

Research on Informal Work in the U.S.: Emerging Concepts and Measurement

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In this memo, I give a brief overview of the state of research on informal work in the U.S. -- focusing both on some of the key conceptual issues as well as the empirical challenges that confront us. Because I've been a laggard, I've benefited greatly from the many excellent background papers that have already been submitted, and so this memo is in part a response to those thoughtful pieces.

1. Definitions

As other memos have also highlighted, a critical first step in this area is to be very clear on definitions. In particular, we need to distinguish between the following two dimensions:

- a. **Standard <-----> nonstandard work:** The extent to which the structure of the employment relationship deviates from some standard. In the U.S., this is usually something along the lines of a direct, unmediated employment relationship between one employer and one worker, taking the form of a permanent, full-time job. But much could be added to this baseline standard.
- b. **Formal <-----> informal work:** The extent to which work is being performed under conditions that either evade or outright violate employment and labor laws, and potentially, normative standards of working conditions. The extent to which we include normative standards in this definition is one of the key conceptual challenges (more on this below).

Clearly, these two dimensions are correlated, even tightly so. But they're not the same, either conceptually or empirically. For example, a Wal-Mart worker who works off the clock (which is illegal) is very likely working in a standard job; correlatively, there are nonstandard jobs that don't qualify as informal work. More important, behind these two dimensions often sit very different types of employer strategies, and from both a theoretical as well as policy standpoint, distinguishing employer strategies is a key goal in this area, since ultimately, that's where the causes of nonstandard and informal work will be found.

A further complication is that there is also interest in the informal or underground economy. But in my mind this is an entirely different question, i.e. the extent to which there is a distinct market for trading/exchanging goods and services that are produced in illegal conditions, with

its own supply and demand dynamics. In this workshop, my understanding is that we're focusing on informal work, which we recognize can be performed either in the formal or informal economy. (In the U.S., my instinct is that a significant part, perhaps even the majority, of informal work is actually performed in the formal economy).

I stress all this, because in the U.S. especially, all of these concepts are often conflated; nonstandard work is equated with informal work, and folks often use the term informal economy but in fact are really talking about jobs and working conditions. (As we continue to map out this conceptual area, it would be great if we could find another term than informal work -- it's very confusing, and in the public sphere tends to trigger images of marginal, underground, off-the-books enterprises engaged in nefarious activities.)

2. Trends and concepts: standard <-----> nonstandard work

Several memos have done a great job going into depth on identifying and measuring various forms of nonstandard work. So I'll just add some thoughts from the standpoint of researching trends in low-wage labor markets in the U.S. In general, we often talk about the externalization of work and production over the past three decades (i.e. Appelbaum et al. 2003). So that means the shift toward nonstandard forms of work, with externalization both literal (i.e. temp work) and virtual (dissolving internal labor markets, so that while front-line jobs may still be in-house and even permanent or full-time, they are effectively isolated from any upward movement). On the production side, this means the complex strategies by which firms have siphoned off and contracted out/outsourced specific functions of the production process (whether of goods or services).

I'm particularly focused on subcontracting, which by all accounts has become pervasive in key industries and which I think impacts significantly more workers than some of the other categories of nonstandard work that we are better able to measure (i.e. temp work). In many industries, for example, janitorial, laundry, and cafeteria functions have been almost entirely subcontracted, resulting in entirely new industries (building services, industrial laundry, food services). While subcontracting does not inherently result in nonstandard jobs, in practice, the strategy is often used to lower wages, avoid benefits, gain flexibility in hours, and/or evade responsibility for employment and labor laws. Especially in low-wage industries, subcontractors are more likely to misclassify their workers as independent contractors or use other similar contingent work classifications.

This makes it one of the central trends in the labor market that we need to be capturing, but it is one of the hardest to capture. Workers most often do not know if they are working for a subcontractor, or even when they think they know, often get it wrong. And to my knowledge, there are no consistent, national establishment-based data on the use of subcontracting, though for specific industries we may have scattered data.

3. Trends and concepts: formal <-----> informal work

Conceptual and empirical work on this topic is still young; there was a spate of largely theoretical work on the informal economy in the 80s and 90s (i.e. Sassen 1990), but since then, we haven't made much progress. At the time, however, everything we are seeing on the ground indicates that informal work is growing in a range of industries and especially during the past decade, and there is now a real urgency for rigorous concepts and research.

There are two key conceptual questions about defining informal work, which also have consequences for measurement.

First: Do we define informal work only by evasions and violations of employment and labor laws, which is relatively straightforward, at least conceptually. Or, do we also include violations of normative, non-legal workplace standards, which is a much fuzzier project.

As others have noted, the answer here may vary by country. In the U.S., employment and labor laws include laws that regulate wages and hours worked, setting minimum standards for the wage floor, for overtime pay, and in some states, for rest and meal breaks. They also comprise laws governing health and safety conditions in the workplace, setting detailed requirements for particular industries and occupations. Others on the list include antidiscrimination laws, right-to-organize laws, and laws mandating employers' contribution to social welfare benefits such as Social Security, unemployment insurance, and workers' compensation.

In comparison with other developed countries, though, this is a bare bones legal structure that is mainly focused on setting a floor for working conditions; employment is largely "at will," without legally binding contracts.

As a result, one might be tempted to also incorporate non-legal standards in definitions of informal work -- i.e. violations of normative standards that have enough weight (and organizing force behind them) to shape employers' decisions about wages and how work is organized. At least until the past few decades, such normative standards typically included predictability of schedules, vacation and/or sick leave, annual raises, and, in some industries, living wages and employer-provided health insurance and pensions.

In a recent volume (Bernhardt et al., 2008), I and my co-authors argue that legal and normative workplace standards are both being eroded for similar reasons as employers seek to reduce labor costs, achieve greater flexibility, etc. Further, we argue that the existence of strategies to subvert or ignore laws by some employers pulls down normative standards further up in the labor market.

But it's not easy figuring out where to draw the line. If our definition of informal work is extended to include violations of a broad range of normative standards, we may risk losing what is distinctive about the concept in the first place, and end up simply narrating the overall

decline in working conditions for front-line workers over the past 30 years (i.e. loss of employer-provided health insurance, control over work, access to internal career ladders, etc.). And while that narrative is vitally important, my instinct (at least right now) is that there is something about informal work that is unique that we want to retain, i.e. the conscious, intentional violation or evasion of workplace laws by employers.

Second: Which types of employment relationships are included in the concept of informal work? Specifically, how do we sort through the various categories of independent contractors?

This is a very difficult question, as others have flagged. From qualitative research on a dozen industries in New York City, my instinct is that there are three categories of independent contractors we need to wrestle with.

1. Workers who are misclassified as independent contractors, but who are employees under the eyes of the law and therefore covered by employment and labor laws. These jobs obviously should be included in our universe (and note that under specific employment laws, misclassification is itself a violation).
2. Workers who are not considered independent contractors under the eyes of the law, but where the terms of employment are effectively dictated by an employer, contracting agency or industry regulation, and where conditions of work fail to meet one or more of the minimum standards of workplace regulation. This is a very tricky category: the clearest case from our research in New York City is yellow cab drivers, who are independent contractors by legal standards, but whose conditions of work are almost wholly dictated by the city's strong regulatory agency (which sets fares, lease rates, etc.) and the garages/brokers who lease cabs to drivers. Working conditions would often qualify as informal, in terms of sub-minimum wage pay, lack of overtime pay, etc.
3. Workers who we would clearly say are independent contractors, substantively as well as legally. The archetype here is the graphic design freelance worker, who works for multiple clients or on multiple projects and has complete control over the terms and conditions of work. But there may also be examples further down in the labor market: i.e. housecleaners who have, say, 10 clients a week, cleaning 2 hours in each home and again, largely setting the terms and conditions of work (even though it's low-wage).

These are of course abstract categories, and in practice, it's often quite difficult to clearly identify which type of case one is looking at (the various forms of child care are probably the most difficult of all), and case law on independent contractors is still very much in flux (Ruckelshaus and Goldstein 2002).

But the conceptual point still holds: there is a profound theoretical as well as policy question here about which forms of work should be afforded the protection of employment and labor laws, and more generally, the benefits that in the U.S. have traditionally been delivered via employers (health care, pensions, paid vacations, etc.).

4. A quick tour of research on informal work

As already mentioned, research on informal work is still very much an underdeveloped field, and there are currently few comprehensive estimates of the prevalence of workplace violations. Here as elsewhere, it is largely a question of triangulating between a variety of data sources and methods.

1. Representative employer surveys: The best evidence we have to date stems from a series of rigorous “employer compliance surveys” conducted by the U.S. Department of Labor in the late 1990s, focusing on minimum wage and overtime violations. For example, the department found that in 1999, only 35% of apparel plants in New York City were in compliance with wage and hour laws; in Chicago, only 42% of restaurants were in compliance; in Los Angeles, only 43% of grocery stores were in compliance; and nationally, only 43% of residential care establishments were in compliance (U.S. Department of Labor 2001). Confirming this, Weil (2005), in an independent analysis of Department of Labor administrative compliance data, found that 46% of garment contractors in Los Angeles were in compliance with the minimum wage in 2000. Unfortunately, these surveys were largely limited to only a handful of industries and/or regions, and most are no longer being conducted.

2. Representative worker surveys: Academics and applied researchers have recently begun to generate their own studies of workplace violations, especially of minimum wage and overtime laws. But only a few are representative. One of the most carefully constructed is survey of a national random sample of day labor hiring sites across the country; the authors found that 48% reported at least one instance of underpayment of wages in the preceding two months (Valenzuela et al. 2006). And I'm currently involved with a collaborative research project that recently completed a large representative survey of low-wage workers in Chicago, Los Angeles and New York City, with the goal of estimating the prevalence of a wide range of workplace violations (analysis currently being conducted).

3. Convenience samples of workers: While not representative, applied researchers and advocates have conducted surveys of convenience samples of workers, often yielding suggestive evidence of minimum wage and overtime violations in key industries including restaurants, building services, domestic work, and retail (Domestic Workers United and Datacenter 2006; Make the Road by Walking, and Retail, Wholesale, and Department Store Union 2005; Nissen 2004). For example, in a survey of New York City restaurant employees, researchers found that 13% earned less than the minimum wage, 59% suffered overtime law violations, 57% had worked more than four hours without a paid break, and workers reported a plethora of occupational safety and health violations (Restaurant Opportunities Center of New York and the New York City Restaurant Industry Coalition 2005).

4. Administrative data: We have recently seen a spate of studies that make innovative use of state administrative data to suggest that 10% or more of employers misclassify their workers as independent contractors (Carré and Wilson 2004; DeSilva et al. 2000; Donahue, Lamare, and

Kotler 2007). Drawing on similar data sources, a study by the Fiscal Policy Institute (2007) estimated that between half a million and one million eligible New Yorkers are not receiving workers' compensation coverage from their employers, as they are legally due. And while data are rarely available on health and safety violations in the workplace, a study of Los Angeles garment factories in the late 1990s is suggestive, finding that 54% had serious Occupational Safety and Health Administration (OSHA) violations (Appelbaum 1999). Finally, researchers have used administrative data, sometimes in combination with follow-up surveys, to document a marked weakening in compliance with the National Labor Relations Act over the past several decades, with a particularly steep rise in the 2000s relative to the last half of the 1990s in illegal firings of pro-union workers (see Bronfenbrenner 2000, Mehta and Theodore 2005, Schmitt and Zipperer 2007).

5. Data on employer strategies: The forms of work that we want to document are a direct outgrowth of employer strategies about how to organize work and production -- and so at least conceptually, this is another potential source of information. But while academic researchers have for several decades tracked changes in how employers are reorganizing work and production, they have often been stymied by the inherent challenges in measuring workplace practices and business strategies (see, for example, Appelbaum et al. 2003; Cappelli et al. 1997; Herzenberg, Alic, and Wial 1998; Osterman 1999). As a result, the best documentation comes largely from in-depth studies focused on particular industries, offering a rich, qualitative understanding of why employers use particular strategies and of the impact they have on workers and job quality. Comprehensive quantitative data are generally not available.

As already mentioned, in my mind probably the most important strategy is the subcontracting of jobs or functions to outside companies. The workers performing those jobs may still be located on-site (as with subcontracted janitorial workers) or be moved off-site (as with industrial laundry workers cleaning linens for hotels and hospitals). And again, greater use of subcontracting in and of itself does not necessarily result in informal work -- but in low-wage industries, there's a good chance it will. Subcontracting can help employers evade responsibility for compliance with employment and labor laws, creating greater legal distance in cases where, for example, a fly-by-night cleaning subcontractor pays less than the minimum wage. Accurate numbers are very difficult to come by and are likely to vary greatly by industry. But a recent example shows how deeply the practice can penetrate: in the institutional food sales industry, fully 51% of sales come from subcontracted food service providers (Hagerty 2002; see also Lane et al. 2003; Mann 2003; Moss, Salzman, and Tilly 2000).

Subcontracting is just one example, but in my mind, this is an area rich for conceptual development and research: identifying and then measuring the employer strategies that might correlate tightly with informal work (e.g. use of piece-rate pay, use of labor brokers, use of forms of contingent work such as day labor, etc.).

6. Other indirect indicators: To the extent that union density has declined, we would infer a likely increase in informal work, through two mechanisms. First, in industries that had high

density, loss of union membership typically results in an industry-wide lowering of wage standards and working conditions. Employers compete on the basis of labor costs instead of quality services and products, lowering the wage floor toward the minimum and increasing the likelihood that some employers will go below that floor (or adopt other erosive strategies such as temping out or subcontracting). Second, unions have historically been, and continue to be, key agents in enforcing employment and labor laws, actively monitoring their workplaces for adherence to wage and hour, health and safety, right to organize, and other laws. The decades-long decline in union density in the U.S, therefore, does not bode well: In 1948, almost one in three workers were in a union; by 2005, the fraction had fallen to just one in eight (Schmitt and Zipperer 2007).

Finally, federal capacity to enforce labor standards has waned. Between 1975 and 2004, the number of federal workplace investigators declined by 14 percent and the number of compliance actions completed declined by 36 percent—while the number of workers grew by 55 percent and the number of establishments grew by 112 percent (Bernhardt, McGrath, and DeFilippis 2007). Similarly, the Occupational Safety and Health Administration’s budget has been cut by \$14.5 million since 2001, and at the same time the agency has shifted resources away from enforcement and deterrence toward “compliance assistance”; at its current staffing and inspection levels, it would take federal OSHA 133 years to inspect each workplace under its jurisdiction just once (AFL-CIO Safety and Health Office 2007).

5. Lessons from research

In sum, triangulating between different types of data suggests that informal work -- the evasion and outright violation of workplace standards -- is a key trend in the U.S. labor market, to varying degrees depending on the industry and standard in question. But our conceptual and empirical grasp of this trend is still weak. We have a lot of work to do in sorting out and differentiating between nonstandard work, informal work, and the informal/underground economy. And in terms of empirical research, adequately documenting this trend will require the development of new research methods and gathering original data.

This is a critical point. While some of our established government worker surveys can shed some light on informal work, they are inherently limited by (a) the inability of workers to consistently identify the type of employment relationship they are in, the legality of their working conditions, and the business strategies being used by their employers, as well as (b) the inability of government surveys to consistently reach the types of workers most likely to be in informal jobs.

This means we need to embrace the fact that we will always be drawing on multiple data sources (workers, employers, government agencies, unions, legal dockets); that we will always need to integrate qualitative and quantitative data; and that we will need to come up with new measures of informal work and collect original data. For example, the three-city survey project that I mentioned above is using a novel sampling method called Respondent Driven Sampling,

part of a new set of what are called adaptive sampling methods that allow researchers to find workers usually under-represented in standard surveys, such as undocumented immigrants. This project also ended up writing an entire new regimen of questions in order to accurately measure violations of employment and labor laws.

Most important, I hope that work in this area continues to be integrated directly into a broader analysis of what has happened on the demand side of the labor market, and the ever changing landscape of employer strategies to achieve flexibility and cut costs. In other words, research on informal work shouldn't be reduced to an exercise in categorization, but instead always be driven by an examination of underlying economic causes and policy drivers.

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