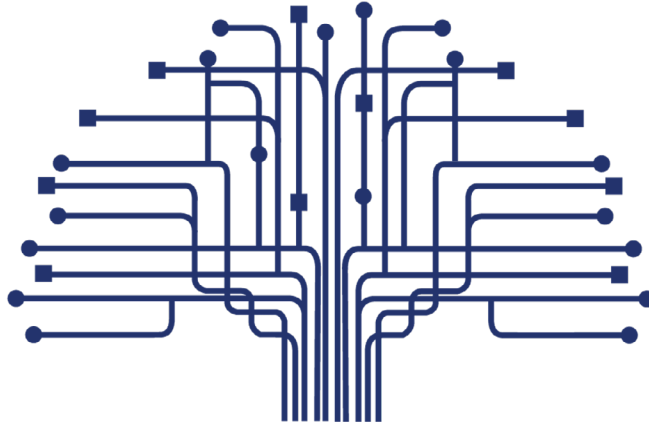**Contract Worker Disparity Project**

Responsible Contracting Standard

Tech Companies Closing the Gap in Contract Work

January 2022

TECHEQUITY COLLABORATIVE

To learn more about the Contract Worker Disparity Project
go to contractwork.techequitycollaborative.org

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At TechEquity Collaborative, our mission is to mobilize tech workers and companies to advance structural change that addresses economic inequity at its roots.

We do this in three ways:

Education	Public Policy	Corporate Practice
We create educational spaces in which the tech community can deepen their understanding of structural inequities, the history behind them, and the solutions we can enact together.	We advocate for public policy that addresses structural inequity in our economy. We work on issues that have a nexus with tech and the economy, with a focus on housing and workforce and labor.	We research, develop, and promote corporate practices that build equity and opportunity in the broader economy.

Why a Responsible Contracting Standard?

We created the Contract Worker Disparity Project to shine light on the growing problem of inequality inside of tech workplaces, specifically with contract workers[1]. Through this research, it became clear that the contracts between staffing agencies and tech companies create a murky environment that leaves contract workers vulnerable to exploitation.

Tech companies have the power to level the playing field. By employing ethical contracting practices, tech companies can set a standard for contract workers within their organization, contract workers across the industry, and inform policy that could support the nation's labor force as a whole.

The tech industry did not invent contract work[2]—but their reliance on the practice over the last forty years has spurred precedent-setting lawsuits[3] that continue to govern the day-to-day experience of contract workers. Because the tech industry is seen as a market leader, their decisions—for good and for bad—tend to become employment standards across a variety of industries.

Already, many tech companies have acknowledged the importance of improving conditions for contractors. In 2015, Microsoft announced 15 days of guaranteed paid time off[4] for contract workers and followed up that commitment in 2018 with the inclusion of 12 weeks of parental leave[5]. Many companies have responded to the growing inequities—driven by pressure from tech workers—by implementing basic standards that match widely-adopted state laws including a $15-an-hour minimum wage, minimum days for paid sick leave, and other programs.

While these are important first steps, our research has shown that in order for contract workers and temps to have stable, good jobs we need to set a more comprehensive standard for employers to follow. Our Responsible Contracting Standard lays out the processes and practices that our research shows will create the conditions for contract workers to have safe, healthy and family-sustaining employment opportunities in the tech industry and beyond. Where possible, we've included specific policy language and reference to laws that undergird many of these recommendations.

A note on language

For brevity we've chosen some key words to refer to the contracting world.

When we say **contract workers** we are referring to any worker who is hired through a third party (vendor, staffing agency or payroll company) but who performs their day-to-day work for a tech company. This group of workers runs the gamut from low-wage service workers (like janitors and security officers) to high-wage technical workers (like software engineers).

When we say **contracting agencies** we are including hiring agencies, staffing agencies, payroll agencies, and vendors. When discussing the roles they play we will specify what type of agency, but on a whole we are including all companies and agencies that act as a third-party to bring contingent workers to the parent tech companies.

1. Require family-sustaining pay and benefits

When it comes to ensuring quality pay and benefits for contract workers, tech companies have more power than they realize. The staffing and temp agencies that compete for a lucrative contract with a tech company are usually only required to specify their bill rate in their Requests for Proposal—leaving critical wage and benefits decisions up to the agency. This means wage rates, titles, benefit offerings, paid time off, career supports, and more are left unseen and unscrutinized by tech companies, giving room to agencies to grow their profits at the expense of contract workers.

This gives tech companies the opportunity to require higher standards for worker treatment in their vendor selection process, and raise the bar for working conditions at their company and across the industry.

What tech companies can do

- Require vendors to provide at minimum a living wage[6] for the area in which a contract worker lives or works.

- Ensure that employees are offered medical, vision, and dental benefits that reflect the minimum value and affordability threshold[7] that is offered to direct employees.

- Demonstrate a commitment to employee wellness by ensuring adequate paid time off (PTO) and parental leave programs[8]. For workers with part-time or contract time limits, use a formula to calculate pro-rated PTO that would be equivalent to directly-employed workforce PTO benefit.

- Provide transparency about the terms and conditions of assignments with written notice from the staffing agency that includes: the length of the assignment, safety requirements, certifications, or personal protective equipment needed for a work assignment, the specific criteria for transitioning to permanent employment, and the "spread" between the temp worker's hourly wage and the hourly charge to the tech (or parent/client) company for their labor. (From Temps in Tech NELP and TWJ Report[9])

- Ensure that agencies use clear contract timelines that include written details of when a contract will be evaluated for renewal, evaluation criteria for renewal, and provide any details on what employees must do to initiate the renewal process.

- Prohibit contract terms that limit temp workers' opportunities to obtain permanent employment at a tech (or parent/client) company—or accept employment with a competitor company. (From Temps in Tech NELP and TWJ Report)

- Implement best practices for predictable scheduling[10] and apply components of fair workweek laws[11] and current California law for scheduling[12] across the contract workforce.

2. Compensate workers with equal pay for equal work

Contract workers are integral to the success of tech companies. They are moderating content, conducting research, launching marketing campaigns, planning events, and so much more—often side-by-side with full-time employees. However, these workers—disproportionately Black, Indigenous, brown, women, and nonbinary[13]—are often paid lower wages and benefits than their directly-employed counterparts. Tech companies must ensure that all of their workers are being valued and paid for the work they do, not just the ones on direct payroll.

What tech companies can do

- Require reports from staffing agencies that include pay rate by job type; tech companies are already required to report this information[14] to state agencies and should be evaluating their contract workforce against their directly-employed workforce to ensure that they are not enacting unequal pay for equal work.

- Create a clear and transparent process—that is provided in writing to contract workers—to request, approve, and process raises for contract workers.

- During the Request for Proposal bid process—and routinely as an audit practice—tech companies should ensure that staffing agencies provide equivalent plans for employer-sponsored healthcare to all contract workers.

- Implement equitable hiring practices[15] for direct and contract employees including publishing pay rates in all job descriptions[16] and prohibiting the request for salary history[17] in the application, interview, or offer stages for a candidate.

3. Develop protocols to report workplace safety violations and protect contract worker voices

Contract workers are routinely faced with a painful choice between speaking up about abuse and keeping their jobs. Because contract workers rely on contract renewals to maintain economic security, they often feel unable to report workplace harassment and toxic environments.

Without protection against retaliation, contract workers have no avenue to improve their conditions and tech companies have no idea what really goes on in their workplaces. Tech companies must use their power to provide safe, non-retaliatory means for contract workers to raise concerns and create accountability for all responsible parties.

What tech companies can do

- Develop an independent complaint process, led by contract workers and/or worker organizations, that allows contract workers to confidentially file complaints that are investigated—ideally by a third party— and if complaints are found to be valid, take responsibility to ensure that workers are made whole as a result.
- Publish and report the abuses of staffing agencies[18] to the relevant regulatory body to ensure that the staffing agency is held accountable for wrongdoing.
- Outline in writing to vendors that the company supports workers' right to organize, to utilize protected concerted activity[19], and encourages the voluntary recognition of unionization efforts.
- Allow contract workers to attend All-Hands meetings and be included in other all-staff communication channels where employees are able to receive and respond to company news and important health and safety updates.

4. Implement equitable procurement practices

As the contracting structure currently stands, it's remarkably easy for staffing agencies to take an enormous cut of their agreements with tech companies for their own profit. During procurement and in subsequent invoices, staffing agencies often only provide a flat bill rate to the tech company; this enables the agency to charge undisclosed amounts for their agency fee and overhead, while paying the worker less than what the tech company may have intended for the worker to receive.

This lack of transparency hurts the workers and the tech company alike. The contract workers are getting paid a mere fraction of what the company is paying for them, creating a situation of exploitation for the workers, and an opaque financial investment for the company. Tech companies have significant leverage with staffing agencies and can utilize that power to improve the wages, benefits, and working conditions of contract workers—not to mention, improve their return on investment and make wiser long-term financial decisions.

What tech companies can do

- Require an itemized breakdown within RFPs of agency fees for service (sometimes referred to as "markups"), wage rates, benefits options and employee co-pays, recruiting methods, mentorship opportunities, retention rates, HR protocols, complaint procedures, etc.
- Require that all vendors and staffing agencies provide detailed assignments to all workers that include pay rate, benefit options and employee contribution, paid time off, HR protocols, complaint procedures, location of assignment, hourly schedule, and agency fees or "markups" for service.
- Change internal policy to allow for procurement officers to take other factors into account besides cost and competence when making contracting decisions
- Align RFP review processes to align with best practices for fair chance hiring[20] to ensure a more inclusive talent pool; do not work with agencies that implement non-compete practices.

5. Outline and publish clear pathways to direct employment

Even though contract workers contribute to the success of their tech company, they're often barred from reaping the benefits of that work. Most tech companies create a firewall between contract roles and full-time opportunities, leaving contract workers on the outside. Given that contract workers are disproportionately from racial and gender groups that are under-represented in tech, this practice creates harm, furthering the racial wealth gap.

By creating real pathways to direct employment, tech companies are not only giving their contract workers a chance at opportunity and security, they're also opening themselves up to a diverse and experienced talent pool.

What tech companies can do

- End the gag order on contract workers[21] and allow them to list their experience working at the tech company on their resume; stop the practice of penalizing workers (in the form of not extending or renewing their contracts) who do so.

- Systematize hiring practices that allow contract workers to access internal job boards and acknowledge their previous work and contribution to the company, similar to how internal candidates would be considered with condensed application requirements and shorter review windows.

- End policies that disincentivize contract worker mobility (non-competes, high fees for conversion) and adopt the incentives provided to direct workers, including hiring bonuses for those who successfully recruit contract workers. Existing policies demonstrate that tech companies understand the rationale behind internal referral systems, offering several-thousand dollar bonuses for successful referral hires[22]. These policies, replicated for teams or managers who successfully hire former contract workers, would also improve the mobility and stability of tech's entire workforce.

- Offer training and professional development opportunities to contract workers. If there are minimum standards for tuition reimbursement provided, do a regular audit of the staffing agencies to ensure those benefits are being distributed and applied correctly.

6. Improve transparency for workers, companies, shareholders, and the public

Tech companies hold significant influence in the global economy. Their actions—whether in product development, company acquisition, privacy, or labor rights—have ripple effects throughout our society.

By being transparent about their actions, tech companies can ensure that their actions are in-line with their values and their commitments to shareholders, workers, and the public. Sharing the outcomes of these policies helps ensure that tech company's written policies and stated commitments are correctly applied by the staffing agencies they employ. Tech companies have an opportunity to set an example, to demonstrate what it means to be a responsible actor within the industry and the broader economy. Through establishing transparency and accountability, tech companies can be leaders in ensuring fair treatment for all workers.

What tech companies can do

- Publish standards for vendors and staffing agencies that includes high-road practices and accountability mechanisms for the vendors and the tech company itself.
- Publish a list of the vendors and agencies with which they work, as well as aggregate data on workers hired through third parties including racial, gender, and pay demographics in addition to years with the company and classification.
- Include contract data in annual DEI reports—disaggregating pay, race, gender, and other important equity factors from contractor to direct employee; as well as listing which vendors they are employing.
- Make reports to the Bureau of Labor Statistics and other relevant state agencies public and easily accessible to workers, shareholders, and the public.
- Conduct an annual audit of staffing agencies and vendors to ensure that stated commitments and written policies of the tech company are being implemented and applied to the contract workers themselves. When staffing agencies do not comply, ensure that there is a clear policy for those violations that includes dropped contracts, fines, and any other mechanisms that are appropriate to internal policy violation repercussions.

Adopt the Standard

By implementing these practices for responsible contracting, tech companies are enacting the values that tech was built on. They're setting an important precedent in the increasingly precarious world of contracting; they're not only ensuring the stability and wellbeing of contract workers in tech, but also setting the stage for contract workers everywhere to be treated with the dignity and respect that they deserve.

If you're interested in implementing these standards at your company and are looking to build your plan, email partnership@techequitycollaborative.org to take the first step.

Endnotes

1   Holloway, H. (2021, May 19). *Contract Working Conditions in Tech: What's It Really Like?* TechEquity Collaborative. Retrieved January 19, 2022, from https://techequitycollaborative.org/2021/05/19/contract-working-conditions-in-tech-whats-it-really-like/

2   Holloway, H. (2021, June 16). *The Murky Middleman – How Contracting Agencies Profit in Tech.* TechEquity Collaborative. Retrieved January 19, 2022, from https://techequitycollaborative.org/2021/06/16/the-murky-middleman-how-contracting-agencies-exploit-workers-in-tech/

3   Greenhouse, S. (2000, December 13). *Temp Workers at Microsoft Win Lawsuit.* The New York Times. Retrieved January 14, 2022, from https://www.nytimes.com/2000/12/13/business/technology-temp-workers-at-microsoft-win-lawsuit.html

4   Paid time off matters: *Ensuring minimum standards for the people at our suppliers.* Microsoft On the Issues. (2015, May 26). Retrieved January 19, 2022, from https://blogs.microsoft.com/on-the-issues/2015/03/26/paid-time-off-matters-ensuring-minimum-standards-for-the-people-at-our-suppliers/

5   Stahlkopf, D. (2018, August 30). *Paid parental leave matters.* Microsoft On the Issues. Retrieved January 19, 2022, from https://blogs.microsoft.com/on-the-issues/2018/08/30/paid-parental-leave-matters/

6   Glasmeier, A. (n.d.). *Living wage calculator.* Living Wage Calculator. Retrieved January 19, 2022, from https://livingwage.mit.edu/

7   *Minimum Value and Affordability.* Internal Revenue Service. (n.d.). Retrieved January 19, 2022, from https://www.irs.gov/affordable-care-act/employers/minimum-value-and-affordability/

8   Kastrenakes, J. (2018, August 31). *Microsoft says its US contractors must offer paid parental leave.* The Verge. Retrieved January 19, 2022, from https://www.theverge.com/2018/8/31/17806726/microsoft-supplier-paid-parental-leave-requirement

9   Desario, D., Gwin, B., & Padin, L. (2021, August 20). *Temps in tech: How big tech's use of temp labor degrades job quality and locks workers out of permanent, stable jobs.* National Employment Law Project. Retrieved January 19, 2022, from https://www.nelp.org/publication/temps-in-tech-how-big-techs-use-of-temp-labor-degrades-job-quality-and-locks-workers-out-of-permanent-stable-jobs/

10   Wykstra, S. (2019, October 15). *The movement to make workers' schedules more humane.* Vox. Retrieved January 19, 2022, from https://www.vox.com/future-perfect/2019/10/15/20910297/fair-workweek-laws-unpredictable-scheduling-retail-restaurants

11   Wolfe, J., Jones, J., & Cooper, D. (2018, July 19). *'Fair workweek' laws help more than 1.8 million workers: Laws promote workplace flexibility and protect against unfair scheduling practices.* Economic Policy Institute. Retrieved January 19, 2022, from https://www.epi.org/publication/fair-workweek-laws-help-more-than-1-8-million-workers/

12   Zaller, A. (2020, February 15). *"Predictive Scheduling" and Scheduling Requirements Under California Law. California Employment Law Report.* Retrieved January 19, 2022, from https://www.californiaemploymentlawreport.com/2020/02/predictive-scheduling-and-scheduling-requirements-under-california-law/

13   Holloway, H. (2021, October 14). S*eparate and Unequal: How Tech's Reliance on Disproportionately Diverse, Segregated, and Underpaid Contract Workers Exacerbates Inequality.* TechEquity Collaborative. Retrieved January 19, 2022, from https://techequitycollaborative.org/2021/10/14/separate-and-unequal-contract-workers-in-tech/

14   California, S. of. (2021). *California Pay Data Reporting.* California Department of Fair Employment and Housing. Retrieved January 19, 2022, from https://www.dfeh.ca.gov/paydatareporting/

15   Anderson, B. M. (2020, June 30). *The single biggest step to pay equity? Stop asking about salary history.* LinkedIn. Retrieved January 19, 2022, from https://www.linkedin.com/business/talent/blog/talent-management/stop-asking-salary-history-questions

16   Danielson, J., Pettersen, B., Buckner, J., & Gonzales-Gutierrez, S. (2019, April 30). *Equal Pay For Equal Work Act.* Colorado General Assembly. Retrieved January 19, 2022, from https://leg.colorado.gov/bills/sb19-085

17   *Salary history bans: A running list of states and localities that have outlawed pay history questions.* HR Dive. (2021, July 30). Retrieved January 19, 2022, from https://www.hrdive.com/news/salary-history-ban-states-list/516662/

18   California Department of Industrial Relations. (n.d.). *What makes a good lead for the Labor Enforcement Task Force (LETF).* Labor Enforcement Task Force. Retrieved January 19, 2022, from https://www.dir.ca.gov/letf/good_lead_for_LETF.html

19   *Concerted Activity.* National Labor Relations Board. (n.d.). Retrieved January 19, 2022, from https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/employees/concerted-activity

20   Gordon, S. (2021, October 21). *System Reset.* TechEquity Collaborative. Retrieved January 19, 2022, from https://techequitycollaborative.org/system-reset/

21   Wong, J. C. (2018, December 12). *Revealed: Google's 'two-tier' workforce training document.* The Guardian. Retrieved January 19, 2022, from https://www.theguardian.com/technology/2018/dec/11/google-tvc-full-time-employees-training-document

22   Abed, R. (2018, April 23). *Google spent 3 years finding out how to get more employees to refer new candidates. Here's what they learned.* Inc.com. Retrieved January 19, 2022, from https://www.inc.com/robbie-abed/google-spent-3-years-finding-out-how-to-get-more-employees-to-refer-new-candidates-heres-what-they-learned.html