The Fissured Workplace

David Weil
Wage & Hour Division
WHD’s Mission

“Promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce.”

-- Wage and Hour Division, Strategic Plan

Another way to say it:
Make sure working people in the U.S. receive a fair day’s pay for a fair day’s work.
The Fissured Workplace
Fissured Hospitality

Provider of management service
• Third party management co.
• Brand management co.

Provider of cleaning service
• Franchisees
• L/S business
• Subcontractor
• Labor contractor

Provider of landscaping service
• Multiple parties / multi-levels
Fissured Supply Chains: Inside a Distribution Center
Who is in Charge?

Third Party Logistics Co.

Temp Firm 1

Incoming dock

Conveyer system

Temp Firm 2

Outgoing dock

Intl. Shipments

Individual stores
The Fissured Workplace: Balancing Two Interests

- Standards and Monitoring
- Core Competence
- Shifting Out Work
Growth of the Fissured Workplace

Share of workers in each type of alternate work arrangement

<table>
<thead>
<tr>
<th>Year</th>
<th>Independent contractors</th>
<th>Workers provided by contract firms</th>
<th>On-call workers (excluding day laborers)</th>
<th>Temporary help agency workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>'05</td>
<td>8%</td>
<td>7%</td>
<td>6%</td>
<td>5%</td>
</tr>
<tr>
<td>'15</td>
<td>8%</td>
<td>7%</td>
<td>6%</td>
<td>5%</td>
</tr>
</tbody>
</table>


THE WALL STREET JOURNAL.
Consequences of the Fissured Workplace: Labor Standards Violations

### Off the Clock

- Home health care: 12.4%
- Grocery stores: 23.5%
- Restaurant and hotels: 18.2%
- Residential construction: 12.7%
- Security, bldg., grounds: 22.3%
- Retail and drug store: 25.7%
- Average: 18.2%

### Overtime

- Home health care: 73.6%
- Grocery stores: 65.0%
- Restaurant and hotels: 67.7%
- Residential construction: 72.2%
- Security, bldg., grounds: 62.6%
- Retail and drug store: 62.7%
- Average: 73.6%

### Minimum wage

- Home health care: 73.6%
- Grocery stores: 75.2%
- Restaurant and hotels: 74.2%
- Residential construction: 72.2%
- Security, bldg., grounds: 70.0%
- Retail and drug store: 83.4%
- Average: 75.2%

### Prevalence of minimum wage violations: CA & NY

- 3 to 6 percent of all workers covered by the FLSA experience minimum wage violations.
- Est. 2 million + nationally.
- Between $20 and $29 million lost wages / week.
- 40% of earnings lost among those affected by violations.
- 7,000 California families and 8,000 New York families pushed below the poverty line.

Source: Bernhardt et. al., 2013

Source: ERG for the US DOL, 2014
Consequences of fissured workplace: Health and safety

Source: Day and Knutson, 2012,
Responding to the Fissured Workplace: Strategic Enforcement

- Core Competence
- Shifting Out Work
Impact of Fissured Workplace on Wages

Within Firms

1990's 2016

1990's 2016

Between Firms
Strategic Enforcement: Setting Priorities--Fissured Industries
Strategic Enforcement: Focusing at the Top

Retailer / Hotel / Lead Company

Third Party Manager / Supplier

Contractor / Temp agency

Contractor / Temp agency

Contractor / Temp agency

Contractor / Temp agency
Joint Employment
Estimating average wage rates and costs based on BLS national level data.

$1,000 represents multiple paychecks to typical workers in many industries.

- More than five weeks of groceries at $185/week
- More than a month’s rent at $800/month
- More than three months of utility bills at $300/month
- More than 5 weeks of childcare at $185/week

(Estimated average wage rates and costs based on BLS national level data.)
The Fissured Workplace: Impact on other Workplace Policies

- Funding pensions and health care benefits
- Funding and providing training for the workforce
- Workplace safety net: unemployment and workers compensation
- Workplace representation under the NLRA
Progress in Strategic Enforcement

Percent Complaint and Directed No Violations

Back Wages per Employee--Directed