



OPENING THE DOOR

Ending Racial Discrimination
in Industrial Temp Hiring
Through Innovative Enforcement

PARTNERS FOR
DIGNITY & RIGHTS



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ABOUT THE COLLABORATORS

PARTNERS FOR DIGNITY & RIGHTS

(formerly NESRI) partners with communities to build a movement for economic and social rights, including health, housing, education and work with dignity. Partners for Dignity & Rights works in a participatory way with communities directly impacted by rights violations to put people's experiences at the center of efforts to build power, shift narratives and change policies.

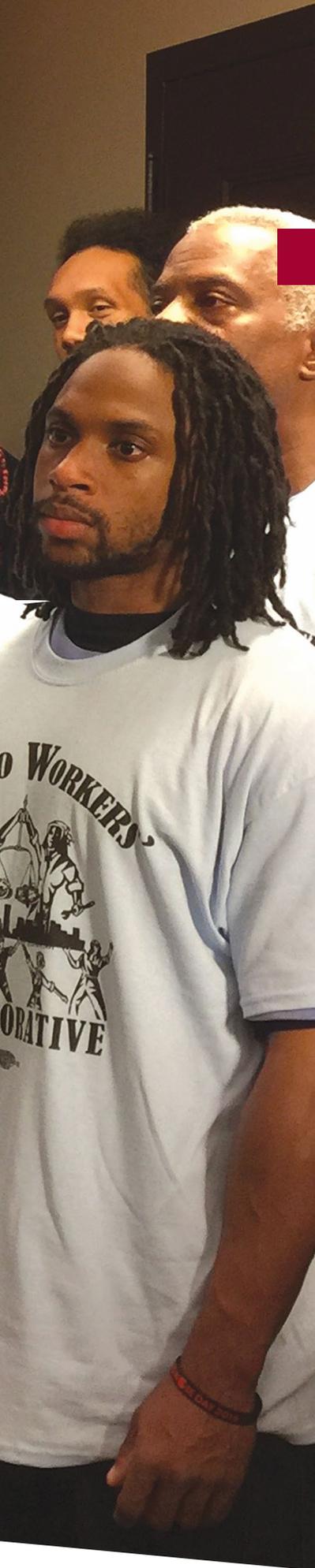
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EQUAL RIGHTS CENTER

is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations nationwide. The Equal Rights Center's core strategy for identifying unlawful and unfair discrimination is civil rights testing.

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INTRODUCTION

“Black and brown standing up together . . . can build better communities stopping discrimination in the workplace.”

—Fredy Amador, a Latinx organizer with the Chicago Workers’ Collaborative who worked in factories outside Chicago as a temp worker for more than ten years¹

“I know how hard it is when you need to be there and looking for a job and they don’t pick you. I cannot be shutting my mouth no more.”

—Pamela Sanchez, a former dispatcher for the temp agency MVP, on why she, a Latinx woman, testified about the agency’s discrimination against Black workers before the Illinois legislature²

Union blue-collar jobs, which once forged America’s middle class and provided a ladder for Black communities to build stability and wealth, have been turned into sub-poverty and insecure jobs both overseas and right here at home. Much attention has been paid to outsourcing corporate needs overseas to exploit labor, but less apparent have been the strategies employed by large corporations here in the U.S.

The manufacturing sector drove 12 percent of the wealth created in the U.S. economy in 2018.³ U.S. manufacturers produced 18 percent of the world’s goods,⁴ making the U.S. the second largest producer of manufactured goods in the world.⁵ A worker without a college degree used to be able to find a good stable job in this sector, whether in a factory or warehouse, by applying directly with the companies that had pizzas to make, pills to package, or shipments to unload. But now brand-name companies, such as Amazon, Johnson & Johnson, Procter & Gamble, Home Depot, Walmart and Kraft Foods have outsourced their supply chains and the labor-intensive parts of their businesses en masse.⁶ As a result, the workers who produce, package and move these goods have been experiencing declining job security and pay, and an increased likelihood of unlawful abuses in pay and working conditions.⁷

Corporations profit from abusive jobs without being held to account by outsourcing them to temporary staffing agencies.⁸ Specializing in “supply chain management,” these agencies win low-bid contracts with large corporations and then make their profit primarily by finding ways to minimize labor costs.⁹ This cost cutting—which is the only “value” added by supply chain management agencies—has been achieved by replacing largely unionized and well-compensated blue-collar jobs with permanently “temporary” jobs that pay workers poverty wages without benefits or job security.¹⁰ Temporary

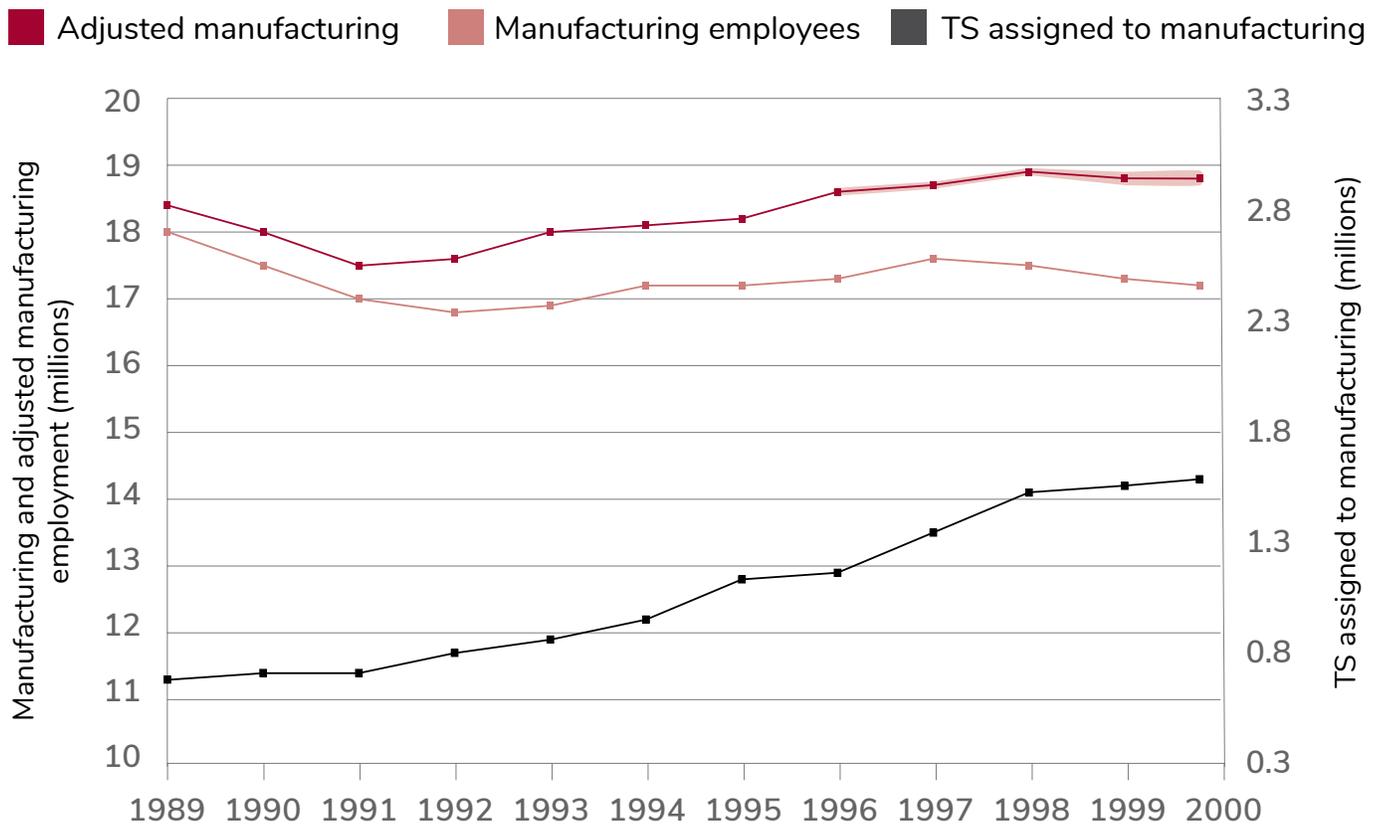
staffing agencies keep workers from demanding better pay and conditions in a myriad of ways, from retaliation for organizing¹¹ to dividing communities through discriminatory practices.

Despite the commonsense interpretation of “temporary,” the use of temp workers in today’s factories and warehouses is not a short-term intervention.¹² Today, blue-collar jobs make up roughly half of the temporary staffing industry.¹³ In fact, if temp workers were accounted for in official measures of the manufacturing industry, employment would have increased 1.3 percent between 1989 and 2000, rather than decline by over four percent (see Table 1).¹⁴ In many cases, temp agencies are playing a permanent role in managing industrial labor relations, keeping workers precariously employed

indefinitely.¹⁵ Under these unstable arrangements, wage theft and unsafe working conditions are common, and workers’ compensation and unemployment benefits are largely inaccessible.¹⁶

Employers transform good jobs into bad jobs with sub-minimum conditions by abusing the power differential between large companies at the top of their supply chains and an increasingly vulnerable blue-collar workforce at the bottom. Many of today’s industrial jobs commonly offered through temp staffing agencies are held by workers who are marginalized, even locked out of, the mainstream labor market.¹⁷ Black and Latinx workers, in particular, are significantly overrepresented in the industrial temp staffing sector. While 40 percent of the Chicago metro area’s population is Black or Latinx,

TABLE 1
TRENDS IN MANUFACTURING EMPLOYMENT AND TEMPORARY STAFFING (TS) WORKERS ASSIGNED TO MANUFACTURING



Note: Shaded area represents 95% confidence interval for employment adjusted for TS workers assigned to manufacturing.

Source: Matthew Dey, Susan N. Houseman & Anne E. Polivka, Manufacturers’ Outsourcing to Staffing Services, Upjohn Institute Staff Working Paper No. 07-132, 34 (2006).

according to the first full year of data under a new, first-of-its-kind reporting requirement in Illinois, Black and Latinx workers receive 85 percent of the area's blue-collar temp work assignments (see Table 2).¹⁸

Recent research has shed light on the prevalent and effective use of threats and retaliation in low-wage workplaces and the culture of fear this creates throughout the workforce, which compels workers to silently accept abusive, sweatshop conditions in major hubs of U.S. industry.¹⁹ Much of this is illegal, but a combination of gaps in the law and an outdated labor enforcement system fail to protect the most vulnerable workers from these abuses of power.²⁰

This is unlikely to change without building unity among workers to create collective action. This report exposes how companies divide workers through illegal but blatant discrimination. Specifically, companies use temporary staffing agencies to unlawfully target vulnerable workers, based on race and ethnicity, and create a segregated workplace where worker organizing is especially



difficult. Although relatively unknown to the general public, race-based hiring discrimination is a normalized feature of these lawless segments of the labor market, and, in combination with rampant retaliation, creates often insurmountable barriers to holding companies accountable and improving workers' pay and conditions.

TABLE 2
OVERREPRESENTATION OF BLACK AND LATINX WORKERS
IN INDUSTRIAL TEMP WORK, CHICAGO METRO AREA, 2019

County	Countywide demographics			Temp assignment demographics		
	Latinx	Black	Total pop.	Latinx	Black	Total assign.
Cook	1,329,837	1,236,333	5,194,675	100,554	85,093	211,514
DuPage	133,871	48,597	916,924	66,456	35,132	122,956
Will	123,316	82,662	677,560	30,607	40,867	85,336
Kane	166,947	30,916	515,269	32,489	16,663	56,900
Lake	157,575	52,760	703,462	18,505	4,620	26,859
McHenry	42,918	5,558	308,760	1,911	1,155	4,968
Kankakee	12,252	17,017	113,449	890	2,249	4,669
DeKalb	12,304	8,728	105,160	392	47	1,298
Grund y	5,257	901	50,063	309	619	1,257
Kendall	22,947	9,179	114,736	293	59	554
Total	2,007,224	1,492,651	8,700,058	252,406	186,504	516,311
% Total	23%	17%		49%	36%	
Overrep.				113%	112%	

TESTING METHODOLOGY

This report presents new research that documents and measures the prevalence of discrimination against Black job applicants in the Chicago area's industrial temporary staffing industry relative to Spanish-speaking Latinx applicants. This research also documents race-based job channeling of both groups of applicants. A rigorous matched pair testing methodology was designed and implemented by the Equal Rights Center in consultation with Dr. Marc Bendick, Jr., an employment economist and leading authority on matched pair testing. Between March and May 2019, 65 tests were completed on 60 staffing agencies in the Greater Chicago area.

Previous research has confirmed hiring discrimination against workers of color as a group, compared to white workers, and found temporary staffing agencies engaging in discrimination at significantly higher rates than traditional employers. Our research fills a gap in this research comparing the experiences of Black job applicants and Spanish-speaking Latinx job applicants, who are the primary ethno-racial groups applying to and working through staffing agencies in the Chicago area's low-wage manufacturing, assembly, warehousing and distribution sectors.

The Equal Rights Center developed a representative sample of 100 industrial temporary staffing agencies in the Chicago labor market using a random selection process taking into account the neighborhood geography of the Chicago area.

Of the agencies selected in this sample, 26 percent were located in the City of Chicago, 43 percent in the remainder of Cook County, and 25 percent in adjacent counties.

Six Black testers were paired with five Spanish-speaking Latinx testers who were similar in gender, age and work experience. These testers were all likely users of the agencies—actual job seekers who presented their own qualifications and were free to accept referrals from agencies if offered. The testers' credibility as applicants was confirmed by the high rate of job offers that they received: a total of 204 offers.

Testers were trained to follow standardized procedures in which tester pairs made walk-in applications for work at an agency a few minutes apart on the same day, with the Black tester applying first. Both applicants complied with whatever application procedures and job referrals the agency directed. Testers reported agency processes, questions, comments and job offers, and follow-up calls were monitored. Testers were compensated for training and testing and were reimbursed for travel to and from test sites.

MATCHED PAIR TESTING is a well-established research method for measuring and documenting patterns of discrimination against marginalized groups. It has been used in investigations by federal agencies,²¹ and the data gained through testing has been recognized by courts as the basis for litigation.²² Matched pairs of testers are carefully selected and trained so that each pair of testers has the same job-relevant qualifications such as education and work experience, but is different in one crucial variable, such as race. The goal is to present two applicants who are similar in every respect except one, and thereby measure the effect of that one differing characteristic on the pair's success in seeking employment.



RACIAL DISCRIMINATION IN TEMP HIRING

TESTING ANECDOTE

At 9 a.m. on a Friday, Michael*, a 56-year-old Black man, arrived at a staffing agency near O'Hare Airport. He approached an employee at the agency and asked whether they were hiring, to which the employee responded that they were not at the moment. The employee did not ask Michael any questions about his background or qualifications. Michael left his contact information with the employee, but never received a follow-up call.

Twenty minutes later, Jose, a 50-year-old Latinx man, arrived at the same staffing agency and, like Michael, asked an employee at the agency whether they were hiring. The employee asked Jose what shifts he was available and whether he had a car. When Jose said he had a car, the employee described a warehouse job at an electronic assembly plant about five miles from the agency paying \$11 per hour and told Jose that he could start on Monday. After having him fill out an application, the employee gave Jose a work order with the address of the factory and name of the person to whom he should report. The employee then told Jose that he was looking to hire at least one more worker for the job and encouraged him to refer friends to the agency.

*Names of testers are fictitious to protect their identities.

What happened to Michael is illegal. Discriminating against applicants on the basis of race is illegal under federal, state and, in many cases, local law.²³ But discrimination in the hiring process can be hard to prove.²⁴ Applicants like Michael may sense that they are being discriminated against, but without more

proof, they are rarely able to make a successful legal claim.²⁵ Furthermore, with the pressure to find a job to support themselves and their families, applicants experiencing discrimination often have little time or resources to pursue action against agencies and simply move on to seek jobs elsewhere. Matched pair

testing is uniquely designed to uncover this kind of discrimination by employers who refrain from making explicit comments to applicants that might implicate themselves, and whose discrimination will be scattered among job seekers who are unlikely to share their individual experiences with each other.²⁶

Random testing of the Chicago area’s industrial staffing agencies confirmed widespread hiring discrimination and job channeling based on race. Two-thirds of agencies engaged in racial discrimination (see Table 3). Overall, a large majority of job

offers were segregated (see Table 4). More than four out of five job offers were made to either only the Latinx applicant or only the Black applicant, with significantly more jobs offered to Latinx applicants. Black applicants received job offers at just 75 percent the rate of Latinx applicants.

TABLE 3
AGENCIES’ TREATMENT OF BLACK AND LATINX APPLICANTS

Agency Behavior		Agencies	% of Agencies	% of Agencies
Neutral	Neither allowed to apply	0	0.0%	
	Both allowed to apply, neither get offers	10	16.7%	36.7%
	Both allowed to apply, both got same offers [^]	12	20.0%	
Segregated	Both got equivalent ^{^^} but different offers	9	15.0%	15.0%
Latinx Applicants Favored	Neither allowed to apply, but Latinx applicants got more information, assistance or encouragement	2	3.3%	38.3%
	Only Latinx applicants allowed to apply	2	3.3%	
	Neither got offers, but Latinx applicants got more information, assistance or encouragement	4	6.7%	
	Latinx applicants got offers, Black applicants did not	4	6.7%	
	Both got some offers, [^] but Latinx applicants got more information, assistance or encouragement	1	1.7%	
	Both got offers but Latinx applicants got more or better offers	10	16.7%	
Black Applicants Favored	Neither allowed to apply, but Black applicants got more information, assistance or encouragement	0	0.0%	10.0%
	Only Black applicants allowed to apply	0	0.0%	
	Neither got offers, but Black applicants got more information, assistance or encouragement	0	0.0%	
	Black applicants got offers, Latinx applicants did not	4	6.7%	
	Both got some offers, [^] but Black applicants got more information, assistance or encouragement	0	0.0%	
	Both got offers but Black applicants got more or better offers	2	3.3%	
Total		60	100.0%	100.0%
Agencies Engaging in Discrimination		38		63.3%

[^] Offers considered the same if they were for the same job or differences reflected only preferences expressed by testers during discussions with agency staff.

^{^^} Offers considered equivalent if they had similar wage rates, type of work, and job duties.

TABLE 4**RACE-ETHNIC SEGREGATION OF JOBS OFFERED TO TESTERS**

Jobs		Number of Jobs ^{^^}				Segregated Jobs (Offered to Only One Tester)		Probability that Difference between % of Segregated Jobs and Zero is Due to Chance
		All Jobs	Offered to Latinx Only	Offered to Black Only	Offered to Both	Jobs	% of Total Jobs	
All Jobs		173	86	56	31	142	82.1%	<.00001***
Timing of Offer	At in-person application	123	53	41	29	94	76.4%	<.00001***
	In follow-up messages	50	33	15	2	48	96.0%	<.00001***
Type of Work	Factory 2nd or 3rd Shift	54	18	24	12	42	77.8%	<.00001***
	Factory, Shift Unknown	17	11	5	1	16	94.1%	<.00001***
	Factory 1st Shift	42	22	9	11	31	73.8%	<.00001***
	Unknown	33	21	6	6	27	81.8%	<.00001***
	Warehouse	23	12	9	2	21	91.3%	<.00001***
	Other (Events, Cleaning, Food Service, Office)	21	13	8	0	21	100.0%	<.00001***
Adjusted[^] Wage Rate (\$/Hour)	\$12.00-\$15.00	63	32	18	13	50	79.4%	<.00001***
	\$11.00-\$11.99 ^{^^^}	46	24	14	8	38	82.6%	<.00001***
	\$8.00-\$10.99	19	7	7	5	14	73.7%	<.00001***
Is Job Closer to One Tester?	Latinx 3-21 Miles Closer than Black	67	23	13	31	36	53.7%	<.00001***
	Distance is <3 Miles Different	44	19	16	9	35	79.5%	<.00001***
	Black 3-16 Miles Closer than Latinx	19	9	8	2	17	89.5%	<.00001***
Population in Agency's Zip Code	>25% Black	20	6	9	5	15	75.0%	<.00001***
	Neither (Non-Minority Neighborhood)	27	9	6	12	15	55.6%	<.00001***
	>25% Latinx but not >25% Black	126	71	41	14	112	88.9%	<.00001***
Structure of Staffing Agency	Single Office	26	17	6	3	23	88.5%	<.00001***
	Multiple Offices in Illinois	69	30	28	11	58	84.1%	<.00001***
	Offices in Multiple States	78	39	22	17	61	78.2%	<.00001***

Based on 204 offers to testers during 65 applications by Black workers and 65 applications by Latinx workers or followup calls after those applications.

[^] Adjusted by adding \$.25 per hour if offer mentions possible bonuses, raises, or earning from transporting other workers.

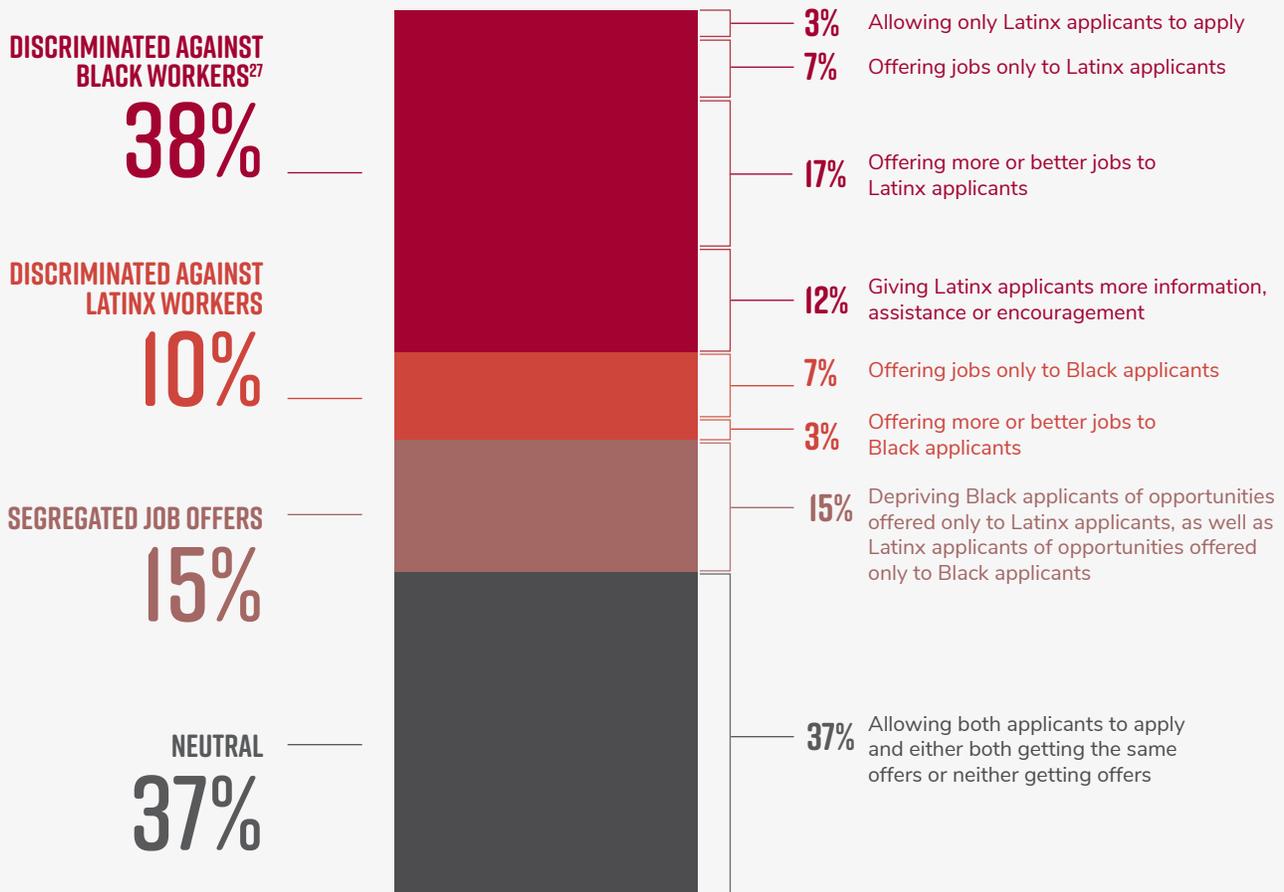
^{^^} Jobs offered to both are counted as one job.

^{^^^} Mean of all hourly wage rates offered is \$11.64, median is \$11.75.

*** Difference between the number of jobs offered to Black workers and the number of jobs offered to both is statistically significant at <.001.

KEY RESEARCH FINDINGS

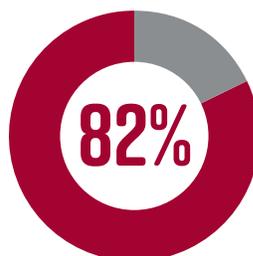
TWO-THIRDS OF AGENCIES ENGAGED IN DISCRIMINATION, PRIMARILY DISCRIMINATING AGAINST BLACK APPLICANTS.



A SIGNIFICANT MAJORITY OF JOBS OFFERED THROUGH THE AGENCIES WERE RACIALLY SEGREGATED.

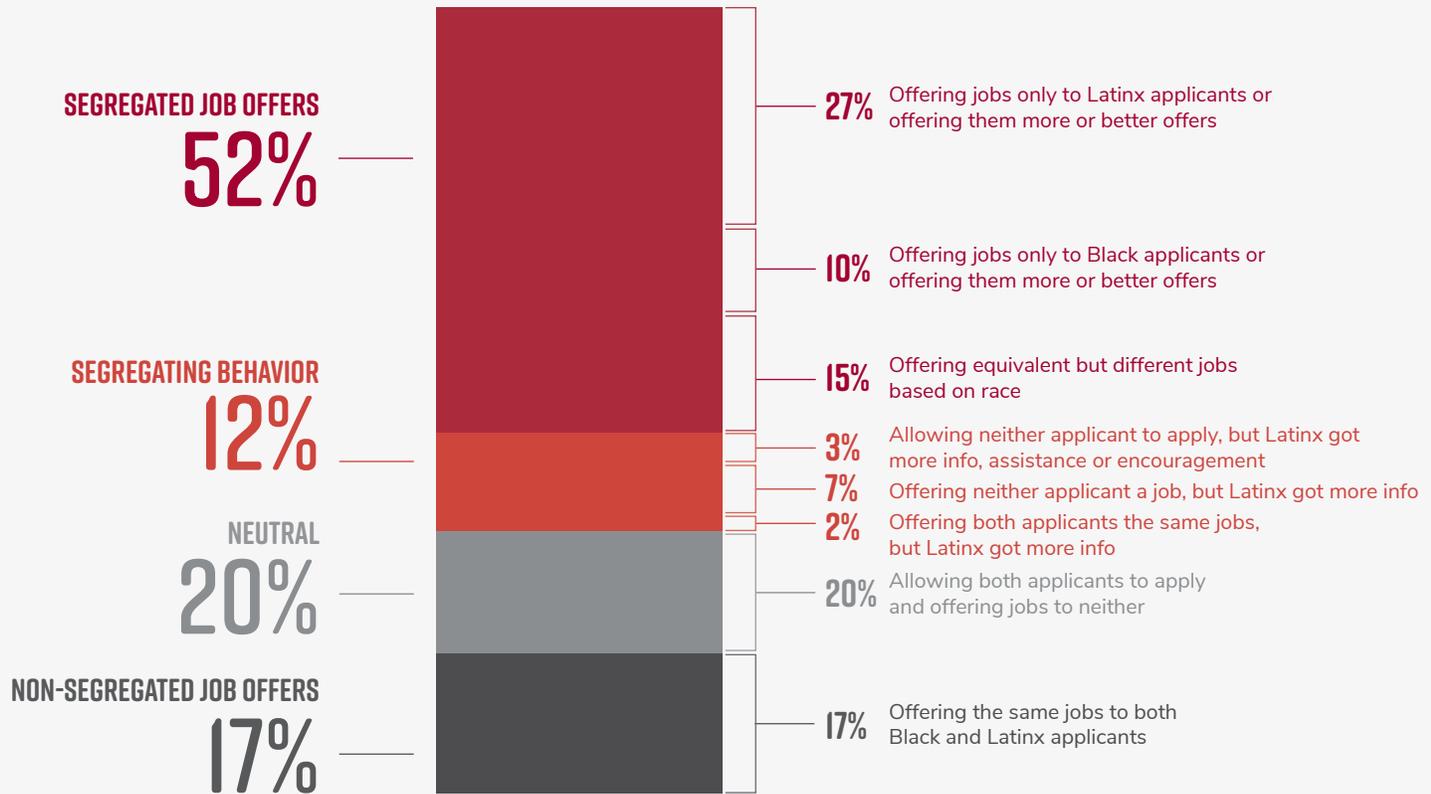
Eighty-two percent of jobs were offered to only the Black applicant or only the Latinx applicant, and not the other.

Agencies offered just 18% of jobs to both applicants.



Even when type of work, wage level, agency neighborhood location, distance of job from applicant's home, and agency size are controlled for, a majority of jobs were offered to only the applicant of one group (54%).

MORE THAN HALF THE AGENCIES SEGREGATED JOB OFFERS BASED ON RACE.



AGENCIES CHanneled SIGNIFICANTLY MORE JOBS TO LATINX APPLICANTS THAN TO BLACK APPLICANTS.



Overall, Black applicants were offered jobs at 75% the rate of Latinx applicants ($p < .01$).



Black applicants received even fewer job offers, compared to Latinx applicants, when the offers were made by agencies based in Latinx neighborhoods (65%), which is particularly relevant since, in the random sample of agencies selected for testing, 70% of agencies were located in Latinx neighborhoods, compared to just 8% located in Black neighborhoods (see Table 5).



Black applicants also received fewer job offers when the offers were made by follow-up message (49%) or the offers concerned first-shift factory work (61%) or higher paid work (\$12–15.00/hour) (69%).



The only jobs that agencies offered to Black applicants at an equivalent or higher rate than Latinx applicants were for less desirable jobs, including those that were lower-paying (\$8–\$11.00/hour) or on the second and third shift at factories. (For jobs on those shifts, Black applicants received offers at almost twice the rate of their Latinx testing partners.²⁸)

CLIENT COMPANIES' RACE-BASED LABOR ORDERS

TESTING ANECDOTE

At 8:50 a.m. on a Tuesday, Lorraine, a 39-year-old Black woman with warehouse, assembly and other work experience, entered a staffing agency in DuPage County near O'Hare Airport. An employee of the agency told Lorraine about three jobs. The first involved heavy lifting, the second was on the graveyard shift, and the third was a second-shift job as a warehouse picker for a distribution center that paid \$12.40 per hour. When Lorraine expressed interest in the last job, the employee told her that the computers were down, so she needed to fill out an eight-page paper application. When Lorraine finished with that, the employee explained she needed to perform a drug test immediately and pass a background check before she could begin work. Lorraine agreed to the drug test on site, and the next morning the agency employee called to say her drug test cleared and she could begin work.

About eight minutes after Lorraine, Patricia, a 42-year-old Latinx woman, entered the same agency and spoke with the same agency employee. Unlike Lorraine, the agency employee told Patricia that she could complete an application on the computer. The employee then offered Patricia a second-shift job at a flower company starting in a week that paid \$13 per hour plus productivity bonuses, which, according to the employee, would allow Patricia to make up to \$15-20 per hour. The employee said it was a temporary position, but good because of the bonus pay, and offered to send Patricia to other jobs once that job was finished. The employee gave Patricia an assignment slip for the job without administering a drug test or mentioning a background check.

Neither Lorraine nor Patricia received any information about the jobs the other was offered.

On May 17, 2018, Deyanira Gonzalez testified as part of a whistleblower lawsuit that, over several years, Alternative Staffing, a temporary staffing agency in Chicago, fulfilled orders for Mexican workers only at Vee Pak, a manufacturer of health and beauty products.²⁹ While a supervisor at Alternative Staffing, Gonzalez explained that she would receive phone calls several times a week from Vee Pak's first shift supervisor, Juan Montoya, to check on the status of his labor orders.³⁰ She

explained, "He specifically would say he wanted 'his quality of people,' meaning Hispanic, young, pretty, and hard-working" and that "he didn't want Black people."³¹ When Gonzalez reported the comments to the president of Alternative Staffing, Steven Swerdloff, he instructed her to "Just give him what he wants."³²

In recent years, government and private whistleblower lawsuits have provided a behind-the-curtain look at race-based hiring discrimination and job

Dispatcher

COMPUTOR EXP.

WINDOWS/ WORD/ EXCELL

WORK WELL WITH PEOPLE

Training Available

BI-LINGUAL

Own Transportation

Flexible Hours

*Resume Required

RACIALLY CODED LANGUAGE

“In New Jersey, blacks were called ‘number 2s.’ In Illinois, ‘Code 3’ meant a Latino worker. A Texas temp agency called whites ‘blue eyes.’ An Ohio agency called them ‘vanilla cupcakes,’ ‘hockey players’ or someone ‘like you and me.’ Another agency owner in Alabama was accused of running her finger along her own white cheek to indicate a preference for whites.

In Seattle, ‘no Mohammeds’ meant not to send anyone of Arab descent. In Florida, construction contractors said, ‘Don’t send me any monkeys,’ meaning blacks. In Texas, ‘bilingual’ often meant a request for Latinos in jobs where speaking more than one language wasn’t necessary.”

2016 REVEAL NEWS
EXCERPT

channeling through temporary staffing agencies. In 2016, journalist Will Evans reviewed two dozen of these cases, and also interviewed recruiters, sales representatives, and managers with insider knowledge of the industry’s practices.³³ What he found was evidence that temp agencies around

the country use coded language to filter workers by race, age and gender. Code words enable temp agencies to fulfill the discriminatory labor orders of the companies with which they contract.

CREATING DIVISION AS PART OF LAWLESS COMPETITION

2015 CHICAGO RETALIATION
STUDY EXCERPT

“Alberto, a 42-year-old Latinx man, has worked for several companies around the Chicago area, including jobs in a grocery store, factory, warehouse and in construction. ‘There’s no job security and companies know it. They take advantage, overwork us, abuse us verbally and discriminate against us.’

Even though Alberto has experienced violations of several of his legal rights on the job, including stolen wages, he never complains. ‘I am afraid,’ he admits. ‘I’ve seen what happens to others when they complain. Retaliation comes swiftly.’ He recalls many instances of coworkers who complained about illegal working conditions being fired, struggling with more difficult or impossible work assignments, enduring verbal abuse and harassment, and effectively forced into quitting. He even once witnessed a supervisor threaten to physically assault one of his coworkers. ‘This is what I always see.’ He adds, ‘Fear allows [supervisors] complete control.’”

Companies appear to be exercising an unlawful preference for workers they perceive to be more vulnerable and more likely to silently accept abusive, sub-minimum pay and conditions. The matched pair testing of a representative sample of Chicago’s industrial temp agencies featured in this report evidenced a significant preference by companies for Latinx temp workers. A disproportionate number of temp agencies have even set up shop in Latinx neighborhoods (see Table 5).³⁴ Companies appear to be using race and ethnicity as indicators

for the increased vulnerability associated with an undocumented immigration status. They know that if undocumented workers speak up about low pay and abusive conditions, employers rarely face consequences for engaging in immigration-related retaliation, such as calling ICE (Immigration and Customs Enforcement), while workers may have no viable recourse.³⁵

By exercising preferences for workers perceived to be more vulnerable, companies are able to cultivate

THE CODE WORDS used to identify Black and Latinx workers at a suburban Chicago branch office of MVP Staffing, a nationwide temp staffing agency, are indicative of the anti-Black bias that permeates the industry’s hiring practices. In a 2016 class action lawsuit in federal court that accused MVP and several of its client companies of engaging in racial discrimination, Rosa Ceja, a 29-year-old Latinx woman who worked as a dispatcher for the company, said that Black applicants were referred to as “guapos,” which means “handsome ones” in Spanish, and to Latinx as “feos,” which means “ugly ones.”³⁶ “They said African Americans wanted to keep their hands clean and not get dirty, and not work as hard as a Mexican—that’s why they called them guapos.”³⁷ Throughout the low-wage labor market, race continues to play a significant role in hiring decisions, with Black job seekers persistently positioned as “candidates of last resort” because they are Black.³⁸

TABLE 5
BLACK AND LATINX POPULATION
IN THE ZIP CODE OF AGENCIES
IN STUDY'S SAMPLE

Zip Code	City	Number of Agencies	Black % of Residents	Latinx % of Residents
60131	Franklin Park	1	0.5%	46.0%
60804	Cicero	2	1.3%	77.5%
60176	Schiller Park	1	1.5%	29.2%
60439	Lamont	1	1.6%	7.0%
60191	Wood Dale	2	1.8%	24.8%
60631	Chicago	1	2.2%	11.5%
60632	Chicago	1	2.4%	84.3%
60018	Rosemont	1	2.8%	36.6%
60165	Stone Park	1	3.1%	89.4%
60164	Melrose Park	1	3.3%	59.9%
60137	Glen Ellyn	1	3.3%	6.8%
60005	Arlington Heights	1	3.4%	11.3%
60459	Burbank	4	3.5%	29.2%
60618	Chicago	1	3.7%	40.9%
60641	Chicago	2	4.0%	53.7%
60546	North Riverside	1	4.0%	22.7%
60101	Addison	3	4.1%	41.5%
60638	Chicago	1	4.5%	48.3%
60106	Bensenville	6	4.7%	45.7%
60008	Rolling Meadows	2	4.7%	24.8%
60513	Brookfield	2	6.0%	22.5%
60402	Berwyn	4	6.6%	62.3%
60402	Stickney	1	6.6%	62.3%
60160	Melrose Park	7	7.0%	74.0%
60188	Carol Stream	3	7.0%	14.2%
60181	Villa Park	1	7.2%	20.3%
60501	Summit	3	7.3%	70.0%
60453	Oak Lawn	3	7.3%	20.3%
60647	Chicago	3	8.2%	47.3%
60133	Hanover Park	3	8.4%	38.2%
60563	Bolingbrook	1	8.5%	9.4%
60563	Naperville	2	8.5%	9.4%
60642	Chicago	1	10.4%	22.4%
60639	Chicago	5	14.4%	78.1%
60608	Chicago	4	18.6%	52.0%
60302	Oak Park	2	22.1%	7.7%
60609	Chicago	2	24.5%	54.1%
60440	Bolingbrook	11	24.6%	30.2%
60406	Blue Island	1	29.4%	50.7%
60623	Chicago	4	32.6%	65.2%
60130	Forest Park	2	34.4%	8.6%
60652	Chicago	1	49.3%	39.3%
Average Agency			11.5%	43.1%
Minimum			0.5%	6.8%
Maximum			49.3%	89.4%
Agencies in ZIP Codes >25% Af.Am.			7.5%	
Agencies in ZIP Codes >25% Latinx			69.8%	
Agencies in "Non-Minority" ZIP Codes			22.6%	

^The sampling frame consists of the 100 staffing agencies identified from the internet offering industrial temporary workers that were closest to 5600 W. Roosevelt Road, Chicago. Tests were completed on 65 of these agencies.

Source: U.S. Census Bureau, American Community Survey 2017, reposted in U.S. Census Bureau, American Fact Finder (www.factfinder.census.gov), accessed May 25, 2019.

a culture of fear in the workplace that is perpetuated thereafter by subtle and not-so-subtle threats and retaliation.³⁹ In a rare national study of industrial temp work conditions in 2017, involving surveys with 86 workers and 13 focus groups in four major U.S. industrial hubs (Chicago and Boston metro areas and around New Jersey and Southern California ports), the author documented the consistency and prevalence of exploitative pay and working conditions experienced by temps in all four regions.⁴⁰ Not only did workers experience heightened economic instability and insecurity in the temp arrangement, but they also reported: high rates of unlawfully dangerous conditions; wage theft on top of already poverty-level wages; discrimination in the workplace; and employer retaliation when they attempted to report abuse or improve wages and working conditions.⁴¹ Forty-seven percent of surveyed workers in that study who had filed a complaint with the Department of Labor or tried to improve wages or working conditions experienced retaliation⁴²—similar findings to other studies involving low-wage workers.⁴³ Unbridled discrimination in hiring and retaliation in the workplace function together to grow and maintain profit margins at the expense of workers who suffer abusive pay and work conditions. As these strategies enable companies to gain market share, they become a virtual requirement of market competition.

Discriminatory hiring also stokes racial antagonisms that make organizing efforts for better pay and conditions more difficult.⁴⁴ The treatment of Black workers as on-call, back-up workers for preferred Latinx workers can sow resentment and mistrust among workers.⁴⁵ And if one group tries to organize, they can be threatened with replacement by the other group. While both Black and Latinx workers are just trying to make a living, companies exploit both groups' vulnerabilities, encouraging racial divisions that increase company profit margins at the expense of workers.

LEGAL PROTECTIONS LARGELY UNENFORCED

At 11:42 a.m. on a Wednesday, Edward, a 50-year-old Black man, arrived at a staffing agency in Cook County, just southwest of the City of Chicago. Edward told an agency employee that he had come to see if there were jobs available. The employee told Edward that they only do walk-ins from 9:00 to 11:00 a.m. Monday through Thursday and said he could come back during that time or apply online, giving him the website for the staffing agency.

Six minutes later, Juan, a 50-year-old Latinx man, arrived at the same agency and asked if he could fill out an application. He was shown to a computer where he was allowed to fill out an application. After completing the application, Juan was taken to another room where he completed an interview with another agency employee. That employee then gave Juan a second application to fill out on paper, which included a basic math and measuring aptitude test and asked him to provide more information about his qualifications. Juan was then offered a warehouse job that paid \$12.00 per hour. Juan also received a follow-up call the following day from the agency offering him another \$12.00 per hour job at a different company. Edward received no job offers.

TESTING ANECDOTE

Many companies today use the temp staffing industry as a labor-only supplier.⁴⁶ The agencies themselves rarely, if ever, provide any materials, knowledge, tools, safety equipment or specialized services.⁴⁷ Companies pay agencies the workers' wages plus overhead and a profit for every hour each worker is employed.⁴⁸ The value to the company in this arrangement is not efficiency, but legal flexibility—the ability to evade the legal obligations of an employer.⁴⁹

The temp arrangement, which involves a system of subcontracting, has become a major vehicle for companies to enjoy the fruits of workers' labor while avoiding the legal responsibility owed to employees. Technically, state and federal workplace laws do not distinguish between temps and non-temps. Many labor and employment laws, including those addressing discrimination, apply to temps just as they apply to non-temps, but enforcement of these laws turns on how "employer" is defined.⁵⁰

Though temp agencies' client companies retain control over whether there is work at all, over working conditions, and, through price pressure, over the

margins for workers' wages, it is the temp staffing agencies that are generally recognized as the legal employers of these workers.⁵¹ This arrangement reflects not some invisible natural order or public consensus but the intentional efforts of an army of corporate lawyers and lobbyists.⁵² Their successful efforts, beginning in the 1950s, created a lasting loophole in the regulation of labor supply chains that enables companies to use labor-only suppliers, like temp staffing agencies, as a shield from legal responsibility.⁵³ Despite increasing recognition of joint liability under a range of labor and employment law, which has, in some cases, made it possible to hold client companies responsible for violations of temp workers' rights, without the testimony of whistleblowers on the inside, it is nearly impossible to prove the role of client companies in the discriminatory hiring practiced through temp agencies.⁵⁴

Even when temp workers have access to professional legal help, illegal hiring discrimination remains largely invisible because of the tremendous challenges that impacted workers face in making successful legal claims, whether against

temp agencies or client companies.⁵⁵ Workers' individual experiences in the hiring process rarely provide them with the necessary evidence.⁵⁶ Whistleblowers and other witnesses are also hard to come by given the powerful fear of employer retribution that many workers share—a fear that is far from unfounded, especially in the temp staffing industry.⁵⁷

Few temp workers can face an employer's retaliation without enduring significant hardship, whether loss of needed income or references, deportation, or other forms of hardship, since the legal system rarely delivers timely and adequate relief in these cases.⁵⁸ Employers are also increasingly requiring workers to sign arbitration agreements that further prevent workers from participating in lawsuits; workers subject to these agreements must channel complaints through a private complaint resolution process controlled by their employer.⁵⁹ Similarly, temp agencies often bind their middle management and human resources staff with confidentiality agreements that put them at great risk if they reveal



the discriminatory practices of their employers.⁶⁰ Together, these circumstances enable temp agencies and the client companies they serve to get away with increasing corporate profits and market share through the targeting and exploitation of vulnerable workers, at the expense of all workers.

EXISTING PROTECTIONS FOR TEMP WORKERS

Illinois reputedly has the best protections for temp workers in the country. The Illinois Temporary and Day Labor Services Act (ITDLSA) places several unique, additional requirements on temp agencies, including requiring temp agencies to register with the Illinois Department of Labor (IDOL).⁶¹ Illinois temp agencies must also provide certain notices to workers, such as the name and address of where they will be working, the nature of the work, and the wages they will be paid.⁶² Finally, the Act creates mandatory fees for the registration of temp agencies and potential penalties if the Act is violated, the monies from which are deposited into the Child Labor and Day and Temporary Labor Services Enforcement Fund.⁶³

However, these basic protections have not slowed the trend of companies permanently replacing good, union jobs with temp work, nor have they stopped the unlawful abuses that run rampant in the temp sector.⁶⁴ In response, the Illinois legislators amended the ITDLSA in 2017, passing the Responsible Job Creation Act (RJCA).⁶⁵ Reflecting the need to improve enforcement of anti-discrimination protections in particular, RJCA requires temp agencies to report to IDOL demographic information on who they have hired.⁶⁶ But, as this report demonstrates, substantial discriminatory treatment based on race is occurring *before* applicants are hired. While improved standards and data reporting are crucial, more must be done to actually enforce workplace rights for temp workers.⁶⁷

TEMP AGENCY SEAL OF APPROVAL PROGRAM

The Citizens' Task Force to Improve Enforcement of Temp Worker Rights in Illinois has been bringing together public officials, labor unions, workers' centers, academic experts, and legal and workforce development professionals since December 2018 to identify effective, innovative enforcement models and create a new program that adapts these models to the task of bringing temp agencies into compliance with Illinois law.⁶⁸ Their emerging proposed program, the Temp Agency Seal of Approval

Program, seeks to create market incentives for temp agency compliance with basic labor laws and an independent monitoring and complaints program grounded in community partnerships that can reliably verify compliance. It embodies some of the best thinking nationally to address the deep-seated enforcement challenges that remain in the state.

MARKET CONSEQUENCES

The Seal of Approval Program would give participating temp agencies priority access to a market made up of buyers in the Program. The Citizens' Task Force to Improve Enforcement of Temp Worker Rights recommends that public procurement form the initial market for the Program. State, county and municipal governments can use their significant buying power to adopt responsible procurement policies that ensure their supply chains are free of abusive temp work, contracting only with vendors that agree to the exclusive use of temp agencies that, as indicated by the Seal, are verifiably compliant.

During the matched pair testing featured in this report, temp workers were sent to clean buildings owned by the City of Chicago, including McCormick Place and Soldier Field. Past surveys with Chicago temp workers have similarly documented the use of temps to clean publicly owned buildings, including at the University of Illinois Chicago and O'Hare Airport. Additionally, governments throughout the state procure a wide range of products, including food for school cafeterias, large commercial printing orders, uniforms, furniture and automobiles. Temp workers in the Chicago area report producing,

packaging and moving all kinds of food, commercial print jobs, auto parts and other products of the type procured by governments throughout Illinois. Government should conduct a full audit to determine the extent to which temp workers are employed in their supply chains throughout the state, and all levels of government in Illinois should commit to transparent labor supply chains.

The Task Force also anticipates socially responsible companies and union shops would join the Program to increase the market for participating temp agencies. Socially responsible businesses would protect their brands through participation. And Illinois' unions who have temps in their shops have an interest in including a requirement in their negotiated contracts that employers only use temp agencies that participate in the Program, which would monitor inappropriate use of temp work that displaces union jobs.



INDEPENDENT MONITORING AND COMPLAINTS RESOLUTION GROUNDED IN COMMUNITY PARTNERSHIPS

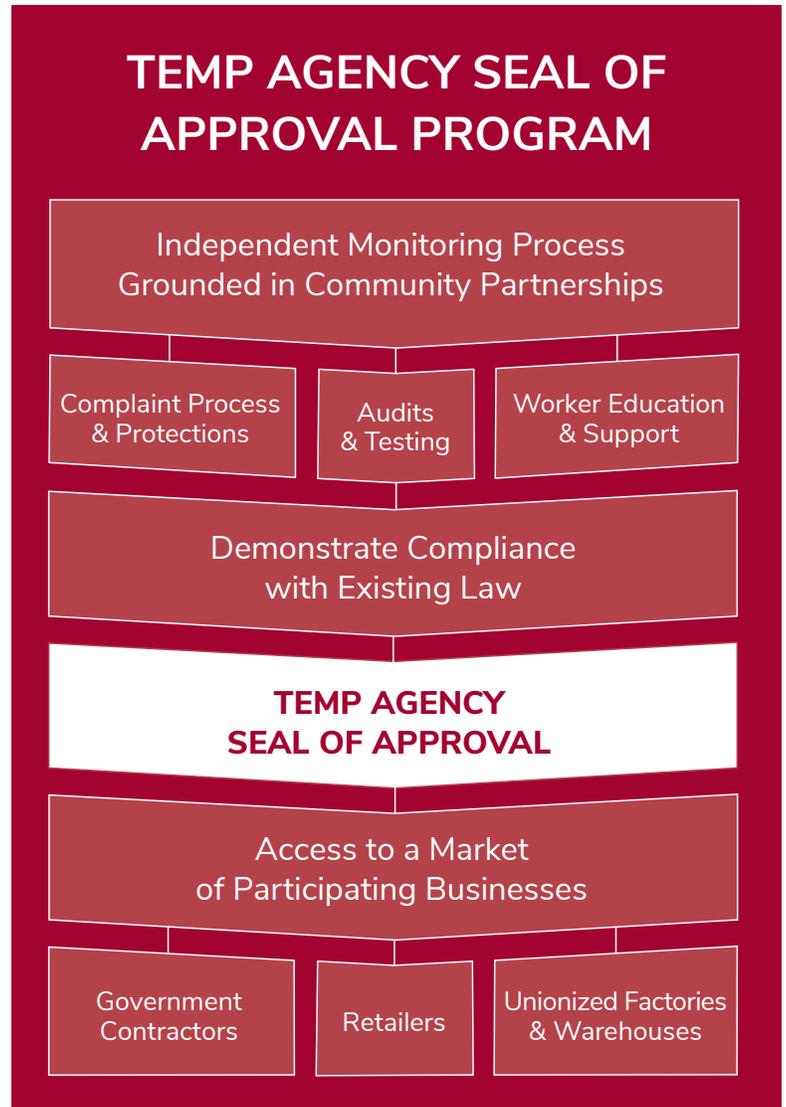
To participate in the Seal of Approval Program, and gain and maintain business with participating buyers, temp agencies would submit to the Program's independent monitoring designed to verify their compliance with state law. Independent monitoring is a critical component of an effective workplace enforcement program. With tools such as matched pair testing of the type cited in this report, it can detect violations such as discriminatory hiring, which are difficult to identify much less prove on an individual basis. Matched pair testing is uniquely designed to reliably expose the practice of discriminatory hiring and can and should be wielded by the independent monitor proposed in the Program.

Measurably effective monitoring programs share a common set of components that enable them to enforce buyers' commitments and verify workplace

compliance, as has been demonstrated by Worker-driven Social Responsibility programs.⁶⁹ To begin with, these programs are rooted in the legal obligations of buyers to deliver swift and meaningful economic consequences to their non-compliant subcontractors and to achieve concrete, measurable outcomes at the workplace level within specific time frames. Buyers' commitments are not voluntary or mere pledges to meet program standards. A rigorous and independent monitoring process is then needed to verify compliance. This requires monitors who are deeply knowledgeable of the industry and labor issues they're monitoring, who can operate independently of the financial control and influence of the program's participating buyers, and, as a central component of the process, are able to do in-depth interviews with workers under conditions where workers can speak freely.

While effective monitoring cannot rely solely on workers' complaints, it also cannot rely solely on outside monitors. Monitors are unable to oversee all or even most workplaces, and the worst offenders always find ways to fly under the radar.⁷⁰ Although outside monitors cannot always be present when a violation occurs, a worker always is. Consequently, workers play a critical role in the process, but to enable workers to speak freely, monitors must aggressively enforce retaliation protections.

To further enable workers to function as partners in the process, other critical components of an effective program include: worker education and a complaint resolution mechanism in which community organizations play a central role. The independent monitor of the Seal of Approval Program would work in close partnership with organizations rooted in workers' communities and trusted by workers. Community partners are the boots on the ground that activate workers to be frontline monitors in an effective monitoring program. Under the Seal of Approval Program, the Task Force anticipates that community partners will: train workers covered by the program on their rights and how to report violations; operate a complaint hotline; and otherwise support workers to partner with monitors. Combined with market consequences for non-compliance, independent monitoring grounded in community partnerships can—and has been proven to—deliver timely and urgently needed relief to low-wage workers.⁷¹





CONCLUSION

Unlawful exploitation of workers runs rampant in Chicago-area factories. Workers find it difficult to address these abuses because of the fear and division bred among them, a dynamic that begins, at least in part, with unlawful race-based hiring practices that are ordered by manufacturers and implemented by temporary staffing agencies. To prevent hiring discrimination and other abuses in this permanently “temporary” arrangement, innovative new models of accountability and

enforcement are necessary. The Temp Agency Seal of Approval Program developed by the Citizen’s Task Force offers just such a new model by adapting the best thinking in labor enforcement to eradicate the most persistent abuses in complex, low-paying industries, like Chicago’s temped-out manufacturing sector.

NOTES

1. Chicago Workers' Collaborative, Facebook, post about nine months ago, <https://www.facebook.com/chitemps/videos/2333995030171817/> (last accessed Mar. 3, 2020).
2. Will Evans, Growing Temp Industry Shuts Out Black Workers, Exploits Latinos, *Chicago Reporter*, Jun. 8, 2016.
3. Yili Chien & Paul Morris, Is U.S. Manufacturing Really Declining?, Federal Reserve Bank of St. Louis, Apr. 11, 2017 (citing Bureau of Labor Statistics).
4. *Id.*
5. Darrell M. West & Christian Lansang, Global Manufacturing Scorecard: How the U.S. Compares to 18 Other Nations, Brookings, Jul. 10, 2018.
6. Armstrong & Associates, Trends in 3PL/Customer Relationships—2013, 6 (2013).
7. See, e.g., Rebecca Smith & Claire McKenna, Temped Out: How Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers, National Employment Law Project 9 (2014) [hereinafter Temped Out].
8. George Gonos, The Contest Over "Employer" Status in the Postwar United States: The Case of Temporary Help Firms, 31 *Law & Soc'y Rev.* 81 (1997); Harrison Freeman & George Gonos, Taming the Employment Sharks: The Case for Regulating Profit-Driven Labor Market Intermediaries in High Mobility Labor Markets, 13 *Empl. Rts. & Empl. Pol'y J.* 285, 293 (2009).
9. See Nik Theodore & Jamie Peck, The Temporary Staffing Industry: Growth Imperatives and Limits to Contingency, 78 *Econ. Geography* 463, 464 (2002).
10. Annette Bernhardt, et al., Confronting the Gloves-Off Economy: America's Broken Labor Standards and How to Fix Them 10 (2009).
11. See, e.g., Brittany Scott, Temporary Work, Permanent Abuse: How Big Business Destroys Good Jobs, National Staffing Workers Alliance & National Economic and Social Rights Initiative (2017) [hereinafter Temp Work Permanent Abuse]; see also Temped Out, supra note 7.
12. Perma-temps account for more than one-third of "temp" workers today. Harris Freeman & George Gonos, Taming the Employment Sharks: The Case for Regulating Profit-Driven Labor Market Intermediaries in High Mobility Labor Markets, 13 *Empl. Rts. & Empl. Pol'y J.* 285, 293 (2009) (citing Lawrence Mishel, et al., *The State of Working America 2006/2007*, 9 (2006)). In a 2015-16 survey of temp workers in four major U.S. industrial hubs, workers reported working in the temp industry for an average of over six years with a typical assignment lasting over three years. Four out of five workers had never had a temp job lead to being directly hired. Temp Work Permanent Abuse, supra note 11 at 12.
13. Matthew Dey, Susan N. Houseman & Anne E. Polivka, Manufacturers' Outsourcing to Staffing Services, 65 *ILR Review* 533, 543 (2012).
14. *Id.* at 549.
15. See, e.g., Temped Out, supra note 7 at 7.
16. *Id.*; see also Lawrence Mishel, Yes, Manufacturing Still Provides a Pay Advantage, but Staffing Firm Outsourcing is Eroding It, Economic Policy Institute (2018).
17. See Jamie Peck & Nik Theodore, Carceral Chicago: Making the Ex-offender Employability Crisis, 32 *Int'l J. Urb. & Reg'l Res.* 251, 268 (2008); see also Gretchen Purser, "Still Doin' Time": Clamoring for Work in the Day Labor Industry, 15 *WorkingUSA: The Journal of Labor & Society* 397 (2012).
18. QuickFacts, U.S. Census Bureau, Population Estimates, June 25, 2020 (race and ethnicity data updated on July 1, 2019); Temp Staffing Assignment Demographics by County, Illinois Department of Labor, July 2019, obtained via FOIA request by Temp Worker Justice (on file with author).
19. See Temp Work Permanent Abuse, supra note 11, 13-16 (47 percent of 86 temp workers surveyed in Chicago and Boston metro areas and the ports of New Jersey and Southern California reported retaliation for filing a complaint with the DOL or trying to improve wages and working conditions through organizing); Brittany Scott, Challenging the Business of Fear: Ending Workplace Retaliation, Protecting Workers' Rights, Raise the Floor Alliance & National Economic and Social Rights Initiative (2016) [hereinafter Business of Fear]. Forty-eight percent of 275 low-wage workers in Chicago—nearly one-third temp workers—reported an experience of retaliation when they tried to fix a problem at work or improve their jobs, and nearly three-quarters reported keeping quiet about a problem at work out of fear of retaliation. *Id.* at 12, 17. Annette Bernhardt, et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities 24-25 (2009) (43 percent of workers who reported making a complaint to their employer or attempting to unionize in the last year reported illegal retaliation in a survey involving 4,387 low wage workers).
20. Business of Fear, supra note 19, 21-32.
21. See Roderick Boggs, Joe Sellers, and Marc Bendick, Jr., "Use of Testing in Civil Rights Enforcement," in Michael Fix and Raymond Struyk (eds.), *Clear and Convincing Evidence, Measurement of Discrimination in America* (Washington: Urban Institute Press, 1993), pp. 345-376.
22. *Id.*; see also Marc Bendick, Jr., Situation Testing for Employment Discrimination in the United States of America, Centre d'Analyse Strategique—Revue Horizons Strategiques (2007).

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23. See, e.g., 42 U.S.C.A. § 2000e-2(a)(1). “It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin . . .”
24. See, e.g., Michele Weldon, *It’s Everywhere: In Employment Discrimination, The Law Usually Wins, Not You*, Huffington Post, Oct. 8, 2017 (citing a study that found only 2% of plaintiffs who filed a discrimination case won at trial; 19% of cases were dismissed, 18% lost on summary judgment, and a little over half were settled; many would-be plaintiffs never filed); see also Marc Bendick, Jr., *supra* note 22.
25. *Id.*
26. Bendick, *supra* note 22.
27. Numbers may not add up due to rounding.
28. Latinx testers received 18 offers to Black testers’ 30 offers.
29. Deposition of Deyanira Gonzalez, May 17, 2018, Lucas v. Vee-Pak, U.S. District Ct. for N.D. Ill., E. Div., Case No. 1:12-cv-09672.
30. *Id.*
31. *Id.*
32. *Id.*
33. Will Evans, *When Companies Hire Temp Workers by Race, Black Applicants Lose Out, Reveal from The Center for Investigative Reporting*, Jan. 6, 2016.
34. In our random sample, 70% of agencies located in Latinx neighborhoods, compared to just 8% that located in Black neighborhoods. These agencies that located in Latinx neighborhoods were more likely than agencies in non-Latinx neighborhoods to channel a disproportionate share of jobs to Latinx applicants and discriminate against Black applicants. See Table 5. See also Jamie Peck & Nik Theodore, *Contingent Chicago: Restructuring the Spaces of Temporary Labor*, 25 *Int’l J of Urb. & Reg’l Research* 471, 488 (2001).
35. *Business of Fear*, *supra* note 19, 30 (citing the 2002 U.S. Supreme Court decision in *Hoffman Plastics* that effectively eliminated undocumented workers’ access to existing remedies for retaliation, and noting, with penalties also rarely imposed even when legally available, the little to no consequence employers face for retaliatory actions).
36. Liam Stack, *Black Workers’ Suit Accuses Job Agency of Favoring Hispanic Applicants*, N.Y. Times, Dec. 6, 2016.
37. *Id.*
38. Devah Pager, Bruce Western & Bart Bonikowski, *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 *Am. Sociological Rev.* 777, 793 (2009). And more broadly, anti-Black racism in hiring has remained unchanged for the last 25 years, according to a 2017 study by researchers at Northwestern, Harvard, and the Institute for Social Research in Norway, who reviewed every hiring discrimination study from 1989 to 2015. Lincoln Quillian, Devah Pager, Arnfinn H. Midtboen & Ole Hexel, *Harvard Business Review*, Oct. 11, 2017.
39. See, e.g., *id.* at 17 (finding all workers, in a survey of low-wage workers in Chicago, at least sometimes staying silent about abuse at work out of fear of retaliation, but especially noncitizens); Bernhardt, *supra* note 18, 43 (finding foreign-born workers endured higher violation rates than U.S. born workers, and, among U.S. born workers, Black workers experienced higher violation rates than White workers).
40. *Temp Work Permanent Abuse*, *supra* note 11; see also *Temped Out*, *supra* note 7.
41. *Id.*
42. *Temp Work Permanent Abuse*, *supra* note 11, 15.
43. Bernhardt, *supra* note 19, 25 (finding 43% of low-wage workers surveyed experienced retaliation as a direct result of their most recent complaint or organizing effort).
44. Evans, *supra* note 2 (quoting a Virginia Tech sociology professor who studied the conflict between Black and Latinx warehouse workers when employers began replacing Black workers with Latinx workers through temp hiring).
45. Evans, *supra* note 2; Evans, *supra* note 33.
46. Gonos, *supra* note 8, 88.
47. *Id.*
48. *Id.* at 85.
49. Theodore, *supra* note 9, 467-68 (identifying “regulatory flexibility” as one of the three forms of flexibility temp agencies offer their clients); see also Will Evans, *How a Temp Agency Can Get Away With Discrimination, Reveal from The Center for Investigative Reporting*, Jul. 28, 2016.
50. See, e.g., *Temp Work Permanent Abuse*, *supra* note 11, 21-22.
51. *Id.* (discussing the legal tests used to determine the existence of an employee-employer relationship in the context of temp staffing employment arrangements).
52. Gonos, *supra* note 8, 94-97.
53. *Id.*

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54. See, e.g., notes 29-33.

55. See Weldon, *supra* note 24.

56. *Id.*

57. See, e.g., Why Witnesses are So Vital to Win Discrimination Cases in California, JML Law, <https://www.jmlaw.com/blog/why-witnesses-are-so-vital-to-win-discrimination-cases-in-california.shtml/>; see also Alexandra Olson, For Witnesses, Calling Out Sexual Harassment is Complicated, AP News, Dec. 17, 2017.

58. See Business of Fear, *supra* note 19, 11-13, 24-26 (finding employers used a wide variety of tactics to retaliate against low-wage workers—seemingly anything that works—and that most of the impacted workers who sought justice after retaliation, by complaining to their employer, a government agency or both, did not feel they received adequate relief).

59. Stephanie Mencimer, Have You Signed Away Your Right to Sue?, Mother Jones, Mar. 2008.

60. Orly Lobel, NDAs are Out of Control. Here's What Needs to Change, Harvard Business Review, Jan. 30, 2018.

61. 820 ILCS 175/45.

62. 820 ILCS 175/10.

63. 820 ILCS 175/80.

64. Temp Work Permanent Abuse, *supra* note 11.

65. Illinois HB690, 100th General Assembly, took effect June 1, 2018; see also Jeff Schuhrke, A Trailblazing New Law in Illinois Will Dramatically Expand Temp Workers' Rights, In These Times, Oct. 4, 2017.

66. *Id.*

67. To fundamentally shift the balance of power for immigrant workers requires addressing the root of fears that companies exploit when they target Latinx they believe to be more vulnerable. The criminalization of immigration and constant threat of deportation creates fear in every part of the lives of undocumented immigrants, including work. This fear is exploited in the labor market. For policy solutions, see Mijente, Free Our Future: An Immigration Policy Platform for Beyond the Trump Era (2018), https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy-Platform_0628.pdf.

68. The Task Force has reviewed a range of enforcement models, from the Fair Food Program's private supply chain model to innovations in public enforcement, including strategic enforcement and co-enforcement. See, e.g., Fair Food 2018 Update, Fair Food Standards Council 2 (2018); Worker-driven Social Responsibility Network, <http://wsr-network.org>; David Weil, *The Fissured Workplace, Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard Univ. Press, 2014); Janice Fine, *New Approaches to Enforcing Labor Standards: How Co-enforcement Partnerships between Government and Civil Society Are Showing the Way Forward*, 2017 The University of Chicago Legal Forum 143, 149-153 (2018).

69. Worker-driven Social Responsibility Network, *supra* note 68.

70. See, e.g., Fresh Allegations of "Human Slavery" Emerge from the Tomato Fields of Immokalee, Coalition of Immokalee Workers blog (Dec. 10, 2007) (noting failure of Burger King's private supply chain monitoring group to detect inhumane conditions); Steven Greenhouse & Jim Yardley, As Walmart Makes Safety Vows, It's Seen as Obstacle to Change, N.Y. Times (Dec. 28, 2012).

71. See Fair Food 2018 Update, *supra* note 68.

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