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February 2009

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Abstract

Atypical work forms – such as independent contracting, on-call, or temporary work – have been criticized as providing employment that is more precarious than that offered by regular (open-ended) employment. One of the concerns attached to these work forms is that they allow employers to evade labor market protections afforded to regular workers. In such cases, we might be expected to see a greater prevalence of atypical workers in those states with greater labor market protections. We test for this possibility using Current Population Survey data from 1995 to 2005. Our results would suggest that at least one form of atypical work – contracting and consulting work – is less likely to be observed in right-to-work states after controlling for state-level characteristics.

Introduction

The use of employment arrangements such as consulting, contracting, on-call and temporary work by employers has been criticized as weakening the bond between employer and employee. One word that has been consistently used to describe these workers is disposable.[1] Supporting this designation are the criticisms that atypical work arrangements (AWAs) offer less secure and less stable work than open-ended employment (see, for example, Hylton, 1996; Lee, 1996; Nollen, 1996). Equally important in the perception of atypical employment being inferior employment to that of open-ended employment is the distinct lack any employment protections, explicit or implicit, that are afforded to regular workers and the transient nature of such employment. Put simply, these workers lack the key advantage of regular workers in that they have no clear expectation of continued employment.

Against this backdrop, it is less clear as to what forces are actually driving the use of these work arrangements by employers. The research into the demand-side of atypical work has been primarily limited to one form of atypical work – namely agency temporary work – or limited to case studies. Much of the existing research into the use of atypical work by firms has been more focused on the de-integration of the labor market (Garen, 1999) and the sectoral composition of the atypical workforce (Estavao and Lach, 1999a, b). Moreover, the two studies that have examined the possibility that firms are using AWAs to evade labor market regulations are mixed in their implications.

The present study seeks to examine one aspect of the demand for atypical work by employers. It explores the possibility that employer usage of AWAs may vary in the presence of differing degrees of labor market regulations. In particular, atypical work might be desirable if there is an increased cost attached to a firm's adjustment of its (regular) workforce, be it

[1] For example, see Castro (1993).

legislatively or otherwise. In such cases, atypical work might afford a firm with the ability to sample workers or to extend offers of (conditional) employment to those who otherwise might not initially merit an offer of regular work. It could also be that firms might find atypical work as a substitute for their regular workforce if they are seeking to avoid increased restrictions imposed upon their hiring/firing decisions. In a perverse sense, increased regulations designed to bolster the bond between a firm and worker might actually serve to effectively decrease the job-match.

We test for this possibility that atypical work is used by firms as a potential response to labor market regulations by comparing the usage of atypical work over a ten-year period of time. We identify two groups of states which differ significantly in their orientation to unionization and collective bargaining. We are primarily interested in determining if there are differences in the usage of atypical work between those states that are right-to-work states against those that are closed-shop. The primary difference between these two groups of states lies in the ability of workers to decline union coverage/membership if representation occurs in their workplace. For closed-shop states, workers are obligated to join a union if it represents any of their fellow workers. The imposition of union membership may be particularly acute in the case of firms' new hires as they would be required to join the coverage already adopted by co-workers. These requirements might encourage employers to substitute atypical workers for regular workers as atypicals explicitly exempted from many labor market regulations.[2] It may also be the case that closed-shop rules encourage firms to simply not hire (regular) workers at the margin, thereby increasing the percentage of a state's workforce accounted for by non-regular workers.

To further improve upon the body of work in this area, we use a nationally-representative dataset that contains richer data on the different AWAs. We are not just restricted to the AWA,

[2] Indeed, in the case of agency temporaries, such workers are technically the employees of the temporary help agency, not the client firm, thereby transferring the legal responsibilities – and any associated protections – away from the client firm.

agency temporary workers, that has been the primary focus of the existing work. To be more precise, we construct three dependent variables which measure the fraction of a state's workforce employed in one of three atypical work forms: contracting/consulting, on-call, and temporary work. There are fundamental differences in the type of work that these three AWAs represent. Equally important are the noted differences in the types of workers, the implications that they have for pay and employment stability, which fill the three different AWAs. Accordingly, we estimate a separate model for each of the different AWA measure.

We begin with a relatively parsimonious review of the literature regarding labor market regulations and atypical work. We next discuss our dataset – the recently discontinued Contingent and Alternative Employment Arrangement Supplement (CAEAS) to the Current Population Survey. We then provide our ceteris paribus analysis of the prevalence of atypical work in a state's workforce. A brief summary concludes.

Existing Work

For atypical employment to exist there must be a demand equal to no less than the supply of workers in these arrangements. Although research into the demand side of atypical work has been more substantive than that into the supply side,[3] it has been hampered by a paucity of quality data. In consequence, analysts have either focused on one arrangement, agency temporary employment, for which there is available data, or have conducted case studies on firm usage of AWAs. To our knowledge there have been only two studies which directly took into consideration the possibility that labor market regulations might be behind the use of atypical work by employers.

[3] For a review of the decision for workers to engage in atypical work, see Polivka (1996). We also note parenthetically that this deficit is being rapidly overcome. For a review of the recent literature on the types of workers filling AWAs and their implications, see Addison and Surfield (2007) and Addison and Surfield (2008).

Houseman (2001) exploited a private survey of establishments that was administered by the Upjohn Institute in 1996. She focuses in particular on the reasons that firms gave for hiring workers into atypical employment. The survey was a stratified sample of 550 establishments that collected data on the frequency with which they utilized various employment arrangements and the primary reasons for their demanding such arrangements. Data were collected on the following AWAs: temporary, on-call (per diem), part-time, and short-term work. Establishments were asked to select the primary reason for which they used each form of work arrangement based on a list initially prepared by the Institute. The author's analysis failed to uncover much evidence that firms were using atypical work as a means to sample workers prior their being hired on as a regular worker. Only for agency temps was screening for regular employment given as a significant reason for their use. The two most commonly cited reasons, across all of the various arrangements, were much more mundane in nature. Namely, firms cited the need to fill a vacancy until a permanent replacement could be hired or to fill in for an absent or ill employee. There was no indication of the rate at which these establishments hired the workers it initially engaged in these arrangements onto their regular payrolls. In sum, firms did not appear to be citing either cost savings or increased flexibility in hiring patterns as their primary motivation for exploiting atypical work.

More important to the present analysis is Autor (2003) who directly examines the relationship between a constraint on the firm's ability to adjust its workforce and atypical work. He takes advantage of a natural experiment, court-mandated exceptions made to the employment-at-will doctrine, to ascertain if labor market relations and temporary employment are correlated. Over the past two decades, state courts have provided for three notable exceptions to this long-standing common law doctrine. Autor hypothesized that the adoption of the implied

contract exception to the employment-at-will principle served to restrict a firm's ability to costly adjust its workforce and contributed to the growth in the use of temporary staffing services.[4]

Employment-at-will allows either party, be it the firm or worker, to terminate the match for any reason and without giving cause. As exceptions to this law began to be recognized, the firm's ability to adjust its workforce became constrained. The courts have viewed such implicit promises of continued employment, such as the successful completion of a probationary period or a record of continued pay increases or promotions, as an implied contract of continued employment. Should a worker be considered as having such an implied contract and later be terminated by the firm, he or she may be able to file suit against the firm alleging unjust dismissal. Put simply, as state courts adopted these attenuations to the at-will principle, the costs attached to a firm's adjusting its workforce directly increased be it from an increased risk of litigation or from the increased cost associated with bureaucratic record-keeping.

While Autor only looks at the effect that these exceptions have on the use of temporary staffing services due to data limitations, his findings were very clear. The adoption of implied contract exception in a state appears to account for approximately twenty percent of the growth in the usage of outputs provided by the temporary staffing industry by other industries.

Given that the two studies examining, directly or indirectly, employment protections and atypical work are essentially a one-off, additional research is warranted. We more closely follow the approach of that of Autor by evaluating atypical work at the state level rather than Houseman's focus on the establishment level due to our richer dataset. We improve upon his findings by examining a wider range of atypical work forms than just agency temporary employment. Our data also includes many of the same controls adopted by Autor to control for

[4] The other two exceptions identified by Autor are public policy and good faith and dealing exceptions. These two exceptions, however, are not as common as the implied contract exception and had little explanatory power in predicting temporary employment levels.

state-level workforce differences to allow us to replicate his empirical models. We shall now turn to our primary source of data, the CAEAS.

Data

Beginning in 1995, the Current Population Survey (CPS) added a supplement that was specifically designed to collect data on atypical work arrangements. Prior to this supplement, identifying atypical workers was problematic and relied on the identification of workers by their industrial classification code. To mitigate this problem, the Contingent and Alternative Employment Arrangement Supplement (CAEAS) was then conducted biennially in the February CPS until it was discontinued in 2005.[5] While the CAEAS is primarily designed to collect micro-level data on the implications that such employment has on its incumbents, we can draw general inferences on the size of this workforce at either the state or national level. Using the CAEAS we can estimate the size of a state's workforce that is engaged in a fuller array of atypical work, not just agency temporaries.

We identify three possible atypical work arrangements in which a worker can be employed. The first, *contracting/consulting*, contains those workers who identify themselves as being employed as an independent contractor. In addition, we fold those who are contract company workers into this work arrangement.[6] Our second measure of atypical work, *temporary workers*, consists of either those workers who are hired directly by a firm in a temporary position or who are assigned a client firm on a temporary basis by a temporary help service. As was the case of contract company workers, we formed this composite group of temporary workers given

[5] Budgetary constraints prevented the collection of data in 2003, providing us with only five usable waves of the CAEAS.

[6] This was necessitated by the very small number of workers – typically less than one percent of the workforce – who are found in such employment. For estimates on the size of the atypical workforce, see Surfield (2005).

the small number of workers employed as an agency temporary.[7] Finally, *on-call workers*, are those who indicate that they work on a per diem basis or who are day laborers. For each state, we then estimated the fraction of the workforce employed in one of these three mutually exclusive work arrangements by weighting our mean estimates with the supplemental weights contained in the CAEAS. These weights were constructed by the CPS specifically to allow for representative inferences to be drawn at the aggregate level. The final step in constructing our three dependent variables was to take the natural log of the AWA averages. This allows us to estimate the percentage increase/decrease in the usage of these work forms associated with the various characteristics of the states.

The data contained in the parent CPS surveys were then used to construct the labor force characteristics, save for union coverage rates[8] and the average annual state unemployment rate. As shown by Cohany (1996), temporary workers tend to be younger, lesser educated, and a minority than are regular workers. At the other end of the spectrum lie contractors/consultants who are more likely to be older, better educated, married and overwhelmingly male. To disentangle any competing implications that these demographic characteristics may have with that of the relaxed legal protections afforded by right-to-work states, we constructed a series of state-level workforce variables. To be more precise, for each state we estimated the weighted average of a state's workforce that is: black or an other minority, female, married, married females, between 16 and 24 years old, greater than 55 years old, and a set of educational attainment variables. We also included the logged value of the state's level of workforce employment given the finding of Segal and Sullivan (1995) that (at least) agency temporary

[7] Although seemingly garnering the most attention, and scrutiny, of policy makers, such workers account for only one percent of the work force. Their direct-hire temporary brethren, on the other hand, account for between five and seven percent of the national workforce.

[8] The union coverage rates were obtained from Hirsch, et al (2001), with the average state unemployment rate was provided by the Local Area Unemployment Statistics published by the Bureau of Labor Statistics.

employment is pro-cyclical in nature. Note that all of workforce demographic characteristics constructed followed the convention of those controls used in Autor (2003).

Finally, we folded the five cross sections into one pooled sample to facilitate are more precise estimation of our regression models. Given the rotational design of the CPS, and that we are primarily interested in the state-level data, we do not have any overlap of individuals observed across the five different supplements.[9] To disentangle any year-specific implications on the usage of atypical work, we constructed four year dummies to include in our multivariate results.

Results

Turning first to the summary statistics presented in Table 1, we can see that in the case of contracting/consulting work do we uncover a significant difference in the usage of atypical across our two state groups. As we expected earlier, the usage of contracting/consulting work was higher in those states adopting closed-shop rules relative to right-to-work states. States that have closed-shop regulations appear to use contracting/consulting work at a rate that is eight percent more than that of states which are right-to-work. Critics of closed-shops states also appear to be justified in arguing that such labor market regulations serve to increase a state's unemployment rate. Such states experience an unemployment rate that is nearly ten percent higher than that of right-to-work states.

(Insert Table 1 near here)

Turning briefly to the labor force characteristics, we see that the two groups of states do significantly vary in terms of their work force compositions. These differences may ultimately

[9] Households contained in the CPS are interviewed for four months, rotated out for eight, and re-interviewed for four more months before being permanently rotated out of the CPS.

serve to explain part of the observed difference in the use of contracting/consulting work as workers engaging in such work tend to be older, white, married, males and better-educated. Note that, with the exception of education which is mixed in its results, we observe a significant difference in the expected directions for ethnicity, marital status, and age. Also, not surprisingly given the orientation of closed-shops states, we find that requiring all hires of a unionized firm to join the union serves to increase the state's union penetration rate. Closed-shop states have nearly twice as many unionized workers, as a fraction of their total workforce, than do their right-to-work counterparts.

Given the competing implications that a state's workforce composition and its legal regulations have on its prevalence of atypical work, we next turn to our ceteris paribus results. Table 2 presents the OLS regression estimates of the prevalence of atypical work. We present the results for each of our three dependent variables in its own column. Looking at the first row of each column after controlling for the observed differences in the states' workforce characteristics, we seemingly produce coefficient estimates attached to being a right-to-work state that fail to achieve significance at conventional levels. Unemployment appears to significantly explain part of the variation in the usage of two types of atypical work. Each percentage point increase in a state's unemployment rate appears to increase the use of contracting/consulting (on-call) work by a state's employers seven (eight) percent.

(Insert Table 2 near here)

In reviewing the results obtained we use the rate of usage of temporary employment within a state as our dependent variable, we obtain poorly-estimated coefficients. Only in the case of marital status do we obtain any statistically valid results.

Turning next to the case of contracting/consulting (column two), we find that increases in the proportion a state's workforce that is black is negatively correlated with the prevalence of this work arrangement. This negative association is also found in the case of increases in the proportion of younger workers. These findings are consistent with those of Cohany (1996) in that contracting/consulting workers are disproportionately more likely to be those workers who are older or who are white. The penetration of unions in a state's workforce is negatively correlated with the usage of contracting/consulting.[10] Part of this relationship may be due attributed to unions imposing restrictions on the use of this work form in their negotiations with firms. Those states which are more unionized may be more likely to be restrictive in the individual employer's ability to use contractors and consultants.

Finally, the results in the third column present our estimates when we use the prevalence of on-call work as our dependent variable. As was the case in contracting/consulting, we see that ethnicity and age do have some explanatory value, although in this case not of the expected direction. We see weak evidence that increases in a state's minority population and younger workers serves to *decrease* the use of on-call work, while having a higher-educated workforce also appears to *increase* the usage of per diem workers. Given that all of the existing work has produced a profile of on-call workers that suggests such workers are disproportionately likely to be a member of a minority group, poorly-educated and younger, these findings are puzzling.

With regard to the right-to-work variable, the results presented in Table 2 may not necessarily be consistent estimates of the differential usage of atypical work across the two groups of states. In the case of dichotomous variables, such as our right-to-work variable, differences in the dispersion of the dependent variable (in this case the natural log of the fraction

[10] Given the relative animosity of unions towards atypical work, this finding is not entirely surprising. See, for example, Lips (1998).

of a state's workforce engaged in the various atypical work arrangements) may correlate with the model's error term – even if there is no difficulty with the continuous variables. If there is an error-dependence observed for this variable, then our initial estimates are biased and inconsistent. Accordingly, we offer our heteroskedasticity-corrected estimates of the differential, using the procedure outlined in Blackburn (2007) in Table 3.

After we control for error dependence, we see evidence that at least the usage of contracting/consulting work is influenced by a state's orientation towards labor unions. The share of the workforce employed in a contracting/consulting work is slightly more than six percent lower than that of their closed-shop counterparts. Recall that our simple tabulations uncovered an increased rate of usage of this work form that was nearly of the same magnitude. Much of the differential still persists after we take into consideration the other observed state-level characteristics. This would suggest that, for at least the case of contracting/consulting work, states with lower labor market regulations are less apt to see employers using such work relative to their more active regulatory counterparts.

Concluding Remarks

Given our results, we are hesitant to say, wholesale, that the use of atypical work is positively correlated with the level of a state's labor market regulations. Indeed, this appears to be the case with regard to the usage of contracting and consulting work. This finding persists after we control for state-level characteristics and after we take into consideration the error-dependence. The differential uncovered in our simple tabulations remains fairly intact in our multivariate results.

However, we fail to uncover much evidence that greater labor market regulations produce much in the way of increased usage of temporary or on-call work. This might suggest that states are justified in their usage of legislative activity to enhance the bond between a firm and its workers, at least in the case of these two work arrangements. Our findings also fail to support the concerns attached to atypical work in that employers are using AWAs wholesale to evade the legal protections afforded to (regular) workers, at least in the case of a state's orientation towards labor unions.

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Table 1: Weighted Summary Statistics

	Right-to-work States	Closed-Shop States
Temporary employment fraction	5.04 (1.55)	5.00 (1.34)
Contracting/consulting employment fraction	5.25 (1.38)	5.68** (1.85)
Oncall employment fraction	1.21 (0.57)	1.26 (0.55)
Average annual unemployment rate	4.44 (1.03)	4.88*** (1.19)
Work Force Characteristics:		
% Black	0.12 (0.11)	0.08** (0.11)
% Other minority	0.03 (0.02)	0.06*** (0.11)
% Female	0.47 (0.02)	0.47 (0.02)
% Married	0.68 (0.02)	0.58** (0.03)
% Married females	0.27 (0.02)	0.26** (0.03)
% 16 – 24 years old	0.16 (0.03)	0.15** (0.02)
% Over 55 years old	0.13 (0.02)	0.13 (0.02)
% High school graduates	0.33 (0.04)	0.32 (0.05)
% Some college	0.22 (0.03)	0.20*** (0.03)
% Bachelors or higher	0.32 (0.04)	0.37*** (0.06)
Union coverage rate	9.64 (3.68)	17.75*** (4.57)
Log(State Employment)	14.26 (0.92)	14.33 (1.08)
n	107	148

Notes: Results reported as weighted means (using CPS-provided weights) and standard deviations in parentheses. *, **, *** denote significant difference in means at the 0.10, 0.05, 0.01 level, respectively.

Table 2: OLS Regression Estimates of Atypical Work Fractions

dependent variable:	log(Temporary work fraction)	log(Contracting/Consulting work fraction)	log(Oncall work fraction)
Right-to-work state	0.006 (0.045)	-0.064 (0.060)	0.059 (0.097)
Average annual unemployment rate	0.013 (0.015)	0.066*** (0.014)	0.077*** (0.029)
Labor force characteristics:			
% Black	-0.166 (0.303)	-0.875*** (0.294)	-0.617* (0.370)
% Other minority	0.173 (0.187)	0.160 (0.187)	-0.316 (0.214)
% Female	-0.396 (1.449)	-2.025 (1.408)	-0.842 (2.254)
% Married	-2.275* (1.171)	-0.245 (1.074)	0.309 (1.747)
% Married females	0.888 (2.270)	0.999 (1.865)	-0.728 (3.540)
% 16 – 24 years old	0.765 (0.803)	-1.793** (0.749)	-2.781* (1.506)
% Over 55 years old	-1.564 (1.171)	0.215 (0.905)	0.840 (1.459)
% High school graduates	-1.716 (1.107)	-0.268 (1.117)	0.985 (1.738)
% Some college	-1.643 (1.238)	0.263 (1.103)	3.245** (1.491)
% Bachelors or higher	-0.824 (0.967)	1.395 (0.890)	0.141 (1.562)
Union coverage rate	-0.007 (0.005)	-0.019*** (0.004)	0.000 (0.006)
Log(State Employment)	-0.005 (0.023)	-0.039 (0.024)	-0.095*** (0.036)
Adjusted R^2	0.43	0.46	0.23
n = 255			

Notes: Results are reported as coefficient estimate and Huber-White standard errors to correct for heteroskedasticity in parenthesis. Four year dummies were included (omitted year was 1995). Omitted categories were whites, % 25 – 55 years old, and high school dropouts. *, **, *** denote significance at the 0.10, 0.05, and 0.01 level, respectively.

Table 3: Corrected OLS Regression Estimates of Atypical Work Fractions

dependent variable:	log(Temporary work fraction)	log(Contracting/Consulting work fraction)	log(Other atypical work fraction)
Right-to-work state	0.010	-0.064***	-0.015
	(0.005)	(0.008)	(0.048)

See *Notes* to Table 2.