

THE “TENURE” TRACK FOR SUBCONTRACTED WORKERS

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From a legal perspective, a subcontracting relationship, where an employer hires a management company that in turn hires employees,¹ reduces liability and allows contractual freedom. From a human perspective, however, subcontracts can reduce workers' wages and constrict work-related benefits. Subcontracted workers, like the janitorial staff at the American University Washington College of Law (“WCL”), are overlooked as a nameless entity. As individuals, they share the same inquisitive intellect and dedication to justice that is represented in the student body at WCL.

When El Salvador was at war with high unemployment rates and low wages, Hector sacrificed his job at the Department of Commerce to immigrate to the U.S. The cultural upheaval was enormous, but of little significance when compared to the opportunities his children could attain in the U.S. The model of stability, he married, settled down, and has faithfully remained a worker at WCL for 14 years. Impassioned about theology and philosophy, he converses fluently about ancient Greek sages and their impact on modern cultural ideologies.

In 1980, Martha was a 20-year old psychology student working in a chemistry lab in El Salvador. After her younger brother was tortured and disappeared, her family fled to the U.S. Soon after, her husband returned to El Salvador where he was kidnapped, tortured, and killed. Despite the tremendous trauma she experienced, Martha later remarried and now has four children and one grandchild. Due to a lack of university records, she was unable to validate her university studies, but continues to have a great affinity for education. Additionally, Martha has overcome the language barrier, taking classes in business administration in hopes that she can start her own restaurant. She has worked at WCL for seven years. “I do not have a homeland. The U.S. is my home but my homeland turned its back on me,” she lamented recently.

Hector and Martha are part of the large Central American community in Washington, D.C., where Latinos now make up 8% to 10% of the population.² How do well-educated and successful people end up as janitors and domestic workers? As it turns out, immigrants make up 1 in 9 U.S. residents, one in seven U.S. workers, and one in five low-wage workers.³ Of the 17.9 million foreign-born workers in the U.S., some 12.7 million

are legal permanent residents, temporary guest-workers, or hold other legal status.⁴ Additionally, almost 30% of immigrant workers hold bachelor's degrees.⁵ Without the contribution of immigrant workers, the output of goods and services in the United States would be \$1 trillion less.⁶ Still, immigrants' hourly wages are lower on average than U.S.-born workers, and nearly half of immigrant workers earn less than 200% of the minimum wage.⁷ The average low-wage immigrant worker earned \$14,400 in 2001.⁸

There are 14.8 million “non-employees,”⁹ which includes independent contractors, on-call workers, temporary agency workers, and workers provided by contract firms.¹⁰ These workers accounted for approximately 25% of the total employment work-force. The Bureau reported that, compared with workers employed directly by their employer, subcontracted employees were less likely to be eligible for employer-provided pension plans.¹¹ While “non-employees” can range anywhere from emergency room physicians to janitorial staff, working-class, and foreign-born individuals are indisputably amongst the most vulnerable.

At WCL, working for a subcontracting company makes the workers ineligible for tuition reimbursements, wage benefits, and pensions. In light of the constraints imposed on them by this arrangement, it is no surprise that the workers seek a more favorable contractual relationship directly with WCL. No. Moreover, one of their primary requests is that the students, professors, and administrators value them as part of the WCL community, cooperating as a team to make WCL a place where everyone can excel.

Collectively, Amparo, Ana, Ena, Flor, Hector, José M., José R., María, Martha, Reyna, Sonia from El Salvador, Manuel from the Dominican Republic, Alex from Guatemala, plus the kitchen staff, security team, and other staff represent millions of workers throughout the country who are more than “the help.” They are engineers, artists, lawyers, dreamers, and part of our national fabric, as well as part of our WCL's fabric. Many of them have been at WCL longer than the faculty and staff. Where are their tenure-track benefits for loyalty and good work? We are all the descendants of immigrants and it is our duty to support our workers in their struggle for a better life and working conditions.

ENDNOTES

* Adianez Castillo Misigoy, Vashti Mercado, and Rita M. Montoya are second-year law students at American University Washington College of Law (“WCL”). María Lucero Ortiz is a third-year law student at WCL. They would like to pay tribute to the hardworking immigrant workers at WCL and throughout the country.

¹ *Lack of Worksite and Employer Sanctions: Hearing Before the Subcomm. On Immigration, Border Security, and Claims, H. Comm. on the Judiciary, 109th Cong. 41-43 (2005)* (statement of Jennifer Gordon, Associate Professor of Law, Fordham University School of Law) (Subcontracting exerts downward pressure on wages in two ways. Contracts are put out to bid, encouraging contractors to offer the lowest possible price. Falling labor contract prices translate directly into falling wages. Subcontracting introduces a middleman who takes a cut of the contract that would normally go to the worker. As a standard arrangement in a particular industry, it affects all workers in that industry, documented or not. Thus, increased subcontracting has decreased the wages of all U.S. workers).

² Central American Resource Center of Washington (“CARECEN”), available at <http://www.dccarecen.org> (last visited Oct. 29, 2006).

CARECEN's comprehensive mission is to help Central Americans and other Latino immigrants to obtain legal status in the United States and to fully participate in the political, social and economic development of their families and communities.

³ Michael Capps et al., *A Profile of the Low-Wage Immigrant Workforce*, The Urban Institute (Oct. 27, 2003), available at <http://www.urban.org/url.cfm?ID=310880> (last visited Oct. 29, 2006).

⁴ *Id.*

⁵ *Facts About Immigrant Workers*, National Immigration Law Center, available at http://www.nilc.org/immseplymnt/factsimmworkers_041504.pdf (last visited Oct. 29, 2006).

⁶ *Id.*

⁷ See Capps et al., *supra* note 3.

⁸ See Capps et al., *supra* note 3.

⁹ *February 2005 Report*, United States Department of Labor: Bureau of Labor and Statistics, available at <http://www.bls.gov/news.release/conemp.nr0.htm> (last visited Oct. 28, 2006).

¹⁰ *Id.*

¹¹ *Id.*