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Warehouse 'permatemps' push Walmart accountability

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Dilma Fuentes passes out flyers informing warehouse workers of how to unionize at the NFI cross-dock facility in Mira Loma, California. Walmart contracts NFI to handle logistics, but about 90% of the workers aren't employed by either Walmart or NFI. They work for temp agencies.

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by Mitchell Hartman
Marketplace for Wednesday, November 28, 2012

STORY

Walmart's Standards for Suppliers

Part One: Workers protest pay, conditions at Walmart warehouses

Part Two: Walmart warehouse temps add flexibility -- and save money?

A dozen temporary warehouse workers from Chicago and Los Angeles descended on Walmart's home town of Bentonville, Ark., last month.

Walmart was holding its annual stakeholders meeting at a big conference center in town -- closed to the press and labor groups. As the warehouse workers waited impatiently in the parking lot to give company executives a box of petitions collected by supporters all over the country, they

struck up a tune, improvised on "My Girl," an old Motown number: "I guess you'd say, what can make me feel this way -- organizing, talk about organizing. . ."

The workers have been organizing for better pay and treatment back home, with rallies, strikes and protest marches outside stores and warehouses. In Bentonville, they sat down quietly with some of the company's top brass.

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"It's a major breakthrough that Walmart was willing to meet -- that has never happened before," says Nick Allen, who was at the meeting. Allen is campaign director for [Change To Win](#), a union coalition (including the Teamsters, United Food and Commercial Workers, Service Employees International Union, and Farm Workers), that's helping to organize [warehouse workers](#). Change To Win is assisting the two groups of local warehouse workers who were represented in Bentonville: [Warehouse Workers United](#) from Southern California, and Warehouse Workers for Justice from Northern Illinois.

The workers load boxes exclusively for Walmart. But [they work in warehouses](#) run by so-called third-party logistics companies such as [NFI](#) and [Schneider Logistics](#), that in turn hire temporary staffing agencies to hire most of the hand-loaders and forklift drivers. These workers don't get their paychecks, or on-the-floor supervision, directly from Walmart.



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So, why not target the warehouse operators and temporary staffing agencies that actually employ these warehouse workers?

"On the employer side, who really has the power to change conditions?" Allen asks in reply. "In logistics and warehousing, that answer is very simple. It's the giant retail importers that have the power. And of those, Walmart is by far and away the most significant and powerful and influential."

Allen says labor activists consider Walmart the only employer in the industry that can set higher standards for wages and conditions.

"We can find a warehouse where people move goods for Target that could have similar conditions, or Home Depot, Loews, Kohls -- you name your big-box retailer," says Allen. They have to compete with Walmart, which is five times bigger. We're not saying that Walmart is worse than anybody else. We're just saying everybody else is competing with Walmart. And so there's almost no path to fixing this problem without Walmart deciding it has to change."

Walmart Vice President of Communications David Tovar issued this prepared statement to Marketplace after the meeting: "Even though these workers aren't employed by Walmart directly, we're taking these allegations very seriously. The fact is, we hold all of our service providers to high standards, and remain committed to ensuring that workers throughout our supply chain are treated with dignity and respect."

Walmart does have a set of published [labor standards](#) for companies that produce and distribute products in its supply chain overseas. It says those vendors must follow all national and local health, safety and labor laws; pay higher-than-subsistence wages; and leave workers free to organize and engage in collective bargaining.

Union advocates are pressing Walmart to enforce those standards within the company's domestic supply chain in the U.S.

California labor officials also support that approach. They've been conducting extensive investigations of warehouses across Southern California. Last year, the [California Labor Commissioner's](#) office issued more than \$1 million in fines for wage theft and other violations against staffing agencies at a warehouse operated for Walmart by Schneider Logistics in Mira Loma, Calif.

And [Cal/OSHA](#) issued \$250,000 in citations last year for workplace hazards at a warehouse operated by NFI in Chino, Calif., where workers say Walmart freight was moved. Another NFI

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warehouse, a cross-dock in Mira Loma, Calif., has been inspected by Cal/OSHA this year, and citations are expected soon. NFI denies there are continuing health or safety problems at these warehouses in Southern California.

Ellen Widess, director of Cal/OSHA, says she'd welcome Walmart explicitly endorsing the application of its supplier standards in its contracted warehouses. "For the warehouses moving goods for Walmart, that would set standards considerably higher than they are now," she says.

Some labor lawyers are trying a different approach to holding companies higher up the supply chain accountable. They want to use the courts to force retailers and their contracted logistics companies to take responsibility for subcontracted warehouse workers.

Attorney Michael Rubin at the law firm Altschuler Berzon in San Francisco is part of a legal team that filed a class-action lawsuit (*Carrillo v. Schneider Logistics*) last year for wage-theft on behalf of as many as 1,800 workers at a Walmart warehouse in Southern California. It's the same warehouse that was cited for fines by the California Labor Commissioner -- Walmart warehouse No. 6060, operated by Schneider Logistics in Mira Loma, Calif.

"We're trying to develop theories here, including joint-employer theories, to show that you can move up the chain of command in these warehouses," says Rubin. "We are trying to establish as a matter of economic reality, which is the short-hand test that the courts apply, that the companies higher up in the chain bear legal responsibility, because they have the right to control what goes on on the workplace floor, and because in many instances they exercise that control."

In other words, the lawyers are trying to prove that employers right up the supply chain are legally responsible for what happens on the loading dock -- and liable for damages.

In this case, that would mean not just the temporary staffing agencies (Premier Warehousing Ventures, Rogers-Premier Unloading Services, and Impact Logistics) that hired the workers to move Walmart's boxes. But also the company -- Schneider Logistics -- that Walmart hired to run the warehouse.

And possibly even Walmart itself. Rubin's team will decide by the end of November whether to add Walmart or other parties to the lawsuit. Company officials from Schneider Logistics declined to comment for this story.

"We do know at this point that the key managers and supervisors employed by Schneider had Walmart emails as well as Schneider emails," says Rubin. "And we're trying to trace what role Walmart actually played in determining how much money is available to pay the workers, what the productivity levels would have to be, what sort of quotas would be imposed and so forth."

This is the same line of inquiry used by Cal/OSHA to determine employer responsibility for hazards in the warehouses, or at any other worksite that has multiple layers of subcontracted employment, says Ellen Widess.

"Sometimes it's confusing between the employers themselves, and it's certainly confusing among the workers, who they should report hazards to," says Widess. "And basically what we're looking for is indicies of control and supervision, for example, specific orders or job duties. It could be through a contractual arrangement between a warehouse, a temporary staffing agency, and a retailer. It could be through production incentives or penalties, through audits. And ultimately, we go up the supply chain as far as the evidence will support."

Her agency has not named Walmart in any warehouse-related regulatory actions to date.

The idea that Walmart is intimately involved in warehouse operations -- even where it does not have direct employees -- is plausible, says engineering professor Yossi Sheffi. He runs the Center for Transportation and Logistics at MIT and recently published a book titled "[Logistics Clusters: Delivering Value and Driving Growth](#)," based on extensive research on the industry.

"Walmart is one of the poster children for logistics efficiency," says Sheffi. "In running the warehouse, Walmart does have control, they specify everything and they control everything."

Of course, that's a professor talking, not a lawyer. And Walmart would be sure to fight back, were it to be dragged into court in such a case.

But the theory of 'joint-employers' isn't far-fetched. Michael Rubin and Ellen Wides say it's been used effectively in the past to hold large employers higher up the supply chain accountable for wages and working conditions for workers at the bottom. The theory has been applied extensively in agriculture and the garment industry. Retail and warehousing could be the next frontier.

About the author

Mitchell Hartman is the senior reporter for Marketplace's Entrepreneurship Desk and also covers employment.

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TammyB - Nov 28, 2012

I wish Freakonomics would do a story on the myth of Walmart's "low low prices."

Consumers need to ignore the hype and shop around. I shop at an employee-owned chain, Woodmans. They keep costs low by not accepting credit cards - it's cash, check or debit only, but they provide fee-free ATMs. I have NEVER seen an item at Walmart that I couldn't buy cheaper at Woodmans. Does anybody in the media even bother to compare and verify? NO. We just swallow the myth whole.

I believe Walmart capitalizes on it's lousy employee relations record as a means to reinforce the low price myth. Consumers think "Gee...their prices MUST be the lowest if they treat their employees so badly. They're just trying to save me money."

People are sheep.

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RichardNYC - Nov 28, 2012

In more than 25 years of managing human resources I have never seen a single situation where the primary company's employees did not functionally manage the sub-contractor's. Once the sub-contractor for an international air carrier I managed was running recruitment ads using the very logo of the primary company. This supposed arms-length relationship is bogus.

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