified to train the worker. Moreover, there are aspects of safety – safety culture, safety climate, particular regulations, specific protocols—that could not be covered by the temp/loaning employer. At the most basic consideration, training is done "on the clock" and the cost may not feel worth it to either party given that temp workers are, by definition, placed at a job for a short time.

Recommendation 1:
Require the borrowing/host employer, alone, to provide safety and health training and all personal protective equipment; remove the responsibility of the temp/loaning employer.

- Develop contractual language and mandate its use in temporary staffing contracts.
- Enforce the OSHA recordkeeping requirement related to PPE and training.

Recommendation 2:
Continue the shared responsibility of temp/loaning and host/borrowing employers to provide training, but mandate the details and develop an accounting/evaluation system to assure legal compliance, implementation of best practices, and continuous quality improvement.

Recommendation 3:
Require a recorded exposure assessment and safety audit at every workplace and for every job done by a temp worker.

Recommendation 4:
Require temp company personnel to accompany temp workers to the borrowing/host employer on the first day and periodically.

Approach 3

Alter the requirement for reporting injuries among temp workers on the OSHA 300 log.

Recommendation 1:
Require both the host/borrowing company and the temp staffing company to record injuries on the OSHA 300 log—dual logging of single injuries.

- Borrowing/host company lists a temp worker injury on their log; notifies the Temp employer
- Temp company branch that hired the worker records on the log;
  - if OSHA 300 log rolls up to the transnational temp company, zipcode of branch should be recorded for every employee
- Corroborate logs of Temp and Host companies whenever there is a severe injury (those that must be reported to OSHA in 24 hours)
- Make the OSHA 300 log available to the Illinois Department of Labor (could be written in the Illinois Temporary and Day Laborer Services Act
- Make the OSHA 300 log available to the workers' compensation insurer

Recommendation 2:
Add a column to the OSHA 300 log for listing whether a worker was employed through temporary staffing (borrowed employee).

Recommendation 3:
Require that all OSHA 300 logs be submitted to OSHA on an annual basis (ie, re-issue the 2016 rule that was rolled back in 2017)

- Link temp company data/cases with non-temp data/cases by geographic area on an annual basis to check correspondence of the two lists—to detect non-compliance by one party or the other, to get an accurate count of temp worker injuries, to focus interventions to prevent workplace injuries among temp workers.

Approach 4

Explore the possibility of connecting temp worker health and safety with current efforts to establish a Seal of Approval for temporary staffing companies.

There is an ongoing effort to improve enforcement of temp workers' rights through development of the Temporary Staffing Agency Seal of Approval Program. The goals are to:

1. increase compliance among temporary staffing agencies
2. provide incentives for temporary staffing agencies to seek out the Seal of Approval
3. build Illinois Department of Labor's capacity to implement this program though community partnerships
4. stop or decrease public subsidies to non-complying temporary staffing agencies

The voluntary Seal of Approval Program could be housed in the Illinois Department of Labor and have penalties that are associated with the Temporary and Day Laborer Services Act. In Chicago, the new Office of Labor Standards could enforce this.

Recommendation 1:

Engage the consortium working on the Seal of Approval Program to determine the potential for adding "best practice" items related to occupational safety and health. Drawing from Approaches 1-3, above, the following are issues that could be added:

- Require the borrowing/host employer to purchase workers' compensation insurance for temp workers or remove their **exclusive remedy** protection for a work-related illness or injury
- Require training by the borrowing host/employer and monitor compliance
- Require that both the borrowing/host employer and the temporary staffing employer record work-related illnesses and injuries on their respective OSHA 300 logs, corroborate case entries on an annual basis, and make the logs public.

Recommendation 2:

Work toward amending the Seal of Approval program related to removing the workers' compensation **exclusive remedy** protection of host/borrowing employers unless the host/borrowing employer purchases the workers' compensation insurance policy that covers injured temp workers

Approach 5

Explore the possibility of barring temporary staffing agencies and labor brokers of any kind from supplying workers to the most hazardous industries.

Recommendation 1:

Review the Scandinavian legislation that restricts staffing in construction as a model for similar legislation in Illinois.

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Reference: Summary of Case Law By State

TABLE 4 Summary of case law related to workers' compensation liability in temp staffing scenario

State	Salient statutes and decisions	Description of findings
ILLINOIS	Exclusive remedy	Statute and case law points to workers comp as the exclusive remedy for a work related injury and liability shared between temp and host employer
Holten v Syncreon No. 2-18-0537. Appellate Court of Illinois https://scholar.google.com/scholar_case?case=5059300641380117l&hl=en&as_sdt=400006 **Illinois Workers' compensation Act** (820 ILCS 305/) https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2430&ChapterID=68		
WISCONSIN	Worker's choice and Loaned employee test	Worker's choice doctrine allows a worker to choose whether to use workers' comp of lending employer or file a lawsuit against the borrowing employer.
re **Estate of Rivera,** 2018 https://case-law.vlex.com/vid/in-re-estate-of-729742281 Used plain reading of work comp statute: "no employee of a temporary help agency claims for compensation may make a claim or maintain an action in tort" (Section 102.29(6)(b)(1)). **Seaman Body Corp. v. Industrial Commission,** 214 Wis. 279 (1934) Feb. 6, 1934 · Wisconsin Supreme Court 214 Wis. 279 https://cite.case.law/wis/214/279/ **Wisconsin Worker's Compensation Act.** Wis. Stat. § 102.01 https://docs.legis.wisconsin.gov/statutes/statutes/102/01 **Loaned Employee Test** Wis. Stat. Ann. § 102.29(6)(b)1 https://docs.legis.wisconsin.gov/statutes/statutes/102/29/7 **Leased employee** (Wis. Stat. § 102.315(1)(g)) https://docs.legis.wisconsin.gov/statutes/statutes/102/29/12 **Sections from the Wisconsin Worker's Compensation Act that describe favoring the employer in all decisions** https://docs.legis.wisconsin.gov/statutes/statutes/102/29/7 https://docs.legis.wisconsin.gov/statutes/statutes/102/29/12		
MICHIGAN	Economic realities test Loaned servant analysis	Although economic realities test analyzes who the employer is through 4 prongs, the worker is nearly always found to be an employee of both lending and borrowing employer and denied a right to sue. This may not be a good choice for Illinois
Smith v. Martindale https://scholar.google.com/scholar_case?case=10090093209784516380&q=Smith+v.+Martindale,+1978&hl=en&as_sdt=400006&as_vis=1 https://casetext.com/case/smith-v-martindale https://www.courtlistener.com/opinion/1989101/smith-v-martindale/authorities/?		

TABLE 4 Summary of case law related to workers' compensation liability in temp staffing scenario

State	Salient statutes and decisions	Description of findings
Kidder v. Miller https://law.justia.com/cases/michigan/supreme-court/1997/105498-4.html https://scholar.google.com/scholar_case?case=14244209105296343333&q=Kidder+v.+Miller,+1997&hl=en&as_sdt=400006&as_vis=1 **Bolen v. Marada** https://scholar.google.com/scholar_case?case=14244209105296343333&q=Kidder+v.+Miller,+1997&hl=en&as_sdt=400006&as_vis=1 https://casetext.com/case/bolen-v-marada-indus-inc **Michigan Workers' Disability and Compensation Act of 1969.** http://www.legislature.mi.gov/(S(fms5jlnh5cy42bws4ctnu45l))/mileg.aspx?page=GetObject&objectname=mcl-Act-317-of-1969 **M.C.L. § 418.131** http://www.legislature.mi.gov/(S(po40vrahsmp5qftirmybgilf))/mileg.aspx?page=getobject&objectname=mcl-418-131&queryid=7494479&highlight=131		
IOWA	Co-employer doctrine Borrowed servant doctrine	The individual analysis and search for co-employers seems to nearly always find in favor of the employers unless there is an explicit contract stating that the worker is not an employee of the borrowing employer. It is unlikely that a temp worker could negotiate any aspect of a contract. This may not be a good choice for Illinois
Quiles v. Johnson https://law.justia.com/cases/federal/appellate-courts/ca8/17-3055/17-3055-2018-10-12.html https://scholar.google.com/scholar_case?case=2538015182221111006&hl=en&as_sdt=6&as_vis=1&oi=scholarr **Sager v. Innovative lighting** https://www.iowacourts.gov/static/media/documents/150783_6FD72DD229E6F.pdf **Bride v. Heckart** https://law.justia.com/cases/iowa/court-of-appeals/2016/15-0783.html https://casetext.com/case/bride-v-heckart https://www.casemine.com/judgement/us/59148263add7b04934494f97 **Oppedahl v. Various Employees of Iowa Department of Transportation** (No.19-1851) https://www.iowacourts.gov/courtcases/11888/embed/CourtAppealsOpinion https://www.leagle.com/decision/iniaco20210121236 Based on Iowa Code Section 85.20(2) (2017 **Iowa Workers' Compensation Statute** WORKERS' COMPENSATION, §85, 86, 87 https://www.iowaworkcomp.gov/law		

TABLE 4 Summary of case law related to workers' compensation liability in temp staffing scenario

State	Salient statutes and decisions	Description of findings
PENNSYLVANIA	The facts determine who is an employer	A borrowing employer was stopped from asserting immunity from civil suit because it had successfully defended against being considered the employer in a prior work comp case brought by the same worker filing the civil suit
Nelson v Rothering, 1993 https://law.justia.com/cases/pennsylvania/superior-court/2018/3697-eda-2017.html https://case-law.vlex.com/vid/478-n-w-2d-631132850 https://casetext.com/case/nelson-v-rothering		
MASSACHUSSETTS	Borrowing employer required to purchase work comp insurance.	A borrowing employer tried to avoid purchasing work comp by claiming that it was not an "insured person liable for payment of compensation;" the court found that the employer was not immune from tort liability. In another case, Alternate Employer Endorsement regarding workers' compensation coverage assures that both the temp/loaning employer and the host/ borrowing employer are covered by exclusive remedy provision in the current reading of the law.
ALM GL ch. 152, § 18 (1993) **Numberg v. GTE Transport, Inc.,** 34 Mass. App. Ct. 904 https://casetext.com/case/numberg-v-gte-transport **Molina v. State Garden, Inc (2015)** http://masscases.com/cases/app/88/88massappct173.html		

Terminology and Definitions

TABLE 5 Terminology and definitions used in this document

Term	Description/Definition
Temp staffing company	This is a "middleman" company that contracts with large employers to provide workers. The temp staffing covers requisite insurances and provides all the human resources services for that employee. Specifically, the Temp employer provides the paycheck and covers workers' compensation insurance.
Temporary worker	A worker that is employed through a temporary staffing company
PEO	PEOProfessional employer organizations (PEOs) provide human resource services for their small business clients—paying wages and taxes and often assisting with compliance with myriad state and federal rules and regulations. The PEO is generally responsible for the workers' compensation insurance coverage.
Terminology used to describe the temporary staffing company vs the work placement site; varies in different states	
Leased	Employee leasing is an arrangement between a business and a staffing firm, who supplies workers on a project-specific or temporary basis. These employees work for the client business, but the leasing agency pays their salaries and handles all of the HR administration associated with their employment.
Loaned	In loaned-employee agreements, the company that provides the services of a loaned employee is legally responsible for meeting employer-related requirements. The company that purchases the services of a loaned employee is responsible only for paying the costs associated with the employee services received, but can't be held legally responsible for other expenses normally associated with employment.
Borrowed	A borrowed employee agreement is a legal contract in which an employee is assigned by their employer to work for another employer for a period of time.
Special employer	A term for a company that receives an employee on loan from another business (Warehousing company B is the "special employer" of a worker employed by Temp Company B.
General employer	The "general employer" is an employer who dispatches its employees to a different company. Temp staffing company A could be considered a "general employer" in some jurisdictions.
Host employer	The "Host" employer is the one that owns, manages, or controls the property or worksite (for example, Construction Company B) where an employee of a temporary employment service (Temp Company A) does the work. This terminology is used by the U.S. Occupational Safety and Health Administration.
Client employer	"Client" employer describes the relationship between the temp and host employer. Warehousing Company B is the client of Temp Company A.
Independent contractor	An independent contractor is a self-employed person or entity contracted to perform work for or provide services to another entity as a nonemployee. This arrangement is outside the "temporary staffing" arrangement.

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