BOOK REVIEWS

David Weil’s *The Fissured Workplace* lays out a blueprint for public policy actions needed to catch up with changes in the organizational forms employees encounter at work today. As he says, the era of the large corporation that provided a full array of benefits and was clearly responsible for meeting the requirements of labor and employment laws has passed. It has been replaced by what Weil labels the fissured workplace, essentially a maze of contracting, franchising, and outsourcing of work not deemed to fall within the core competencies of the firm that ultimately receives and benefits from the work performed. What falls between the fissures is accountability for meeting, enforcing, and improving employment practices and outcomes mandated in the nation’s labor and employment laws.

No one has done more solid or extensive empirical research on these issues than the book’s author. Moreover, no one has worked more directly with state and federal officials and with business and labor groups in designing and implementing new regulatory strategies that might address the challenges necessitated by these changes in organizational form. In this book, Weil draws on his research and experience to describe the current mix of organizational forms that fit the fissuring phenomenon, to document the effects of fissuring on employment standards and outcomes, and to suggest ways to update public policies and enforcement strategies to catch up with these new organizational forms.

Parts I and II of the book explore why fissuring is taking place. Weil’s answer is essentially that firms have discovered that outsourcing allows them to cut labor costs. “Isn’t that the whole point of using contractors” is a quote used later in the book to summarize one executive’s answer to the question of why firms outsource work. The problem is the way costs are cut: reducing wages; escaping coverage of voluntary benefit programs such as health insurance and pensions as well as taxes for social security, unemployment insurance, and workers’ compensation; and escaping coverage by union contracts. Fissuring is also muddying the waters over who is responsible for enforcing legally mandated employment standards.

The integrated corporation of the past found it necessary to have a rational and equitable internal wage structure in which the lowest paid occupations were positioned above rates needed to find people in the external labor market willing to do this work. If these firms offered health insurance and pensions to higher level employees they most likely needed to extend them to lower paid employees as well. These obligations go away by contracting out work not deemed essential to the core competencies of the firm. Thus janitorial work, food services, and later IT, human resources, and other professional tasks became outsourced. Moreover, entire industries such as restaurants, janitorial services, cell tower construction, and hotels moved to franchising and multiple layers of contracting that obscure authority and responsibility for enforcement of employment rules and regulations. The result is increased risk of injuries (increased fatalities in the case of cell tower construction), lower wages, fewer benefits, and increased risk of wage and hour law violations.

Part III explores strategies for “Mending the Fissured Workplace.” The first and most essential step is to rethink responsibility for whom to hold accountable for meeting legal obligations in fissured employment relationships. Weil’s answer is clear, and I believe, correct: The firm that controls the specifications and is the ultimate beneficiary of the work should be held responsible. If these lead firms can and do set down contractually enforceable rules specifying quality standards, delivery dates, and other requirements that contractors and/or franchisees must meet, then they should also be held accountable for requiring suppliers and contractors to meet legal obligations governing work, whether performed by individuals deemed employees or by independent contractors. This sounds simple and sensible but is harder to achieve than it might seem. Implementing this strategy will take a combination of changes in legislation, vigorous and innovative enforcement strategies, and engagement of unions and civil society advocacy groups.
Given today's political realities, there is little prospect for new federal legislation on labor issues. But such legislation is not hopeless, now or in the future. Weil outlines four features needed to overcome resistance to enacting national labor legislation. Proposals 1) must build on local- and state-level experiments and legislation rather than be cut from whole new cloth; 2) need to apply to and benefit a broad cross section of the workforce rather than focusing narrowly on the specific interests of unions or other subgroups; 3) need to avoid being uniformly opposed by the business community (some will oppose for sure but some need to be either lukewarm in their opposition or signal their implicit support by not opposing them at all); and 4) need to be supported by labor and coalition partners in community, immigrant, or other civil society groups.

Legislative reforms to hold lead firms accountable for suppliers' practices might possibly meet these four features. Laws enacted in New York, California, and Illinois have demonstrated proof of concept; these laws protect low wage and professional contractors alike; businesses that comply with the law benefit by eliminating unfair competitive advantages of firms that do not, and; a variety of religious, community, immigrant, and labor union groups support legislative change. This may be one labor policy topic for which national political gridlock might just be broken.

Legislation alone, however, is not enough. Weil catalogs a range of new enforcement strategies that need to be brought to bear as well. These strategies include partnering with unions and community groups to extend the enforcement arm of government agencies, using "hot cargo" and other strategies that identify where the power and greatest incentives lie within the supply chain to enforce standards, strengthening the voice of employees to bring complaints and to expose violators, and targeting the most egregious violators and thereby supporting those firms that consistently meet their legal responsibilities. This is Weil's blueprint for administrative action.

Weil ends the book by calling for a return to basic values. The Path Forward has to be one that is based on fairness, but also one that is well informed on how to achieve it. The realigning of business incentives by holding lead employers accountable and implementing the legislative, enforcement, and institutional innovations called for in this book do indeed suggest a viable forward path.

The book is certainly timely. Henry Kissinger wrote that once a person is in a high-level government position, he or she has no time to think strategically about how to respond to day-to-day challenges that arise. One needs to bring a world view and analytic framework into the job in order to act strategically. David Weil is perfectly prepared to think and act strategically and is in a position to do so. If confirmed by the time of this publication, he will be serving as the Director of the Wage and Hour Division of the Department of Labor. I wish him well in putting to work the analytical model in his head and presented in this excellent book. He is the perfect person for the job!

Thomas A. Kochan
George M. Bunker Professor
Sloan School of Management
Massachusetts Institute of Technology


The world of work is no longer the same as it was when labor and employment law were developed and institutionalized. This change in particular has affected the so-called standard employment contract, characterized by being full time and open ended. New patterns of employment relationships, known as nonstandard contracts, have emerged to an ever greater extent. At the same time, the boundary between a dependent employment relationship and an autonomous contractual status has become blurred. All this has led many people to question whether the labor and employment law of yesterday is still relevant for coping with the