The fissured workplace: Implications for *Closing the Gaps*

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Four goals for *Closing the Gaps* affected by the fissured workplace

- To identify the industries and occupations where intervention is most needed;
- To identify new or emerging hazards (new hazards; old hazards in new settings);
- To identify individual workplaces (departments within workplaces) where intervention is warranted;
- To identify potential, previously undocumented risk factors (e.g. inadequate supervision) that require further etiological research.

*Source:* CSTE *Closing the Gaps* meeting, April 2009.
Fissured formula

FISSURED RECIPE:
• Focus on core competencies
  • Brand / Coordination / Cost
• Shed employment to lower level providers in competitive markets
• Develop standards & create structure to protect core

RESULTS FOR LEAD FIRMS:
• Capture rents from revenue side
• Lead firms face a schedule of prices for services rather than wages for labor
• Reduce costs but creates agency dilemmas
Consequences of fissured employment

RESULTS FOR SUBSIDIARY ORGS:
• More competitive markets and price for services
• Labor a significant share of costs
• Downward pressure on labor costs and conditions

SOCIAL CONSEQUENCES:
• Externalities: Increased costs from coordination problems
• Compliance: Increased incentives for violating standards
• Income distribution: Impact of taking shifting wage setting

Source: Bernhardt et al. 2009
From iPhone to advanced subcontracting: Fissured cell towers...

* then known as Cingular

Graphic by Dan Nguyen, ProPublica / Cell tower icon by Dima and Christian Hohenfeld from The Noun Project
Fissured supply chains: Schematic of WalMart’s nerve center

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When widespread violations were found, who is the employer?
Franchising as a fissured form: Fast food

Company Owned

Franchisee (Single-unit)

Franchisee (Multi-unit)

Franchisee

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Fissuring and compliance—Top 20 branded fast foods

Impact of franchising on labor standards compliance: Top 20 fast food companies, 2001-2005

- Probability of non-compliance: 23.6%
- Back wages per employee paid in violation: 50.0%
- Back wages per investigation: 59.3%

Percentage differential of franchise compliance outcome to a comparable company-owned outlet

Source: Ji and Weil 2011
## Fissured employment in assorted industries

<table>
<thead>
<tr>
<th>Industry</th>
<th>Lead firm / organization</th>
<th>Lower level entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eating and drinking</td>
<td>brands (franchisors)</td>
<td>franchisees / outlets</td>
</tr>
<tr>
<td>Limited service (fast food)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hotel and motel</td>
<td>brands (franchisors)</td>
<td>hotel / motel properties; contractors; labor brokers</td>
</tr>
<tr>
<td></td>
<td>brand / independent operators</td>
<td></td>
</tr>
<tr>
<td>Residential construction</td>
<td>major homebuilders</td>
<td>contractors / subcontractors</td>
</tr>
<tr>
<td>Janitorial services</td>
<td>building service providers / franchisors</td>
<td>contractors / franchisees</td>
</tr>
<tr>
<td>Moving companies / logistics providers</td>
<td>branded national moving companies</td>
<td>subcontracted local movers; interstate trucking companies; warehouses</td>
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<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td>Telecommunications</td>
<td>media and telecomm companies (e.g. time Warner; Verizon)</td>
<td>contracted installation providers and services</td>
</tr>
<tr>
<td>Retail food stores (prepared foods)</td>
<td>major food retailers</td>
<td>franchised prepared food providers</td>
</tr>
<tr>
<td>Home health care services</td>
<td>major purchasers of home health care services</td>
<td>franchised home health care providers</td>
</tr>
</tbody>
</table>
Key questions on injury and illness surveillance

- How are injuries / illnesses currently recorded in fissured workplaces in different industries? Whose log(s) reflect workplace incidents?

- How does fissured work contribute to injuries and illnesses, arising from coordination problems (cell); shifting liability (petrochemical); training (construction)?

- How do injuries / illnesses vary across different fissured structures?

- How should injuries / illnesses be recorded given the joint / multi-party nature of employment and responsibility?
Policy responses
Rebalancing the fissured workplace: Strategic enforcement

Policies to rebalance the fissuring decision:

• Refocus enforcement to the top of fissured structures

• Transparency and “connecting the dots”

• Rethink enforcement procedures on the ground (deterrence / worst offenders)

• Engage workplace advocates
Advanced subcontracting: Focusing at the top

Traditional approach

Mended approach

* then known as Cingular

Graphic by Dan Nguyen, ProPublica / Cell tower icon by Dima and Christian Hohenfeld from The IVN Project
Examples of policies / opportunities

- Hot-goods authority (WHD)
  - Food industry—fresh produce
- Enterprise-wide agreements (WHD / OSHA)
  - Monroe Muffler / National Roofing
  - Hotel initiative
- Multi-employer citation policy (OSHA)
  - Summit Contractors decision
- Misclassification initiatives (Federal and state)
  - State / federal collaboration
- Transparency / connecting the dots (WHD / OSHA)
  - Eat / Shop / Sleep
Rebalancing the fissured workplace: Public policies

Public policies to rebalance the fissuring decision:

- Redefining “employer” in workplace laws
- Misclassification and egregious fissuring
- Broaden notions of liability
- Expand transparency requirements