

Who's In Charge? Labor Market Intermediaries in California Employment

A report prepared by

Don Villarejo, PhD

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“Temporary staffing firms act as intermediaries in matching available temporary workers to employer assignments... In the United States, our Manpower branch operations are primarily related to providing temporary employment services. During 2002, approximately 37% of our United States temporary staffing revenues were derived from placing office staff, including contact center staff, 41% from placing industrial staff and 22% from placing professional and technical staff.”

- Manpower Inc., Form 10-K, pp. 2,4
Annual Report to the U.S. Securities & Exchange Commission
February 27, 2003

“Number of temporary workers: 1.9 million in 1991. Hours of work provided: 780 million hours worldwide.”

- <http://www.manpower.com/mpcom/content.jsp?articleid=33>

About the Author

Don Villarejo became active in civic affairs in 1955, successively participating in the student, civil rights and peace movements. In 1960, he was a founding editor of *New University Thought*, one of the first publications of the New Left, serving as Chair of the Board of Editors until 1965. In 1967-68, he participated in the preparation of protests at the 1968 National Democratic Party Convention in Chicago.

After several years of involvement in the Los Angeles peace movement, including founding the Indochina Work Group (dedicated to ending U.S. military intervention in Vietnam), he joined the eight-member National Standing Committee of the Indochina Peace Campaign in 1972, representing the Pacific Region, a position he held until the conclusion of the U.S. involvement in 1975.

He served as volunteer with the farm workers movement in 1976 and, after the conclusion of this work, founded the California Institute for Rural Studies (CIRS) in 1977, serving as Executive Director until his retirement from that position in 1999. CIRS is a private, non-profit research and education organization dedicated to helping create a rural California that is socially just, economically viable and ecologically balanced.

His professional career has been multi-disciplinary, starting with a Ph.D. in Physics from the University of Chicago in 1967. He joined the faculty of the Physics Department at the University of California, Los Angeles, in 1968, serving until 1975, and then taught at the University of California, Davis, for several years until switching careers subsequent to the founding of CIRS. Dr. Villarejo's experience as a research physicist, particularly analytical and quantitative skills, proved to be invaluable preparation for his subsequent career as a researcher interested in agricultural economies and rural societies.

Dr. Villarejo has served as a consultant for numerous public and private agencies, including the California Agricultural Labor Relations Board, California State Assembly (Office of Research), U.S. Department of Labor, Bureau of Reclamation, National Institute for Occupational Safety and Health, California Rural Legal Assistance, International Brotherhood of Teamsters (Locals 601 and 890), and Migrant Legal Action Program, among others.

He has received a number of awards in recognition of his service, most recently the 2000 National Service Award of the Office of Migrant Health (U.S. Department of Health and Human Services) for "Exemplary commitment, dedication and service to the nation's migrant farm workers."

Dr. Villarejo's publication, *Suffering in Silence* (November 2000), was cited by The California Endowment as the primary motivating factor in its recently announced \$50 million commitment in new grants to provide health services for hired farm workers in California.

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Introduction

Bank of America startled its employees in December 2002 when it notified 1,000 that they would henceforth work for Electronic Data Systems, one of the nation's largest information technology companies. Under the terms of a new, 10-year deal, worth an estimated \$4 billion, EDS had been contracted to provide computer services and to help California's largest retail bank transform its voice and data network systems. In effect, 1,000 of the bank's employees were 'traded' to EDS. It remains to be seen whether accrued pension, vacation and other benefits will also be 'traded.' (*New York Times*, December 13, 2002, "EDS in \$4 Billion Deal with Bank of America," by Reuters in *Company News*, p. C4)

During the same month, two other major financial organizations revealed that they, too, were 'outsourcing' core aspects of their on-going business.

American Express. IBM has entered into a seven-year contract to provide worldwide information services for American Express. All credit card transactions, and future adjustments of information needs for American Express are now the responsibility of IBM. (*Los Angeles Times*, December 1, 2002, "Outsiders Have Inside Track Handling Data," by James Flanigan.)

J P Morgan Chase. New York bank J.P. Morgan Chase and Co. said it signed a seven-year contract for information technology services with IBM Corp. worth more than \$5 billion as it moves to cut costs. The deal, the largest services contract IBM has received from the financial services sector, is a coup for the computer maker, which is focused on selling services. As a result of the agreement, J.P. Morgan said, it will transfer about 4,000 employees and contractors to IBM in the first half of next year. Desktop support and other services will remain in-house, the bank said. (*Los Angeles Times*, December 31, 2002, "JP Morgan Signs Contract With IBM," by Reuters)

These announcements focused attention on one of the most significant initiatives by private-sector firms in recent times: a sharply increased reliance on outside contracting of jobs. As major firms seek to cut costs, large numbers of employees may suddenly find themselves working for sub-contractors, or even out of a job altogether. At the same time, contractors of all types, whether firms or individual entrepreneurs, find there are new opportunities for their services.

This type of contracting out of jobs, as opposed to contracting for new work, is the latest development of a trend that affects all sectors of the U.S. economy. Shortly after announcing the new deals with American Express and J.P Morgan Chase, IBM let it be known that it was contracting out a large number of its remaining manufacturing jobs to two firms that specialize in computer hardware assembly. More than 1,000 IBM employees were offered jobs with the contract assembly firms, or will be let go. (*New York Times*, "IBM in Deal to Farm Out Some PC Jobs," January 8, 2003, by Steve Lohr)

What is of special interest insofar as labor relations are concerned is that an employment intermediary has come between the worker and the contracting firm. The

same type of work is being performed, in many cases on the same premises, but the employees, whether ‘traded’ from the contracting firm, or newly hired by the outside contractor, are performing tasks that had once been the purview of direct-hire employees.

In a variant of this practice, some employees have been told that they must become independent contractors, or face dismissal. The most widely publicized case of this type involves 6,400 insurance agents who, after many years of direct-hire employment by one of the nation’s largest companies, were notified that their employment relationship would be ended and they would become independent contractors. Their work would remain the same, and they would still be responsible for securing business for the insurance company, but they would no longer be its employees. According to the agents, they were offered an alternative choice of keeping their jobs as employees, but would have to give up all of their accrued benefits. Faced with the prospect of losing medical insurance and other employment benefits, litigation has followed in what promises to be one of the largest class-action age discrimination cases in U.S. corporate history. (*New York Times Magazine*, “Too Old to Work,” by Adam Cohen, March 2, 2003, pp. 54ff)

Traditional views of labor relations contemplate a firm that hires employees, a practice best described as “direct hire employment.” In contrast, sub-contracting engages workers who are not directly employed by the contracting firm. Rather, the contracting firm pays another company to perform the needed tasks, using its employees. While some may work as independent contractors, most often, workers are supplied through a labor market intermediary: a personnel supply firm, a labor contracting firm, or a specialty professional service business.

At the outset, it must be understood that the client is the engine creating new employment or work, not the labor market intermediary. Apart from a very few jobs recruiting or managing its employees, most persons hired by intermediary firms perform tasks directly for the client. If the client no longer needs the service, owing to market factors, then the need for workers furnished through the intermediary may shrink.

The present report examines the importance of labor market intermediaries in private sector California employment and finds a striking growth of sub-contracting of jobs. Evidence is presented that previous studies have not accurately assessed the full extent of the use of these intermediaries in the state. In industries as diverse as farming and medical services, sub-contractor employment is growing, often while direct hiring is stagnant or declining.

Of course, anyone who hires a gardener, plumber, roofer, babysitter, or a part-time housekeeper is, in fact, contracting for labor services. Most such service providers are self-employed persons who operate as independent contractors. Of interest in the present report is contracting that involves substitution of a contracting relationship for work that is normally provided by direct-hire workers, in other words, the contracting out of jobs. As practiced in today’s economy, contracting for labor services may take one of several additional forms, distinguished by the place where the services are performed, or by the employment relationship of the persons who supervise the work.

The main forms of contracting are as follows:

- Independent contractors who typically provide a specialized service or work product, sometimes off-site, sometimes on-site, usually on a temporary, part-time

- basis. Most are self-employed. *Examples: attorneys; plumbers; answering services; typists; babysitters; gardeners; information technology specialists.*
- Contract firms that provide a specialized service or product, at the contracting firm's site. Some of these firms may, in turn, hire independent contractors to provide the services for clients. *Examples: security services; translation service agencies; landscape services.*
 - Personnel supply service companies that provide workers, most often on a temporary or part-time basis, who are supervised on-site by the client, but are employees of the personnel service company and are exclusively paid by that company. *Examples: staffing supply companies; temporary service agencies.*
 - Labor contractors that provide workers on-site at the contracting firm, most often on a temporary basis; the workers are hired and exclusively supervised by the labor contractor. Note carefully that unlike personnel supply service agency employees, persons who work for labor contractors are normally supervised by the labor contractor, not the contracting firm. *Examples: farm labor contractors; contract food services; contract housekeeping services; construction sub-contractors.*
 - 1099 "employees" who are "hired" by the contracting firm as individual, self-employed contractors, and who work on-site, under the direct supervision of the contracting firm. These workers are most often "hired" on a probationary basis with the expectation, or, perhaps, the hope, of being promoted to permanent, direct hire status at some future time. *Examples: insurance agents; computer programmers.*
 - Professional services companies, many of which provide sub-contracting services for other firms. Increasingly, information services are being provided in this way. Some of these companies rely on independent contractors instead of direct-hire employees. *Examples: translation services; information technology companies.*

An additional category of worker often included in discussions of these categories of employment is the "on-call" worker, who works on a temporary direct-hire basis, but is usually unsure of when or how long they will be employed at a given job. A good example is substitute teachers. The same criteria could equally well apply to many agricultural workers, whose direct-hire employment by a farm operator depends upon a variety of external factors: weather, pest populations (weeding or spraying), crop yields (harvesting), market conditions (how much to harvest), and competition from other workers.

A distinct, but related, phenomenon is the privatization of public services, a topic that is not considered in this paper. In the public sector, pressures for increased reliance on sub-contracting have clearly become part of the national policy debate. For example, President George Bush seized national attention during November 2002 with the suggestion that as many as 850,000 Federal jobs, nearly half of the entire Federal work force, could be sub-contracted out to private firms. The President argued that an enormous cost-savings could be realized, along with greater productivity.

As the following example illustrates, California public employment faces the same set of issues.

University of California. The French firm Sodexho Alliance, once a partner with Marriott Corporation in Sodexho-Marriott, now provides, through its U.S. subsidiary, nearly all food services on the nine campuses of the University of California. Formerly, these services were provided by direct-hire UC staff. Today, food service workers are employed by Sodexho, not UC, even though nearly all of the work is performed on the nine UC-owned campuses. From the UC perspective, a highly efficient and knowledgeable firm is now providing food services at a level of quality that the university itself believes that it could not match, as well as commanding impressive bulk purchase discounts in the marketplace. In addition, the Sodexho firm, a very large food and management services company, is accustomed to making necessary adjustments during periods when the UC campuses close. As one UC management person describes it, “the university is an educational institution; we are not well-qualified to be in the restaurant business.” At the same time, because these workers are not UC employees they are not eligible to receive the UC benefits package; they do receive the benefits offered by Sodexho to its employees. However, when these services were sub-contracted, affected UC employees were offered the opportunity to remain in their same job at UC, or transfer with the same pay scale and accrued benefits. (Patricia Kearney interview, November 12, 2002.)

Why has contracting become more important in recent years?

On a national basis, employment by personnel supply companies, the dominant form of contracting for labor services, experienced a spectacular increase during the economic boom of the 1990s. As discussed further in Chapter 1, the number of persons working for the ‘staffing supply industry’ increased by two-and-one-half times, from roughly 1 million workers in 1990 to 2.58 million in 2000. There is evidence that these figures are probably undercounts – the true numbers may be as much as 50% larger.

Explanations for the growth of contracting are many, and which of these is emphasized depends somewhat on one’s point of view. In describing how firms have retreated from the old, post-war industrial model of long-term employment, and the accompanying supporting structures of employment-based social insurance, government regulations and labor unions, one group of authors describe how heightened competitiveness and the rapid pace of change in today’s global markets require firms to have the ability to adapt quickly to new circumstances.

“The scope and the structure of the business are subject to continual financial calculation. Employment and the terms and conditions on which it is offered are contingent on markets and technologies that are likely to change. The organization is, in principle, focused on its core competencies; work that is not directly related to these competencies is subcontracted. The employment conditions a company offers, even though they resemble those of the postwar era, are extended to a much smaller group of people relative to those whose economic welfare is ultimately linked to the company’s activities, and the size and shape of the corporation are open to continuous revision through merger, acquisition,

divestiture, and subcontracting.” (Paul Osterman, et al, *Working in America*, MIT Press, 2001, p. 15)

Personnel supply companies, who prefer to describe their business sector as the “staffing services industry,” emphasize their increased skill in matching workers with jobs under these changed conditions.

“Until a few years ago, there was no such thing as the ‘staffing services’ industry, at least not one that the public knew by that name. There was a temporary help industry – firms that supplied short-term workers to businesses that needed people to fill in for employees who were sick or on vacation, or to help with peak production or sales periods. ‘Staffing’ suggests a less transient function. Indeed, the practice of contracting with staffing firms to provide workers with the skills necessary to perform non-core functions on an ongoing basis has become a fixed star in almost every business’s economic constellation – a vital tool to achieve greater flexibility, productivity and competitiveness.”

- “The Staffing Service Industry: Myth and Reality,” Edward A. Lenz, *Issue Paper*, The American Staffing Association, 2/15/01.

Both of the reports cited above refer to sub-contracting out ‘non-core’ functions. One of the findings of the present paper is that, increasingly, core functions as well are being handled by sub-contracting. In agriculture, farm labor contractor firms are performing a substantial share, perhaps most of the work involved in many key activities, such as harvesting. As described in Chapter Three, what appears to be developing is that more and more seasonal hiring is being handled by farm labor contractors, relieving the farm operator of the managerial task of recruitment, hiring, training and supervision of short-term workers.

Coase, in his seminal paper, “The Theory of the Firm,” examines the conditions under which an entrepreneur, or firm, may choose to internalize the procurement of goods or services instead of using the nominally more efficient markets. Transaction costs, incurred when obtaining goods or services in the market, may be minimized when internalized within the firm, termed the “entrepreneur function.” Hence, firms tend to become larger. It is then argued that the limiting factor in firm size will be bureaucratic inefficiencies, or that the costs of organizing additional transactions within the firm may rise to an unacceptable level.

A factor that may have been neglected in examining the recent expanded reliance on labor market intermediaries is the extent to which transaction costs have increased owing to additional bureaucratic and record-keeping requirements imposed by government regulations. For example, the Immigration Reform and Control Act of 1986 (IRCA), requires, for the very first time in U.S. history, that all employers must affirm the employment eligibility of all potential employees before hiring. Hiring of an ineligible person can trigger fines and/or imprisonment under the “employer sanctions” provisions of IRCA. The legal responsibility for hiring unauthorized immigrants was fully placed on the shoulders of employers by the provisions of IRCA, an outcome strongly supported by the organized labor movement and many immigration advocates.

A new paper document, Form I-9, was created for this purpose, and employers must demonstrate that they have reviewed employee documentation that the Immigration and Naturalization Service specifies is suitable as proof of employment eligibility. Most employers make photocopies of these documents in order to prepare for possible INS field inspections of their records and show that they have complied with the law.

Now consider a firm that hires hundreds or thousands of seasonal workers every year. What if, as in the case of agriculture, many of these workers are not employment eligible, and very likely may use false names and/or documents when they seek jobs? In these circumstances, a farmer might want to consider using a labor contractor. Relieved of both the record-keeping burden and the potential liability associated with hiring employment ineligible persons, the farmer can still get the work done.

Recently, it has become clear that during the economic boom of the 1990s, when some 16 million additional workers entered the U.S. labor force, fully half (8 million, or 50.3%) were foreign-born. In California, 87% of the Civilian Labor Force growth during the same period was attributable to immigrant workers. (A. Sum, et al, *Immigrant Workers and the Great American Job Machine: The Contribution of New Foreign Immigration to National and Regional Labor Force Growth in the 1990s*, Center for Labor Market Studies, August 2002, Table 6, p. 17; Table 10, p. 22).

For many firms, the use of sub-contractors relieves them of major responsibilities that they may not be equipped to handle. In the information age, expertise has become the most highly valued commodity, and those who can provide it may be able to provide the contracting firm with a competitive edge. Skill in the recruitment and management of labor, along with keeping a lid on labor costs, can also become highly valued. One of the largest categories of employment is familiar to literally every adult, but how the handling of customer service telephones is actually carried out may be less well known, as is more fully described in the following illustration.

ClientLogic. The large and growing “call center” business – employing at least 3.5 million people in about 60,000 call centers on a nationwide basis - provides a case study of how the use of contractors provides flexibility for employers while simultaneously providing employment opportunities for women who are seeking flexible work schedules. The firm ClientLogic provides staffing of customer service telephones (so-called “800” numbers). When the major firm Earthlink decided that it needed more flexibility, the company shrank its call center staff and contracted most of the work out to ClientLogic. Companies such as ClientLogic seek to locate their facilities in communities with a relatively large supply of underemployed persons, often married women. By offering work schedules sensitive to mothers who need to return home to provide after-school care for their children, as well as offering “soft benefits,” such as on-site exercise rooms, tuition support for post-high school study, and limited child care support, these firms attract a large number of married women. (*New York Times*, March 27, 2002, “Answering '800' Calls Offers Extra Income but No Security,” by Louis Uchitelle.)

The additional flexibility gained by firms that use workers furnished by labor market intermediaries is considerable. Most commonly, today, during an economic

downturn, a firm may choose to reduce its staff through ending the use of temporary workers, or sub-contractors. Indeed, as the 2002-03 state budget crisis unfolded, Governor Gray Davis announced on November 26, 2002, that all “non-essential” state contracts would either be immediately cancelled or postponed, thereby forestalling potential layoffs of direct hire state employees, or cutbacks in core state services. (Executive Order D-64-02, by the Governor of the State of California, November 26, 2002.)

There is now substantial evidence that firms reduce their hiring of temporary or contract workers during periods of economic recession. According to the American Staffing Association, new orders for staffing industry workers declined sharply during the recent recession, measured by the 14% drop in total revenues in 2001 as compared with 2000. Thus, as existing contracts for temporary help were completed, so few new contracts were obtained that demand for temporary employees fell sharply as well, by some 10%. The ASA also estimates that demand for permanent replacements furnished by the staffing industry fell by an even greater 25% during the 2001 recession. (*Poised for Growth*, op. cit.)

The extent of the impact of the reduction in hiring of temporary workers can be clearly seen in the annual Form 10-K reports to the U.S. Securities and Exchange Commission by the largest company in this field, Manpower, Inc. In its report dated April 2, 2001, “...the Company estimates that it assigned over 2.7 million temporary workers on a worldwide basis during 2000.” But its Form 10-K report earlier this year dated February 27, 2003, omits any reference to the number of workers placed. Its web site, however, has the missing detail, 1.9 million temporary workers placed during 2001. That’s a 30% decline in just one year.

What does organized labor think about the rise of contracting?

Labor unions generally find that organizing and representing contract workers is more problematic than trying to organize comparable direct-hire workers. This is due, at least in part, to the complications involved in three-party relationships. Just this year, a union organizing drive in Southern California appears to have been effectively countered when the employer allegedly brought in workers from a major U.S. provider of temporary manual labor as sub-contracted labor. (*Los Angeles Times*, August 1, 2002, “Labor Ready Firm Sued as Strikebreaker.”)

The Los Angeles building maintenance industry provides a clear example of how organized labor was thwarted through the use of sub-contract labor. More than two decades ago, most large office buildings in the downtown area were staffed by unionized janitors and other building maintenance personnel who were directly hired by the building owner or management firm. Many of these workers were African-American and enjoyed relatively high wages and benefits. However, non-union, Mexican-American building service sub-contractors offered to replace the unionized workers at much lower cost, relying on networks of recent immigrants. Over a period of just a few years, the industry was transformed, and most maintenance work in large office buildings in the region is now handled through these labor market intermediaries. Mines and Avina argue that the “...main problem in California as been spiraling competition from nonunion contractors, whose reliance on low-wage immigrant labor allows them to easily underbid

unionized firms.” Ironically, in recent years, the Justice for Janitors initiative of the Service Employees International Union (SEIU) has successfully organized union representation for some of the workers employed by building maintenance contract companies. (Mines, Richard, and Jeffrey Avina, “Immigrants and Labor Standards: The Case of California Janitors,” *U.S.-Mexico Relations: Labor Market Interdependence*, Jorge Bustamonte, Clark W. Reynolds and Raul A. Hinojosa Ojeda, Eds., Stanford University Press, Stanford, CA, 1992, pp. 429-448.)

A similar replacement strategy was adopted by the Coastal Growers Association (CGA) in the Ventura County lemon industry following a bitter labor dispute with the United Farm Workers of America (UFW) during the late 1970s. The association was the major supplier of hired farm workers to more than one hundred citrus farm operators in the region. Initially, the CGA and the UFW were able to agree on terms of employment and signed a union contract. However, when the contract came up for renewal, and faced with demands from the UFW that the association believed to be patently unrealistic, several farm operators left the association and turned to farm labor contractors. The labor contractors involved had relationships in several areas of Mexico that were not previously represented among the hired farm workers of Ventura County, thwarting efforts of union supporters to appeal to the new workers. Ultimately, all of CGA’s farm operators abandoned the association and it went out of business. Today, the vast majority of Ventura County citrus laborers is supplied by farm labor contractors. (Mines, Richard, and Ricardo Anzaldúa, *New Migrants vs. Old Migrants: Alternative Labor Market Structures in the California Citrus Industry*, Monograph No. 9, Program in U.S.-Mexican Studies, University of California, San Diego, 1982.)

That violations of labor law are disproportionately found in some industries that rely heavily on labor market intermediaries is widely understood. It is not even a partisan political matter. Interestingly, during the tenure of Republican Governor Pete Wilson, the major California labor market issue to which he chose to devote special attention involved high-profile employment relationship abuses. The two industries he cited as notoriously problematic were ones in which sub-contracting or labor contracting is especially important: cut-and-sew garment and agriculture. By Executive Order, he created the Targeted Industries Partnership Program (TIPP), a program that sought to bring to bear the combined resources of several state agencies, in cooperation with federal agencies, seeking to correct abuses of workers. The combination of targeted enforcement initiatives and educational programs for employers were thought to be the remedies that were needed. In both industries, labor market intermediaries were the primary focus of these efforts.

Recent legislation has sought to address some of the problems emerging with the rise of the use of labor market intermediaries. AB 2816 (Rep. Shelley, D-San Francisco), signed into law during September 2002, requires temporary agencies to pay workers compensation insurance premiums for the personnel they provide based on the contracting firm’s safety record, and not the safety record of the temporary agency. Workers compensation insurance premiums may be as high as 15% of wages, so lowering that cost could result in a significant savings. The increased use of sub-contractors, including temporary agencies, in the construction business, is at least partly attributable to a desire on the part of the contracting firm to “spin-off” potential liabilities, including those that may have been caused by its own negligence.

The state of labor market intermediaries in California.

The present report examines the remarkable growth in the past quarter century of several of these forms of contracting for labor services in the state of California as well as the implications of this trend for labor relations. Labor market violations such as wages, hours of work, health and safety, and discrimination, are found to arise disproportionately among labor contractors. At the same time, many workers find that this type of employment relationship offers a degree of flexibility and independence not available in most traditional direct-hire settings.

As developed in the following chapters, previous research has neglected important segments of the labor market, resulting in substantial under-estimates of the size of the temporary or alternative market labor force. These major oversights include woeful under-representation of agriculture, especially important in California, and the unintended exclusion of numerous types of sub-contractors who provide labor services that were once the domain of direct hire workers.

The report has four chapters: an overview of the use of labor market intermediaries; two chapters examining the major industry sectors where contracting for labor is especially important in California; a discussion of the implications of the major findings and recommendations for future research.

Chapter One

Contingent and Alternative Employment

National findings

Prior to 1995, little information was available about the extent of the use of contingent or alternative labor. Labor advocates charged that there were widespread abuses of these workers, and pointed to the way in which sub-contracting appeared to be undermining traditional, direct-hire, employment relationships.

In 1995, partly in response to increased interest in this issue, the U.S. Department of Labor, as a part of the monthly Current Population Survey (CPS) conducted by the Bureau of Labor Statistics (BLS), initiated a special Contingent Work Supplement, a biennial survey of those workers who self-identified as alternative or contingent. BLS defines contingent workers to be persons who do not expect their jobs to last, or who report that their jobs are temporary. Persons in alternative work arrangements are workers who are not employed in traditional direct-hire jobs. Individuals might be contingent workers, in alternative work arrangements, or be both contingent and in an alternative work arrangement.

For the first time, data about the demographic characteristics, employment experience, earnings, benefits and other aspects of this segment of the labor force was gathered on a national basis in a statistically sound manner. Every two years, during February, the special supplement provides a national ‘snapshot’ of these workers.

The findings of the 2001 survey are striking. Three alternative measures, from the most narrow to the most broad, indicate that contingent workers account for at least 1.7% and as much as 4.0% of total national employment, or a maximum of 5.4 million persons. This is a decline of nearly one-fifth (18%) from the maximum of 4.9% of total employment found in the comparable 1995 survey.

On the other hand, the 2001 survey found that the proportion of persons in various types of alternative work arrangements was essentially unchanged from the 1995 findings. About 12.5 million workers, or 9.4% of total employment, were reported to be working in this manner. Table 1 shows the number of workers, and percent of total employment, in the four categories of alternative work arrangements.

Table 1. Persons in Alternative Work Arrangements, United States, February 2001, Bureau of Labor Statistics, News Release USDL 01-153

<i>Type of Employment</i>	<i>Number of Workers</i>	<i>Percent of Total Employment</i>
Independent contractors	8,600,000	6.4%
On-call workers	2,100,000	1.6%
Temporary help agency workers	1,200,000	0.9%
Contract company workers	633,000	0.5%

The American Staffing Association's quarterly survey of its members indicates that average daily employment was 2.58 million in calendar year 2000, a two-and-one-half-fold increase from 0.99 million in 1990. It is important to realize that the ASA survey asks employers how many persons were on their payroll each day during four successive calendar quarters. Daily employment in the industry was estimated to have declined somewhat, to 2.18 million during 2001, a consequence attributed to the recession. Of major significance is that an estimated 9.6 million individuals worked for a staffing company at some time during 2001, either in temporary or contract work. One important distinction in the BLS Survey is that only workers who were primarily employed by temporary help agencies or as contract company workers are counted, while the ASA survey includes individuals for whom working at a staffing agency is part-time work, possibly combined with a full- or part-time job, and may count individuals more than once if they are employed by multiple staffing agencies. Thus, the BLS Survey counts individuals for whom this is their primary employment while the ASA survey counts jobs filled. (*Poised for Growth*, American Staffing Association, May 2002.)

The decrease of contingent workers found in the 2001 BLS survey, relative to the previous surveys in 1995, 1997 and 1999, is consistent with findings from the 2001 survey of personnel supply service industry employers conducted by the ASA. Thus, there is compelling evidence from two sources that contingent worker employment declined more than permanent worker employment during the 2001 recession.

The total of 1.83 million temporary help agency and contract company workers found in the BLS survey is reasonably close to the 2.18 million reported as the average daily employment in the ASA survey, although there may be differences in definitions.

Table 2. Characteristics of Contingent and Non-contingent Workers, United States, February 2001, BLS News Release USDL 01-153

<i>Characteristic</i>	<i>Percent of Contingent Workers</i>	<i>Percent of Non-contingent Workers</i>
Age, 16-24 years	30.5%	14.1%
Age, 25-44 years	42.7%	49.9%
Age, 45-64 years	23.1%	33.0%
Age, 65 years and over	3.7%	3.0%
Male	50.0%	53.2%
Female	50.0%	46.8%
Race and Hispanic Origin, White	81.6%	84.0%
Race and Hispanic Origin, Black	13.4%	11.2%
Race and Hispanic Origin, Hispanic	16.9%	10.6%
Full-time workers	58.2%	83.1%
Part-time workers	41.8%	16.9%
Students (percent of workers age 16-24 years)	60.4%	40.6%
Less than high school graduate (percent of workers age 25-64 years)	13.4%	8.8%

Many characteristics of contingent workers in the BLS survey differ substantially from those of non-contingent workers. Contingent workers are more likely to be younger, students, employed on a part-time basis, less likely to have completed high school, and more likely to be female, Black or of Hispanic origin. These characteristics are shown in Table 2, as percentages of the total of contingent workers, and of non-contingent workers.

The BLS survey also asked workers to describe their occupation and industry of employment. Occupational comparison data are surprising and vary greatly by category of workers with alternative employment arrangements. For example, on-call and contract workers are most likely to be in professional specialty, or in precision production, craft and repair occupations, as compared with all workers in traditional employment relationships. On the other hand, temporary help agency workers are more likely to be in administrative support (including clerical), or operator, fabricator, and laborer occupations, again, as compared with all workers in traditional employment relationships.

Independent contractors, on-call workers and temporary help agency workers all reported that a larger share worked in service industries as compared with workers who were in traditional employment relationships. Contract company workers and temporary help agency workers were disproportionately in manufacturing industries, but independent contractors and on-call workers were far less likely to work in that sector than persons in traditional employment relationships.

Correlated with the findings regarding occupation are the self-reported weekly earnings of full-time workers in each of the four categories of alternative employment relationships. Earnings were greatest for contract company workers (\$790) and independent contractors (\$644). On-call workers earned far less (\$517), and temporary help agency workers the least (\$396). Average weekly work hours and average hourly wage rates are not reported in the BLS Survey.

Employer-provided benefits, such as health insurance, closely paralleled the pattern of earnings. Just 10% of temporary help agency workers and 30% of on-call workers had health insurance benefits, but 52% of contract company workers had such coverage.

Roughly two-thirds of independent contractors were men, but three-fifths of temporary help agency workers were women. On-call workers were more evenly divided between men and women.

Overwhelmingly, independent contractors (75%), contract company workers (90%), and temporary help agency workers (79%), were employed full-time. But only a slight majority of on-call workers (53%) had full-time employment.

These differences in earnings and health insurance benefits are at least partly understood as reflecting differences in age and educational attainment among the four groups of workers with alternative employment relationships. According to the BLS,

“...independent contractors tend to be older, highly educated persons holding higher-paying professional specialty jobs, while temporary help agency workers are more likely to be younger and are concentrated in lower paying administrative support positions.”

- "Contingent and Alternative Employment Relationships, February 2001, *News*, U.S. Department of Labor, Bureau of Labor Statistics, May 24, 2001, USDL 01-153

BLS also found, but did not discuss, remarkable differences in full-time compensation between men and women, and between members of different races or Hispanic origin. Among independent contractors, workers provided by contract firms, and on-call workers, women earned only about two-thirds of what men reported as their weekly earnings. Among temporary help agency workers the earnings gap was somewhat narrowed, but even there women earned only 84% of what men earned.

Similarly, Hispanic origin workers reported weekly earnings far below those reported by White workers among independent contractors (72%), on-call workers (62%), and temporary help agency workers (75%). Black workers fared somewhat better as regards earnings than Hispanic origin workers, but still less than White workers, in all three categories. The very small numbers of Black and Hispanic origin persons reportedly among persons working for contract firms rendered it impossible to determine comparative earnings data for that category.

Discrepancies in the National Data for the Help Supply Service Industry

The February 2001 BLS Survey finds approximately 1.833 million temporary help agency and contract firm workers. During the same month, Help Supply Service employers (SIC = 7363) reported an aggregate total of 3.167 million employees in the Current Employment Survey (CES). This latter figure is 73% more than found in the BLS household survey. The discrepancy between the BLS Survey and the CES has been noted by at least one other author, although no effort was made in that case to attempt to understand and explain its origin. (Paul Osterman, et al, *Working in America*, MIT Press, 2001, pp. 37-38)

As the above authors note, caution should be exercised in interpreting these differences because the CPS survey is based on households, interviewing residents of about 55,000 randomly selected U.S. households each month. The CES survey is based on establishments (workplaces), gathered from reports by about 300,000 randomly selected employers, again, each month. There are important differences in definitions used and which workers are included. The CES does not include self-employed individuals, agricultural workers, unpaid family workers and private household workers. All of these groups are included in the CPS survey.

It has long been realized that the CPS household survey yields differing numbers of reportedly employed persons than does the CES, in part because persons holding two or more jobs will be counted twice in the latter figures. But it seems unlikely that such a large fraction of persons working in the Help Supply Service industry would be holding two or more such jobs in the same industry during the same pay period. The apparent discrepancy between the three sources is shown in Table 3.

**Table 3. Comparison of Help Supply Service Employment,
Household Survey (BLS) and Establishment Surveys (ASA and CES),
United States, 2001**

<i>Source</i>	<i>Number of Workers</i>
BLS Survey of workers (CPS), February 2001	1.83 million
ASA Employer Survey, average daily employment, 2001	2.18 million
BLS Survey of employers (CES) (SIC=7363), February 2001	3.17 million

There are three principal factors contributing to this apparent discrepancy. One is a technical problem resulting from definitional differences in the BLS and CES surveys, the second is very likely to be a systematic shortcoming of the BLS Survey itself, and the third is the problem of taking proper account of multiple job holders.

As to the first, there is a technical definition problem: the BLS and CES Surveys refer to somewhat different categories of workers. The February 2001 CES Survey refers to Help Supply Service Employment based on definitions used in the 1987 Standard Industrial Code (SIC=7363). The new North American Industry Classification System (NAICS), adopted by the Census Bureau for the 1997 Economic Census, divides this single SIC code into two new industry categories: Temporary Help Services (NAICS=56132) and Employee Leasing Services (NAICS=56133). The BLS Survey obviously refers to NAICS=56132, and utilizes a second category as well, Contract Firm Employment, that likely refers to NAICS=56133. Several other SIC codes were also added to the new Temporary Help Services category of the NAICS: SIC 7299 Miscellaneous Personal Services, NEC (babysitting bureaus); SIC 7819 Services Allied to Motion Picture Production (casting bureaus); SIC 7922 Theatrical Producers and Miscellaneous Theatrical Services (casting agencies).

The Economic Census, a comprehensive enumeration of all U.S. establishments (work sites), is conducted every five years. The most recent Economic Census refers to 1997. According to the 1997 Economic Census, during the week of March 12, 1997, 2.61 million persons were working in the Temporary Help Services industry (NAICS=56132) and an additional 0.90 million were working in the Employee Leasing Services industry (NAICS=56133). Importantly, the 1997 Economic Census found considerably greater numbers of Temporary Help Services industry workers employed during the week of March 12 (2.61 million, NAICS=56132) than did the February 1997 BLS Survey of Contingent and Alternative Employment (1.30 million, Temporary Help Agency). The difference is still very large, 1.31 million persons, or roughly double.

Unfortunately, since there is no Economic Census available for the 2001 period, a more precise resolution of the apparent discrepancy shown in Table 3 is not possible. As this is written, the 2002 Economic Census is underway, but these findings will not become available until 2004.

When the NAICS replaces the SIC classification system in the CES (expected to begin during June 2003), the discrepancy will likely be substantially altered. Both the BLS Survey and the CES will then be referring to the same category of workers when describing Temporary Help Agency staffers.

The second possible problem may be with the BLS Survey itself. It is very likely that the 1997 BLS Survey did not obtain an accurate sample of persons working in this

industry. For example, some respondents who were actually working for an Employment Placement Agency may have identified their employment as with the client firm. It is also possible that the sample missed significant numbers of eligible participants. This latter point is discussed further below when agriculture is considered.

Finally, there is the possibility that temporary work is an adjunct to full-time employment for a large number of workers. The BLS Survey considers this problem and states, “For persons holding more than one job, the questions referred to the characteristic of their main job – the job in which they worked the most hours.” The Economic Census and the CES are surveys of employers who generally have no knowledge about which, if any, of their employees hold multiple jobs.

Although there is no Economic Census for 1999, a large discrepancy is again found between the BLS Survey and the CES in that year. The February 1999 BLS Survey of Contingent and Alternative Employment finds 1.19 million Temporary Help Agency workers, while the February 1999 CES finds 2.96 million Help Supply Services workers (SIC=7363). The apparent discrepancy is a huge 1.77 million persons, or roughly 150%. Even if the roughly 0.80 million persons working for Employee Leasing Service employers that were enumerated in the BLS Survey are discounted from the CES finding, as would be necessary for a more precise correspondence, the discrepancy is still 0.97 million workers, or roughly 82%, very likely too large a figure to attribute solely to double counting of workers simultaneously holding two jobs.

Interestingly, the ASA Survey of its members reported 2.26 million workers in the Temporary Help Service industry in 1997 (average daily employment). Considering that the 1997 Economic Census data refer only to the pay period that includes March 12 and found 2.61 million workers, but the ASA survey finds a daily average for the entire year, it is possible that there is no discrepancy with the ASA Survey.

The February 1997 BLS Survey of Contingent and Alternative Employment found 0.81 million Contract Firm employees, reasonably close to the 0.90 million working in the Employee Leasing Services industry reported for the week of March 12 in the 1997 Economic Census.

Discrepancies in the National Data for the Agricultural Industry

Table 4. Hired Farm Workers, United States, 2001
BLS News Release USDL 01-153 and *Farm Labor* (USDA)

<i>Category</i>	<i>BLS Survey (February 2001)</i>	<i>Farm Labor (January 2001)</i>
On call (direct-hire workers)	44,000	118,000
Contract & temp Agency workers	9,000	163,000
<i>Total</i>	53,000	281,000

Another significant discrepancy concerns the February 2001 BLS finding regarding the number of persons reportedly working as hired farm workers. From the BLS data, in the entire U.S., approximately 3,200 contract firm workers, 5,800 temporary

help agency workers, and 44,000 seasonal workers (described as “on-call”) were employed in agriculture. This is a total of 53,000 workers in all of U.S. agriculture.

The CES only surveys non-agricultural employers so no data is available from that source for comparison purposes. However, the U.S. Department of Agriculture’s quarterly survey of farm employers does report the number of various types of hired farm workers. The USDA results differ markedly from the BLS findings. During the week of January 7-13, 2001 (the closest quarterly date to the BLS February 2001 survey), there were an estimated 163,000 persons working for agricultural service businesses on U.S. farms (the most likely equivalent for agriculture of contract firms plus temporary help agencies), or eighteen times more than found in the BLS survey. Similarly, farmers reported employing 678,000 workers, of which 118,000 were hired for fewer than 150 days (many of the latter group may be equivalent to on-call workers). These comparisons are shown in Table 4. (*Farm Labor*, NASS, USDA, February 2001, p. 3).

An additional shortcoming of the February BLS survey with respect to agriculture is that relatively few hired workers are employed during the winter months. For example, during July 2001, there were a reported 1,039,000 direct-hire workers on U.S. farms, of which 317,000 were expected to be employed for fewer than 150 days. And another 335,000 agricultural service company workers were employed at that time. Hence, a total of at least 652,000 persons were working in contingent or alternative employment relationships in agriculture at that time. This is more than twice the number reportedly working in that capacity during February. Since winter season farm employment is concentrated in the southeastern and southwestern U.S., whereas summer farm employment is more uniformly found throughout the whole nation, it is even likely that some persons working as hired farm workers in February might not be working in the same capacity in July.

Therefore, estimates of persons working in alternative employment arrangements in agriculture are likely to be at least a factor of five too small (February) and very possibly a factor of twelve too small (July). This shortcoming of BLS surveys in enumerating hired farm workers has led many to rely on other surveys, such as the National Agricultural Workers Survey of the U.S. Department of Labor (NAWS).

California Findings

Findings from the BLS Survey of Contingent and Alternative Employment are only reported for the nation as a whole. However, Cox Edwards and Grobar obtained sufficient data for California from the Current Population Survey (CPS) to extract information about contingent employment in the state for 1995, 1997 and 1999. (Cox Edwards and Grobar, *Contingent Workers and Alternative Employment Arrangements: Evidence from the State of California*, 2001).

Table 5. Contingent Workers as Percent of Total Employment, 1995, 1997, 1999 California and United States, Cox Edwards and Grobar (2001)

<i>Geographic Region</i>	<i>1995</i>	<i>1997</i>	<i>1999</i>
California	5.4%	5.8%	6.2%
United States	4.9%	4.4%	4.3%

The main finding regarding contingent workers in California is that their share of total state employment increased significantly during that time frame, from 5.4% to 6.2% of the total. On a national basis, during the same period, there has been a slight decrease, from 4.9% to 4.3% of total employment. This is shown in Table 5.

The same data yields important findings about the distribution of contingent workers by industry and occupation in California. The contingent worker proportion in agriculture and in the services sector was found to have increased significantly in 1999 as compared with the two earlier years. Moreover, among occupational groups, large increases during the same period were found among professionals, technicians, administrative support personnel, and in farming, forestry and fishing occupations.

Cox Edwards and Grobar demonstrated that contingent employment increased in California because contingency rates increased within sectors, not because industry sectors with higher contingency rates gained in relative importance to total employment. In 1997, contingency rates increased in Hospitals, Communications, Transportation and Entertainment, followed by Non-Durable Manufacturing. In 1999, the key sectors with increasing contingency rates were Educational Services, Agriculture, Wholesale Trade, and Other Professional Services. During the same period, contingency rates increased among professional, technician and administrative support occupations.

Two of the most important industries with rising contingency rates in California were education and hospitals which together account for 10% of employment in the state. From 1995 to 1999, their contingency rate nearly doubled, increasing from 8% to 15%.

Table 6. Characteristics of Contingent and All Workers, California, 1995, 1997, 1999; Cox Edwards and Grobar

<i>Characteristic</i>	<i>Percent of Contingent Workers, 1995</i>	<i>Percent of Contingent Workers, 1997</i>	<i>Percent of Contingent Workers, 1999</i>	<i>All State Employment, 1995-99 Average</i>
Age, 16-24 years	22%	27%	30%	14%
Age, 25-44 years	56%	48%	51%	55%
Age, 45-64 years	18%	22%	18%	29%
Age, 65 years and over	4%	3%	2%	3%
Male	52%	60%	52%	56%
Female	48%	40%	48%	44%
Race and Hispanic Origin, White	77%	72%	83%	82%
Race and Hispanic Origin, Black	7%	10%	4%	6%
Race and Hispanic Origin, Hispanic	31%	25%	31%	27%
Full-time workers	68%	66%	62%	81%
Part-time workers	32%	34%	38%	19%
Less than high school graduate (for workers age 25-64 years)	18%	18%	19%	14%

Demographic information about contingent workers was also obtained for all three years. As in the nation as a whole, contingent workers in California were younger, more likely to be working part-time, and more likely to have not completed high school than workers in traditional employment relationships (see Table 6).

The same authors examined aspects of alternative work arrangement data from the BLS surveys for 1995, 1997 and 1999. Overall, they find that in 1999, California had 12.1% of its workforce – roughly one of every eight workers – employed in an alternative work arrangement, as compared with 9.5% of the nation’s workforce. In all categories of these employment relationships, California had a disproportionately large share of national employment. Even though California only comprises roughly 12% of total employment in the country, the state had over one million independent contractors, nearly 15% of the U.S. total, and roughly 20% of all contract workers. Table 7 shows these findings.

Table 7. Workers in Alternative Employment Arrangements (BLS), California, 1999, Cox Edwards and Grobar

<i>Type of work arrangement</i>	<i>California</i>	<i>United States</i>	<i>California share of U.S. total, percent</i>
Independent contractors	1,211,000	8,309,000	14.6%
On-call workers	325,000	2,078,000	15.6%
Temporary help agencies	195,000	1,181,000	16.5%
Contract workers	130,000	652,000	19.9%

Just as for national as a whole, the BLS Survey findings for the total number of California workers employed by Temporary Help Agencies and Contract Hire firms is substantially smaller than is reported by employers. The 1997 Economic Census finds 364,549 persons working for Temporary Help Services employers as of the pay period that includes March 12, 1997. Cox Edwards and Grobar report that 1.2% of California’s employed persons were found by the February 1997 BLS Survey to be working for Temporary Help Agencies (Cox Edwards and Grobar, *Contingent Workers and Alternative Employment Arrangements: Evidence from the State of California*, 2001, Table 4-1, p. 42). EDD reports that February 1997 Total Employment was 14,594,000. Therefore, the BLS Survey finding is that just 175,000 persons were working for such employers during February 1997. The 1997 Economic Census finding is 108% larger than the comparable figure from the BLS Survey.

Demographic characteristics of workers in alternative employment arrangements in California varied greatly among the specific types of work arrangements, and were generally found to be similar in many respects to the findings for all such U.S. workers. That is, about two-thirds of independent contractors in California are men, roughly 60% are between the ages of 35 and 54, and most are highly educated Whites. Independent contractors in California are mostly in managerial, professional, farming or sales occupations.

In contrast, on-call workers are nearly equally divided between men and women, are more likely to be working on a part-time basis, are younger, and are more likely to be

Hispanic. Also, most are less well educated than independent contractors. On-call workers tend to be found in farming, operator/laborer, and service occupations.

Contract workers, like independent contractors, are mostly male, working full-time and relatively young. Proportionately fewer contract workers lack a high school diploma than is the case among traditional direct-hire workers. More Blacks and fewer Hispanics are employed as contract workers. Contract workers are mostly in the operator/laborer, technician and service occupations.

Employees of personnel supply service agencies tend to be quite young, predominately female, and most are working full-time. They also tend to have a somewhat lower educational attainment than workers in traditional work arrangements. Relatively more workers in this sector are Black than are found among independent contractors, or on-call workers, or in the labor force as a whole. Temporary help agency workers are mostly in the administrative support, technician and operator/laborer occupations.

Earnings and benefits vary greatly among the various types of alternative employment relationships. As compared with traditional, direct-hire workers, independent contractors and contract workers earned more. On-call workers and temporary help agency workers earned less.

There were strikingly large earnings disparities between male and female workers within three of the four types of alternative employment category. With the exception of contract workers, where women outearned men by 14%, the median weekly earnings of women were substantially below those of the men. The median weekly wages of female independent contractors was 67% of what males earned. Women temporary help agency workers reported median weekly wages that were 72% of what men earned. Women working as on-call workers fared slightly better, reporting median weekly wages that were about 77% of what men earned. In contrast, women in traditional direct-hire employment relationships reported median wages that were about 87% of what their male counterparts earned. These findings are summarized in Table 8.

Table 8. Median weekly wages, full-time workers in various employment arrangements, California, 1999, Cox Edwards and Grobar

<i>Characteristic</i>	<i>Independent contractors</i>	<i>On-call workers</i>	<i>Temporary help agency workers</i>	<i>Contract workers</i>	<i>Traditional, direct-hire workers</i>
Male	\$840	\$450	\$500	\$692	\$577
Female	\$560	\$346	\$360	\$792	\$500
<i>All workers</i>	<i>\$759</i>	<i>\$400</i>	<i>\$400</i>	<i>\$769</i>	<i>\$560</i>

In order to account for these substantial differences between male and female workers in the various alternative employment arrangements, it would be necessary to have substantially more information than is available, e.g., occupational data within each category as well as information about job experience, educational attainment, and productivity. To illustrate, do female independent contractors charge less for the same type of work than male independent contractors, or is there significant voluntary gender-based occupational segregation?

As to benefits, employer-provided health insurance was available to only 3.9% of temporary help agency workers, and to about one-fifth of on-call workers. In both of these types of alternative employment relationships, California workers lagged far behind their national counterparts in the extent of employer-provided health insurance. Only for contract workers was the availability of health insurance through the employer at all comparable to what is available to workers in traditional employment relationships.

Summary

The Contingent Work Supplement to the Current Population Survey shows that contingent and alternative employment relationships are more important in California than in the nation as a whole. In 1999, roughly 6.2% of the California labor force can be described as contingent workers, versus about 4.3% of the national work force is classified as such. Moreover, during the period 1995 through 1999, the number of contingent workers rose in the state, while the national number declined.

The growth of contingent work in the state has occurred because contingency rates rose in each industry where it is important, and not because those industries gained in relative importance in the state's labor force.

The proportion of the California labor force in alternative employment relationships was about 12.1% in 1999, as compared with the corresponding national figure of 9.5%. The state has a disproportionately large share of each type of the nation's contingent workers: independent contractors, on-call workers, contract workers and temporary help agency workers.

Both contingent workers and those in alternative employment relationships are quite heterogeneous in California. Managerial, professional, technician, clerical, machine operators, and laborers are all well represented in both measures of this labor force. However, each type within the alternative employment labor force has distinctive demographic features. For example, independent contractors are predominately male, while temporary help agency workers are predominately female.

Earnings of full-time workers, as reflected in median reported weekly wages, showed a wide range in California. Independent contractors and contract workers reported significantly higher earnings than workers in traditional employment relationships, while the opposite was the case for on-call workers and those employed by temporary help agencies.

Most strikingly, in all but one category, where California women actually earned more than men, California women reported median weekly wages lagging well behind those of men in the same type of work arrangement. The disparity was greatest for independent contractors and temporary help agency workers, where women earned just 67% and 72%, respectively, of what men earned. Moreover, these large discrepancies exceeded that reported for women employed full-time in traditional employment relationships, where their median weekly wage was about 87% of what men earned.

Benefits paid to California's contingent workers or those in alternative employment relationships also lagged far behind enjoyed by workers in traditional work settings. Of considerable importance, is that a far smaller fraction of California's workers in alternative employment relationships had employer-provided health insurance as compared with corresponding types of workers in the U.S. as a whole.

Finally, the BLS Survey findings regarding the numbers of workers employed by Temporary Help Services Agencies are in striking disagreement with corresponding data obtained from surveys of employers, both with the CES Survey (1997, 1999, 2001) and the 1997 Economic Census. For both the U.S. and California, employers consistently report much higher numbers of workers than are found in the BLS Survey. A portion of these discrepancies may be due to differences in industry definitions in the surveys, but reference to the 1997 Economic Census, in which the definitions most closely correspond, suggests that this factor is too small to account for the discrepancies.

In the Agricultural Sector, the discrepancy between the BLS Survey and the USDA Survey of employers is particularly large. On this basis, it appears likely that the BLS Survey may not be as comprehensive as is needed to obtain an accurate body of data for workers in the industries it seeks to represent.

Chapter Two

Personnel Supply Services

This industry is primarily composed of persons working for temporary help supply companies, employment agencies or other suppliers of temporary workers. The 1987 Standard Industrial Classification for the industry is SIC 736. The industry includes the following sub-categories: SIC 7361 Employment Agencies (including Executive Search Service firms); SIC 7363 Help Supply Services (Temporary Help Supply firms and Employee Leasing Service firms).

Within SIC 7363, except for the relatively few persons who work at the agency or supplier, nearly all employees are posted at the contracting firm's workplace and are directly supervised by that company's staff. On the other hand, these workers remain employees of the agency or supplier, and receive paychecks issued by those companies. For this reason, the agency or supplier is responsible for employer taxes (FICA, Medicare, Unemployment Insurance) and workers compensation insurance (required under California law for virtually all private sector employers). An obvious advantage of this relationship, from the contracting firm's perspective, is that nearly all of the employer's supplemental payroll responsibilities are handled by the agency or supplier.

Clearly, these workers are employed by a labor market intermediary, often with the expectation that the job will be short-term. In fact, the ASA reports, on a national basis, such placements have an average of just two months duration. On the other hand, again according to the ASA, a majority of these workers, who are often characterized as 'temps,' are able to secure a traditional direct-hire job within a few years of their first job 'temping.'

Over the past quarter century, California has seen explosive growth for this industry. Annual average employment (the average of twelve monthly reports of employment in the industry) has increased from about 36,000 in 1975, to nearly 500,000 in 2000. Nominal payrolls have increased from about \$188 million in 1975 to nearly \$12 billion in 2000. And the number of such establishments has grown more than six-fold. These findings are summarized in Table 9.

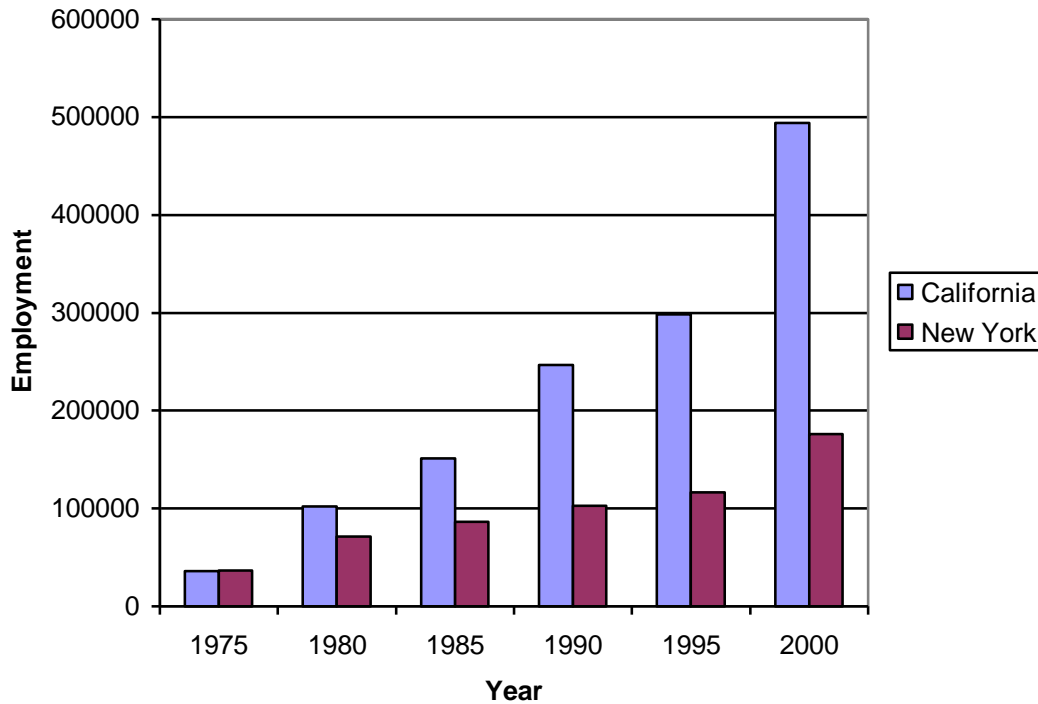
**Table 9. Personnel Supply Services Industry (SIC 736x), California
Employment, Wages and Establishments. EDD Wage and Employment Files
and BLS (Current Employment and Wage Files)**

<i>Year</i>	<i>Employment (Annual Avg)</i>	<i>Payroll (wages) (nominal dollars)</i>	<i>Number of Establishments</i>	<i>Percent of Total CA Employment</i>
1975	35,944	\$188,723,148	998	0.4%
1980	101,991	\$903,202,418	1,713	0.9%
1985	150,853	\$1,837,775,556	2,098	1.3%
1990	246,581	\$3,541,327,552	3,111	1.7%
1995	298,611	\$5,296,224,199	4,537	2.1%
2000	493,914	\$11,745,619,000	6,319	3.0%

While both U.S. and California employment have grown significantly during this same time frame, the growth of the Personnel Supply Service Industry has far outstripped that expansion. In 1975, just one out of 240 California workers was employed in that sector. Today, one job out of 33 is in this industry.

At one time, the New York City area was understood to be the nation’s largest center of white-collar work. Presumably, temps were a key element of that preeminence. But California’s Personnel Supply Service Industry has grown at a far faster pace than has the New York industry. In 1975, both states had roughly the same employment in this industry. By 2000, California’s employment was nearly three times bigger. This is shown in Figure 1.

Figure 1. Employment (Annual Average), Personnel Supply Services, California and New York



From the data in Table 9, as of 2000, the average establishment in this industry within California had about 78 persons employed (annual average) and an annual payroll of roughly \$1,859,000. From these findings, it would appear that the average establishment was relatively small. Even if the average employee worked there for only two months, as is the case on a national basis, fewer than 500 persons would have been employed during the course of the year.

However, careful analysis of individual employer wage reports show that there are no more than 3,186 separate firms, and several of these have more than one dozen

branches. Thus, in 2000 average employment per firm was about 155 and annual payroll was closer to \$4 million.

The size distribution of this industry is even more concentrated than these findings would indicate. The largest 21 firms (0.66%) of the total of 3,186 account for fully 40% of the total payroll. Even more pronounced, the largest five companies have one-fifth (19.5%) of the market.

Table 10. Employment Services, California, 1997
Source: 1997 Economic Census, U.S. Census Bureau

<i>Category</i>	<i>Establishments</i>	<i>Receipts (billion)</i>	<i>Annual Payroll (billion)</i>	<i>Employees, Pay Period Including 3/12/97</i>
Employment Placement Agencies	849	\$0.745	\$0.441	16,523
Temporary Help Services	2,844	8.665	6.083	364,549
Employee Leasing Services	476	1.991	1.651	68,456
<i>Total</i>	4,169	\$11.401	\$8.175	449,528

The 1997 Economic Census reported important detailed information about the industry that is not contained in the reports on employment and payroll described previously. Most significantly, industry-wide revenues, payroll and employment are disclosed. These findings for California are described in Table 10.

Total industry revenues in 1997 were \$11.4 billion, of which \$8.2 billion, or roughly 72%, were accounted for by payroll costs. Employer taxes, workers compensation insurance premiums (mandatory under California law) and any employee benefits likely account for at least another \$1.4 billion, leaving about \$1.9 billion to cover office and administrative costs, and operating profits. Thus, payroll and supplemental payroll costs were about \$9.6 billion, or 84% of receipts.

The largest segment of the industry is Temporary Help Services, which accounts for about three-quarters of industry-wide receipts (76%) and payroll (74%) and four-fifths of employees (81%). However, Employee Leasing Services, akin to Contract Firm employment, accounts for an appreciable one-sixth of the industry as measured by receipts (17%). Clearly, Employment Placement Agency staffers are a minor part of employment in the industry.

While precise data are lacking, dividing the reported 1st Quarter Payroll (not shown in Table 10) by the reported Number of Employees in the pay period that includes March 12, yields the suggestive finding that Temporary Help Service employees earned about \$3,700 per equivalent employee, but Employee Leasing Service workers earned about \$5,400 per equivalent employee. Employment Placement Agency staffers earned slightly more, about \$5,600 per equivalent employee. Of course, it is not known how much variation in the number of employees there were in each category during the entire 1st calendar quarter of 1997, so this finding must be treated with caution.

An unusual insight into the Temporary Help Supply industry is provided by the annual survey of large Los Angeles County firms published as “Lists” by the newspaper *Los Angeles Business Journal* (see www.labusinessjournal.com). Table 11 shows the listing of the largest ten Temp Agency firms, with Annual Revenue (Los Angeles County, 2001), Average Hourly Wage, and Number of Temp Workers Placed.

Table 11. Leading Los Angeles County Temp Agencies, 2001
Source: Los Angeles Business Journal (www.labusinessjournal.com)

<i>Name of Firm</i>	<i>Revenue, Los Angeles County, 2001</i>	<i>Average Hourly Wage</i>	<i>Temp Workers Placed</i>
Manpower Inc	\$170,000,000	\$17.00	Not disclosed
AppleOne Employment Services	96,000,000	\$8.83	4,229
Adecco	83,500,000	\$10.00	3,286
Checkmate Staffing Inc	65,000,000	\$8.13	6,223
Ventury Staffing Partners	48,000,000	\$14.50	4,000
Headway Corporate Staffing Services	41,000,000	\$8.35	3,000

From the data presented in Table 11, it is possible to estimate the distribution of wage rates paid to workers employed by these firms. An estimated two-thirds of all workers enumerated in this list of leading firms earned \$10 per hour or less.

From the data presented in Table 10, firms in the California Temporary Help Services industry on average paid 70% of their receipts in wages. Applying this ratio to the reported receipts each of the five firms listed in Table 11 that had at least 3,000 employees, payroll can be estimated. Then, dividing the resulting estimated payroll by the average hourly wage to obtain the total number of hours worked, and then dividing by the number of workers placed, an estimated annual average number of hours per temp worker is obtained. The range of values is from 581 hours per temp worker (Ventury) to 1804 hours per temp worker (AppleOne). This is roughly in the range of quarter-time to full-time employment.

This survey also asked each firm to describe the industries and occupations they serve. The combined set of industries and occupations represented among these ten leading companies is surprisingly diverse. Among industries, the following predominate: manufacturing (8 firms), engineering (7 firms), information technologies (5 firms), aerospace (2 firms), financial (2 firms), entertainment (2 firms), medical (1 firm), and government (1 firm). Perhaps most surprising is the high degree of representation of manufacturing and engineering among the persons placed as temporary employees.

Occupations represented are also diverse: clerical (6 firms), office administration (4 firms), accounting (3 firms), customer service (2 firms), call center (2 firms), professional (2 firms), scientific staffing (1 firm), sales (1 firm), and warehouse (1 firm). The dominance of clerical staffing is consistent with stereotypes of temporary employees, but accounting, professional and scientific staffing is not.

Detailed examination of the names of the individual firms in the statewide employer data provided by EDD also reveals a remarkably heterogeneous industry: office temps, laborers, nurses, bookkeepers, accountants, attorneys, physicians, information technology specialists, among others, are all represented.

The employer-provided data do not, however, reveal very much about individual workers in this industry. The only derived information that can be deduced is the ‘average annual wages per equivalent employee,’ and how that may have changed over the entire twenty-five year period. But this computation must be treated with caution for an industry that has such a high rate of employee turnover, and has jobs that may be only a few weeks or months in duration.

EDD obtains employment reports from employers referring to the number of persons on the payroll during the pay period that includes the twelfth day of the month. If an individual is not employed during that pay period, but does work earlier or later in the same month, they are not enumerated in the monthly employment figure. On the other hand, payroll figures, reported quarterly, refer to all persons who received wages or salaries during the entire calendar quarter, even if they do not appear in the monthly employment data. Computations of ‘annual average of reported monthly employment’ may, or may not, accurately reflect ‘employment’ as it is usually understood. The term ‘employment’ usually refers to persons employed on a year-round basis.

Figure 2. Wages per Equivalent Employee, Personnel Supply Services and All Industries, California

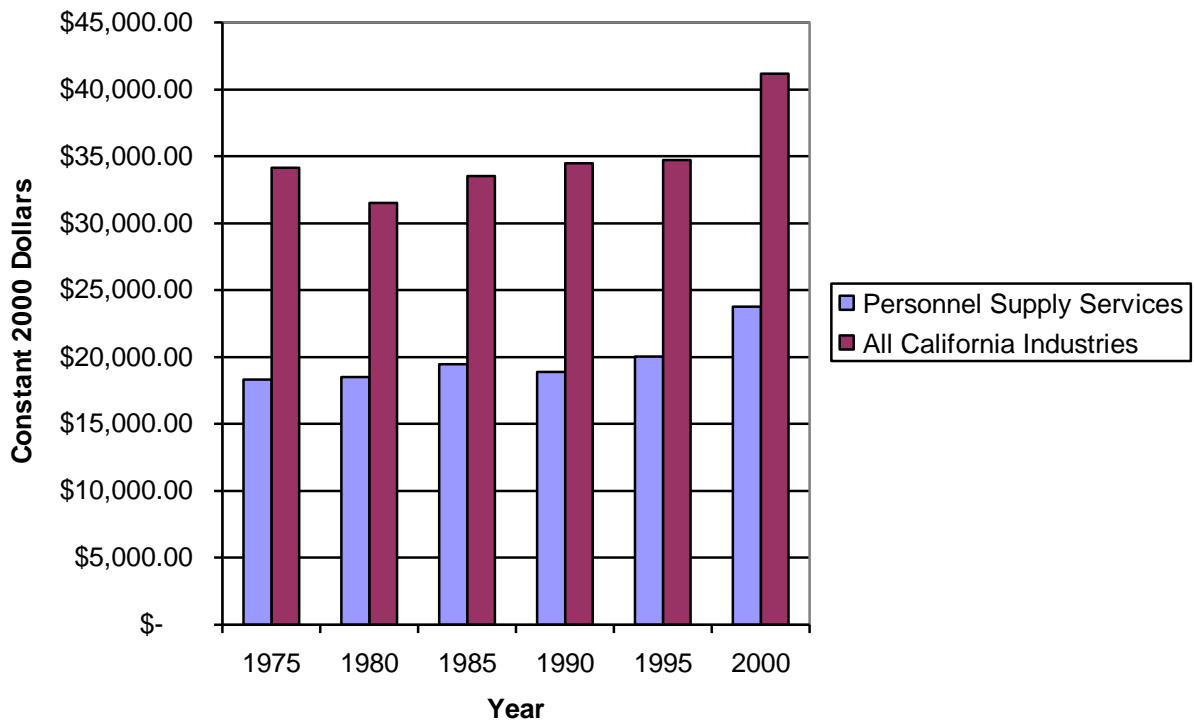


Figure 2 shows the trend over the entire twenty-five year period of average annual wages per equivalent employee (termed ‘wages per equivalent employee’ in the figure) for workers in the Personnel Supply Service Industry. It is simply the ratio of the reported total wages divided by the annual average of reported monthly employment. Of course, the wage figure is corrected for the effect of inflation, using the California Consumer Price Index (CPI). What is of special interest is the fact that the wages per equivalent employee are relatively stable at about \$18,500 to \$19,000 from 1975 to 1990, but then rise to \$23,800 in 2000.

The analogous data for all California industries is also presented in Figure 2. Average wages per equivalent employee was fairly constant, in the range of \$32,000 to \$34,000 from 1975 through 1995, and then increased to about \$41,000 in 2000. The pattern is exactly as was found for the Personnel Supply Services industry, suggesting that the increase in 2000 was ubiquitous, affecting this industry in the same manner as the average for all others. Importantly, the ratio of average wages per equivalent employee in the Personnel Supply Service industry to that for all industries remained nearly constant throughout the entire period at 0.568 (standard deviation 0.020).

The increase in wages per equivalent employee (Figure 2) may reflect an increase in the proportion of workers in managerial, professional or technical occupations who are working in the Personnel Supply Service Industry. Another possibility is that the tight California labor market in 2000, when the unemployment rate fell below 5%, may have led to higher salaries or wages for temporary employees. Clearly, more information is needed in order to understand how this industry is changing and developing.

Discrepancies in the Reported Number of Temporary Help Agency Workers

As discussed in the previous chapter, Cox Edwards and Grobar have analyzed the BLS Survey data for California. These authors report the fraction of California employment, or the number of persons employed in both the Temporary Help Agency and Contract Firm categories. Table 12 presents the California findings from the February 1997 BLS Survey as compared with the corresponding findings from the 1997 Economic Census, which refers to the pay period including March 12, 1997.

**Table 12. Temporary Help Agency and Contract Workers, California, 1997
BLS Survey (Cox Edwards and Grobar) vs. Economic Census**

<i>Type of work arrangement</i>	<i>February 1997 BLS Survey</i>	<i>1997 Economic Census (pay period that includes March 12, 1997)</i>
Temporary help agencies	175,000	364,549
Contract firm workers	88,000	68,456

There is only a small discrepancy, probably within the statistical confidence interval, regarding the number of Contract firm workers between the BLS Survey and the Economic Census. On the other hand, as was also noted in Chapter 1, there is a large discrepancy between the two sources regarding the number of Temporary help agency workers. Temporary help agency employers report substantially more (108%) workers

than were found in the BLS Survey. The discrepancy between the two reports for California temporary help agency workers is comparable to what was found for the nation as a whole, 108% vs. 100%. While it is possible that the discrepancy may be due to the inclusion of large numbers of multiple jobholders who hold part-time jobs as temporary agency workers, the magnitude of the discrepancy is so large as to suggest that this is an unlikely explanation. In fact, in their analysis of the BLS Survey data for California, Cox Edwards and Grobar conclude that, "Most (81%) temporary help workers are working in full-time positions." (Cox Edwards and Grobar, p. 47)

Survey of California firms utilizing Personnel Supply Service workers

One survey of California employers provides information about the extent of utilization of workers furnished by the state's Personnel Supply Service firms. In 1995, a statewide telephone survey was conducted in which interviews were sought with client firm human resource departments. Of 1,289 companies contacted, 607 completed the survey. Southern California firms made up 62% of the respondents, and Northern California companies were 38% of the total. (*California Business Perceptions of Temporary Employment Agencies: 1995*, Professional Management Services, El Dorado Hills, CA, 1995).

Among the findings of this survey were that about half (51%) of the respondents were using workers furnished by a temporary help agency. Banking and related financial service, and health industry firms had the highest reported rate of use of temporary workers (61% and 68%, respectively), while telemarketing and accounting had much lower rates (33% and 36%, respectively). Manufacturing industry firms had a surprisingly high 48% participation rate in using temporary workers.

Another finding of interest is that use of temporary workers was associated with large firm size: the larger the firm, the greater the likelihood of using temporary workers. Smaller companies relied more heavily on in-house staff.

The characteristic of temporary workers that was ranked highest in importance by clients was "quality of the people". Other factors, including cost savings, ranked substantially lower in the decision to use temporary workers.

The degree of satisfaction was quite high: 76% said they received the expected quality of service, and 14% said they received better quality of service than they expected. Only 4% said they received poorer service than they expected.

Of those firms contacted that were not using temporary workers, about one-fourth said they had done so in the past but had decided not to continue the practice, and three-fourths said they had never used temporary workers. A detailed industry profile of those who had used temporary workers in the past but had dropped the practice was not available in the published findings.

Characteristics of Personnel Supply Service Industry Workers

In the previous chapter, California findings from the Contingent Work Supplement to the BLS Survey were reported. But the number of persons in that survey and working in the California Personnel Supply Service Industry is relatively small, which limits the extent of analysis for reasons of statistical reliability.

The number of California temp agency workers who were actually subjects in the February 2001 Contingent Work Supplement sample can be estimated. According to BLS, the Contingent Work Survey is administered to about three-fourths of the 55,000 households of the monthly CPS sample. About 0.87% of the total reported employment involved persons working in the temporary help agency industry. California workers in that type of alternative employment were roughly 16% of the national total. Thus, the number of such individuals who were enumerated in the Contingent Work Supplement was likely to have been smaller than 100 individuals. This is insufficient for all but the crudest estimates of demographic features of this sub-group of the national labor force.

In order to carry out a more detailed and statistically reliable analysis of the temporary supply services workforce, Baru at the Center on Policy Initiatives combined data from the Current Population Survey earnings file for a three-year period (1997-99). Only persons who identified employment in the Personnel Supply Services were included. This is the sample from which the biennial supplemental survey on contingent and alternative employment is drawn. However, it includes persons who worked for temporary help agencies in months other than February 1997 and February 1999, when the supplemental survey was conducted. Thus, a large and presumably more statistically reliable sample is obtained. (Baru, *Working on the Margins*, 2001).

Table 13. Characteristics of Personnel Supply Service Workers, California, 1997-99, CPS BLS; *Working on the Margins* (Baru)

<i>Characteristic</i>	<i>Percent of All PSS Workers</i>	<i>Percent of Traditional, Full-Time Workers</i>
Age, 18-24 years	20%	11%
Age, 25-44 years	55%	60%
Age, 45-64 years	23%	29%
Male	42%	59%
Female	58%	41%
Married, spouse present	37%	56%
Race and Hispanic Origin, White	48%	51%
Race and Hispanic Origin, Black	12%	7%
Race and Hispanic Origin, Hispanic	29%	29%
Educational attainment, less than high school graduate (age 25-64 years)	15%	16%
Educational attainment, high school graduate (age 25-64 years)	26%	23%
Educational attainment, some college (age 25-64 years)	25%	21%
Educational attainment, Associate degree (age 25-64 years)	13%	8%
Educational attainment, Bachelors degree (age 25-64 years)	18%	21%

The major findings are that, in California, the temporary help labor force is predominately female, young, less likely to be married, more likely to be Black, and to have very similar educational attainment as traditional employees. Surprisingly, there was no difference at all in the proportion of Hispanics among temporary workers as compared with traditional, full-time employees. The proportion of White workers was also nearly the same in both groups.

Particularly interesting is the similarity in educational attainment at all but the highest levels. Some of these findings, such as the much lower fraction of temps who are married, may simply reflect the younger age distribution of persons employed in the personnel supply service industry. More than half are younger than 34 years of age. Among full-time workers in traditional employment relationships, only 40% were younger than that age. These findings are summarized in Table 13.

Of considerable significance is that, contrary to national findings, Baru finds that employees of personnel supply service companies in California had lower reported median hourly wages than those of comparable workers who had full-time traditional jobs. This latter comparison is based on an analysis that matched people in the two groups who had similar demographic characteristics and who worked in the same industry and occupation. The male temp wage deficit (-8.8%) was slightly larger than the female temp wage deficit (-6.7%). This finding is consistent with characterization of the temporary worker industry as a “segmented labor market,” that is, temping is a “traditionally female” industry; all those in the industry are likely to have lower wages.

Summary

The Personnel Supply Service Industry has grown far more rapidly in California than elsewhere in the nation. The rate of growth of this industry in the state has accelerated since 1995. Roughly one worker in 33 is now employed in this sector.

The BLS Survey of Contingent and Alternative Employment Arrangement workers appears to seriously undercount California’s Personnel Supply Service employees. Direct comparison of the 1997 BLS Survey findings with the 1997 Economic Census shows a substantial discrepancy (108%) with employers reporting a much larger number of workers than were found in the BLS Survey.

Worker earnings, on average, are relatively low, reflecting low hourly wages (\$10 per hour, or less) for the vast majority of employees. On the other hand, the range of industries and occupations served is remarkably broad.

Temporary help agency workers are predominately younger, female, and less likely to be married than full-time workers in traditional employment relationships. Temp workers are more likely to be Black, but the proportion that are White or of Hispanic origin is the same as among traditionally employed workers. Of considerable interest is the fact that this group of workers is at least as well educated as the traditional worker group, except at the highest levels of educational attainment.

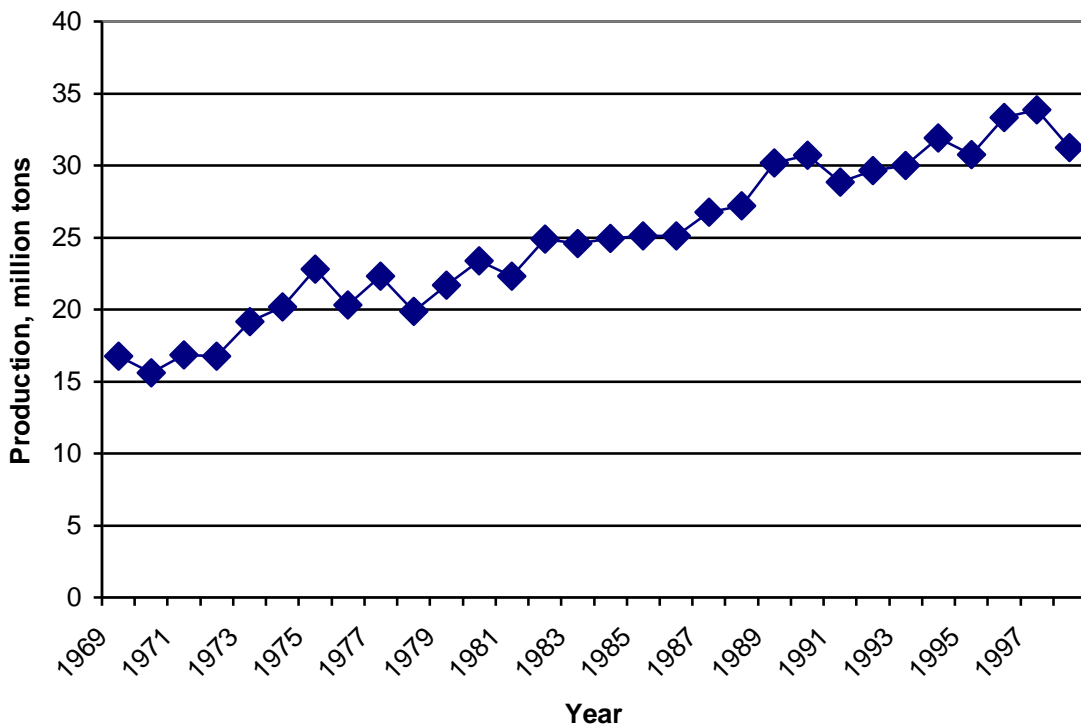
Finally, Baru has directly demonstrated that both male and female temp workers have a significant wage deficit as compared with traditionally employed workers when both demographic and occupational characteristics are matched. Thus, there is evidence of a marginal wage savings associated with the use of temp workers for the same job as performed by permanent employees.

Chapter Three

Farm Labor Contractors

California is the nation's pre-eminent agricultural state, and has been the leader for more than half a century. In recent years, the production of fruits, vegetables, ornamental nursery crops and milk in the state has sharply increased. For example, since 1974, the annual tonnage of fruit and vegetables harvested has doubled (see Figure 3), more than 800,000 acres of trees and vines have been added to the state's inventory, and harvested vegetable acreage has increased by more than half. Just a few years ago, California's fluid milk production surpassed that of Wisconsin, and the Golden State is now the nation's leading dairy state.

Figure 3. Fruit and vegetable production (tons), California, Annual, 1969-1998, USDA-CASS



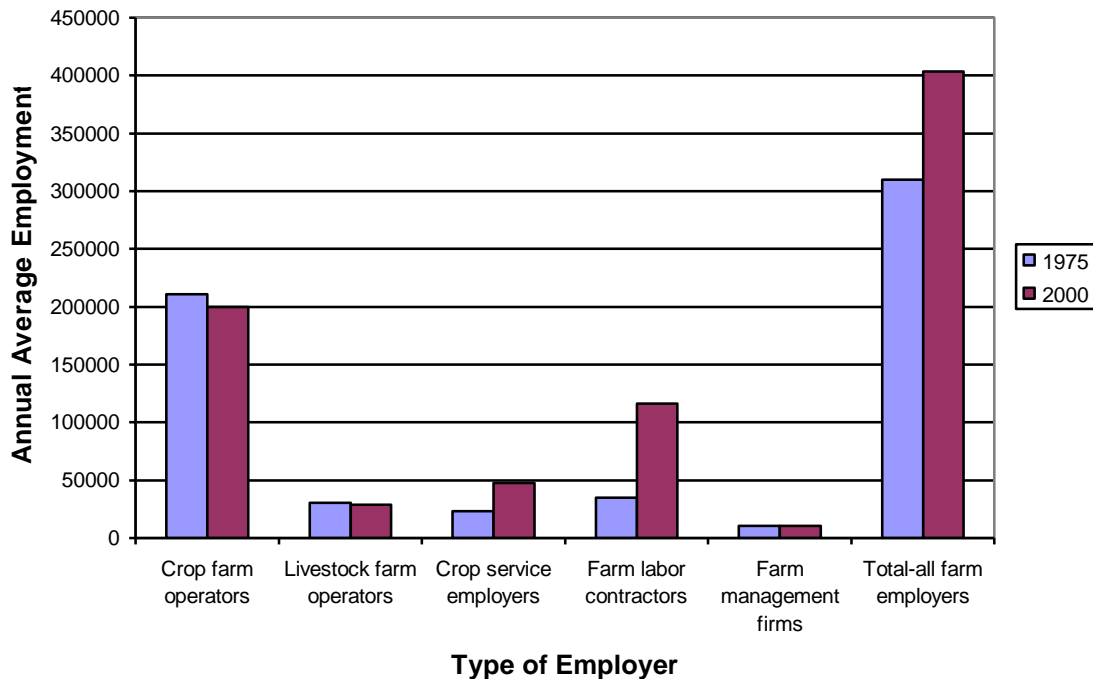
While the number of U.S. farms has declined in the past quarter-century, employment of hired farm workers has increased in California. Although precise figures are difficult to determine, largely due to the fact that most farm jobs are short-term, the data suggests that annual average employment of hired farm workers in the state increased by about 25% between 1975 and 1999. (Villarejo, *California's Farm Employers: 25 Years Later*, 2000). The increased dependence on hired workers in the state is a reflection of the sharply rising output of labor-intensive crops. Even after

NAFTA, California retains a comparative advantage over Mexico in nearly all labor-intensive crops. (Schockman and Madjd-Sadjadi, "After NAFTA," *California Policy Choices* 9, 1994)

It is often asserted that economic growth is associated with the accumulation of capital, which becomes relatively low priced relative to labor. Thus, technological change in agriculture is a normal complement of economic growth and is associated with a decline in labor demand. (C.E. Bishop, *Farm Labor in the United States*, p. 5). Clearly, the opposite has occurred in California agriculture: labor demand has increased.

Nearly all of the net increase in the employment of hired farm workers during the past 25 years is attributable to the sharp increase in farm labor contractor employment. Figure 4 shows the changes in the annual average of monthly employment of hired farm workers as reported to EDD among each major category of farm employer in 1975 and 2000. First, according to this source, annual average employment of hired farm workers has increased by about 30% during this period. Direct-hire employment by crop or livestock farm operators has fallen, but employment by crop service companies (soil preparation services, custom harvest companies and similar types of firms), farm labor contractors and farm management companies has increased substantially, more than offsetting the decline in direct-hire employment. About 87% of the net increase in hired farm worker employment during this period is a result of the spectacular 230% rise in farm labor contractor employment.

Figure 4. Hired Farm Worker Employment, Annual Average, by Type of Farm Employer, California, 1975 & 2000, California EDD



The Farm Labor Contractor Industry

State law clearly defines the meaning of Farm Labor Contractor (FLC).

“Farm labor contractor” designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one of more of the following services: furnishes board, lodging or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.”

- *California Labor Code, Employment Regulation and Supervision, Chapter 3, Sec. 1682. Definitions.*

Persons or businesses conforming to this definition must be licensed, and the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations is responsible for licensing. As of September 2002, there were 1,152 FLCs licensed to operate in California.

In addition to state licensing, the Migrant and Seasonal Agricultural Worker Protection Act requires that FLCs register with the Wage and Hour Division of the U.S. Department of Labor. However, owing to significant differences in definition, the number of these registrants is much larger than the number of state-licensed FLCs, and is typically in the range of 2,500 to 3,000 in any given year.

Another California law requires FLCs to register with the County Agricultural Commissioner in each and every county in which they conduct business. The purpose of this registration is to provide the local agency responsible for compliance with pesticide safety laws the information necessary to conduct inspections of all agricultural employers, or others, who use registered pest control materials in the county.

During 2002, the author requested FLC registration files from each of the state’s County Agricultural Commissioner. Nearly 2,400 FLC registration records were received, representing all counties where commercial agricultural activity is conducted. But some counties provided records for 2001 as well as for 2002. Careful review shows that a total of 1,151 FLCs were represented in the combined file. Of that number, 603 were registered in just one county.

Surprisingly, nearly half of all FLCs (47%) were registered in two or more counties. The largest number of individual county registrations for a single FLC was 19. Thus, a great many FLCs are multi-county operations, and some extend throughout the entire state. The notion that a typical FLC is a small, local operation with limited assets and resources is clearly outdated. While many FLCs do fit this description, a great many do not.

A comprehensive profile of the Farm Labor Contractor industry was published a decade ago (*Farm Labor Contractors in California*, Labor Market Information Division, California Employment Development Department, 1992). This report was based on a survey was conducted by the California Institute for Rural Studies under a contract with the Agricultural Personnel Management Program of the University of California, and was funded by the California Department of Employment Development (EDD). The survey included interviews of 180 randomly sampled, currently active farm labor contractors during 1991 from four of California's six agricultural employment regions. Thirty FLCs were interviewed in each of three regions (Desert, South Coast, Central Coast) and ninety were interviewed in the fourth region (San Joaquin Valley), where half of all reported farm employment is located.

Among the major findings were that nearly all FLCs operate a crew system, whereby a crew is recruited and hired for the duration of a regional season or, in some cases, as long as an entire year. A foreman is also hired to supervise the crew. The number of crews may fluctuate through the season, and may even decrease to zero during the off-season. The average number of foremen employed at peak activity was 7.7. One FLC reported 62 foremen at peak. Smaller-scale FLCs may supervise a crew but larger FLCs generally do not, usually devoting their full attention to managing the overall business.

The FLC's primary role is to arrange jobs through agreements with farm operators, packinghouses, and packer/shippers. Some also provide services for non-farm businesses. The crews move from client to client over the course of a season or longer, and may work on as many as several different farms in the course of one week.

Some FLCs specialize in a specific crop or task, such as pruning dormant trees in fruit orchards. An FLC interviewed in the Salinas Valley specializes in providing crews for the sole purpose of tying cauliflower leaves to cover young plants (cauliflower would become green if allowed to grow exposed to the sun owing to photosynthesis, so completely covering it with the leaves keeps it white). At the other extreme are FLCs who not only provide workers for farm jobs but also provide workers for un-related industries. One FLC who provides crews of workers for the Central Valley citrus harvest also supplies and transports workers for a fast food franchiser in another Pacific Region state and, in addition, provides staff for several East Coast hotels.

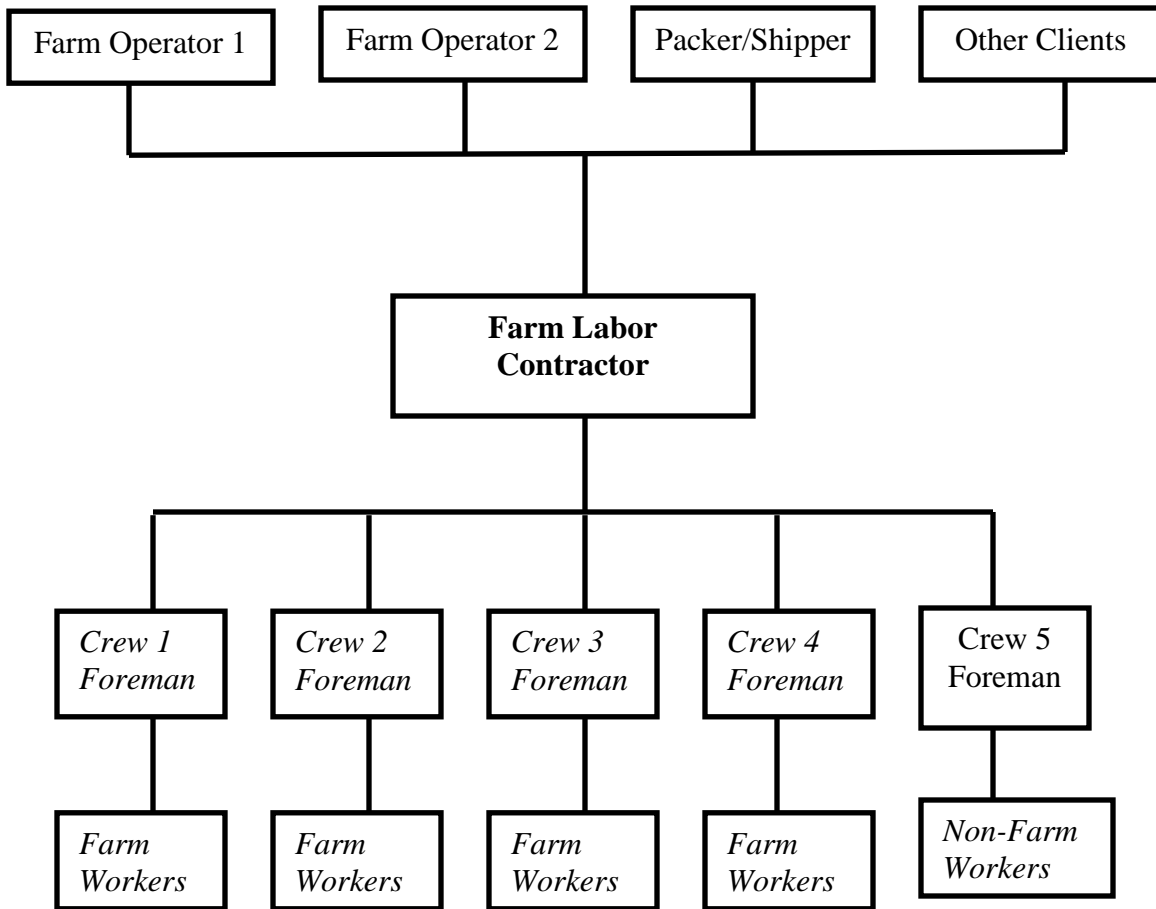
Smaller FLCs personally recruit, hire and train their crews. But larger FLCs often delegate these tasks to their foremen. As a consequence, hired farm workers who are employed by larger FLCs may regard their foreman as "the boss" and specify their foreman's name if asked for whom do they work.

Larger operations employ a second level of supervision to manage groups of foremen. Overall, 40% of the FLCs interviewed had at least one such supervisor. One-third of the FLCs employed supervisors year-round, or for the duration of the working season.

Finally, nearly all FLCs employ office staff to assist with bookkeeping, payroll, billing and necessary record keeping. An independent employment and payroll survey of 199 randomly selected, currently active farm labor contractors conducted by EDD during January 1991 found 17,760 production and 411 non-production workers, or an average of 2.1 non-production and 89 production workers per FLC at that time (EDD, Private communication, April 18, 1991).

The structure of these relationships is illustrated in Figure 5, which, for a hypothetical farm labor contractor, shows the FLC relating primarily to clients and to foremen, while hired farm workers primarily relate to their foreman.

Figure 5. Structure of Relationship of Farm Labor Contractor to Farm Operator and Packer/Shipper Clients, to Other Clients, to Crew Leaders (Foremen), and to Farm and Non-Farm Workers



Most of the increased farm labor demand in California, noted previously, has been met through increased reliance on farm labor contractors. This finding is consistently reflected throughout several independent measures.

First, the extent of growth of expenditures for these services is examined. Table 14 shows Hired Labor and Contract Labor expenses reported by farm operators to the Census of Agriculture (this Census is conducted every five years; data from the 2002 Census of Agriculture will be published in 2004). The table shows these expenditures for the six most recent Census years (1974 through 1997) as reported by farm operators for the U.S. as a whole, and for California. The data is expressed in constant (1997) dollars,

corrected for overall inflation in the production sector of the U.S. economy using the PPI Deflator (*Economic Report of the President*, February 2002, Table B-65).

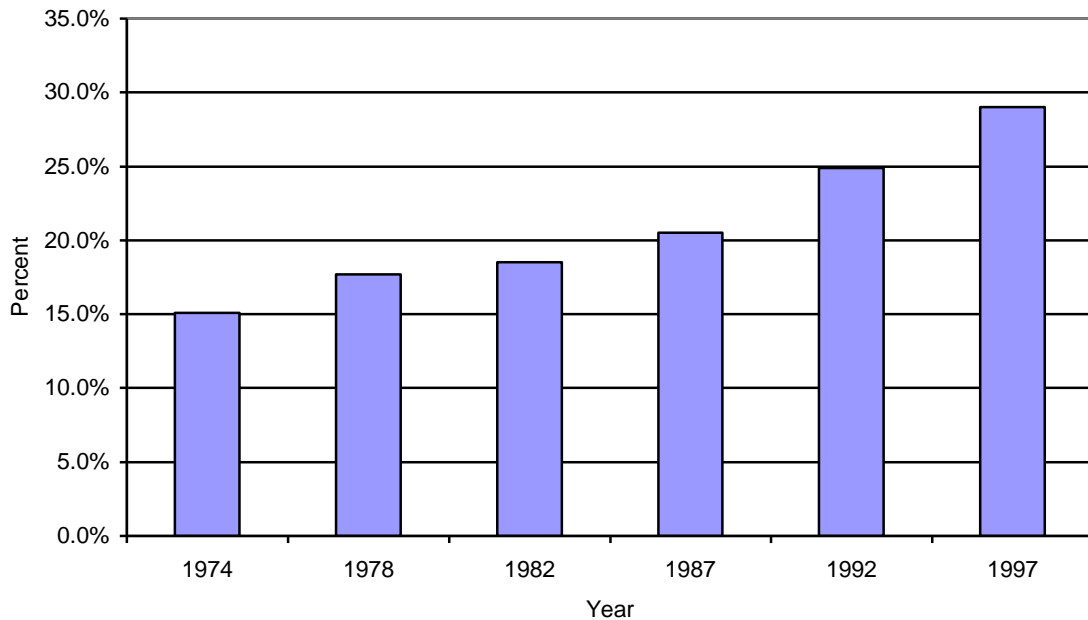
Hired Labor Expense (second and fourth columns) show a moderate increase (26% for the United States and 28% for California) over the twenty-four year period. On the other hand, the reported Contract Labor Expense has increased by 130% in the U.S. and very nearly tripled in California, a 196% increase.

Table 14. Hired and Contract Labor Expense, United States and California, Constant (1997) Dollars, Census of Agriculture

<i>Year</i>	<i>Hired Labor, United States</i>	<i>Contract Labor, United States</i>	<i>Hired Labor, California</i>	<i>Contract Labor, California</i>
1974	\$11,791,212,000	\$1,286,894,000	\$2,642,847,000	\$468,629,000
1978	12,932,707,000	1,714,692,000	2,588,359,000	555,996,000
1982	11,125,475,000	1,454,773,000	2,397,868,000	545,344,000
1987	13,587,950,000	2,304,604,000	2,982,684,000	766,966,000
1992	13,866,429,000	2,486,125,000	3,126,388,000	1,034,905,000
1997	14,841,036,000	2,959,005,000	3,392,577,000	1,386,159,000

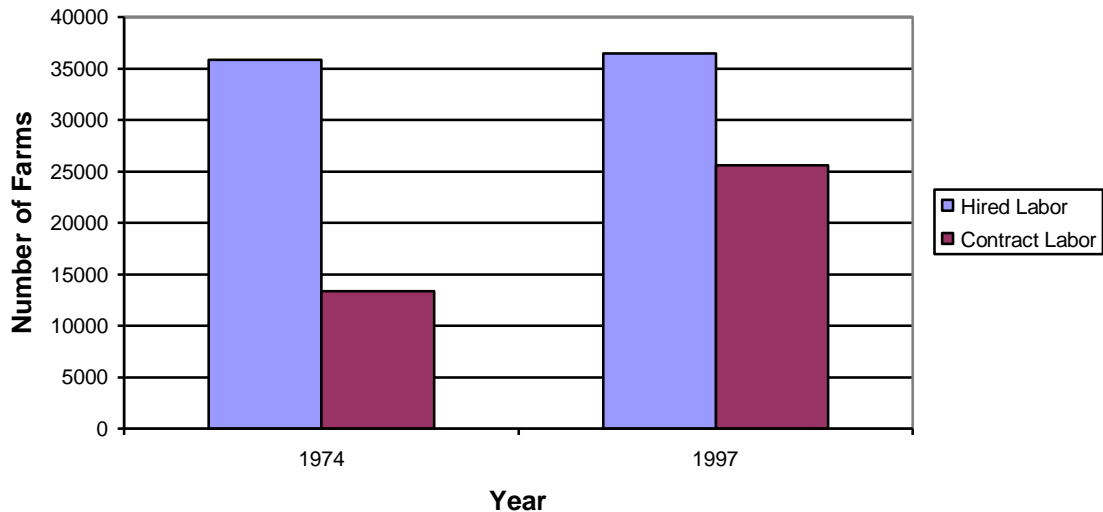
Overall, Contract Labor Expense in California, reported in the Census of Agriculture and expressed as a fraction of the sum of both types of labor costs, has nearly doubled in this period, increasing from about 15% of total reported labor expenses in 1974 to about 29% of the total by 1997. This is shown in Figure 6.

Figure 6. Contract Labor Expense, as percent of Hired and Contract Labor Expenses, California, Census of Agriculture



Secondly, equally important, the number of California farms relying on FLCs has also grown at the same time. In other words, the increased reliance on FLCs documented in Table 14 is not only due to having them perform more work on a given farm, it is also due to more farms using these services. This is shown in Figure 7, where the number of California farms reporting Hired Labor or Contract Labor expenses is reported. The number of farms reporting Hired Labor expenses increased only slightly during this period, by slightly less than 2%. But the number of farms reporting Contract Labor expenses increased by 92%. Indeed, it would appear that virtually all of the growth in contract labor has been due to the number of farms utilizing it (extensive utilization) as opposed to increases in its use by individual farms (intensive utilization).

Figure 7. Number of Farms Reporting Hired or Contract Labor Expenses, California 1974 & 1997, Census of Agriculture



These findings are somewhat incomplete because businesses that are not farm operators but nevertheless employ workers to perform farm tasks are not included in the Census of Agriculture reports. For example, a packer-shipper that only harvests and ships a crop under a joint venture agreement with a farm operator will not be asked to report its business activities in the Census of Agriculture because the company does not operate the farm. The extent of such of “on-farm employment,” and the corresponding labor expenses, for non-farmers who hire workers to perform farm tasks is not accurately known.

It is possible to estimate the magnitude of the “missing” wages of hired farm workers for 1997, not reflected in the Hired and Contract Labor expenses shown in Table 14. The estimate will be prepared by first computing the amount that wages alone represents within the Hired and Contract Labor expenses reported in the Census of Agriculture. This finding will then be compared with wage reports for all hired farm work from an independent source that reports wages alone.

In Table 14, Farm Labor expenses represent the sum of wages, employer taxes, workers compensation insurance premiums, and non-mandatory benefits, such as health insurance. Employer taxes are: FICA and Medicare, 7.65%; Unemployment insurance, 5% (estimated average value for farm employers); workers compensation insurance premiums, 7.3% (based on WCIRB data for 1997, described below). The total value of non-mandatory benefits is not known but is assumed to be close to zero. Thus, the total of employer taxes and workers compensation insurance premiums is estimated to be 19.95% of wages or about 16.63% of total compensation. From this estimate, wages represented in Hired Labor expenses is calculated to be \$2.828 billion.

In the case of Contract Labor expense, independent research established that the total of employer taxes, workers compensation insurance premiums, FLC administrative expenses, and FLC profits averaged the equivalent of about 35.9% of wages on a statewide basis during 1991 (LMID, *Farm Labor Contractors in California*, 1992, Table E-5, p. 40). This represents additional administrative costs and profits of about 15.95% of wages or about 11.73% of the total amount paid to farm labor contractors. From this reported value, total employee compensation is calculated at \$1.224 billion and wages represented in Contract Labor expenses are calculated to be \$1.020 billion.

Assuming that administrative costs are no more than 7% of the total paid to farm labor contractors, the average profit for such enterprises corresponds roughly to that of manufacturing, another highly competitive industry that exhibits large economies of scale. Since we have a high turnover in the industry (discussed further in a later section of this report) with virtually fixed labor costs across contractors due to the highly competitive nature of the business, only those contractors who exhibit a clear skill in minimizing administrative expenses will be able to continue in the industry over time. Now, these expenses are likely to decrease relative to revenue with increasing scale of operations, this helps to explain the increasing concentration of the industry in the hands of large farm labor contractors.

Hence, the total of wages derived from the reported Hired and Contract Labor expenses in the 1997 Census of Agriculture must be the sum of these two values, or \$3.848 billion. Of course, if there are non-mandatory benefits that are provided, it is clear wages alone must be less than this value.

Wage reports corresponding to all persons who worked as hired farm workers, irrespective of the nature of employer, in California agriculture for the same year (1997) can be determined from The Workers Compensation Insurance Rating Bureau of California (WCIRB), which publishes annual reports of workplace injuries, medical and indemnity expenses, workers compensation insurance premiums, and payroll for all employers in each category of workplace risk. For the 15 categories of workplace risk (termed “classification codes” by the agency) that exclusively refer to farm tasks, the total reported payroll in 1997 was \$4.666 billion (WCIRB, Policy Year 1997, Report Level 3, Payroll Amount).

The difference between wages and non-mandatory benefits found from the Census reports, \$3.848 billion, and the total value of hired farm worker wages for the same year, as determined from the WCIRB data, \$4.666 billion, is \$818 million. Hence, approximately \$818 million is the maximum estimated amount of “missing wages” if there were no non-mandatory benefits. This is roughly 17.5% of the total of hired farm

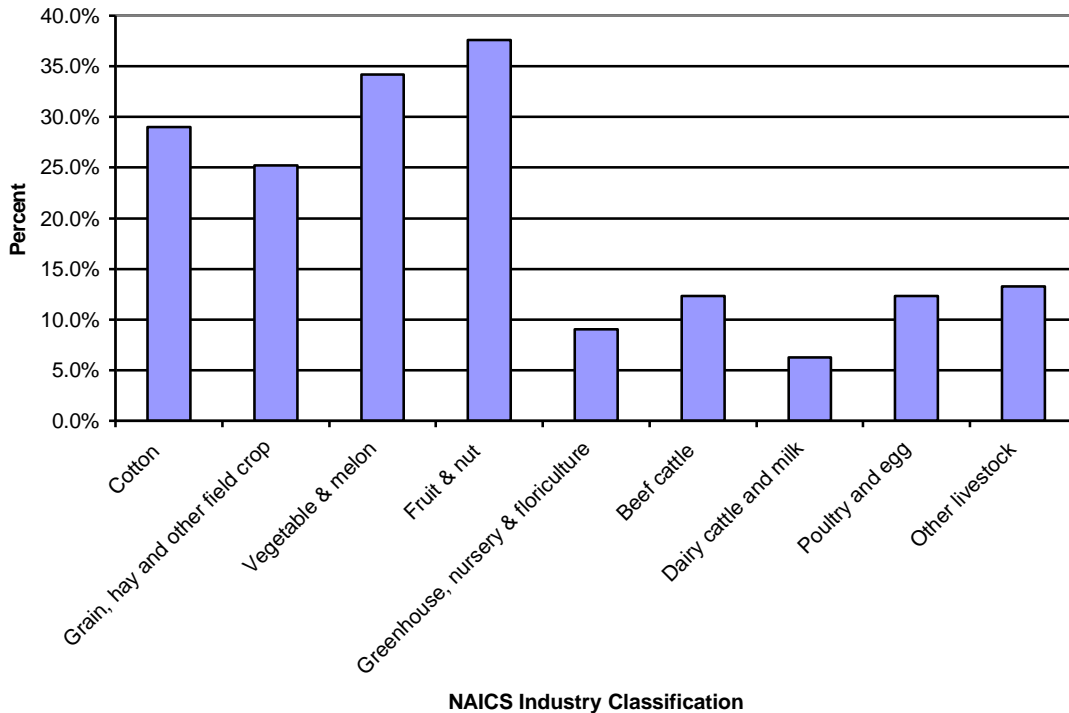
worker wages. But it is more than 21% of the total of hired farm worker wages if only the Census of Agriculture reports serve as the basis of the computation.

The greater the amount of non-mandatory benefits that may be part of the Census of Agriculture figures, the lesser will be the amount represented by wages. Hence, the *greater* will be the amount of the “missing wages.” It is not known how much of these “missing wages” represent FLC services provided to non-farmers.

There is substantial variation in the extent of the use of FLCs in different sectors of the agricultural industry. The 1997 Census of Agriculture provides sufficient data to provide some insight into this variation. Shown in Figure 8 is the proportion that Contract Labor expenses represent out of the total of Hired Labor and Contract Labor expenses for each of the major farm sectors.

Overall, Contract Labor expense as a percentage of the total of Hired and Contract Labor expense varies from 6% (dairy) to 38% (fruit and nut). Livestock farms, and greenhouse and nursery floriculture farms use relatively little labor furnished by farm labor contractors. Dairies and greenhouse farms normally operate year-round, and their employees tend to work in that capacity as well.

Figure 8. Contract Labor Expense, Percent of Total of Hired and Contract Labor Expenses, by Type of Farm, California, 1997, Census of Agriculture



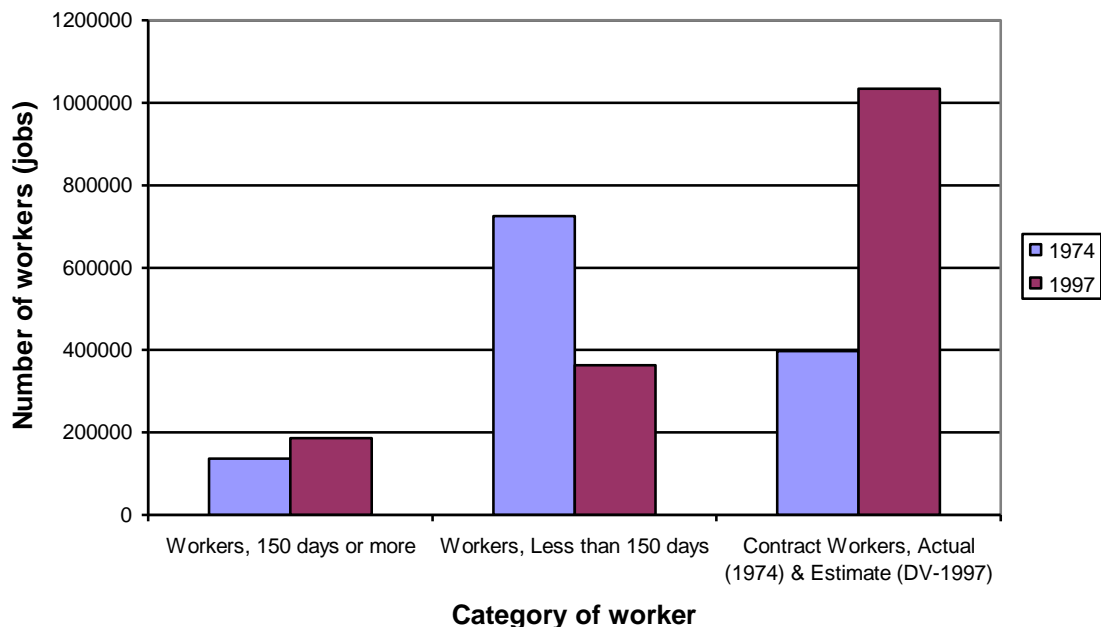
On the other hand, most other types of crop farms make extensive use of FLC labor. Evidently, fruit and tree nut farms have the greatest reliance on labor contractors, followed in importance by vegetable and melon farms. Both of these sectors, except for tree nut farms, rely heavily on manual labor. But cotton farms, highly mechanized from

planting to harvest, also relies to a substantial degree on farm labor contractors. This is because cotton cultivation requires manual labor to thin and weed. Herbicides to control weed pests would damage the growing crop, so crews furnished by labor contractors are brought in to hoe the fields. The recent development of herbicide-resistant varieties will likely reduce the reliance of cotton farmers on hand hoe crews.

A particularly useful insight into the role of farm labor contractors can be obtained from Census of Agriculture reports of “hired workers.” Each farm operation that directly hires workers is asked to indicate the total numbers as well as the number who worked 150 days or more, and the number who worked less than 150 days. The latter workers are usually thought of as “seasonal” employees, and the former as “regular” employees. The total Hired Labor expense in each category is also reported.

In addition, in just one Census of Agriculture (1974), farmers were asked to report on the number of contract workers on their farm, and to also report the corresponding Contract Labor expense. Since many farmers may have insufficient information to respond accurately to this question unless they go to some effort to find the FLC and seek to obtain the requested information, the Census dropped this question in later years.

Figure 9. Hired Farm Workers (Jobs), California, 1974 & 1997, Census of Agriculture



The main point is that a worker who is employed, either direct-hire or through and FLC, may actually perform farm tasks on two or more farms, and will be counted more than once in the Census reports. For this reason, it is more accurate to describe these Census findings as “jobs” rather than “workers” since a count is triggered each time a worker is hired to perform a job on a farm.

Figure 9 shows these findings for 1974 and 1997. The 1974 figures are taken directly from the Census of Agriculture, with appropriate adjustment for unreported of Contract Workers. The 1997 data for direct-hire workers is also taken from the Census of

Agriculture. However, since the 1997 Census did not ask about the number of Contract Workers, it proved necessary to estimate the value for that year, a procedure described more fully below.

There are several important findings shown in Figure 9. First, the number of direct-hire “jobs” of duration 150 days or more rose substantially during this period, by about 50,000 to 186,358, or roughly 37%. Many of these are believed to be virtually year-round jobs in such industries as dairy, and greenhouse and nursery floriculture. Also, many older farmers report that they are finding it difficult to persuade their children or others of the next generation to make farming a career, so farm or ranch manager positions have become more numerous, replacing farmer or unpaid family labor.

Second, the number of direct-hire “seasonal” jobs, those lasting less than 150 days, fell dramatically by half 50%), to just 362,907 in 1997, from 725,127. In fact, the number of these direct-hire “seasonal” jobs reported for 1997 was actually smaller than the number of Contract Workers jobs reported in 1974 (396,688).

Third, the number of estimated Contract Worker jobs in 1997 was 1,033,881, some two-and-one-half times larger than the number reported in 1974. However, care must be exercised in reference to this estimate. It is based on an extrapolation procedure that, unfortunately, cannot be directly tested.

The Contract Worker job estimate for 1997 was constructed as follows. Using the 1974 reports for hired workers, the amount of expense per direct-hire job that was less than 150 days in duration was calculated (workers, less than 150 days: 725,127; amount paid, less than 150 days: \$358.4 million). The result is \$494 per direct-hire job of 150 days or less.

Next, the expense per contract-hire job was calculated (workers, contract labor reported: 281,704; amount paid, contract labor reported: \$131.6 million). The result is \$467 per contract-hire job.

The ratio of expense per contract-hire job to that of direct-hire jobs of 150 days or less is, thus, $(\$467/\$494) = 0.9455$. Note that the two values in the ratio are nearly equal and that the ratio is independent of dollar value. What this result means is that, in 1974, the average expense per contract-hire job was very nearly the same as the average expense per direct-hire job. In other words, they were nearly comparable in cost to the farmer. To put it another way, in economic terms they are essentially equivalent.

Estimation of the number of Contract Worker jobs in 1997 proceeds under the hypothesis that the same ratio holds in 1997. In other words, if it is possible to calculate the average expense per direct-hire job lasting less than 150 days, then using the ratio 0.9455 from 1974 makes it possible to find the cost per contract-hire job. From the 1997 Census of Agriculture, the expense per direct-hire job lasting less than 150 days is determined to be \$1,418 (see County Data, Table 5. Hired Farm Labor – Workers and Payroll, 1997, NASS, *Census of Agriculture. California. 1997*. Note that the data for farms reporting only workers working less than 150 days was utilized). Hence, the estimated expense per contract-hire job is found to be \$1,341.

Since the total Contract Labor expense reported in the 1997 Census of Agriculture for California was \$1,386 million, the estimated number of contract-hire jobs is found to be $(\$1,386,000,000/\$1,341) = 1,033,600$. There is no direct way to confirm this estimate. Of course, an individual employed by an FLC may be represented by several such

contract-hire jobs in the Census. This is because the FLC may bring a given crew to several different farms in the course of a crop season.

It is possible to compare the ratio of the average costs of contract-hire jobs to “seasonal” direct-hire jobs for other states. When this is done for all states reporting at least 10,000 contract-hire jobs, the results for the ratio are as follows: Arizona, 0.8564; Florida, 2.4301; Idaho, 0.7182; North Carolina, 1.7030; Oregon, 1.1108; Texas, 0.9144; Washington, 1.4719. Interestingly, the average ratio in the four western states is 1.0393, while for the two eastern states it is about twice as large, 2.066. Thus, the range of values is from 0.7182 to 2.4301.

If the ratio for California in 1997 were as small as 0.7182, then the estimated number of contract-hire jobs would be 1,361,000. But if the ratio were as large as 2.4301, the estimated number of contract-hire jobs would be 402,200. At either extreme, the estimate would actually exceed the reported number of direct-hire jobs of duration less than 150 days.

Relatively little is known about the scope of Farm Labor Contractor industry. For example, the value of total receipts (gross income) of the industry in any year has never been accurately determined. While the Census Bureau regularly examines important U.S. industries, no current Economic Census reviews the Agricultural Service sector of the economy, and none includes the Farm Labor Contractor industry. Only during 1969, 1974 and 1978 did the Census of Agriculture seek to conduct a special Census of Agricultural Services, which effort was fraught with difficulties. The Census Bureau relies primarily on mail-out solicitations for participation. Despite great efforts, it was determined that it was nearly impossible to develop a sufficiently reliable mail list. After 1978, this Special Report was abandoned.

In retrospect, it is fair to say that in both 1969 and 1974, the published Special Reports on Agricultural Services very likely failed to include a majority of FLC activity. For example, in 1974, for the entire United States, this Census reported just \$145.2 million in gross receipts. But the 1974 Census of Agriculture reported that farm operators paid \$511.6 million in Contract Labor expenses. Thus, the Special Report on Agriculture Services found only 28% of the total reported by farmers.

The 1978 Special Report on Agricultural Services fared substantially better, reporting \$441.2 million in FLC receipts for the nation, as compared with Contract Labor expenses of \$908.1 million reported by farmers in the Census of Agriculture. In this case the Special Report on Agricultural Services found nearly half (49%) of what farmers reported as Contract Labor expenses.

Table 15. Gross Receipts, Payroll, Supplemental Labor Costs, and Estimated Operating Margin, Nominal Dollars (millions), Farm Labor Contractors, California, *Census of Agriculture, Volume III, Agricultural Services, 1974 (Table 18) and 1978 (Table 23)*

<i>Year</i>	<i>Establishments</i>	<i>Gross Receipts</i>	<i>Payroll</i>	<i>Supplemental labor costs</i>	<i>Operating margin</i>
1974	178	\$79.0	\$63.2	\$4.6	\$11.2
1978	582	267.0	187.1	24.7	55.2

The 1974 and 1978 Special Reports on Agricultural Services did produce some useful findings. Most importantly, for those FLCs who were identified and did respond, aggregate totals for gross receipts, payroll and supplemental payroll expenses (mandatory employer taxes, workers compensation insurance premiums and non-mandatory benefits) were published. These figures provide baseline data for estimating FLC costs as a percentage of receipts in those years. The findings for California FLCs are summarized in Table 15.

The estimated operating margins were 14% in 1974 and 21% in 1978. Taken at face value, the data shown in Table 15 suggest that in 1974 California FLCs charged their customers an average of 25% above direct payroll costs, and in 1978 the charges amounted to an average of 43% above payroll. But it must be remembered that farmers report Contract Labor expenses to the Census of Agriculture, which are equivalent to FLC Gross Receipts. In 1974, California farmers reported \$186.3 million in Contract Labor expenses, and in 1978 they reported \$294.4 million.

The 1974 Agricultural Services Census figure for FLC Gross Receipts, quoted in Table 15, represents somewhat less than half (42%) of the total reported by farm operators. In 1978, the figure for gross receipts in Table 15 is much closer (91%) to the Contract Labor expense figure reported by farmers. For this reason, the 1978 average of 43% of payroll charged by FLCs is likely to be a more reliable indicator of the true situation as compared to the implied figure for 1978.

The 1991 survey of FLCs produced the result that those FLCs who charge a commission based on payroll obtained a commission of 35.9% of payroll, not terribly much smaller than the figure of 43% for 1978 that was deduced from the data provided by the Census. About two-thirds of the 180 FLCs interviewed in 1991 were using this method of establishing the commission as a fixed percentage of payroll expenses. Of course, payroll taxes, workers compensation insurance premiums, non-mandatory benefits, office and administration expenses must be paid out of the commission, leaving a small margin, perhaps as low as 10%, on average, as profit for the FLC.

Farm labor contractor employment in California

In order to provide support and oversight for a specific industry, it is essential to have reliable records of firms active in that industry. The number of firms, employment, wages, geographic identifiers and other measures are vital components of accurate record keeping.

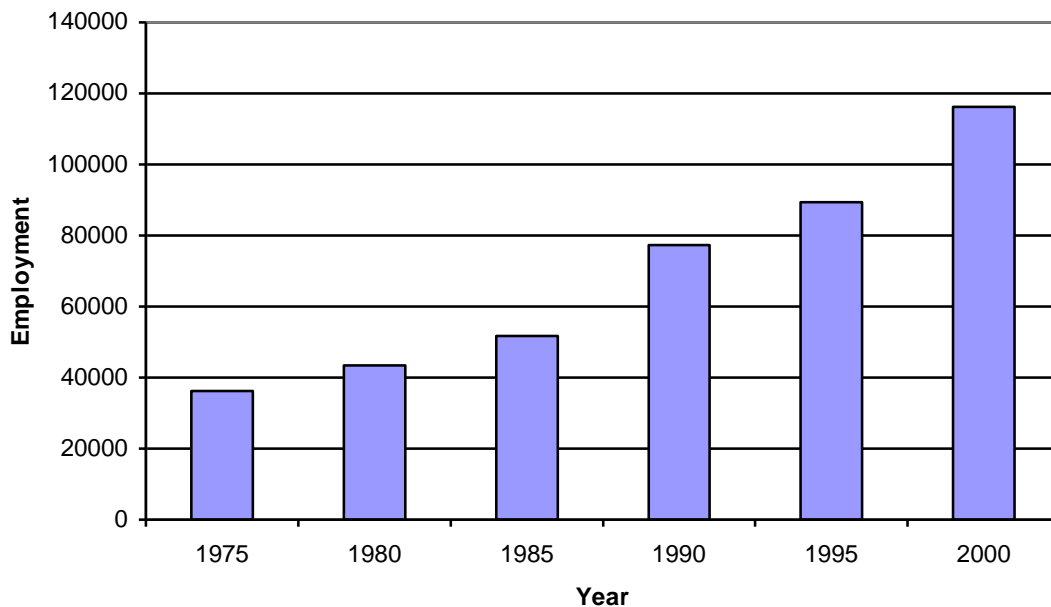
Given the exceptionally high annual rate of turnover of FLC firms (described in detail in a later section of this chapter), state licensing and record keeping faces an especially difficult challenge in maintaining accurate and up-to-date records of these businesses. The Division of Labor Standards Enforcement (DLSE) has responsibility for licensing of FLCs in California. This license is annual, and renewal requirements now include obtaining tax clearance from the Internal Revenue Service as well as satisfactory completion of in-service training.

The only published data reporting employment by businesses classified as farm labor contractors by EDD (SIC = 0761) shows the same dramatic increase described previously. According to these reports, annual average employment rose from fewer than 40,000 in 1975 to more than 115,000 by 2000. The actual number of workers employed

by FLCs reporting in the SIC 0761 industry is far greater because most are hired for short-term farm tasks. From data on average wage rates and earned income reported by FLC employees (see p. 74, Table 22), it is likely that only a small portion of FLC employees have more than half-a-year's work. Using 26 as the average number of weeks worked, the total number of FLC workers is estimated to be 230,000.

Figure 10 shows these employment figures. Caution must be exercised when interpreting the data in this figure because, as is demonstrated in Table 16 of this chapter (see p. 54), many farm labor contractors reported their employment (and wages) in other SIC codes than 0761 during 2000. Thus, the data presented in Figure 10 is certainly incomplete by an unknown amount.

Figure 10. Farm Labor Contractors (SIC = 0761), Annual Average of Monthly Employment, California, EDD



The sharp increase in employment reported by farm labor contractors classified as SIC = 0761 is also reflected in corresponding increases in the aggregate total of wages paid, and in their industry's share of total statewide employment. This is shown in Table 16. Of considerable significance, the number of establishments reporting to EDD in this industry's SIC code has roughly doubled during the past quarter century, to about eleven hundred firms. Thus, there has been growth in the number of FLCs as well as in their level of employment.

Careful examination of individual employer reports to EDD for the year 2000 shows, however, that the above data understates the true extent of FLC employment. By utilizing a comprehensive electronic file of farm labor contractors licensed by the Division of Labor Standards Enforcement (DLSE) of the California Department of Industrial Relations, an effort was made to match each license holder with a corresponding EDD report.

Table 16. Farm Labor Contractor Industry (SIC 0761), California, Annual Average Employment, Total Wages and Quarterly Average Number of Establishments. EDD and BLS

<i>Year</i>	<i>Employment (Annual Avg)</i>	<i>Total Wages (nominal dollars)</i>	<i>Number of Establishments (Average of Quarterly)</i>	<i>Percent of Total CA Employment</i>
1975	36135	N.A.	N.A.	0.420%
1980	43454	\$210,073,557	679	0.403%
1985	52091	\$318,702,942	736	0.432%
1990	74811	\$571,860,675	901	0.522%
1995	101592	\$788,690,597	1059	0.715%
2000	114414	\$1,250,645,000	1139	0.704%

EDD classified 1,156 businesses as FLCs (SIC = 0761) in 2000 that reported wages paid in at least one calendar quarter. Most were FLCs licensed by DLSE, but several hundred were not. As shown in Table 17, an additional 271 licensed FLCs reported employment and wages in other SICs. Several other licensed FLCs were classified in SICs other than 0761 but did not report either wages or employment.

Table 17. Farm Labor Contractors, Annual Average of Monthly Employment and Total Wages by SIC Code, 2000, California. Author's Analysis of EDD Data.

<i>SIC Code</i>	<i>Number of FLCs</i>	<i>Annual Average of Monthly Employment</i>	<i>Total Annual Wages</i>
0131 (cotton)	3	438	\$3,349,643
0161 (vegetables & melons)	30	2,615	\$35,091,044
0172 (grapes)	60	3,069	\$46,122,992
0173 (tree nuts)	3	132	\$2,198,362
0174 (citrus fruits)	9	346	\$3,204,293
0175 (deciduous tree fruits)	8	342	\$2,832,195
0179 (fruit farms, not classified)	13	384	\$3,234,397
0191 (general farm, crops)	37	2,530	\$33,054,554
Other crop farm codes (4)	5	52	\$1,036,544
0721 (soil preparation services)	14	1,310	\$16,640,921
0722 (crop harvesting)	23	2,271	\$36,766,813
0723 (prepare crops for market)	15	2,281	\$37,916,460
0762 (farm management)	23	1,851	\$28,539,492
4212 (local trucking)	7	292	\$4,818,353
9999 (nonclassifiable firms)	10	145	\$2,221,998
Other SIC codes (8)	11	1,424	\$22,161,193
<i>Total – 26 SIC codes</i>	<i>271</i>	<i>19,482</i>	<i>\$279,189,254</i>

As shown in the table, the amount of reported employment and wages by licensed FLCs in these other SIC codes during 2000 is significant. Some reported as various types

of farm operators (SIC = 01xx), others reported as crop harvesting firms (SIC = 0722), and still others reported as trucking and warehousing companies (SIC = 42xx). Altogether, about 17% additional annual average employment and 22% more in wages were reported by licensed FLCs reporting in these SIC codes.

It is not surprising to find so many FLCs classified in a large variety of other business activities. Many FLCs, as many as two-thirds, operate other businesses as well as their farm labor contractor business (LMID, *Farm Labor Contractors in California*, 1992, p. 24). Industries represented include farming, farm management, custom harvesting, trucking, food packing or processing, real estate and restaurants. An FLC who also operates a custom harvest business may not be required to obtain a farm labor contractor license for that activity because furnishing harvest machinery normally does not require licensing by DLSE. Then, if the employer reports all of his employment under SIC=0722, those workers who actually are FLC employees would not appear in SIC=0761.

Matching FLC license records with EDD wage and employment reports

A comprehensive electronic data file of currently licensed FLCs was supplemented with a data file of all license holders dating back to 1988. Staff at DLSE kindly provided the author with a comprehensive electronic data file of all of these records, updated through May 7, 1992. The file contains 3,072 records, of which 1,049 pertain to firms designated by DLSE as “active” license holders at that time. The remainder were designated “expired” or, in a few cases, are unclassified. Thus, most records in the file are of firms that were licensed at some point in time in the previous dozen or so years but have lapsed without being renewed.

Table 18. Industries and SIC Codes with Utilized EDD Wage and Employment Records

Agriculture Forestry & Fishing
Agricultural Production, Crops (01xx)
Agricultural Services (071x, 072x, 076x)
Construction
General Building Contractors (15xx)
Special Trade Contractors (17xx)
Manufacturing
Preserved Fruits and Vegetables (203x)
Apparel and Other Products (23xx)
Electronic and Other Electric Equipment (36xx)
Transportation and Public Utilities
Trucking and Warehousing (42xx)
Wholesale Trade
Grocery and Related Products (514x)
Farm Product Raw Materials (515x)
Retail Trade
Grocery Stores (541x)

Finance, Insurance and Real Estate
Real Estate Operators and Lessors (651x)
Real Estate Agents and Managers (653x)
Services
Hotel and Motels (701x)
Personnel Supply Services (736x)
Building Maintenance Services (7349)
Social Services (83xx)
Engineering and Management Services (87xx)
Services, N.E.C. (89xx)
Non-Classifiable Services (9999)

The license holder file was then compared against confidential files of employers' quarterly records of employment and wages for the year 2000, made available to the author through the kind cooperation of the California Department of Employment Development. This latter set of files included reports by all employers in any one of seventeen industries, which are identified by the Standard Industrial Classification (SIC) codes in Table 18. Obviously, the "Farm Labor Contractor and Crew Leader" industry (SIC 0761) was the most important to include as were all types of farm operators. But employment agencies, construction contractors and various other types of providers of services, both within and outside of agriculture, were included as well. A total of more than 275,000 employer records were in the files furnished by EDD.

The results of this comparison are illuminating as to the difficulty of maintaining reliable records for the FLC industry. First, electronic matching of the license file with either Legal Name of the business or DBA Name of the business yielded 557 records, of which only 390 were from the SIC 0761 file.

Then, a careful manual search of the EDD files using license file names and license file mailing or business site addresses, yielded matches for another 602 records, of which 498 were from the SIC 0761 file. Differences in Legal Name of the business, or of DBA Name, in the license file as compared with the corresponding record in the EDD files accounted for the significant failure of electronic matches. In some cases, these differences were rather minor, such as spelling errors in one of both of the files, or use of non-standard abbreviations. In other cases, the differences were quite substantial, often related to the widespread use of dual surnames by persons of Hispanic origin, or of the use of an entirely unrelated DBA Name in one file as compared with the other.

Thus, in the end, matches of license records were obtained for 1,159 records, of which 888 were from the SIC 0761 file. But some of these matches were for FLC firms whose licenses expired during 2000. The number of matches can be compared, respectively, with the file size for license holders and with the number of SIC 0761 records (1,274 during 2000). Importantly, an estimated 82% of FLC firms holding active licenses at some point during 2000 were matched with records from the EDD file, and 63% were located in the SIC 0761 file. On the other hand, only slightly more than two-thirds (70%) of EDD's SIC 0761 employer records were matched with licensees from the DLSE file.

The finding that roughly eight of ten license holder records were matched with employment records suggests that most FLC licensees are reporting wages and

employment. But the fact that nearly one-third of all employers who describe their business as farm labor contracting cannot be found among license holders is disturbing. These findings suggest that while fairly good records of employment and wages are available for licensed FLCs, it appears that it is likely that some active farm labor contractors who should be licensed are not.

Since it was found that nearly one-third of the EDD file of self-described farm labor contractors could not be matched against the DLSE file of licensees, an effort was mounted to investigate a sample of the unmatched firms. The findings are illuminating. Some were discovered to be primarily farm operators who may, or may not, also occasionally engage in labor contracting activities. Still others were discovered to be farm management businesses that may, or may not, provide a full range of hired farm labor, depending upon the needs of the client. One vineyard management firm describes its business as providing "...full management services from planting to harvest..." Whether this firm's activities technically fall within the requirements for licensing may well be subject to interpretation.

Most disturbing in this effort was the discovery that some unmatched firms in EDD's SIC 0761 file have been repeatedly found to be engaged in farm labor contractor activities over a number of years but have never been licensed. For example, during the 1990s, one firm, reporting several million dollars in annual payroll in 2000, was repeatedly fined by Cal-OSHA inspectors for "serious" farm safety violations and was identified by those inspectors as a farm labor contractor (SIC 0761). On four different occasions, this firm was subject to inspection as a result of accidents, in one case described in the accident report as "Employee Fractures Neck in Fall From Ladder." Three of these investigations included classification of the firm as SIC 0761, farm labor contractor (the fourth inspection classified the firm as SIC 0174, Citrus farm). Yet, this corporation has never been licensed under its name, and there are no records at the offices of the appropriate County Agricultural Commissioners indicating that this firm operates a farm. At the same time, the California Secretary of State currently reports that the firm, which is a corporation, is "active" and its corporate status is clear.

A borderline category is firms involved in activities that may, or may not, require licensing as a farm labor contractor. An interesting example is the providing of reforestation services, an industry that, strictly speaking, is not farm production (Forestry is classified as SIC 08xx, whereas Agriculture is within SIC 01xx, 02xx, and 07xx). But it is an activity within the larger Industry Group termed "Agriculture, Forestry and Fishing."

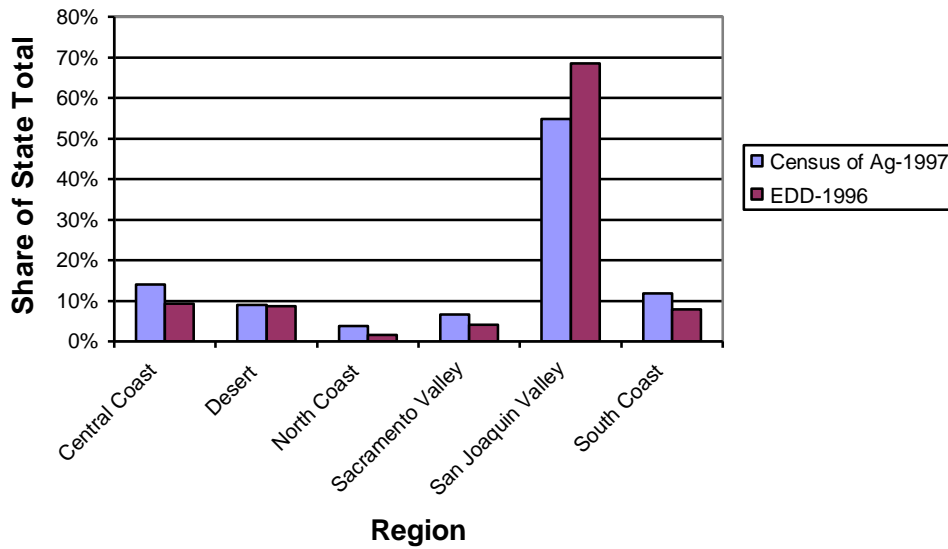
Careful review of information provided by a number of these firms in connection with approval for Small Business Administration services reveals that much of their revenue is derived from contracts to provide forestry services in U.S. National Forests. Like labor contractors, the firms hire workers who then perform the services specified in the contract. Persons employed to clear brush, apply herbicides, or plant seedlings perform tasks that are really no different than farm tasks. Also, like much hired farm work, employment is highly seasonal. There are a number of firms providing these services in California, and most report to EDD within the industry code SIC 0761. In other words, they consider themselves to be farm labor contractors. Curiously, some of the latter have maintained active farm labor contractor licenses for many years, but in reviewing the files regarding unmatched firms, it was discovered that several large

reforestation service firms are not licensed. What is unclear is whether farm labor contractor licensing should be required of all reforestation companies.

It is not known how many of the unmatched firms in EDD’s SIC 0761 file should have been licensed at that time (CY 2000). Quite possibly, some are no longer in business or may have ended their farm labor contracting activities. On the other hand, the fact that so many describe their business as “farm labor contracting,” some even to the extent of using this terminology in their firm name, suggests that quite a few should have been licensed, but were not.

In 1990, a similar matching effort was undertaken in connection with the report *Farm Labor Contractors in California*. In that instance, only SIC 0761 files were obtained from EDD and used for matching purposes. It was found that 657 licensees were matched with EDD wage and employment reports. This represented 61% of the licensee file which totaled 1,080 records at that time. The finding for 1990 can be compared with the new finding for 2000: when comparing licensee records with EDD’s SIC 0761 file, in 1990 it was found that 61% of licensees were matched, and in 2000, 59% were matched. From this it can be concluded that there has been no significant progress in the past ten years in developing a more accurate correspondence between FLC license holders and those employers who report as self-described farm labor contractors to EDD.

Figure 11. Geographic Distribution of FLC Labor Demand vs. EDD Report of Employment, California



Large discrepancies were also found between the counties where many FLC employees actually worked and the county in which their employment was reported to EDD. When examining the EDD files a nearly universal practice was found in which self-described FLCs report all of their employment as having occurred within a single county, usually the one where their business office is located. Just two FLCs provided separate reports for their operations in two or more counties. However, as demonstrated elsewhere in the present report, a great many FLCs operate in two or more counties. Yet

all of these multi-county operators submit a single report as though all of their workers were in that county. One FLC conducts operations in nineteen of California's counties but its reports to EDD indicate its employment is entirely in the county where its home office is located. This has the effect of substantially distorting the reported geographic distribution of actual FLC employment.

The amount of the distortion of the geographic distribution of FLC employment attributable to the practice of single county reporting by multi-county employers can be estimated. The Census of Agriculture reports the amount of Contract Labor Expense by county for each of the state's 58 counties. On the other hand, the EDD *Agricultural Bulletin* provides monthly, and annual average, employment and wage rates for each major industry category, including farm labor contractors. Unfortunately, EDD has not been able to provide data for the most recent Census year (1997) or for the year following (1998). Accordingly, EDD data for 1996 has been used for comparison purposes.

When this comparison is carried out, it is found that the discrepancy is unacceptably large, an average difference of 32% for the six agricultural regions of the state. For the Central Coast, FLC employment is estimated by EDD to be about 34% smaller than Census of Agriculture contract labor expense would indicate. It is well known that many of the state's largest FLCs are based in the Central Coast, but also hire crews of workers to work in the Desert region during the winter months, and in the San Joaquin Valley as well.

At the other extreme, EDD's estimate of FLC employment in the San Joaquin Valley is about 24% higher than Census of Agriculture contract labor expenses indicate. The EDD estimate of South Coast FLC employment is worse, some 30% too small.

These findings are shown in Figure 11, where the regional distribution of Contract Labor Expense is compared with the EDD findings for annual average employment. The EDD employment data has been adjusted for regional differences in FLC annual average weekly earnings, as reported in the 1996 *Agricultural Bulletin*. This adjustment is necessary because the Census data refers to expenses (dollars) while the EDD findings are of employment.

Inspection of individual employer EDD records shows that a few FLCs who operate other businesses file separate reports for both lines of business. A citrus packinghouse, for example, that employs harvest crews on behalf of their growers, reports in SIC=0761 for these crews, and in another SIC for its packing workers.

Some of the ambiguity in assigning an employer to an SIC code may be related to definitional problems. Most of the FLCs classified as SIC=0723 (Crop preparation for market) have the words "packing" or "packing and harvesting" in their business name. A majority of the FLCs classified in this SIC that have the word "packing" in their business name, and that are also listed in the Western Growers Association member directory, describe their business as "Field Packer" or "Packer/Shipper" in that directory. It is likely that these businesses choose this type of self-description because they feel it more accurately describes what they do, as opposed to the more generic "farm labor contractor."

A number of FLCs describe their businesses as Employment Agencies, perhaps because they so closely resemble Temporary Help Agencies in their relationship to workers and to their clients. This industry category falls within the more general grouping "Personnel Supply Services," described in Chapter Two of this report. Like

Temporary Help Agencies, FLCs provide temporary workers at the client’s work site, and perform tasks that are in accord with client directives, both as to when to work and how the work is to be done. Also, these hired farm workers are formally employees of the FLC, not the farm operator. For that reason, the FLC pays for mandatory workers compensation insurance at rates determined by his/her safety record, which may or may not accurately reflect workplace risk factors at the farm operator’s site. But, unlike Temporary Help Agency workers sent to industrial or office work sites, FLC workers are normally under the supervision of the FLC’s foremen and supervisors, not the client’s.

Even the highly respected business data firm, Harris Information, identifies some FLCs in the Help Supply Services industry. For example, “Green Thumb Farm Labor” is described as providing “employee leasing for the agriculture industry.” (2002 *Directory of California Wholesalers and Service Companies*, Harris Information, p. 836).

EDD, in describing major employers at the individual county level on its web site, lists a number of licensed FLCs, mostly in rural or heavily agricultural counties. Interestingly, EDD has been unable to resolve these classification ambiguities. All licensed FLCs listed in any county’s roster of major employers are shown in Table 19, together with the industry category to which they have been assigned by EDD.

Of the seventeen firms, just six are identified as active within the “Farm Labor Contractors” or “Farm Labor and Management Services” industry. A total of nine are identified as firms operating as “Personnel Supply Services.” One is identified with “Services, All Other,” and one as “Painting and Paper Hanging.”

Table 19. Licensed Farm Labor Contractors and Industry Identification, Major Employer List, by County, EDD/LMID
(<http://www.calmis.cahwnet.gov/htmlfile/subject/MajorER.htm>)

Colusa

Jose M Sandoval-Farm Labor – Personnel Supply Services

Fresno

Kreger Inc, Five Points – Farm Labor and Management Services

Imperial

E-Z Labor, Brawley – Personnel Supply Services

Kern

T and R Banghi Ag, Delano – Personnel Supply Services

Kings

Double L Contracting, Lemoore – Personnel Supply Services

Madera

Central Ag Labor, Madera – Personnel Supply Services

Monterey

Arroyo Labor Contracting Services, Gonzales – Personnel Supply Services

Foothill Packing Inc, Salinas – Services, All other

Norcal Harvesting, Salinas – Farm Labor Contractors

Premium Harvesting and Packing, Salinas – Farm Labor and Management Services

Quality Farm Labor, Gonzales – Personnel Supply Services

Napa

Jack Neal and Sons, Inc, St Helena – Painting and paper hanging

Riverside

Jorge C Ochoa Farm Labor Contractor, Indio – Farm Labor and Management Services
San Benito

Jesus Quintero, Inc, Hollister – Personnel Supply Services
San Luis Obispo

Ramirez Farm Labor, Shandon – Personnel Supply Services
Tulare

Valley Labor Services, Dinuba – Farm Labor and Management Services

Latino Farm Labor Services, Visalia – Farm Labor and Management Services

By utilizing the comprehensive list of FLCs reporting to EDD in 2000 as SIC = 0761, and of licensed FLCs reporting in all other SIC codes, the revised annual average employment, total wage and establishments figures that replace those in Table 15 are as follows: Annual Average Employment, 134,958; Total Wages, \$1.5 billion; Establishments, 1,427. And FLCs accounted for 0.811% of state employment.

The findings of the comprehensive list can also be used to compare with the two published sources data on farm labor contractor employment in California in 2000. One such publication is *Farm Labor*, a quarterly survey of farm employment in the U.S. The other is *Agricultural Bulletin*, a monthly publication of EDD. Table 20 shows this comparative data.

Table 20. Farm Labor Contractor Employment, California, Monthly, 2000, Comparison with Agricultural Service Employment (*Farm Labor*, USDA), and with Farm Labor Contractor Employment (*Agricultural Bulletin*, EDD)

<i>Month</i>	<i>Farm Labor (USDA)</i>	<i>Agricultural Bulletin (EDD)</i>	<i>Comprehensive (the author – employer reports, EDD)</i>
January	75,000	69,700	96,017
February	n.a.	94,500	96,049
March	n.a.	77,400	96,548
April	85,000	86,600	134,475
May	n.a.	124,800	155,804
June	n.a.	141,900	166,836
July	99,000	150,300	177,409
August	n.a.	151,700	170,149
September	n.a.	156,600	177,574
October	86,000	109,100	135,949
November	n.a.	97,400	109,087
December	n.a.	82,600	103,597
<i>Annual average</i>	<i>86,250</i>	<i>111,883</i>	<i>134,958</i>

USDA's *Farm Labor* reports the lowest figures for three of the four months it covers, and its average for the year, based only on these four reports, is the lowest among the three sources. EDD's *Agricultural Bulletin* reported employment data for all twelve months. For each and every month this source also reports lower employment

figures than the results from the comprehensive list assembled by the author from individual employer reports to EDD.

Importantly, the peak employment month in both the *Agricultural Bulletin* and the comprehensive list is September, when the latter's figure is just 14% larger than EDD's estimated value. The largest monthly difference occurs during April, when the comprehensive list yields 134,475, more than 56% larger than is found in either the USDA survey or the EDD survey.

In any case, it appears that both the *Farm Labor* and *Agricultural Bulletin* surveys underestimate the amount of farm labor contractor employment in California.

Size concentration of FLC employers

The comprehensive FLC employment list assembled by the author from individual employer reports to EDD can be used to examine the size distribution of these firms in California. In other words, are most FLC businesses small in terms of numbers of employees, or are a few large firms dominant? To accomplish this analysis, all firms categorized by EDD in the industry SIC = 0761 and all additional licensed FLCs that were classified in other SICs by EDD were merged into a single list (the comprehensive list) and then ranked in descending order of annual payroll. Both total annual payroll and annual average of reported monthly employment were determined for each firm. In all, 1,427 firms were listed.

Figure 12. Number of Farm Labor Contractors by Size Category of Annual Payroll, California, 2000, Author's Analysis of EDD Data

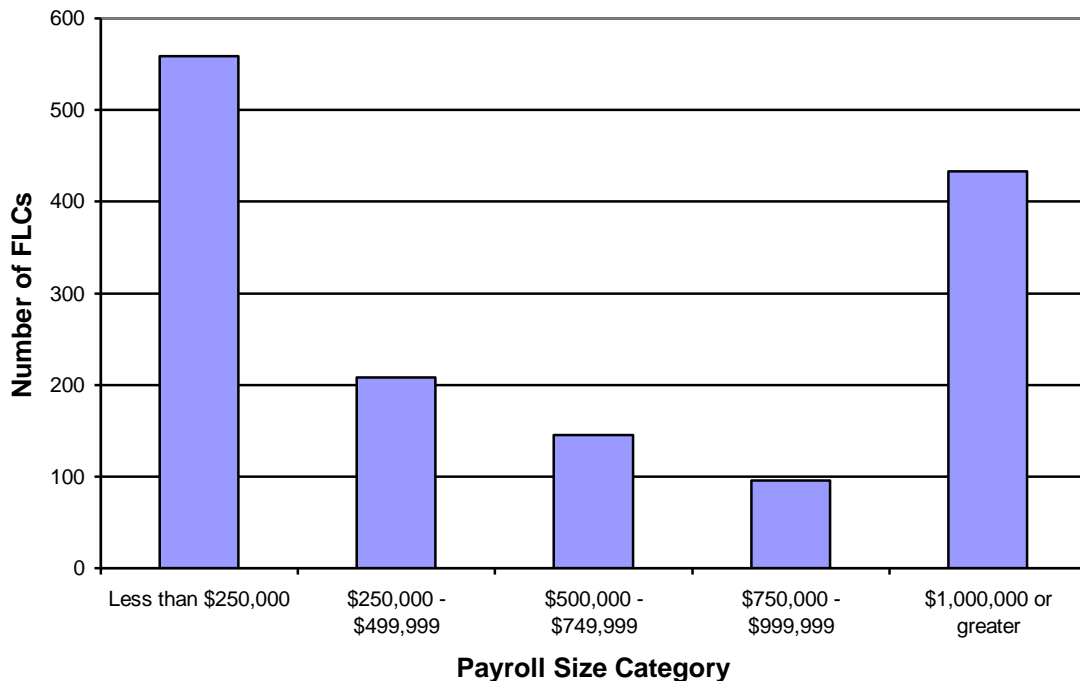
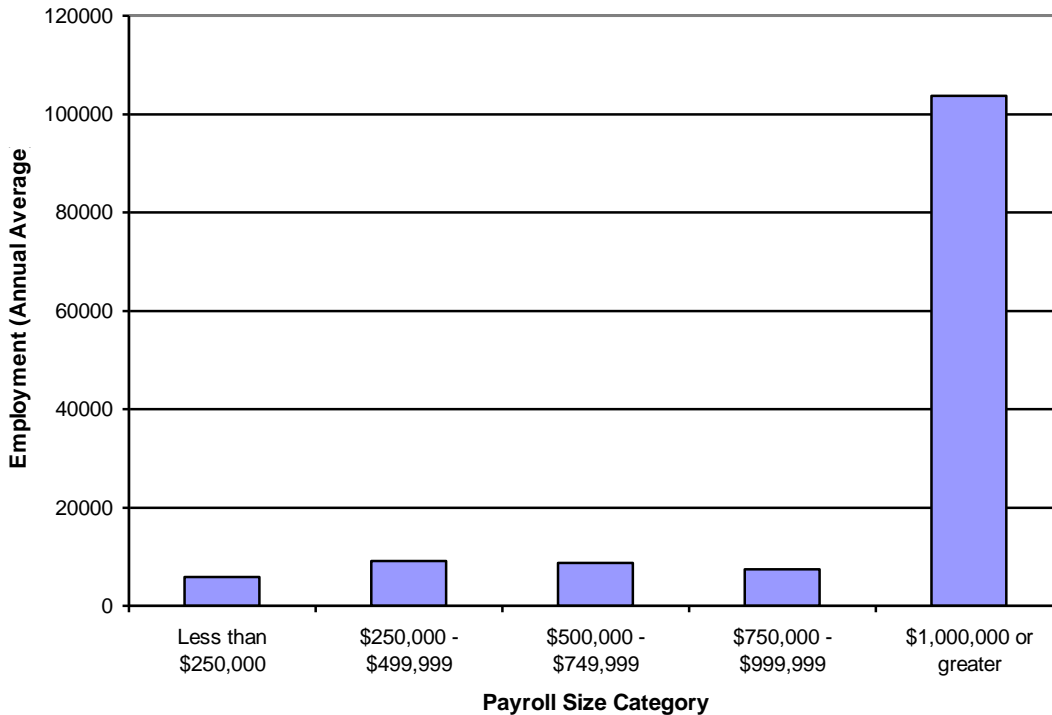


Figure 12 shows the number of firms by size category of annual payroll. Most FLC firms (63%) are small employers, and have an annual payroll less than \$500,000. But 429 have a payroll that exceeds \$1,000,000 per year, and not separately shown are the 49 firms with an annual payroll of \$5,000,000 or more.

Next, the size distribution of annual average of monthly employment is examined. This is shown in Figure 13.

Figure 13. Annual Average of Monthly Employment, by Size of Annual Payroll, Farm Labor Contractors, California, 2000



This is a remarkable finding. Most employment (77%) is concentrated among those FLCs with annual payroll of \$1,000,000 or more. When contrasted with Figure 12, it is evident that most FLCs (53%) are small employers (payroll less than \$500,000), but taken together these small FLCs have a very small share (11%) of the industry’s employment.

Comparable data was published regarding the size distribution of FLCs in 1990 (LMID, *Farm Labor Contractors in California*, 1992, Figures B-3 and B-4, p. 12). However, only the tabular summary data expressed in 1990 dollars, as published, are available. This presents a comparison problem because the current data is in 2000 dollars. Thus, both the size categories and payroll amounts are affected by changes in the value of the dollar.

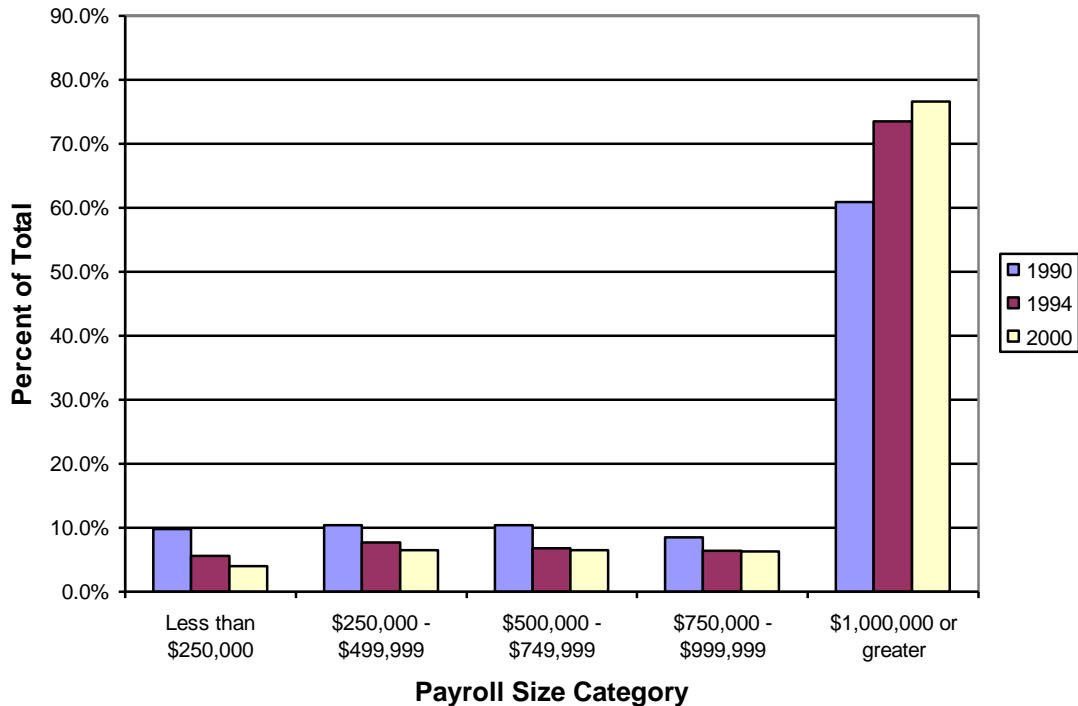
The difficulty in making comparisons is resolved by converting figures in the 2000 comprehensive list into 1990 dollars using the PPI deflator, and then calculating the

distribution using size categories expressed in 1990 dollars (*Economic Report of the President*, February 2002, Table B-65). In this way, both the size categories and payroll amounts will be properly corrected making comparisons meaningful. A similar adjustment is applied to previously unpublished data for 1994.

First, it is important to note that more FLCs were identified in the present report than were found in 1990 (1,427 vs. 1,084). This is because the search of other SICs than 0761 produced records for licensed FLCs that did not appear in that SIC. Second, the total payroll, in constant 1990 dollars, for the FLCs identified in the present study was 141% larger than was found in 1990, partly because 32% more FLCs were included. Third, the 1994 data includes FLCs identified in fifteen SICs in addition to SIC 0761.

The results, shown in Figure 14, are compelling. Despite the inclusion of one-third more FLCs in the 2000 data, for each size category except the largest, the share of the aggregate payroll declined as compared with the 1990 findings. In the largest size category, the aggregate payroll share increased, from 61% to 77% of the total. In plain language, there was a substantial increase in size concentration among FLCs in California during this period.

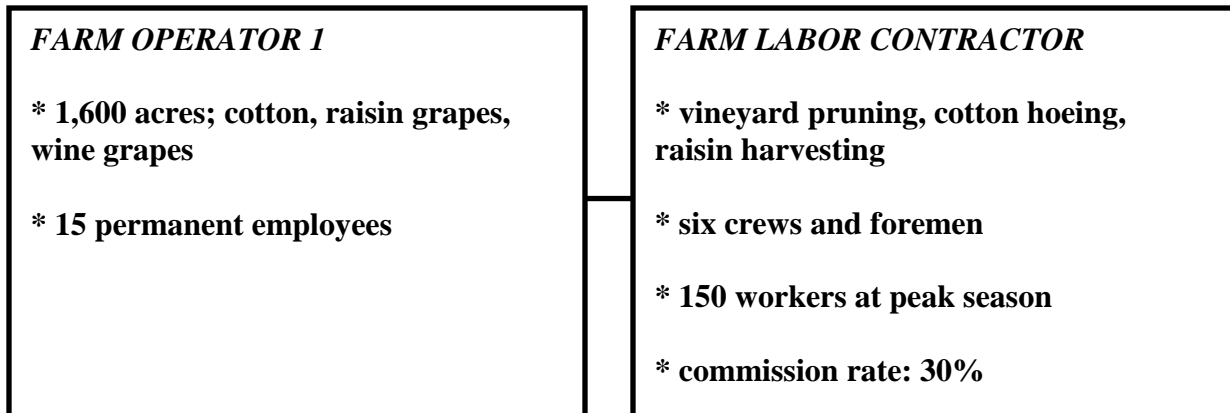
Figure 14. Size Distribution of Annual Payroll, Farm Labor Contractors, California, 1990, 1994 and 2000, Constant (1990) Dollars



Seven case studies: labor contractors, their employees and their clients

As a part of the FLC survey conducted in 1991, interviewers asked 24 randomly selected FLCs to provide (1) name and contact information to interview two clients, and (2) access to and permission to interview two workers from each of two different crews. The responses to request (1) are best summarized as profiles of individual FLCs and their clients. These matched interview sets are presented as Figures 15 - 21 below.

Figure 15. Matched Farm Operator and Labor Contractor Interviews Set 1, 1991, CIRS/UC-APMP Survey

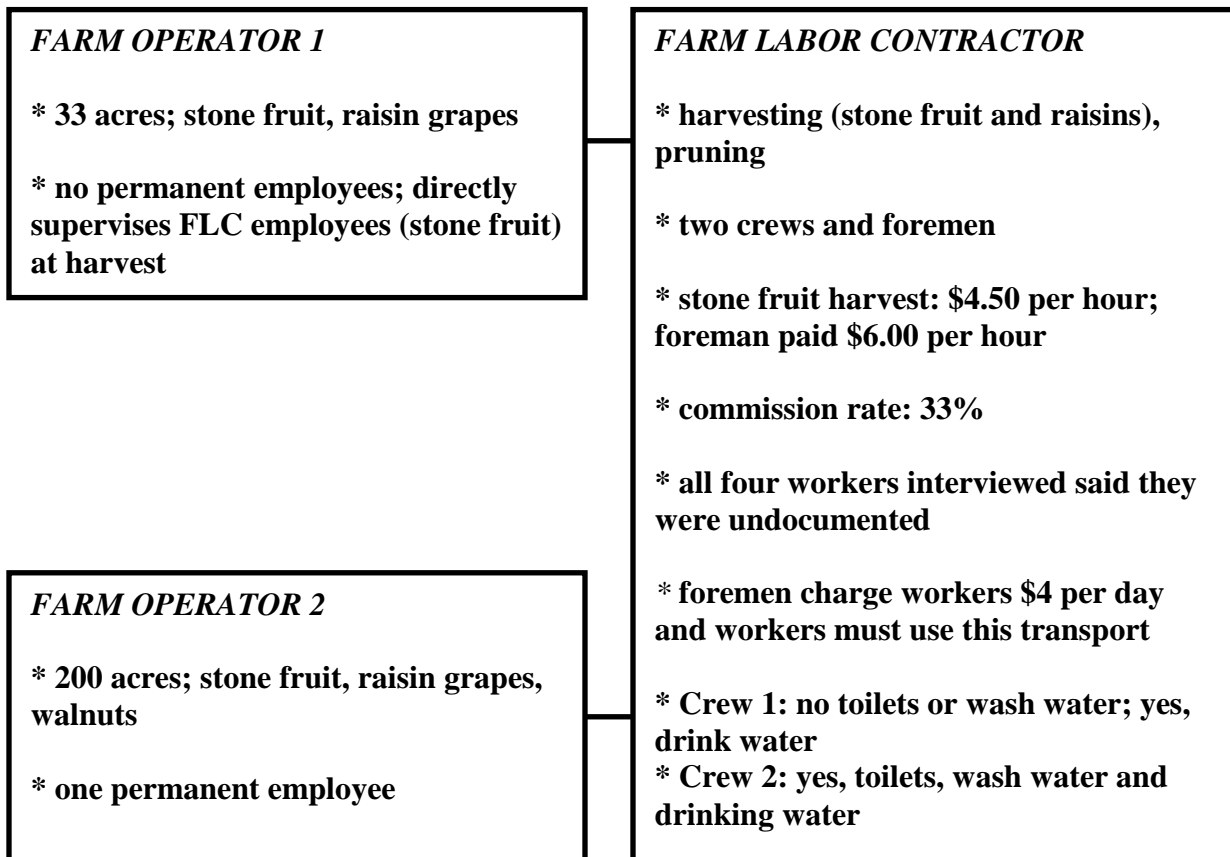


In this case, the FLC was previously a foreman for another FLC. While working for that FLC in 1986, a crisis developed with this farm operator due to a raisin harvest labor shortage that the old FLC could not meet. He became a contractor because of his ability to recruit crews to meet the crisis and then operated without license for two years.

This is an interesting case because it illustrates both a mutual dependency arising from the precarious nature of labor-intensive farming as well as a rather typical FLC career trajectory. A farmer's dependence on the timely supply of labor makes him/her quite vulnerable if there is a sudden labor shortage. During 1986, at about the time of the passage of the Immigration Reform and Control Act (IRCA), many farmers were very much concerned about a possible shortage of farm labor. The high percentage of undocumented workers and raids by INS on farm sites made it difficult to predict labor availability. Evidently, this farm operator was caught in such a labor shortage at a critical moment when the former FLC couldn't deliver the needed crews of workers.

At that time, one of the foremen for the old FLC, today the FLC in this Matched Interview Set, saw an opportunity to use his skills and knowledge of the labor force. Virtually all of the workers involved were Spanish-speaking Mexican immigrants, many of whom were undocumented. As an experienced crew foreman, he was in an excellent position to turn to members of his crew and ask them to recruit other relatives or persons whom they knew from the same village. While details are a bit sketchy, the old FLC was unable to do this, perhaps because he had delegated recruiting to his foremen.

Figure 16. Matched Farm Operator and Farm Labor Contractor Interviews Set 2, 1991, CIRS/UC-APMP Survey

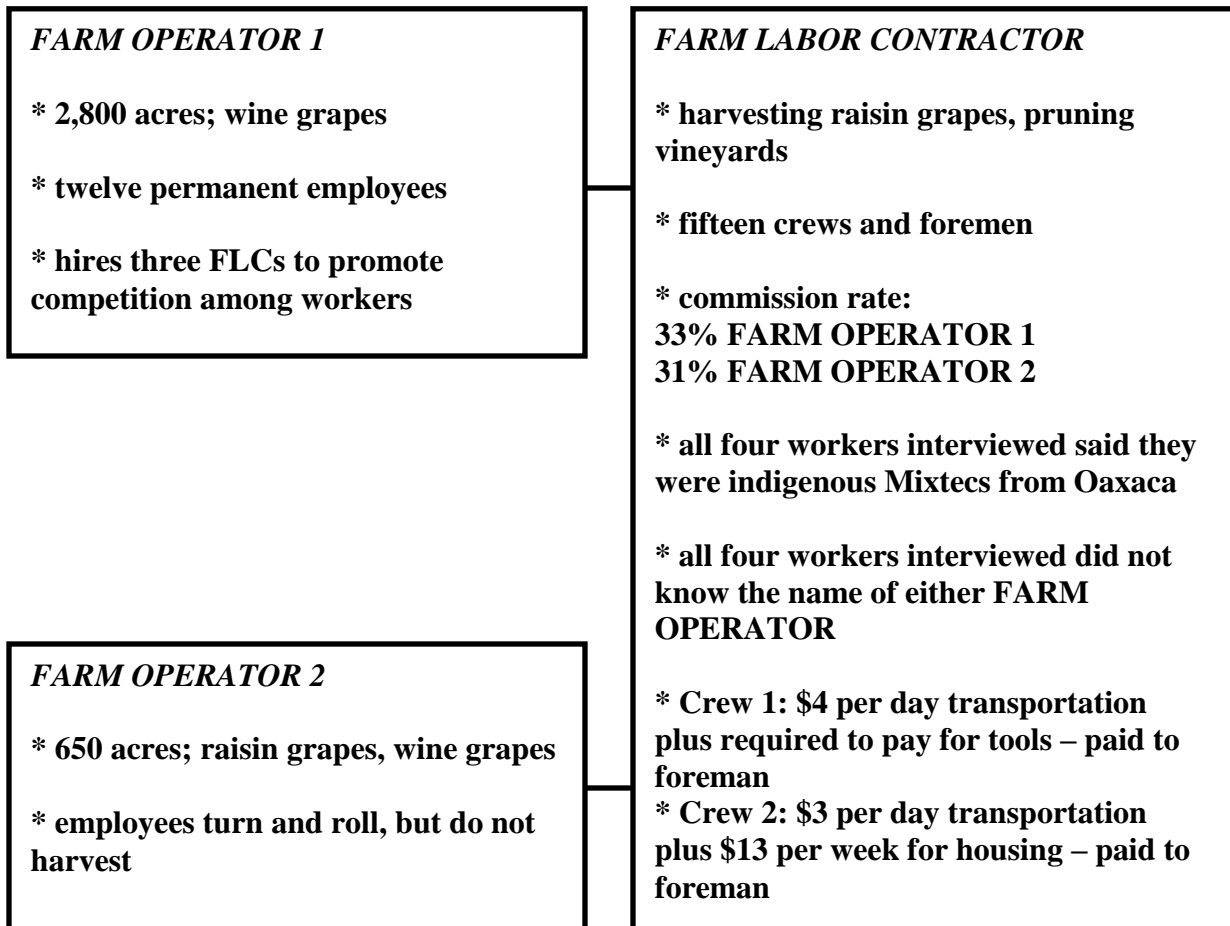


This is a very interesting case because it illustrates a range of common practices among FLC employers as well as concerns of farm operator clients. Farm Operator 1 personally supervises the crews supplied by the FLC because he is very much concerned with the quality of the fruit pack. In doing so, the farm operator becomes fully liable for all labor market relations, even though the FLC is the formal employer. Nearly all farm operators avoid any direct supervisory responsibilities when utilizing FLC crews because they are not liable for most labor market relations, such as violations of labor law, under those conditions. In this case, the farm operator was so concerned about his fruit quality that he did not want to trust the FLC's foremen with this critical matter.

The FLC workers interviewed (four were randomly selected: two from each crew) stated that their foremen required them to ride to the job in vans furnished by the foreman, and to pay \$4, in cash, each day for the ride, a practice that is illegal under federal law. Farm workers often car pool to their jobs, sharing the costs, but it is against the law for the employer to require them to use and pay for furnished transportation.

Another interesting fact in this case is the variability of practices between crews working for the same FLC. Crew 2 were provided with toilets, wash and drinking water at the job, but Crew 1 had no toilets or wash water, only drinking water was provided.

Figure 17. Matched Farm Operator and Farm Labor Contractor Interview Set 3, 1991, CIRS/UC-APMP Survey

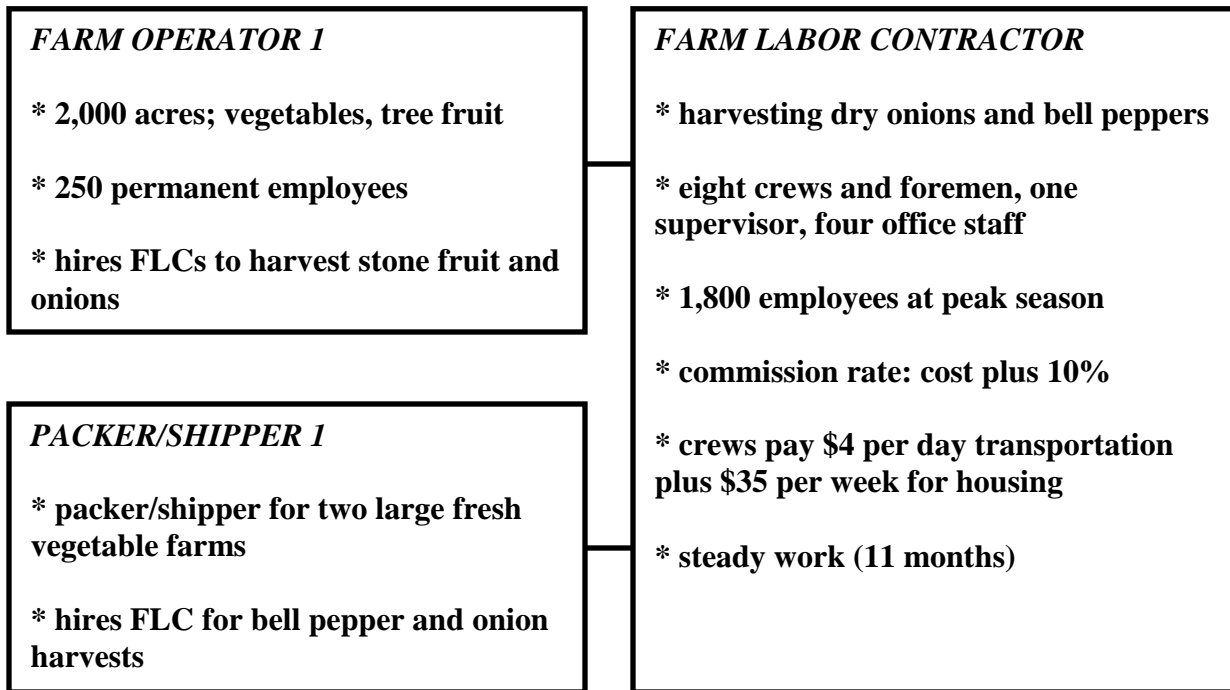


This FLC business was started by the mother of the current owner, who worked as a maid in the household of Farm Operator 2 before deciding to set up an FLC operation. The significantly lower commission rate charged to Farm Operator 2 may be related to this history and illustrates the sometimes very close relationship between an FLC and the farm operators for whom they work.

Farm Operator 1 promotes competition among the workers by hiring three FLCs at the same time. Presumably, keeping one's job will depend on being more productive than the other crews. Farm Operator 2 only uses the FLC workers for the portion of the raisin harvest involving cutting bunches of grapes from the vine, and then uses his own employees for the subsequent "turn and roll" conclusion some ten days to two weeks later when it is often difficult to keep seasonally employed workers waiting for this phase.

Workers from the two crews report their foremen charge differing fees for requiring them to use their vans for the ride to work, a practice that is a violation of labor law. In one case, the workers are also required to pay for the use of tools; state law requires they be paid twice the state minimum wage, but their employer ignores the law. The workers who pay the lower daily ride fee also pay a rather inexpensive rent, but must live in the housing provided.

Figure 18. Matched Farm Operator and Farm Labor Contractor Interview Set 4, 1991, CIRS/UC-APMP Survey



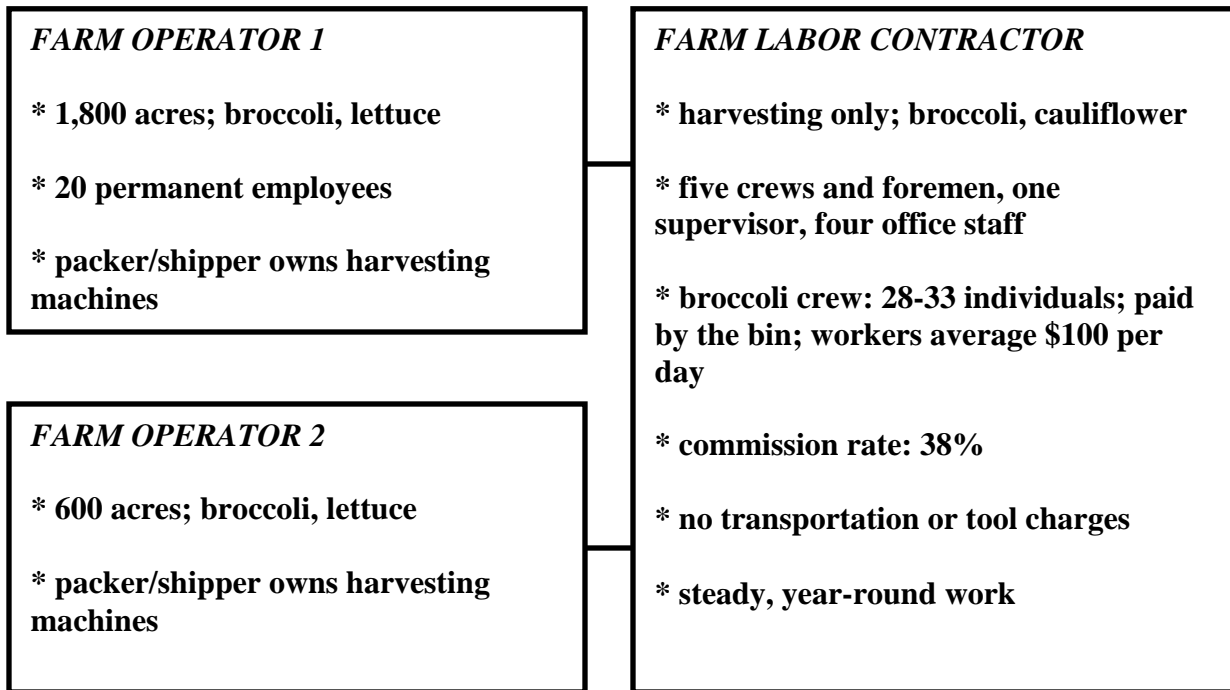
This case study illustrates a number of key points about the diversity of the FLC business and of modern, labor-intensive agriculture. The great degree of specialization by each of the parties is one of the important aspects of the relationships involved. The contractor has both farm operators and packer/shippers as clients.

Farm Operator 1 has a large number of permanent employees, but prefers to contract out several of the less desirable jobs to FLCs at hourly wages that are below rates paid to the regular workers. One of these tasks, harvesting and topping dry onions, is a particular specialty of this FLC who furnishes his own onion harvest machinery. Thus, the farm operator does not have to invest in this equipment. By specializing in the dry onion harvest and providing his own equipment, the FLC is able to provide this service to the packer/shipper as well as other farm operators and spread the cost of owning and maintaining the equipment over several clients.

Packer/Shipper 1 is a medium-size firm that specializes in packing and shipping fresh produce. The two large vegetable farms that partner with the packer/shipper also specialize: planting, cultivating and irrigating these crops up to the point of harvest, activities that they do best. However, neither the farm operators nor the packer/shipper want to take on the responsibilities associated with the harvest of some of these crops, for example, dry onions. Their solution: bring in an FLC that specializes in this activity.

Although the four workers who were interviewed reported relatively low rates of pay, in the range of \$4.50 - \$5.05 per hour, they liked the fact that they had virtually year-round employment. At the same time, they objected to being forced to ride to the job in vans furnished by the foreman, and pay \$4 per day, in violation of labor law.

Figure 19. Matched Farm Operator and Farm Labor Contractor Interview Set 5, 1991, CIRS/UC-APMP Survey



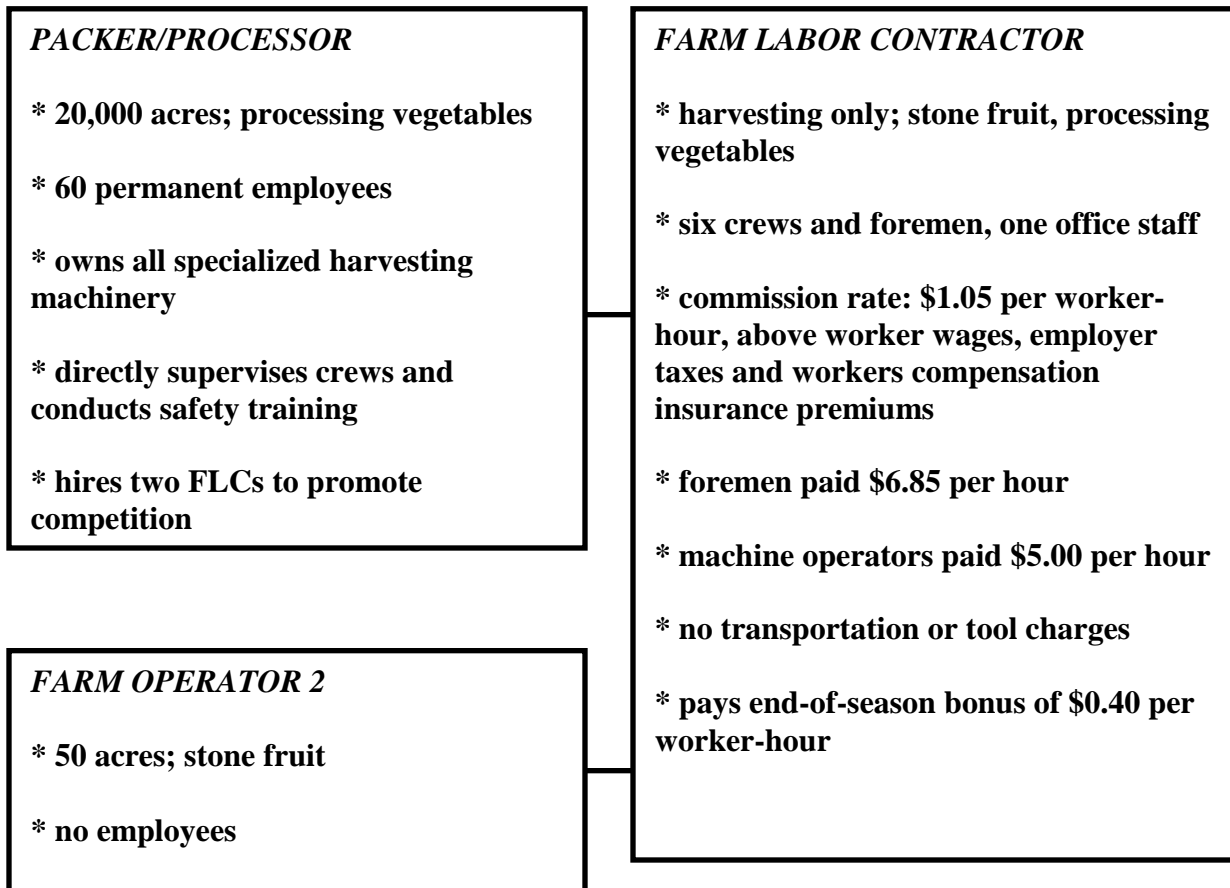
The FLC in this case established his business in response to a specific initiative by the packer/shipper for both farm operators. It was a straightforward effort to avoid a major farm labor union’s organizing drive. The former direct-hire workers were not re-hired at the start of the following year’s harvest season. Instead, the packer/shipper sent their own harvesting equipment, along with workers furnished by the FLC, as replacements for the pro-union, direct-hire workers. In fact, the FLC is simply an “alter-ego” of the packer/shipper, although both parties are careful to maintain the formal distinctions necessary to present an “arms length” relationship, should that ever prove to be necessary. Written contracts between legally separate and formally unrelated parties are all that is needed to establish this “arms length” relationship.

The FLC specializes in just two tasks: harvesting broccoli and cauliflower. But since he does not own the equipment needed for these tasks, he is dependent on the packer/shipper who provides it. On the other hand, the closeness of the relationships among the two farm operators, their packer/shipper partner, and the FLC provides an unusual degree of stability.

The workers are not paid by the hour; instead a crew is paid by bin. The four workers who were interviewed each independently agreed that they earned about \$100 per day for roughly eight hours of work, which is equivalent to an hourly wage rate of \$12.50 per hour. The fact that the FLC provides stable, year-round work was also seen as a very positive aspect of their employment.

All four of the workers who were interviewed said that they were not required to pay their foremen or their FLC for rides to the job, or to pay for the use of tools.

Figure 20. Matched Farm Operator and Farm Labor Contractor Interview Set 6, 1991, CIRS/UC-APMP Survey



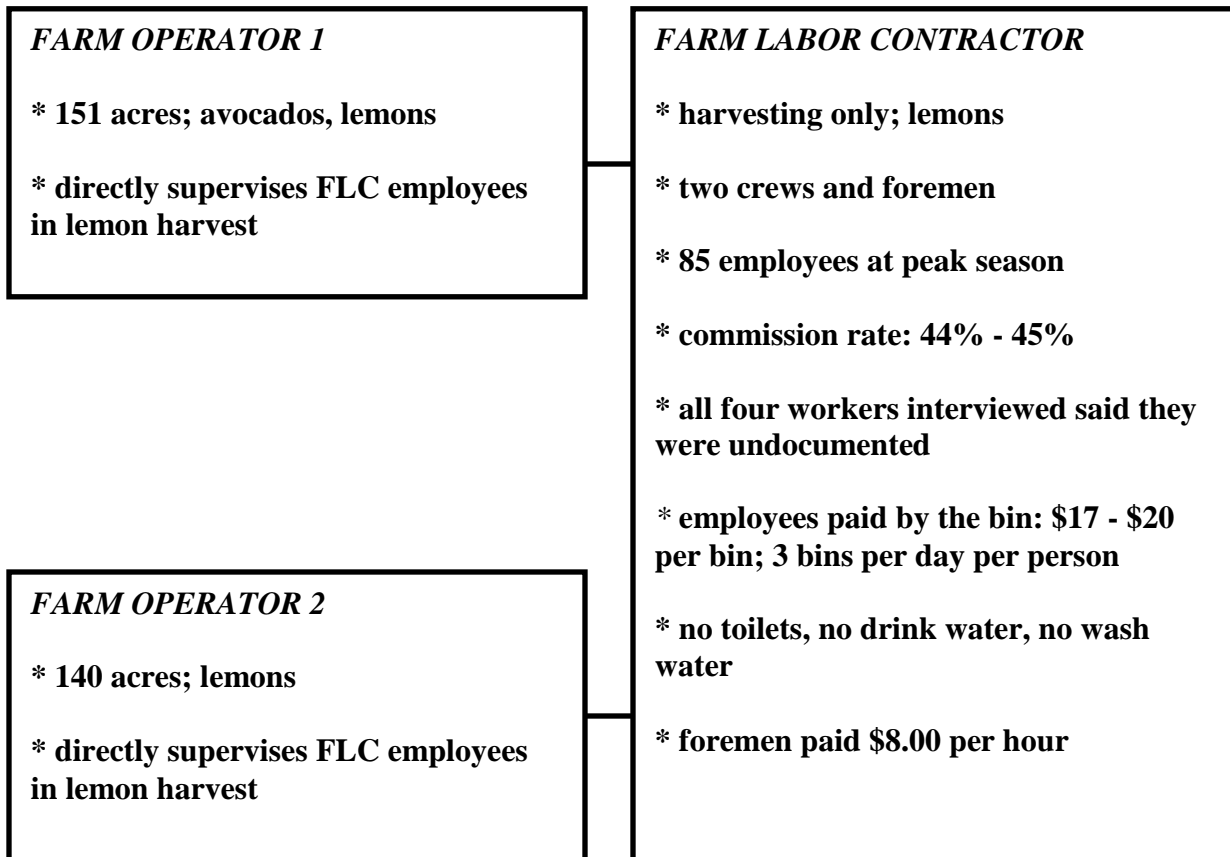
The Packer/Processor in this case study is a very large company that owns and operates a processing plant. Farm operators who grow processing vegetables for the company enter into annual contracts that establish a fixed unit price and acreage for the crops they produce. However, harvesting the crops is entirely handled by the Packer/Processor, relieving their growers of this responsibility. The company believes that quality control is crucial to their ability to compete in the highly competitive processing vegetable business and closely monitoring the harvest process to be an important link in the production chain.

The company also owns all of the necessary harvesting equipment, and directly supervises the crews who operate the equipment, even though the workers are supplied by and are technically employees of the FLC. Two different FLCs are brought in at the same time, to promote competition among the workers.

This FLC also harvests stone fruit, which is an activity that is underway well before the vegetable harvest season commences, and uses the same labor force.

Employees of the FLC like the bonus paid at the end of the harvest season, a bonus that is intended to keep workers on-the-job throughout the entire season. The FLC has found that reducing worker turnover, in turn, reduces recruitment and training costs, leaving a slightly higher profit margin.

Figure 21. Matched Farm Operator and Farm Labor Contractor Interview Set 7, 1991, CIRS/UC-APMP Survey



This FLC specializes only in harvesting lemons, a high-value crop that can be damaged by improper handling. Fruit quality is extremely important, leading some farm operators to personally supervise workers who are actually employed by the FLC during harvest.

Lemon harvest workers are traditionally paid by piece-rate, determined from the number of bins harvested by the entire crew. The 44% - 45% commission rate charged by this FLC is quite a bit higher than the statewide-average commission rate, and may reflect higher workers compensation insurance premium costs for orchard work as compared, for example, with those for raisin grape work. On the other hand, the rate of compensation for these harvest workers is relatively low, so that even with a high commission rate, the overall labor expense may be quite competitive.

All four workers who were interviewed claimed that neither toilets, nor drinking water, nor wash water was provided at the work site, a violation of state labor law. All four said they were undocumented, and they believed that others in their crews were also undocumented.

These case studies demonstrate the very great diversity of tasks performed by FLCs and the subtleties of social relationships between them and the farm operators,

packer/shippers and processing firms they serve. From this, it follows that it is not possible to draw easy or succinct generalizations about the nature of the FLC industry.

Survey of employees of farm labor contractors – 1999

The characteristics of persons working for FLCs and their conditions of employment are examined next. Previously unreported findings from the 1999 California Agricultural Worker Health Survey (CAWHS), conducted by the California Institute for Rural Studies and sponsored by The California Endowment, are described.

The CAWHS is a statewide health needs assessment of 970 randomly selected hired farm workers. The response rate to this population-based survey was quite high: about 83% of eligible persons who were asked agreed to participate.

There were 271 workers (28%) who were FLC employees and 585 direct-hire farm workers (60%). Another 29 CAWHS subjects (3.0%) worked for a packer-shipper or a packinghouse while performing farm work. Of the remainder, 38 (3.9%) were employed by non-farm businesses but had performed hired farm work in the previous twelve months. A few participants did not know what type of employer they worked for while doing farm work (16, or 1.6%), declined to respond to this question (5, or 0.5%), or did not complete the portion of the interview in which this question was asked (24, or 2.5%).

Table 21 shows, separately, demographic findings for direct-hire and for FLC-hire farm workers. In this analysis, only those workers who identified as FLC workers or as direct-hire employees of farm operators are considered. No effort has been made to take account of CAWHS subjects who did not know which type of employer had hired them, or of non-respondents. For example, 306 of 585 (52%) direct-hire farm workers said they did not speak English at all, whereas 180 of 271 (66%) of FLC-hire farm workers responded similarly.

Table 21. Demographic Characteristics of Direct-hire and FLC-hire Farm Workers, 1999, California, CAWHS, N = 856

<i>Characteristic</i>	<i>Direct-hire farm workers</i>	<i>FLC-hire farm workers</i>
Foreign-born	94%	96%
Hispanic ethnicity (specified "Mexican")	90%	89%
Median age	34.5 years	33.8 years
Married	62%	59%
Years of U.S. farm work (median)	10 years	9 years
Highest grade completed (median)	4 th , 5 th or 6 th grade	4 th , 5 th or 6 th grade
Speak English? – "Not at all"*	52%	66%
Read English? – "Not at all"*	65%	74%

Important note: For those characteristics denoted by (), the difference between the findings for Direct-hire farm workers vs. FLC-hire farm workers is statistically significant at the 95% confidence interval.*

As indicated in Table 21, there were few demographic differences between direct-hire and FLC-hire farm workers. These comparisons indicate that, by a very large margin, most are foreign-born, and identify their ethnicity as Hispanic and Mexican. The median age is 34 years for both groups, and roughly six out of ten are married. Educational attainment is very low: half had six years, or less, of formal education.

The small nominal differences in the findings for the two groups were not statistically significant for most characteristics. Only for English language skills were differences noted that were statistically significant at the 95% confidence interval. A greater share of FLC-hire farm workers indicated “not at all” when describing their English-language speaking and reading skill level.

That few demographic differences between the two groups were found should not be particularly surprising: all types of employers of hired farm workers draw from the same population pool when recruiting. Few U.S.-born workers actively seek this type of employment in California, and most foreign-born farm workers who fill these jobs would prefer higher-paying, non-farm work, if they could get it.

Table 22 presents findings on the economic status of workers in the two types of employment relationship. There were nominal differences in the economic status of the two groups, but only a few were statistically significant at the 95% confidence interval. On average, FLC-hire farm workers reported somewhat lower annual earnings, lower hourly wage rates (for those workers who were paid only on a per-hour basis), and lower weekly earnings from the most recent farm job.

Table 22. Economic Status of Direct-hire and FLC-hire Farm Workers, 1999, California, CAWHS, N = 856

<i>Characteristic</i>	<i>Direct-hire farm workers</i>	<i>FLC-hire farm workers</i>
Median personal income (1998)	\$10,000 - \$12,499	\$7,500 - \$9,999
Median family income (1998)	\$12,500 - \$14,999	\$12,500 - \$14,999
Own or buying a house in US*	17%	9%
Paid by piece rate*	8%	18%
Average hourly wage rate (for workers exclusively paid hourly wages)	\$6.57	\$6.32
Median weekly earnings, most recent payday	\$272	\$250
Average weekly earnings, most recent payday	\$310	\$268
No health insurance of any kind	75%	73%
Employer-provided health insurance*	13%	7%
Employer offers health insurance*	16%	8%

Important note: For those characteristics denoted by (), the difference between the findings for direct-hire farm workers vs. FLC-hire farm workers is statistically significant at the 95% confidence interval.*

A larger share of direct-hire farm workers (17%) reported owning or purchasing a house in the US, as compared with FLC-hire farm workers (9%), and this finding was statistically significant at the 95% confidence interval. However, this difference may be at least partly attributed to differences in earned income between the two groups. For all 970 workers in the CAWHS sample, a bivariate analysis shows that Pearson's Correlation coefficient relating home ownership and income is +0.410, and is significant at the 0.01 level (2-tailed). In other words, for participants in the CAWHS, the higher the income, the greater is the likelihood of home ownership. Conversely, a major reason that home ownership is relatively rare is that most have very low incomes.

Some three-quarters of workers in both groups reported they had no health insurance of any kind. That is, most workers were medically uninsured, even lacking coverage through such government-sponsored programs as the state's MediCal program.

Importantly, few workers in both groups had health insurance through their employer, but significantly fewer FLC-hire workers reported this benefit. When asked about their health insurance, among FLC employees, just 7% were insured through their employer, 8% had private insurance they had purchased, 6% had government provided insurance, and 73% said they had no health insurance of any kind. Among direct-hire employees, 13% were insured through their employer, 2% had private insurance, 6% had government provided insurance, and 75% had no health insurance.

While 16% of direct-hire farm workers said their employer offered health insurance for employees, just 8% of FLC-hire farm workers said their employer had this benefit. Thus, the share of direct-hire workers who had, or were offered, health insurance through their employer was twice as large as compared with FLC-hire workers. The differences found in the findings regarding employer-provided health insurance are statistically significant at the 95% confidence interval.

Not indicated in Table 22, but worthy of special note, was the finding that about 3.0% of those FLC employees who are exclusively paid an hourly wage had a wage rate that was below the California Minimum Wage (\$5.75 in 1999), and 2.4% of comparable direct-hire employees said that their hourly earnings were that low. The small difference between these two findings is not statistically significant.

Table 23 reports findings for the two groups of workers regarding workplace safety, and exposure to risk of occupational injury. The fraction of workers who reported a farm job injury during the previous twelve months was also quite similar between the two groups: 5% among FLC employees and 4% among employees of farm operators. It is important to note that many of the CAWHS subjects are employed only seasonally so that these figures should not be compared with *rates* of injury. Again, there is no statistical significance to the small difference between these two findings.

Of those who reported having been injured while performing farm work within the past year, one-fourth said they had not received medical attention for the injury. This is a very disturbing finding because state law requires that workers compensation insurance is to be provided by the employer for virtually all private sector employees, including hired farm workers. The cost of necessary medical treatment for workplace injuries is fully covered by this form of insurance. This finding is not reported in Table 23 and is very likely to be related to the responses given to another CAWHS survey question: at least one-third of all those surveyed were unaware that they may be eligible

to receive paid compensation for lost work time if they are injured at work. In other words, a large share of hired farm workers are not fully cognizant of the provisions of California law that are intended to protect them if they are injured while working.

Direct-hire farm workers are more than twice as likely as FLC-hire employees to drive or operate machinery, including tractors and harvest machines, at their current job (38% vs. 17%), and more than three times as likely to have ever mixed, loaded or applied pesticides (17% vs. 5%). These differences in workplace exposures to specified types of risk of injury are statistically significant at the 95% confidence interval.

When worker health and safety questions were asked, some surprising differences were found. Importantly, when asked if clean drink water and disposable cups, clean toilets, or wash water was provided at the job EVERYDAY, FLC-hire farm workers reported consistently higher compliance with these field sanitation requirements than did direct-hire farm workers. The difference in these findings between the two groups of hired farm workers is statistically significant at the 95% confidence interval.

There was essentially no difference in the share of Direct-hire vs. FLC-hire farm workers who had received pesticide safety instruction or training. Roughly six out of ten said they had received such instruction. But 4% of Direct-hire farm workers said they had been told to enter a sprayed field before it was safe to do so. Among FLC-hire farm workers, the corresponding figure was 2%. This difference is not statistically significant.

Table 23. Occupational Health and Risk Exposure of Direct-hire and FLC-hire Farm Workers, 1999, California, CAWHS, N = 856

<i>Characteristic</i>	<i>Direct-hire farm workers</i>	<i>FLC-hire farm workers</i>
Farm work injury in past year	4%	5%
Operate or drive machinery at current farm job*	38%	17%
Operate or drive a tractor at current job*	29%	10%
Operate or drive a harvester at current job*	9%	2%
Operate or drive a tractor and disc harrow at current job*	13%	1%
Clean drink water and cups at worksite EVERYDAY*	75%	88%
Clean toilets at worksite EVERYDAY*	85%	94%
Wash water at work site EVERYDAY*	82%	87%
Received pesticide safety training or instruction - ever	59%	58%
Mix, load or apply pesticides - ever*	17%	5%
Told to enter sprayed field before it was safe to do so - ever	4%	2%

Important note: For those characteristics denoted by (), the difference between the findings for direct-hire farm workers vs. FLC-hire farm workers is statistically significant at the 95% confidence interval.*

Table 24 presents several findings of follow-on interviews of CAWHS subjects that inquired about more sensitive topics, such as personal risk behaviors and workplace risks not specifically associated with the farm task being performed. The follow-on procedure for CAWHS subjects included a comprehensive physical examination, and then, in the privacy of a medical clinic or examining room, an interview about risk behaviors. About two-thirds of all CAWHS subjects (641 out of 970) completed all three components. Thus, overall, the CAWHS participation rate in the follow-on interviews was 55%.

Table 24. Workplace Injury and Employer Behaviors of Direct-hire and FLC-hire Farm Workers, 1999, California, CAWHS, N = 641

<i>Characteristic</i>	<i>Direct-hire farm workers</i>	<i>FLC-hire farm workers</i>
Workers compensation paid claim - ever	19%	17%
Physically threatened at workplace	2%	5%
Pay <i>raitero</i> (a friend, employer or foreman) for rides to and from work*	29%	46%

Important note: For those characteristics denoted by (), the difference between the findings for Direct-hire farm workers vs. FLC-hire farm workers is statistically significant at the 95% confidence interval.*

Nearly half (46%) of FLC-hire farm workers said they paid their foreman, or their employer, or a friend, for a ride to the job. Among Direct-hire farm workers, the share was quite a bit lower (29%), and this difference is statistically significant at the 95% confidence interval. While many workers voluntarily share rides and the associated expenses, in an unknown fraction of cases the employer or a foreman will provide a van and require that the worker both ride in that van and also pay for that ride as a condition of employment. This latter practice is illegal, but not many workers will voluntarily come forward to the authorities and file a complaint that they have been forced to do this, essentially out of fear of losing their job in retribution.

Since many hired farm workers do not own vehicles, ‘ride-sharing’ is commonplace in communities where this type of employment is dominant. At the same time, there are some very serious issues surrounding the use of *raiteros*, the commonly used slang term that workers use to refer to the person who provides the vehicle and drives them to the job.

Most importantly, there have been a large number of fatalities arising from accidents involving *raitero* vans. On August 9, 1999, the entire nation was shocked by such an accident in rural western Fresno County. In that incident, 13 occupants of a farm labor van were killed.

The employer, a farm labor contractor, was discovered to have allowed his foreman to coerce the workers to use a *raitero*. At the civil trial on behalf of the two survivors and the families of those who were killed, the attorney for the plaintiffs was able to persuade the court that the foreman for the contractor had forced the workers to ride in his van as a condition of employment. The foreman, Jose Rosas, is reported to have described this practice as “Rosas law.” (*Fresno Bee*, “Crash Victims Win Fight,” March 2, 2002).

During the public outcry and controversy that followed this 1999 accident, important regulatory safeguards were added to California law, intended to prevent future incidents of this type. These include requiring installation of permanent seats and seat belts (previously not required), and inspection and certification of labor vans carrying ten or more persons by the California Highway Patrol. Enforcement of these regulations is presently limited to the San Joaquin Valley. Funds to extend the program to other parts of California were approved by the Legislature but were reportedly ‘blue penciled’ out of the state budget by Governor Davis.

Another aspect of the 1999 accident that has not gained much public attention is that the farm operator and the farm labor contractor were found to be fully jointly liable in the civil litigation described above. Even though the farm labor contractor was the employer of record, and the farm operator is usually not held to be legally responsible if he/she does not exercise direct supervisory authority of the crew, this shield was shattered by the decision in the case.

The upper limit of nine passengers before an inspection by the CHP is required may be too high. In September 2002, well after implementation of the new regulations, a van carrying eight farm workers in western Fresno County was involved in an accident: two workers were killed. According to CHP Officer Axel Reyes, the van was “...not considered a farm labor vehicle.” (*Fresno Bee*, “2 Die in Accident Near Caruthers,” September 4, 2002).

Some 5% of FLC employees said they had been threatened at their place of work, and half of those said the threat came from a supervisor. The frequency of this type of violence was 2% among direct-hire workers. However, the difference in these two figures is not statistically significant.

When asked if they had ever had a farm injury that resulted in a paid claim under workers compensation insurance, 17% of the FLC group said they had such an injury and 19% of the direct-hire group responded that this was the case. In other words, somewhere between one-sixth and one-fifth of hired farm workers reported having had a workplace-related injury that resulted in being awarded benefits under state workers compensation laws. There was no statistical significance to the difference in the findings for the two groups of workers.

Farm Labor Contractors and Employer Sanctions

The Immigration Reform and Control Act of 1986 (IRCA) imposed, for the first time in U.S. history, a universal requirement that every employer verify the employment eligibility of all existing employees and new hires. The full requirement provides detailed instructions to employers regarding how this employment verification process is to be conducted (CFR, 2001). Briefly, each employee and newly hired worker is to

complete the newly created Form I-9, and present for inspection by the employer suitable documents to demonstrate compliance with the requirements of immigration law. Failure by the employer to properly carry out this requirement can result in the imposition of sanctions by the Immigration and Naturalization Service (INS), up to and including fines and imprisonment.

The intention of this new requirement was to delegate to employers the responsibility for excluding from the work force all persons who are not eligible for employment under U.S. immigration law. Presumably, the hiring decision is the key point at which to apply this requirement, causing the least disruptive imposition on productive activities. Once hired and on the job, the weeding out of non-compliant employees could be quite disruptive, and might trigger costly delays and litigation. Thus, giving major responsibility for enforcement to employers would, it was postulated, eventually close the employment door to ineligible persons.

Inspections by INS include review of Form I-9 records for each employee, examination of documents presented by the employee in support of claims of eligibility for employment, and a determination of whether or not the employer has met the obligations of the law. Citations can be issued in a number of circumstances: failure to require the employee to complete Form I-9; finding that inadequate documentation was submitted by the employee; intentional circumvention of the requirement on the part of the employer; and so on.

Over 125 million persons are employed in the U.S. (U. S. Bureau of Labor Statistics, 2002 a). There are more than seven million employers. So the task of inspections for proper compliance with the employer sanctions provisions of IRCA is monumental for a relatively small agency, such as the INS. Even if as many as 100 persons were assigned to this verification task on a full-time basis, and even if each was able to completely inspect the records of a single employer in just one day, an impossible task if the employer has thousands of employees, fewer than 25,000 employer inspections could be completed in a year's time. As against the millions of employers, it is clear that less than 0.3% of all U.S. employers could be reviewed in a given year.

The depth of the problem of enforcement is best understood by realizing that while foreign-born workers comprise 12% of the labor force, during the past few years more than 40% of new hires have been foreign-born persons (U.S. Bureau of Labor Statistics, 2002 b). Clearly, the recovery from the early 1990s recession relied disproportionately on foreign-born workers. This remarkable fact reflects the nature of many new jobs added in the years subsequent to the recession: janitors, health care aides, food service and farm labor, to identify just a few of the more numerous.

The Employer Sanctions Data Base (more precisely termed Case Closed File by the INS) of the Center for Immigration Studies (CIS) serves as the data source for the analysis that follows. Altogether, there are 57,845 citations in the database, commencing with the first in 1988 and the most recent in 2000. Only partial records are in the data file for FY2000 and, possibly, FY1999.

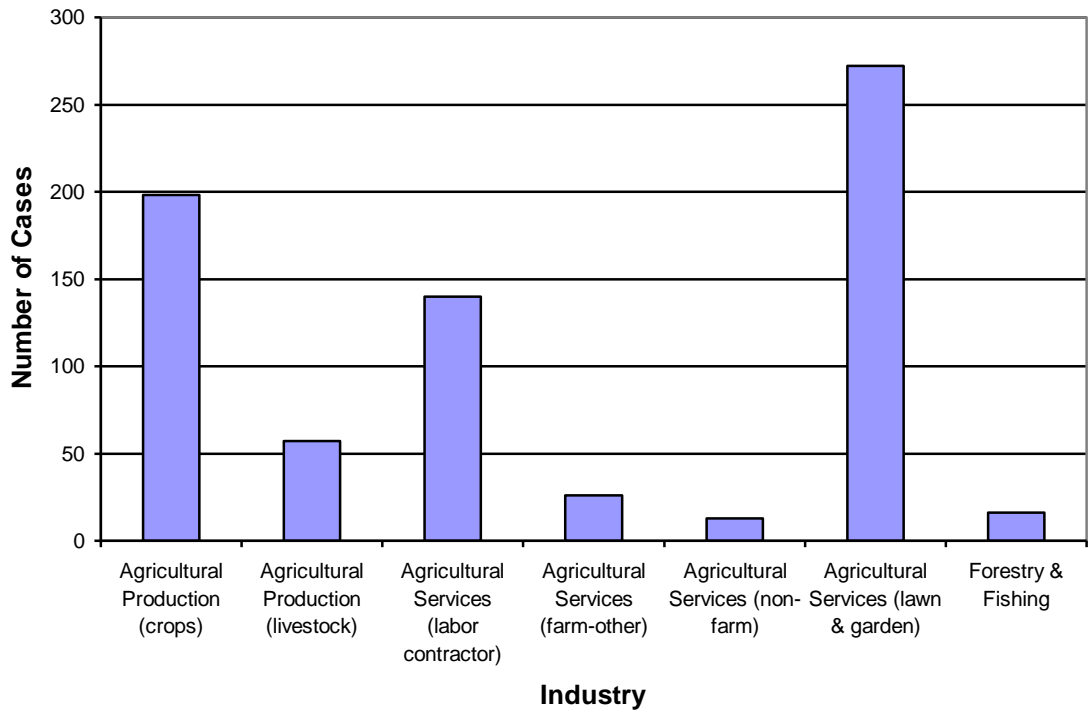
For those cases involving firms with California addresses, the name of each firm classified by SIC code within the industry group Agriculture, Forestry and Fishing was manually reviewed and its SIC identification verified or, in some cases, re-assigned if there is evidence that it had been incorrectly identified. Standard business reference sources, EDD files and the DLSE file of licensed farm labor contractors were utilized for

this purpose. In addition, firm names in other industry groups were reviewed in an effort to find other cited agricultural business that had been mistakenly assigned to another SIC code.

Within the industry group Agriculture, Forestry and Fishing are 726 citations cases that pertain to employers with California addresses. However, only some of the cited firms are employers of hired farm workers. By definition (Villarejo, 2002), a ‘hired farm worker’ is a person directly engaged in the production of an agricultural commodity for sale, termed ‘primary agricultural activity’ in Federal law. The employer may be a farm operator, or may be a non-farm business providing an agricultural service on a farm. Among the most important of the latter are farm labor contractors.

The distribution of the citation cases within the industry group Agriculture, Forestry and Fishing by SIC category of employer is shown in Figure 22. Somewhat less than half of the 722 employers do not have hired farm workers on their payroll. In fact, 272 cases involve providers of lawn and garden services, most often for private homeowners.

Figure 22. Employer Sanctions Citations, Agriculture Forestry & Fishing Industry Group, California, FY1988-FY2000 (partial), INS Case Closed File, CIS



There were 421 cases involving employers of hired farm workers, or 4.2% of all California cases. Of that total, 255 citations were issued to farm operators, either crop or livestock farmers. Another 140 were issued to farm labor contractors, and 26 were issued to other providers of on-farm agricultural services. Thus, on average during each year

represented in the database, there were 21, 12, and 2 citations issued to farm operators, farm labor contractors and to other providers of on-farm services, respectively.

Table 25 compares the number of citations per year to the number of establishments of these types (12-year average), and yields a computed fractional share of firms that were cited.

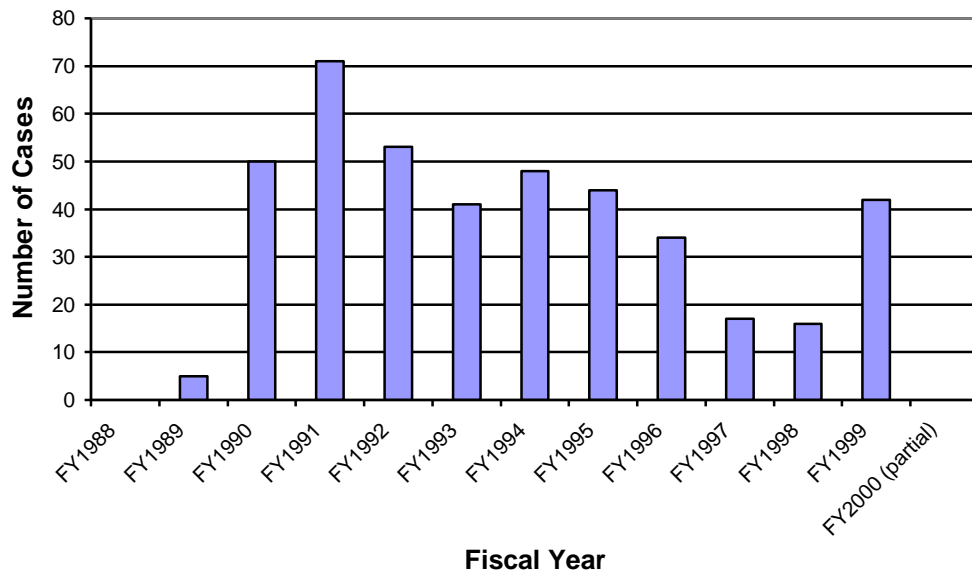
Table 25. Sanctioned Employers of Hired Farm Workers and Establishments, California, FY1988-FY2000 (partial), INS Case Closed File, CIS

<i>Employer</i>	<i>Citations</i>	<i>Establishments</i>	<i>Percent Cited per Year</i>
Farm operator, crop	198	17,489	0.09%
Farm operator, livestock	57	4,206	0.11%
Farm labor contractors	140	1,361	0.86%
Other on-farm services	26	1,857	0.14%

Note: The number of Establishments is the annual average over the 12-year period.

The most important finding shown in Table 25 is that farm labor contractors were nominally *eight times more likely to have been cited* during this period than farm operators and six times more likely than providers of other types of on-farm agricultural services. Although the numbers are small, these differences are statistically significant at the 95% confidence interval.

Figure 23. Employer Sanctions Citations, Employers of Hired Farm Workers, by Fiscal Year, California, INS Case Closed File, CIS



It is not known whether these differences in rates of citation reflect a greater effort by INS enforcement agents against FLCs, or a much higher prevalence of undocumented workers among FLC employees. The CAWHS found no statistically significant difference in the proportion of FLC employees who said they were undocumented as compared with direct-hire farm workers.

The annual pattern of employer sanctions citations issued to employers of hired farm workers is shown in Figure 23. The main point is that the three years with the largest number of cases were FY1990-FY1992. The number of cases reached a peak in FY1991, then fell off, increased slightly in FY1994 and FY1995, then fell off again, but rose sharply in FY1999. In most respects, this pattern is very similar to what was found for all California cases. Most notable is that employer sanctions citations issued to employers of hired farm workers were most significant in the early years of enforcement.

A second measure of employer sanctions activity is the levying of fines and collections of those fines. Altogether, 773 employer sanctions cases in California resulted in a fine being levied and collected. Of those presumably more serious cases, 40 (5.2%) involved employers of hire farm workers.

Since employers of hired farm workers were found to account for 4.2% of all California citations, the fact that they represented 5.2% of all cases involving fines levied and collected suggests that employers of hired farm workers may have been somewhat disproportionately involved in the most serious cases. However, the small difference between these two figures is not statistically significant.

Surprisingly, employers of hired farm workers who were cited had an aggregate total of 114,791 employees, or 19% of all employees of California cited firms. Thus, while these employers represented just 4.2% of those cited, they accounted for a disproportionately large share of employees of cited firms, roughly one-fifth of the total.

The median number of employees of these firms was 30, more than three times larger than for all California cited firms, and the average number of employees was 273, more than four and one-half times larger. Thus, we conclude that cited employers of hired farm workers were, on average, much larger employers than is typical for the state, or for all cited firms.

Importantly, the size of employment data shows that cited farm operators had, on average, many fewer employees than did cited farm labor contractors. Cited farm operators accounted for 39,555 employees, or an average of 155 workers per firm. But cited farm labor contractors had an aggregate of 70,196 employees, and averaged 501 employees per firm, more than three times larger than the average for cited farm operators. Thus, the cited farm labor contractors were very much larger, on average, than were either all California cited firms or all U.S. cited firms.

California firms employing hired farm workers and who were cited for violations of the employer sanctions provisions of IRCA can be characterized as large employers and more likely to have been fined than non-farm businesses. The most important subgroup were farm labor contractors, who were found to have been cited more than eight times as frequently (0.857% per year) as either all California firms (0.103%), or California farm operators (0.098%).

The sharp fall-off of employer sanctions citations among all California firms and employers of hired farm workers is difficult to reconcile with data on the reported share of unauthorized workers in the labor force. In particular, the National Agricultural

Worker Survey (NAWS) found that 9% of hired crop farm workers were unauthorized in FY1990 and FY1991 (Rosenberg, 1993). By FY1995, FY1996, FY1997, the NAWS found that 42% were unauthorized (Rosenberg, 1998).

Comparing this sharp rise in the proportion of hired crop farm workers in California who said they were unauthorized with the decline in the number of citations and fines issued to firms employing such workers demonstrates that the INS employer sanctions effort was significantly curtailed in the most recent period. Importantly, the data also demonstrates that agriculture was not treated differently than other industries. That is, the fall-off in enforcement activity in agriculture was nearly identical as was found for all California firms.

One of the more difficult issues facing enforcement efforts is the failure of IRCA to hold employers responsible even if the documentation submitted by their employees in support of Form I-9 was forged. The “IRCA loophole,” holds employers to be responsible under the employer sanctions provisions only if they “knowingly hire” unauthorized workers. Thus, an employer can argue that forged documents submitted by a prospective employee in support of Form I-9 appeared to be authentic, and be freed of responsibility under employer sanctions.

Employers argue, correctly, that if the documentation presented by a prospective employee appears to be authentic and if they decline to hire on the grounds that the person is likely undocumented, they can be subject to lawsuits charging employment discrimination. In a recent case involving a large Midwestern meatpacker, the U.S. Department of Justice reached a settlement agreement under which the company agreed to pay \$187,500 in back wages and civil penalties. The Department of Justice said that the company had unfairly engaged in immigration-related discrimination by arbitrarily holding foreign-born persons to greater Form I-9 scrutiny than persons who said they were U.S. citizens. (*Gempler's Alert*, Vol. 10, No. 2, February 2003).

Stability and Instability in the Farm Labor Contractor Industry

There is evidence that the number of farm labor contractors actively conducting business in California has remained relatively stable for the past fifty years. Writing in 1951, Deputy Labor Commissioner Alan Bruce reported, “It has never been possible to get exact figures on the number of labor contractors operating in California ... The best estimate for the number operating within the State during any 12-month period in the last few years is between 2,500 and 3,000... Of the 2,500 to 3,000, probably between 1,500 and 2,000 operate in the San Joaquin Valley during at least part of the year. As of March 31, 1950, there were 1,213 contractors licensed in the State. Of these, 837 gave addresses in the valley.” (Alan Bruce, *Agricultural Labor in the San Joaquin Valley*, 1951, p. 177)

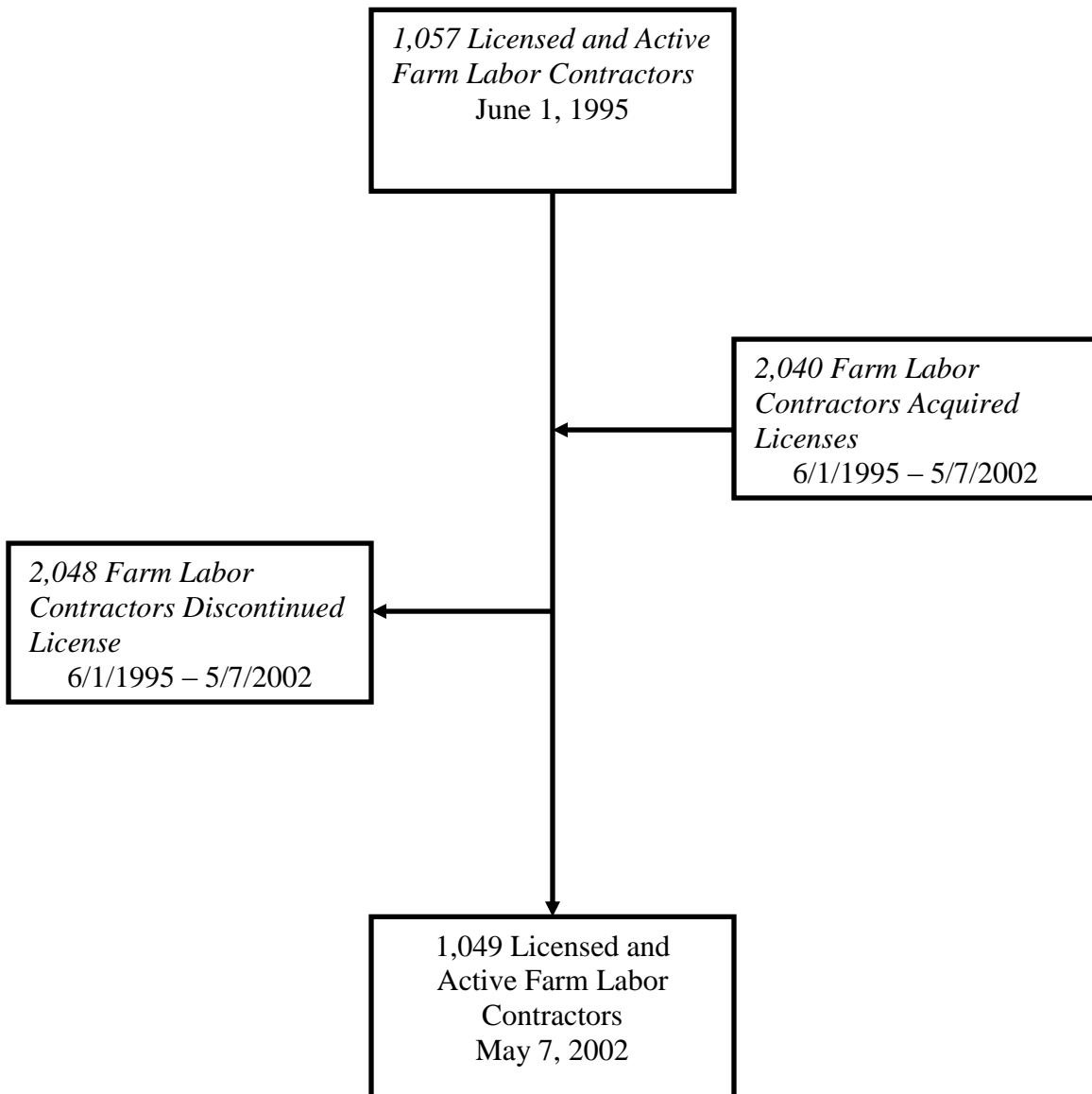
By 1990, when the EDD-LMID Survey was conducted, there were 2,896 farm labor contractors registered with the U.S. Department of Labor, which uses the broadest standard of all government agencies. The number licensed in the state was 1,136. (LMID, *Farm Labor Contractors in California*, 1992, p. 9)

As of September 3, 2002, as part of the research on which this report is based, it was determined that there were 1,152 state licensed farm labor contractors. The number of registered with the U.S. Department of Labor was nearly the same as in 1990.

The fact that the total number has remained relatively constant suggests that the industry is quite stable. But a careful examination shows that this is an illusion. Rather, while the total number has changed but little, there has been an extremely high annual rate of turnover of FLC businesses. Figure 24 shows that in a seven-year period (June 1, 1995 – May 7, 2002), just 322 of the 1,057 (30.5%) FLCs active and licensed at the beginning of that period were still active and licensed at the end. Of perhaps even greater importance is that some 735 of the original cohort went out of business as FLCs or, in a few cases, lost their license. And another 1,313 started up active FLC businesses during the same seven-year period, obtained their state license, but left the business or, in a small number of cases, lost their license, by May 7, 2002.

The annual turnover rate of FLC businesses during this seven-year was 28% (calculated as the average of acquired plus discontinued licenses, divided by the average of the number at the beginning and at end of the seven-year period).

**Figure 24. Turnover of Licensed and Active Farm Labor Contractors
California, June 1, 1995 – May 7, 2002, DLSE**



This is an extremely high annual turnover rate, and should be compared with the turnover rate among California farm operators. A study of farm operator turnover in Fresno and Monterey Counties, referring to the period 1990 through 1994, found that in five years, the turnover amounted to 38.5% and 54.0%, respectively, in the two counties. (D Villarejo, *On Shaky Ground: Farm Operator Turnover in California Agriculture*, CIRS, November 1996) From this, the annual farm operator turnover rate is calculated to be 7.7% in Fresno County, and 10.8% in Monterey County. Both of these turnover rates for farm operators are very much lower than found for farm labor contractors.

Tax Liens Filed Against Farm Labor Contractors

In this section of the present report, tax liens filed against licensed farm labor contractors are examined. Tax liens are complaints that are intended to exact payment for unpaid tax obligations. They may be filed when a taxpayer fails to pay personal income taxes or if an employer fails to pay required payroll taxes. Employers' tax obligations include payment of employer taxes, such as unemployment insurance, FICA and Medicare. Under existing law, employers also have responsibility to withhold an estimated amount of employee income taxes, as well as employee contributions to FICA and Medicare. Both federal and state tax authorities regularly rely on tax liens as an important step in collecting unpaid employer and/or withholding tax obligations.

A Notice of State Tax Lien is a public claim against a taxpayer's property, or rights to property, both owned at the time the lien is filed, or acquired after the lien is filed. (*State Tax Lien*, Information Sheet, Employment Development Department, State of California; see <http://www.edd.ca.gov/de631tl.pdf>). Such notices are filed with the County Recorder (or Clerk/Recorder) in the county where the property is located and serves both as a public notice to the taxpayer's creditors and to establish priority status as a creditor. The claim may be against the taxpayer's home, other real estate, boats, accounts receivable, etc, and remains in effect for ten years, or until it is satisfied.

Notices of State Tax Lien for employer tax obligations, filed by the California Department of Employment Development, were examined in four California counties in which farm labor contractor activity is known to be significant: Fresno, Kern, Riverside and Tulare. These four counties account for 44% of all contract labor expense reported by California farmers in the 1997 Census of Agriculture. Fresno and Kern, respectively, ranked first and second among California counties in this regard.

In all cases, Official Records of the County Recorder was the data source, and only names of licensed farm labor contractors with business addresses in one of the four counties were considered. No effort was made to consider unlicensed farm labor contractors or other employers of hired farm workers. The criterion for matching was that both business name and address corresponded to EDD and/or DLSE records for the labor contractor. Records for the six-year period January 1, 1997 through December 31, 2002 were reviewed. An actual example of the findings (with the name of the contractor omitted), drawn from Fresno County Official Records, illustrates the situation.

A total of 136 licensed FLC employers were found to have such notices filed against them. Some had several such notices filed so that the actual total of notices was larger (199). The most significant finding of this investigation was that one-fourth (24.9%) of all of the licensed farm labor contractors in the combined four-county area had at least one Notice of State Tax Lien on file during the six-year period. These findings are shown in Table 26.

Example of Notice of State Tax Lien	
Tax	\$125,463.69
Penalty	15,245.34
Interest	6,968.12
Total due	\$147,677.15
Assessment for period 1/1/2000 through 3/31/2001	
<i>Source: Official Records, Fresno County, Document Number 2001-0119939, Filed 8/21/2001.</i>	

Several firms had judgments or tax liens complaints filed against them in the period before 1997, and a few had already had complaints filed against them in 2003 at the time when this review was completed. It was also found that some FLCs who are no longer licensed had such claims outstanding. All of these additional cases have been excluded in the analysis that follows.

It is important to realize that in an undetermined number of cases, these FLCs have been able to meet their financial obligations and the judgments or tax liens have been or are now being released. The ultimate fate of those whose tax obligations that have not yet been satisfied is, of course, not possible to determine at this writing since the ten year period during which the Notice is in effect has not yet expired.

**Table 26. Notices of State Tax Liens, Farm Labor Contractors
Fresno, Kern, Riverside and Tulare Counties
Summary of Findings
1/1/1997 through 12/31/2002**

Region	FLCs Licensed	FLCs with Notice of State Tax Lien	Percent with Notice of State Tax Lien	Number of Notices of State Tax Liens Filed	Number of Federal Tax Liens Filed
Fresno	172	40	23.2%	58	8
Kern	162	43	26.5%	61	17
Tulare	178	46	25.8%	64	10
Riverside*	35	7	20.0%	16	3
<i>4-County Total</i>	<i>547</i>	<i>136</i>	<i>24.9%</i>	<i>199</i>	<i>38</i>

* Riverside County data not included for period 1/1/1997-12/31/1997.

Separately, each of the 50 largest farm labor contractors, ranked by annual payroll, was investigated as to their tax lien status. It was found that 9 of the 50 (18%) had Notices of State Tax Lien claims filed against them. A total of \$1,791,833 in taxes, penalties and interest was due just in those claims alone. Although it might appear that the frequency of claims among the largest FLCs is lower than the corresponding frequency among the large group in the four-county area, the difference is not statistically significant.

In interviews with farm labor contractors, all stated that their ability to meet payroll and employer tax obligations is usually determined by the timely payment of their contractual fees by farm operator clients. If the farm operator fails to pay the contractor, so say the FLCs, then payroll and tax payments may become problematic.

It is for this reason that California requires licensed FLCs to post a bond. If payroll is not met, the bond may be used to pay workers. But the intention of requiring the posting of this bond was not to insure that FLCs meet payroll tax obligations. Rather, it is intended to insure that workers receive wages they are owed.

Supporting the view that non-payment of invoices for contracted services may cause failure to meet tax obligations is evidence found in various civil court filings by some of those FLCs who had Notices of State Tax Liens filed against them by EDD. In these cases, civil complaints were filed against farm operators who were alleged to have not made payments for labor contracting services that had been provided. In one case, the FLC obtained a promissory note on the farm operator's peach crop! FLCs could, of course, turn to factoring companies but would then only be able to collect 80%-85% of their outstanding invoices.

An interesting pattern was found regarding the year in which Notices of State Tax Lien were filed. Although the investigation covered a six-year period, nearly two-thirds of these complaints were filed in just two years (2001 and 2002). This is shown in Table 27. Since such Notices are filed many months after the tax obligation has come due, the concentration of the filing of complaints in the most recent two years suggests that substantial problems affecting the financial condition of important segments of the California farm industry arose during 2000 and 2001. It is well established that the raisin grape industry, centered in Fresno and Tulare Counties, experienced considerable financial hardship during that same period of time, and continues to struggle. This industry relies heavily on labor contractors, which might at least partially account for the surge in Notices of State Tax Liens in the years following.

**Table 27. Notices of State Tax Liens, Farm Labor Contractors
State of California EDD filings only
Fresno, Kern, Riverside and Tulare Counties
Year Filed**

Year	Number of State Tax Lien Filings	Percent of Total
1997*	24	12%
1998	12	6%
1999	6	3%

2000	30	15%
2001	44	22%
2002	82	41%

* Riverside County data not included for 1997.

As part of this investigation, the findings regarding FLCs were compared with those for all employers in the same region. In 2002, for all four counties, it proved possible to determine the total number of Notice of State Tax Lien complaints filed by EDD against all employers. This result was then compared against the number of private sector employers in the four counties. The total number of private sector establishments was determined from BLS CEW data.

A total of 3,774 Notices of State Tax Lien complaints were filed by EDD against employers in the four counties during 2002. Of these, 82 were against FLCs. On the other hand, there were an estimated 78,215 private sector establishments employing wage or salary workers during 2001, the most recent year for which this data is available at the county level. These findings are shown in Table 28.

Therefore, in 2002, Notice of State Tax Lien complaints filed against FLCs were 2.17% of all such notices against employers in the four counties. FLC employers were 0.70% of all private sector employers in the same counties. In other words, FLCs were three times more likely to have had a Notice of State Tax Lien complaint filed against them as compared with all employers in the 4-county area. This difference is statistically significant at the 95% confidence interval.

**Table 28. Notices of State Tax Liens
Farm Labor Contractors vs. All Employers
State of California EDD filings only
Fresno, Kern, Riverside and Tulare Counties
2002**

County	<i>FLC State Tax Liens</i>	<i>Total Number of State Tax Liens</i>	<i>Number of FLC Employers</i>	<i>Total Number of Private Sector Establishments</i>
<i>Fresno</i>	28	1,092	172	26,009
<i>Kern</i>	32	720	162	13,889
<i>Riverside</i>	6	1,513	35	30,232
<i>Tulare</i>	16	449	178	8,085
Total	82	3,774	547	78,215

Health and Safety Inspections by Cal-OSHA

Agriculture is an industry that has one of the state's highest rates of occupational injury and illness. According to the Workers Compensation Insurance Rating Bureau, there were 244 on-the-job hired farm worker deaths and 126,062 paid claims for workplace illness and injuries to hired farm workers in just the five-year period 1995-99. (WCIRB, *Classification Experience – Statewide, 2002 Set*, Product Number AC6025E, San Francisco, CA, 2002).

The principal agency with responsibility for enforcement of workplace health and safety regulation in California, Cal-OSHA, has regularly conducted inspections of farm labor worksites for many years. In so doing, detailed information concerning compliance by each of many different categories of farm-related businesses has been gathered. Of interest in the present report is the extent to which farm labor contractors, as compared with other types of farm employers, provide a safe workplace for their employees.

A second issue of particular importance at this time is the sharp increase in premiums paid by employers for workers compensation insurance. Many California employers report that they are faced with double-digit increases in annual premiums.

There is new evidence that Cal-OSHA enforcement and consultation services are a major factor in reducing workplace injuries. Recently, the Workers Compensation Insurance Rating Bureau of California reported that a multivariate analysis of factors associated with the decline of frequency of workers compensation indemnity claims in the 1990's indicates that, "Increased Cal-OSHA enforcement and consultation efforts are related to about 27% of the decline." Other factors contributed to the decrease of indemnity claims: the shift to a service-based economy, 18%; the net impact of slower than typical economic growth, 11%; and erosion of statutory benefits on a real or inflation-adjusted basis, 10%. (WCIRB, *California Indemnity Claim Frequency Analysis*, April 25, 2002, p. 1)

Two separate data sources were consulted to examine the behavior of FLCs who were subjects of Cal-OSHA inspections. First, a large data file of all Cal-OSHA inspections for the period 1987-1997 was made available to the author. This file includes more than 116,000 individual inspection records. Second, the OSHA website provided searchable access to records of inspections, by state, date or SIC code (see www.osha.gov). This website was utilized to access information about inspections in California agriculture for the most recent time period.

**Table 29. Cal-OSHA Farm Worksite Inspections
All Types of Employers
Total Inspections and Serious Violations**

<i>Period</i>	<i>Inspections</i>	<i>W/serious violations</i>	<i>Total serious violations</i>
1/1/1990 – 10/18/1997	4,583	1,027	1,536
1/1/1999 – 12/31/2002	4,082	527	799

Table 29 shows overall findings for employers of hired farm workers. All reported inspections and findings for those violations deemed by the agency to be "serious violations" are included. Farm employers are those in the industry classifications SIC 01xx, 02xx, 071x, 072x and 076x. Only these industries are considered in the analysis that follows.

During the earlier period summarized in the table (January 1990 through October 1997), there was a total of 4,583 inspections of California farm worksites, or an average of about 585 per year. Of that total, 1,027 inspections (22%) found "serious violations" and the total number of such violations was 1,536, or about 0.335 serious violations per inspection.

In the most recent period (January 1999 through December 2002), the total was 4,082 inspections of farm worksites, equivalent to an average of 1,020 per year. Some 527 inspections (13%) found “serious violations” and the number of such violations was 799, or 0.196 serious violations per inspection.

These findings are quite important for they show a marked reduction in the rates of serious violations in Cal-OSHA inspections of farm worksites. The proportion of inspections with serious violations fell from about 22% in the earlier period to 13% in the latest time frame. The rate of serious violations per inspection also fell, from 0.335 to 0.196 per inspection. In both of these comparisons the differences between the findings for 1990-97 and for 1999-2002 are statistically significant at the 95% confidence interval.

Also worthy of special note is the associated increase in the average number of inspections of farm employers per year during the latter period, from 585 to 1,020. As indicated in the WCIRB analysis of the overall decline in indemnity claims, enforcement is effective in reducing the risk of workplace injuries and illnesses on farm worksites. Further analysis is warranted, especially whether random inspections, as contrasted with those triggered by an on-farm accident, are resulting in a lower rate of serious violations.

Findings regarding farm labor contractors are somewhat more difficult to interpret. This is because of the fact that while examining the inspection records for the recent period, it was discovered that numerous FLC and farm operator inspections appear to have been misclassified according to industry in the OSHA files. For example, in the 2001 files, at least 143 inspections of the total of 493 attributed to crop farm operators (SIC 01xx) were actually of licensed farm labor contractors. In all such cases, care was taken to demonstrate that the employer in question did not, for example, operate a farm under that business name as revealed by records of the pertinent County Agricultural Commissioner. Thus, at least 29% of employer inspections that 2001 OSHA records indicate were crop farm operators appear to have been incorrectly classified.

Similar errors have been found for inspections classified as farm labor contractors (SIC 0761). Again, in 2001, 71 of 322 records (22%) attributed by OSHA to this industry were actually of crop farm operators and should have been classified as such (SIC 01xx).

On the other hand, there were no cases found of misclassification of livestock farm operators in the 2001 OSHA file, and relatively few in some crop service sectors, such as SIC 071x. Classification difficulties appear to be concentrated in just a few industry codes.

Serious difficulties in the classification of farm labor contractors by industry have already been a topic of discussion in the present report where it was found that many were incorrectly classified in EDD wage and employment reports (cf. p. 54). It appears likely that OSHA misclassification of an FLC to a particular farm industry code, such as 0174 (Citrus farm), may have arisen when inspectors found the farm labor contractor engaged in harvesting that crop. In that sense, cases of incorrect classification of employers by industry are simply a consequence of the wholly reasonable efforts of inspectors to identify the kind of crop in which the FLC crew was working.

It proved necessary to manually inspect each of the 4,082 OSHA records pertaining to farm worksites for the period 1999-2002 and attempt to correct the erroneous classifications. All data presented in Table 30 (below) are adjusted findings in

which the industry code to which an employer of hired farm workers has been verified or corrected, as appropriate.

First, there were nearly equal numbers of OSHA inspections of FLCs (1,590) and Crop Farm Operators (1,630), but far fewer inspections of Livestock Farm Operators (251). Second, the number of inspections in which violations of any degree of severity were found was very nearly equal for the FLCs and Crop Farm Operators. The rates were also nearly equal: 46% of inspections had violations for FLCs, and the same figure, 46%, was found for Crop Farm Operators. But for Livestock Farm Operators, the rate was much higher, 74%, and the difference as compared with the other two groups is statistically significant at the 95% confidence interval.

However, the findings for inspections in which serious violations were found reveal some additional differences. For FLCs, the number was 167 (10.5%) while for Crop Farm Operators it was 201 (12.3%). The difference between these two percentages is not statistically significant. In the case of Livestock Farm Operators, the number of inspections with serious violations was 90 (36%), implying a rate far in excess of the finding for FLCs or Crop Farm Operators. The difference between this rate and the other two is statistically significant at the 95% confidence interval.

From January 1, 1999 through December 31, 2002, there were 133 licensed farm labor contractors who were found to have serious violations of OSHA health and safety standards. Thus, about 12% of actively licensed FLCs had inspections with serious violations at some point during the four-year period. Since the total number of inspections of FLCs that had serious violations was 167, it should be clear that some FLCs had multiple inspections, often in different years, in which serious violations were found.

**Table 30. OSHA Inspections of Farm Sites
By Industry of Employer
California, 1999-2002**

<i>Industry</i>	<i>Inspections</i>	<i>Inspections with Violations</i>	<i>Inspections with Serious Violations</i>
Licensed Farm Labor Contractor	1,590	729	167
Crop Farm Operator	1,630	750	201
Livestock Farm Operator	251	185	90

These data suggest that California FLCs have workplaces that are significantly safer than those at Livestock Farm Operators, and are no less safe than the worksites of the state's Crop Farm Operators. It is important to emphasize that these conclusions are based on author's adjustment of the industry classification codes for a substantial number of firms that had inspections during this time frame.

The OSHA inspections data yield two additional findings regarding FLCs as compared with other types of agricultural employers. First, the total number of violations at FLC worksites was found to be 1,357 during the four-year period. Based on the total

number of such inspections (1,590), this is equivalent to 0.853 violations per inspection. The comparable figures for Crop Farm Operators and Livestock Farm Operators are 1.063 and 2.096 violations per inspection. The difference in the finding for FLCs as compared with the other two categories is statistically significant at the 95% confidence interval.

Cal-OSHA’s website provides access to useful comparative measures regarding all inspections in the state (www.dir.ca.gov/dosh/cac.htm). During 1999 and 2000, the most recent complete years for which summary data has been published, there were 9,038 serious violations found in all inspections in all industries in the state. The present report finds 263 serious violations for the same period among FLCs, Crop Farm Operators and Livestock Farm Operators, or 2.9% of the state total. California had a reported 1,025,084 establishments with employees covered under the state’s unemployment insurance system in 1999, and 997,085 in 2000 (www.bls.gov/cew/). Thus, the state’s 20,448 FLC, Crop Farm and Livestock Farm employers (average of 1999 and 2000 totals) represent 2.0% of employers. The difference between this result and the 2.9% figure for the farm worksite share of all serious violations found in the state is statistically significant at the 95% confidence interval.

This is one of the most important findings of the present report. Farm employers account for a disproportionately large share of serious violations found during Cal-OSHA worksite inspections.

The second additional finding worth noting concerns the amount of monetary penalties. Presumably, the monetary value of penalties assessed for serious violations reflects the degree of seriousness of the violations involved. For this analysis, the Current Penalty amount is used. The average amount of penalties assessed per inspection with serious violations among the three industry groups was: FLCs, \$3,575; Crop Farm Operators, \$4,919; and Livestock Farm Operators, \$5,658. By this measure, inspections of FLC worksites where serious violations were found were somewhat less dangerous than for the other two groups. Once again, Livestock Farm Operators were found to have fared worst.

**Table 31. OSHA Inspections of Farm Sites
By Industry of Employer and Year
California, 1999-2002**

<i>Industry</i>	<i>Year</i>	<i>Inspections</i>	<i>Inspections with Violations</i>	<i>Total Number of Violations</i>
Livestock Farm Operator	1999	38	26 (68%)	80
Livestock Farm Operator	2000	21	16 (76%)	28
Livestock Farm Operator	2001	154	127 (82%)	386
Livestock Farm Operator	2002	38	16 (42%)	32
All Farm Worksites	1999	1,257	665 (53%)	1,434
All Farm Worksites	2000	1,116	527 (47%)	1,029

All Farm Worksites	2001	1,113	565 (51%)	1,332
All Farm Worksites	2002	596	197 (33%)	472

A finding that is of major concern regarding workplace health and safety on California farms is that the number of Cal-OSHA inspections on farm worksites was substantially reduced in 2002, as compared with the earlier three-year period. This is shown in Table 30. There were only 596 reported inspections of farm worksites in 2002, down by very nearly half (49%) of the annual average for the previous three years. Moreover, the proportion of inspections yielding violations was fairly constant throughout 1999-2001 (53%, 47%, and 51%, respectively). This finding strongly suggests that the same level of effort in agriculture should have been continued, not a cutback.

Of particular concern is the sharp reduction in the number of inspections of Livestock Farm Operators. During 2001, there were 154 such inspections, and most (139) were of Dairy Farm Operators. An astonishingly large 76 (49%) of these inspections found serious violations, of which 74 were of dairy farms. Overall, 53% of dairy farms inspected in 2001 had serious violations. Remarkably, despite these alarming indicators of extremely dangerous conditions on the state's dairy farms, the number of Livestock Farm Operator inspections was cut by 75% in 2002, to just 38 inspections. During 2002 there have been several high-profile cases of on-the-job dairy farm worker fatalities. These data suggest that Cal-OSHA should be encouraged to re-emphasize inspections of dairy farms.

In this context, a finding regarding monetary amounts of penalties assessed in inspections where serious violations were found must be discussed. During 2001, the aggregate Current Penalty amount assessed in cases of inspections of Livestock Farm Operators was \$449,890. As previously described, dairy farms were found to comprise nearly all of these cases. The sharp cutback in the number of livestock farm inspections in 2002 has meant that only \$23,765 in penalties has been assessed. Thus, the cutback in livestock farm inspections has also led to a sharp reduction in the amount of penalties assessed, a matter of great importance to firms in that industry.

Summary

California's farm labor contractor industry has expanded rapidly in the past several decades. However, no comprehensive industry-wide source of data on the economic performance of this important industry is available, either from the U.S. Census Bureau or from state agencies. There is evidence that aggregate farm labor contractor revenue exceeds \$1.4 billion, annual payroll exceeds \$1.2 billion and employment (annual average basis) is in excess of 130,000.

The industry is highly competitive, and individual FLCs compete on the basis of their ability to charge low commission rates, or hold down administrative costs. The competition is so severe that increasing size concentration is apparent, as is a very high annual rate of business turnover (28%).

State records of licensed farm labor contractors can be matched with wage and employment reports to EDD in more than eight of ten instances. On the other hand, a substantial share of these cannot be found classified in the industry that corresponds to

farm labor contractors (SIC 0761). Several hundred were found in other industry categories.

Conversely, an unacceptably high share (nearly half) of companies classified in the farm labor contractor industry in EDD wage and employment files cannot be matched with licensed farm labor contractors. It is not known how many of these unmatched businesses are actually operating as unlicensed farm labor contractors, although evidence was found that several are doing so.

Farm labor contractors were found to be eight times more likely to have been cited by the INS for having hired persons lacking work authorization (undocumented workers) than farm operators. It is not known whether this reflects greater INS focus on labor contractors as compared with farm operators.

Interviews with hired farm workers during 1999 show that those employed by farm labor contractors are less likely to own a home, to have employer-provided health insurance, to have an employer who offers health insurance, and are more likely to be paid piece rate than are persons directly hired by farm operators. At the same time, FLC employees are less likely than their direct-hire counterparts to operate machinery or to load, mix or apply agricultural chemicals.

Hired farm workers who were employed by FLCs were more likely than persons who were direct-hire farm workers to pay another person for a ride to work. The practice of forcing workers to pay for rides to the job, and the prevalence of serious vehicle accidents involving farm labor vans may be affected by a recent civil court case holding the farm operator to be jointly liable with contractors in such accidents.

Farm labor contractors, both from worker interviews and from Cal-OSHA farm worksite inspection records, are more likely to provide a safe workplace than are farm operators, and the difference regarding farm safety is especially pronounced for livestock farm operators. At the same time, farm employers are more likely to be found out of compliance in Cal-OSHA inspections than is the case for all California industries as a whole.

An especially disturbing finding is the sharp reduction of Cal-OSHA farm workplace inspections that occurred in 2002, down by half from the three prior years. Of special concern is the extremely high prevalence of serious violations found on dairy farms in 2001, and the inexplicable cutoff of dairy farm inspections in 2002.

Farm labor contractors are found to be highly likely to have had Notices of State Tax Lien filed against them for failure to pay required state employer payroll taxes. One-fourth of all actively licensed FLCs in a four-county area were found to have had at least one such tax lien filed in the most recent six-year period. At the same time, it is apparent that poor financial conditions in the agricultural industry may lead some farm operators to fail to pay labor contractors for their services in a timely manner.

Chapter Four

Discussion and Recommendations

1. **The Department should establish an inter-agency task force to assess the following aspects of labor contracting in the State of California.**
 - a. **Should Personnel Supply Service firms be required to be licensed, much as other forms of labor contractors are now licensed?**
 - b. **Are there other industries in which labor contracting has become prevalent in which licensing of firms may be appropriate?**
 - c. **Should firms that may not presently be required to be licensed as farm labor contractors, but are otherwise active in the recruitment, hiring and supervision of hired farm workers, be included in a broadened definition of the industry?**
 - d. **Should the amount of the bond required of farm labor contractors be substantially increased?**
 - e. **Should farm operators who hire labor contractors be held jointly responsible for the timely payment of wages, salaries and employer tax obligations?**

The task force should seek advice and participation from representatives of the affected industries as well as other knowledgeable parties. Agencies that should be included are: Division of Labor Standards Enforcement, Employment Development Department, Cal-OSHA, Division of Labor Statistics and Research, Department of Justice and Franchise Tax Board, among others.

Discussion:

In 1948, Alan Bruce, then Deputy Labor Commissioner in California, pointed out that labor contracting was a distinct and different activity from traditional employment agency functions. Until then, farm labor contractors were treated under California law as a form of employment agency (cf. Sec. 1551 of the Labor Code). But Deputy Commissioner Bruce recognized that an employment agency's typical function is solely to recruit, it does not hire nor dictate who is to be hired, and its compensation comes from the employees.

He also pointed out that farm labor contractors differ entirely in their function from this type of activity. Most important, farm labor contractors decide who is to be hired, they have responsibility to pay those persons, and the *amount of their revenue is determined by the amount of labor provided to the client by their employees*. For Deputy Commissioner Bruce, this last factor was decisive in pointing out the need for additional regulation. In this regard, Personnel Supply Service companies are very much like farm labor contractors, with one important difference: the client firm normally provides on-site supervision for the workers who are provided. But the supply firm's revenue, and its profit, is determined by the amount of labor furnished to the client.

Within agriculture, major changes have taken place over the past twenty-five years regarding the manner in which the production of many labor-intensive commodities

is carried out. Of great importance is the widespread adoption of field packing, that is, the preparation of crops for shipment, including packing in cartons, in the fields where the harvest takes place. Machines for this purpose are often provided by a custom harvest company, but so is the entire crew of workers. In one interview, with a vegetable custom harvest company representative, the subject made the interesting comment that he did not need to obtain a farm labor contractor license because his was a custom harvest firm. When it was pointed out that he was furnishing workers as well, he claimed that did not matter, even though his billing charged the client a fee based on the amount of labor provided.

The practice of using labor market intermediaries in various other industries has already led to new laws requiring, for example, that construction sub-contractors pay workers compensation insurance premiums at rates determined by the experience modification of the client, not the sub-contractors. It is not at all clear whether similar problems exist in other industries and whether licensing might be helpful in monitoring activities that require additional attention.

The task force should also review the effects of differing federal and state definitions of farm labor contractor for regulatory purposes. Consideration should be given to adopting the federal definition at the state level for licensing purposes.

Careful review of regulations defining who should be licensed should also be a part of the charge of the task force. The confusion over classification of farm labor contractors among various industries, even extending to the Personnel Supply Service industry, appears to be increasing over time. This finding of the present study should be regarded as a signal that changes are underway that may require new regulation.

The sheer size of outstanding unpaid payroll tax obligations of some labor contractors was a very surprising finding of the present research. This finding alone warrants a full-scale investigation of the industry as a whole regarding the extent of tax liens and the total amount unpaid and overdue (see Recommendation 5, below).

One possible way to correct this problem would be to require the posting of a very much larger bond, in cash or secured by property, by all labor contractors, farm and non-farm. Deputy Commissioner Bruce suggested that the farm labor contractor bond be equivalent to one week's total payroll expense, not simply a fixed amount.

Labor contractors, whether Personnel Supply Service firms or Farm Labor Contractors, do not create labor demand or new jobs. Rather, it is their clients who demand services and are then billed for those services who are ultimately responsible. This has led some to suggest that clients should be jointly and severally liable for all aspects of the activities of labor contractors.

Union representatives and some labor contractors who were interviewed in the course of the research for this paper seemed to be in full agreement that joint and several liability makes sense. On the other hand, client representatives argue, with some validity, that they should not be held liable if they do not exercise complete supervision and control, including the hiring decision. It is for this reason that a homeowner generally cannot be held responsible for activities of contractors whom they hire to perform tasks on their premises.

The possibility of requiring clients to post a bond would recognize the financial responsibility of both client and labor contractor for the payment of wages and salaries, and for employer tax obligations, without addressing other issues.

2. Agency record-keeping regarding individuals and firms, while improving, should to be systematized uniformly across all departments and divisions in the Labor and Employment agency.

Discussion:

An Inter-agency Work Group within Labor and Employment is presently examining how to share electronic file information across the full range of state agencies concerned with labor and employment matters. As demonstrated in the present report, the ability to match records from electronic files of different agencies is seriously impeded by the absence of uniform data record protocols.

This problem has been largely resolved at the county level in California counties. Data handling protocols established by County Clerks and County Recorders are widely used by other county officers, e.g., assessors and tax collectors. These include standardized formats such as: “(last name), (first name)” and spelling out company names in full, normally without abbreviations. In the case of corporation names, it is the standard practice to use the name exactly as it appears in the records of the Secretary of State. The current widespread practice of using the unusual format “(first name) (last name)” by EDD and DLSE, and the arbitrary use of non-standard abbreviations in company names effectively precludes electronic file matching for a majority of records.

Special attention is needed for the large proportion of Hispanic, Middle Eastern and Asian names in the California population. It is not uncommon for persons of Hispanic origin to have dual surnames, which can lead to confusion in keeping accurate records. For example, an individual whose name is Pedro Rodriguez Hernandez may appear in official records as Pedro Rodriguez, or as Pedro R. Hernandez, or as Pedro Rodriguez H., among other possibilities. This can be seriously problematic, particularly in alphabetic sorting of names unless a standard protocol is adopted and put into place that recognizes how to handle cases such as this.

Once again, it was found in the present research that county records in California, especially in those counties where Hispanic, Middle Eastern and Asian populations are numerous, are far better organized and easily searchable due to their more efficient protocols in handling names. For example, in both Fresno and Tulare counties, it was found that there was little difficulty in searching official records for complex Hispanic surnames.

Some agencies may choose to use confidential information, such as Social Security Numbers, for data matching purposes in comparing records from different agencies. Where this type of information is available, of course it should be used to assist in comparing data records. However, this information should be kept confidential and not in the public record.

3. Farm labor contractor licensees that are general or limited partnerships, corporations, or limited liability companies, should be required to disclose the names and physical residence addresses of all partners, stockholders (owners of 5% of more of corporate stock), directors, officers or members, respectively, as part of the licensing process. The purpose here it to ensure that labor contractors who have been denied a license be prevented from using subterfuges to obtain a new license. This information should be in the public record. The Market Enforcement Branch

of the California Department of Food and Agriculture program for the licensing of all persons and corporations handling or purchasing farm products on the wholesale level provides an excellent model of how this kind of record keeping can be accomplished in an efficient manner. CDFA license records include most of the data items listed above (except stockholders who are neither officers or directors) and follow sensible standardized data handling protocols.

Discussion:

At present, there is evidence that some farm labor contractor licensees may choose to discontinue their business, then form a new company (perhaps a corporation) and seek to continue the business under the new name. While this is no doubt a standard business practice, the use of these techniques may cloak activities that should be scrutinized. Full disclosure, as suggested, may tend to discourage this practice, and will at least provide those involved in reviewing licensing applications with additional information that may be helpful in reaching an expedited conclusion.

In examining farm labor contractor turnover, it was discovered that a significant number of firms who left the business were replaced by new firms that were headed by an individual with the same surname and operating at the same business address as the old firm. Other cases involved a newly formed corporation, or limited liability company, in which the principals were the same as those heading the now-defunct firm. In one instance it was discovered that the daughter of a contractor who had lost his license was able to get a license, and the business was continued as before, but under her name.

The large proportion of farm labor contractors who fail to pay their employer tax obligations in a timely manner suggests that tax avoidance considerations may play a role in the high turnover rate as well. Thus, the present practice of seeking clearance from tax authorities at the time of license renewal is good public policy. But this approach does not effectively address the possibility that a new firm may be created, with other principals in evidence, while those who failed to meet their tax obligations remain in the background.

Former State Labor Commissioner Victoria Bradshaw indicated to the author of the present report that tracking records and financial assets of farm labor contractors who operate in this manner was one of DLSE's major headaches (Victoria Bradshaw, private communication, 1995). Though the problem described herein will not be completely solved by requiring full disclosure, it should be clear that having immediate access to the information described above is an essential first step and would likely result in substantial time saving by all agencies concerned with these matters.

Other state agencies with responsibility to license business activities already require that applicants provide the data indicated above. The licensing program of the Market Enforcement Branch of CDFA was established in 1928 for the purpose of implementing a mechanism to assure that market middle persons, such as brokers and commission merchants, could be properly regulated and that farm operators would have some measure of protection from unscrupulous entrepreneurs. It is widely agreed that this program has been very effective, and that full disclosure by middle persons and food processors has played a central role. The author has utilized the CDFA database of license holders and found the data protocols to be exemplary.

A major concern in considering this recommendation is proper protection of an individual's privacy. Taxpayers, of course, are required to provide Social Security Numbers to state and Federal tax authorities, but this information must remain completely confidential.

4. Cal-OSHA should be encouraged to ramp up investigation activities in agriculture, at least at the level attained in 2001. The findings of a very high level of serious violations in the dairy farm sector is especially troubling and the widely publicized multiple fatality cases on California dairy farms in 2002, after the Cal-OSHA inspections were apparently curtailed, are simply unacceptable.

Discussion:

It is now well established that Cal-OSHA enforcement and education activities are an important factor in reducing workers compensation indemnity claims. The sharp increases in premiums for this type of insurance, now facing a great many employers, suggests that is in the interest of those same employers and California's business climate to immediately take steps that reduce their financial burden. This includes focusing Cal-OSHA enforcement on industries with the highest rates of serious violations, such as agriculture.

5. Additional research should be undertaken to determine the full extent of non-compliance with timely payment of state payroll taxes by some labor contractors. Both farm labor contractors and other types of labor contracting businesses should be included in this review. Consideration should also be given to non-compliance with timely payment of Federal payroll taxes and county property taxes.

The finding that fully one-fourth of licensed farm labor contractors in an important four-county region had Notices of State Tax Lien filed against them suggests that there may be a serious tax problem faced by these businesses. Implicit for the state is the absence of much-needed tax revenue. The investigation contemplated should include a determination of the number with outstanding tax liens and the total amount due for all licensed farm labor contractors and other types of labor contracting firms. Then, for a sample of the firms, financial records should be examined in detail to determine the nature of the cause of the problem. The investigation should conclude with recommendations for protecting the public interest regarding tax obligations of employers.

In the present research, no effort was made to determine the extent of non-compliance with Federal payroll or county property taxes by farm labor contractors. However, while examining county records for Notices of State Liens, instances of both Federal and county tax liens were encountered for the some labor contractors. Thus, the proposed research should be of sufficiently wide scope to include those types of tax liens as well.

6. Cal-OSHA investigations in agriculture should seek the license record of any labor contractor encountered. This data item should be included in the name record of the firm, as it already is in some instances. Also, the exact name of the

farm operator where the labor contractor was determined to be working should also be recorded in every such case, as it is in some instances.

Discussion:

There appears to be a relatively small problem in assigning farm businesses to the appropriate industry code when Cal-OSHA field investigations are carried out. For purposes of monitoring the activities of FLCs, recording the license number of the contractor and the name of farm client could be quite helpful in determining patterns of violations. At present, some investigation records contain this data, but others do not. It would be helpful if all did.

7. Farm labor contractors have had mixed reactions to some of the recently proscribed annual in-service training. At present, eight hours per year are required, and can only be obtained from designated providers. Consideration should be given to screening FLCs at license renewal via examination and exempting those who score exceptionally well.

Discussion:

The relatively new in-service education requirement is intended to inform FLCs of their responsibilities under California and Federal law. While the intention has merit, the practice has proved problematic. In interviews with several FLCs, it was apparent that these individuals were at least as knowledgeable as those doing the training. For these highly experienced FLCs, the training was, quite frankly, a poor use of their time. Consideration should be given for the option of “placing out” of the in-service training by examination at the time of license renewal.

8. The farm labor contractor license renewal process should be reviewed with the assistance of knowledgeable parties, experienced labor contractors and representatives of hired farm workers. Consideration should be given to simplify and expedite the process, including one-stop registration and licensing for all agencies.

Discussion:

The yearly license renewal requirement for farm labor contractors makes sense, especially in light of the very high annual turnover described in the present report. At the same time, several contractors reported that delays in the renewal process, of several months duration, were encountered. Informal meetings between representatives of the industry and DLSE staff have already led to suggestions for improving the renewal process. This process should be encouraged to reach a conclusion soon, and changes implemented to speed up renewals. However, representatives of hired farm workers should be included in these discussions in order to ensure that the perspective of workers be reflected in FLC licensing.

At present, in addition to Federal registration requirements, farm labor contractors are required to separately register in each county where they provide services. This registration is accomplished with the County Agricultural Commissioner, and for quite a few contractors, must be repeated again and again in each of many counties. This

process could be made much more efficient and less costly by using computerized registration and licensing on a statewide basis. If a contractor did not know whether he or she would be providing services in a specific county, then any given county could be added later by simply checking a single box in registration form, and simultaneously notifying the county in question. This would assure accuracy and uniformity of information provided to county authorities as well as result in savings of scarce administrative resources at all levels of government.

Another possible simplification would be to standardize the annual registration and licensing date, with new licenses issued at any time, but expiring at the end of the current cycle. This process is used for annual pesticide use permits issued by county Agricultural Commissioners and works well.

9. Consideration should be given to requiring farm operators to disclose the identity of labor contractors whom they hire. This could easily be done through the existing pesticide permit process at the county agricultural commissioner.

Discussion:

The proposed disclosure of farm labor contractors is intended to make it possible to provide improved communication and oversight of workplace activities that are inherently dangerous. There is compelling evidence that additional oversight and enforcement is needed.

The 1999 serious poisoning of several dozen hired farm workers who were weeding and thinning cotton fields in Fresno County was the result of a failure to properly communicate among three different firms performing tasks on the property where the incident occurred. The farm operator is alleged to have thought that weeding and thinning work performed by an FLC crew in a particular field had been completed, and evidently told a pesticide applicator firm to proceed with chemical treatment of the field. The spraying was completed early in the morning of the incident. But the weeding and thinning work had not been completed. The labor contractor who had furnished the workers was unaware that the field had been sprayed just a few hours before the hoeing and thinning crew resumed work at 6 am that morning. Within a short time, more than two dozen workers became violently ill and required emergency medical attention.

At present, the identity and telephone number of a pesticide applicator is required to be part of the pesticide permit and is reviewed by the county Agricultural Commissioner well before any spraying can begin. But no information is required about labor contractors who may also be working on the property and when they are likely to be present. Application of restricted pesticides, the most dangerous materials, requires that a 24-hour advance notice of intent to apply restricted materials be provided to the Agricultural Commissioner. Absent knowledge of the activities of labor contractors, communication breakdowns can occur, exactly as happened in the poisoning incident described above, without any opportunity for independent oversight.

There are two important reasons to require additional disclosure by farm operators and labor contractors. The California Department of Pesticide Regulation (DPR) recently completed a five-year assessment of compliance with the Federal Worker Protection Standard (WPS). WPS was intended to set minimum workplace safety requirements intended to protect the health of hired farm workers who are routinely exposed to

dangerous pesticides. Inspectors from DPR visited 22 counties and went to farm workplaces to determine whether pesticide handlers and field workers were being properly protected. Altogether, 568 pesticide handler firms and 268 employers of field workers, including 81 FLCs, were inspected.

It was found that just 46% of handlers and only 26% of field worker employers were in full compliance with the requirements of the law. During review of the FY 2003 California state budget, the Office of the Legislative Analyst pointed out that there were extremely serious shortcomings found in compliance with the requirements of the Worker Protection Standard.

Finally, Agricultural Commissioners, who have the responsibility to enforce pesticide safety regulations, presently require businesses that apply dangerous chemicals for commercial purposes, usually farm operators, to obtain an annual permit. The permit process is intended to provide all of the information needed by inspectors to carry out their responsibilities. Yet, inspectors for the county Agricultural Commissioner who are seeking to enforce workplace safety find that workers they encounter may not know the name of the farm operator.

10. Labor contractors are presently excluded from consideration as “employers” under the Agricultural Labor Relations Act of California. Hired farm workers should have the right to determine who they wish to have included as “employers” for purposes of concerted action. This extension of determining who is responsible for conditions of employment should be joint and several, not to replace the farm operator.

Discussion:

Labor historians and legal scholars are in agreement that farm labor contractors have sometimes shielded farm operators from concerted action on the part of hired workers. There are more than a few instances in which labor contractors have been used to break strikes. Thus, it seemed to be good policy in 1975 when the ALRA was enacted to hold the farm operator responsible in all cases, even when the actual employer was a labor contractor. In addition, it was thought that farm operators who employed large numbers of workers were likely to have sufficient assets that could be targeted by judgments that might arise from serious instances of unfair labor practices.

However, no one in 1975 thought that farm labor contractors would become the force in the agricultural industry that they have become today. There are more than a few labor contractors who have more assets than some of the farm operators for whom they work: some own vast amounts of farm machinery, and still others have become investors in farm operations as well as continuing their labor contracting business.

Also, it is not uncommon today for a hired farm worker working for a labor contractor to be completely unaware of the identity of the farm operator client. Consider this hypothetical situation. A group of workers employed by a labor contractor want to seek collective action to remedy a workplace problem they have encountered. Suppose these are raisin harvest workers who go from ranch to ranch in the course of each week, sometimes going to two or more ranches in a single day. After continuing to seek satisfaction, they are fired. Under ALRA, this is a possible case of unfair labor practice, and subject to enforcement activity by that state agency. But the agency cannot act

unless the farm operator is designated to be the responsible party. So the workers are then told that they must designate who the farm operator was when they were fired. The question of which farm operator is to be held “responsible” is absurd on its face.

Of course, this is an extreme example, but it illustrates the depth of the problem. One remedy is to allow the workers to charge the labor contractor with unfair labor practices. Why not permit hired farm workers to decide for themselves who they wish to hold responsible for the conditions of their employment? Enforcement of collective bargaining rights could then include all parties, farm operators and labor contractors, as jointly and severally responsible.