VIZCAINO VERSUS MICROSOFT'S IMPACT ON THE FUTURE OF SHORT-TERM AND PERMATEMP CONTINGENT EMPLOYMENT IN MARKETING: AN AGENCY THEORY PERSPECTIVE

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This manuscript examines the impact of the Vizcaino vs. Microsoft case on temporary employment situations in marketing. Using agency theory, the study analyzes short-term and long-term or permatemp contingent workers after the Supreme Court upheld a lower court's ruling granting benefit rights to some permatemp workers. The authors propose that exceptions to agency theory assumptions that could have been a factor in past growth of contingent employment have not changed for short-term temporary employment, but have been lost for permatemp employment. The authors also propose that the future growth for permatemp employment in marketing could slow because of these changes.

INTRODUCTION

For the modern organization, the use of contingent workers has become commonplace. Hired for a temporary job, contingent employees include temporary agency employees, independent contractors, on-call workers, and contract firm employees (BLS 2001; Matusik and Hill 1998). Although total contingent employment is slightly down from the last Bureau of Labor Statistics report of 4.3 percent in 1999, the contingent workforce was 4.0 percent of the total workforce in the United States in 2001 (BLS 2001). Traditional contingent employees were thought of as being clerks, secretaries or laborers, and these categories still account for the majority of contingent workers (Brogan 2000). Marketing has always used contingent workers on a short-term basis in areas such as clerks and cashiers (Brogan 2000). Short-term seasonal employment is also a favorite of marketing. For example, seasonal sales, such as during the holiday season, have always created a need for contingent workers. After the sales season has passed, management reduces the size of the sales force (Trumfio 1994).

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Contingent employees have entered nontraditional areas such as management and professions (Brogan 2000; Piturro 1999). In addition, the length of contingent employment has increased for many of them. Marketing has been a very willing participant in the move to a professional and longer-term contingent workforce. Rather than using a sales force for short-term, seasonal jobs, some companies have used a contingent workforce for new product introductions to ease the risk on the permanent sales force (Carey 1997; Carlson 1994; Keenan 1999). A contingent marketing manager could bring in new ideas and/or expertise not currently existing in a company (Cohen 1996; Murphy 1996). Companies without expertise in such areas as advertising have gone to outside sources such as advertising agencies to help them develop advertising campaigns. If the company lacks a competency in an area such as advertising, a contingent manager could help them in their marketing efforts (Keenan 1999). All of these types of relationships imply the length of employment will be longer than a few weeks or months. For example, Sales Staffers International provided 1200 salespeople for two years to a customer (Carey 1997).

Clearly, the length of contingent employment has a range from the traditional short-term temporary employment to long-term temporary employment. The long-term contingent employees have become known as permatemps (Bernstein 1999; Eisenberg 1999). In this manuscript, all temporary employees are referred to as contingent employees. Long-term temporary employees are referred to as permatemps and workers on shorter jobs are referred to as short-term temporary employees.

In January of 2000, the Supreme Court refused to hear a Microsoft appeal in the Vizcaino vs. Microsoft case. This upheld a lower court's ruling that recognized some contingent employees' rights to a company's benefits based on the longevity of the contingent employees' tenure with the company (Greenwald, Milligan and Hoffmann 2000; Porter 2000; Stedman and McGreever 2000). Consequently, permatemps became more than just a name; long-term service employees were recognized as deserving certain benefit rights whether or not they were permanent employees. This ruling could have a substantial impact on the future use of permatemps by corporations.

Henley, Cotter and White (2001) used agency theory to explain the growth of contingent employment in marketing. They proposed that contingent employment offered exceptions to agency theory assumptions, and these exceptions led to its growth. This manuscript examines the future prospects of contingent employment in light of the Vizcaino vs. Microsoft decision. Specifically, the purpose of this paper is to examine the differences between how management may view permatemp and short-term temporary employment compared to permanent employment after the Vizcaino vs. Microsoft decision. This manuscript uses an agency theory framework to predict how management views permatemp, short-term temporary and permanent employees. Agency theory and its assumptions are explained and examined. From this perspective, a forecast is offered about marketing managers' use of short-term temporary employment and permatemp employment.

LEGAL RECOGNITION OF THE PERMATEMPS: VIZCAINO VERSUS MICROSOFT

Traditionally, contingent workers worked for a few weeks or months. For a significant portion of contingent workers, the length of the temporary employment has been growing. During the 1980s and 1990s corporations underwent considerable downsizing and contingent employment was used to fill in the gaps. Management hired contingent workers out of fear that in a dynamic environment, business could turn down again (Cole 1999; Eisenhardt 1989). Many of these contingent workers have been in that status for years with the same company becoming permatemps (Bernstein 1999). However, in several recent rulings, the courts have changed the legal view of permatemps' status.

Over the past decade, there have been several challenges to the temporary status of permatemp employment. It began in 1989 when the IRS classified independent contractors as employees of a company for payroll tax purposes (Singerman 2000). Since the IRS considered them employees, some of the independent contractors at Microsoft sued to be included in the pension and stock option plans (Flynn 1999 and Singerman 2000). After first being denied, the Ninth Circuit Court of Appeals in 1997 overturned the lower court and said the independent contractors were basically common-law employees and entitled to the employee benefit plans (Flynn 1999). The ruling applied even if the independent contractors had signed a contract saying they were to be responsible for their own benefits (Singerman 2000).

Most of Microsoft's independent contractors subsequently became employees of temporary employment agencies (Singerman 2000). However, the court ruled that these temporary agency employees were also common-law employees of both the agency and Microsoft (Singerman 2000). Consequently, the permatemp employees were also eligible for Microsoft benefits (Singerman 2000). In January 2000, the Supreme Court rejected Microsoft's appeal to overturn the lower court's ruling (Stedman and McGeever 2000). In effect, the Supreme Court upheld the permatemps' claim for Microsoft benefits.

The judgment against Microsoft has far-reaching implications for the temporary employment industry. Although other factors such as the amount of control over temporary workers also affects classification as common-law employees, the length of employment is a major factor. How long it takes to become eligible for benefits is not clear. Microsoft has drawn the line by limiting temporary employees to no more than twelve months work and waiting one hundred days before rehiring them (Porter 2000). Any company employing permatemps needs to realize these employees may be eligible for the same benefits as its permanent employees.

The effect of Vizcaino versus Microsoft was to split contingent employment into two classes. Short-term temporary employees, who are only on the job for a few months or less, are not eligible for benefits. For more than a few months, the contingent employees become permatemps with rights to company benefits.

AGENCY THEORY

Agency Theory was developed to describe the relationships between owners, managers, and employees (Eisenhardt 1989; Bergen, Dutta, and Walker 1992). It recognizes that the owners or the managers of a company or organization cannot perform all of the tasks needed to run a successful operation. Consequently, management needs to hire employees to successfully operate the business. Agency theory describes the employer and employee relationship in terms of principals and agents. The principal, the employer, makes a contract with the agent, the employee, to perform some task for the principal (Pratt and Zeckhauser 1984).

Agency theory has been a means to describe various types of business relationships. Its uses have included temporary employees in marketing (Henley, Cotter, and White 2001), sales (Bartol 1999; Basu, Lai, Srinivasan and Staelin 1985; Krafft 1999), marketing (Bergen, Dutta and Walker 1992), advertising agencies (Ellis and Johnson 1993; Spake, D'Souza and Crutchfield 1999), consumers (Drennan 2000; Singh and Sirdeshmukh 2000), finance (Fama 1980; Fama and Jensen 1983), accounting (Baiman 1990), and organizations (Hesterly, Liebeskind and Zenger 1990).

To explain the behavior of principals and agents, the theory makes several assumptions. Agency theory assumes principals are risk neutral and agents are risk averse. A dynamic environment increases the risk of both parties and influences outcomes. Principals and agents are motivated by self-interest. Finally, the principal has incomplete information about the behavior of the agent (Bergen, Dutta and Walker 1992).

Each of those assumptions is examined in more detail in the following sections. The assumptions are analyzed in reference to short-term temporary employees, permatemps, and the Vizcaino vs. Microsoft decision. A proposition on the impact of the Microsoft ruling on short-term temporaries and permatemps follows each assumption discussion. A final proposition on the future of short-term temporary and permatemp employment flows from consideration of all the agency theory assumptions and the Vizcaino vs. Microsoft court ruling.

Agency Theory Risk Assumptions Agency Theory Risk Assumptions

Agency theory assumes that principals are risk neutral and agents are risk averse (Bergen, Dutta and Walker 1992). It makes these assumptions because of the nature of the principal and agent's roles. The principal or owner of the firm can diversify his or her portfolio and reduce overall risk by holding many assets. Knowing that one venture's failure will not bring ruin to the entire portfolio, the principal is willing to accept more risk. However, the agent does not have the luxury of a multiple asset portfolio. The agent or permanent employee has everything invested into employment with the organization. If the organization fails because of a risky venture, the permanent employee has lost his or her job. This lack of diversification of permanent agents leads to risk aversion when making decisions for the organization.

In the situation where one permanent employee hires other permanent employees, the permanent employee doing the hiring is also considered the principal and the permanent employee being hired is the agent. Even in these situations, the principal is more risk neutral than the permanent agent (Bergen, Dutta and Walker 1992). The principal passes the risk to the agents being hired rather than diversifying a portfolio. However, the permanent agents are still risk averse and will not want to accept the risk.

Since the risk preferences of the principal and permanent agent are different, this leads to goal incompatibility. For example, the principal may want to pursue an opportunity in a new market. However, the permanent agent may view this as not an opportunity, but a chance for failure and loss of the permanent agent's job. Consequently, the principal would be motivated to pursue the goal while the permanent agent would be motivated to stifle the pursuit.

Contingent Employees and Exceptions to Agency Theory Risk Assumptions

Henley, Cotter and White (2001) proposed that the risk assumption of agency theory changes for contingent employees. In agency theory, the principal is considered to be risk neutral because of either being able to diversify the portfolio or pass the risk on to subordinates. For the contingent agents, they no longer have a stake into the organization. If the organization makes a risky decision and it fails, the contingent agent will move to another organization. This transfer is easy in situations where the contingent agent is actually employed by a temporary employment service. In this case, the employment service would place the contingent employee on another job. Without a stake in the organization, the contingent employee becomes an exception to the risk-aversion assumption of agents. The contingent agent is risk neutral. Since both the principal and contingent agent are risk neutral, there is less goal incompatibility between the parties. The risk neutrality and resulting goal compatibility offer management a tremendous advantage by hiring contingent employees rather than permanent employees. The risk-neutrality advantage of the contingent employees was proposed by Henley, Cotter and White (2001) as a possible reasons for the tremendous growth of contingent employment.

VIZCAINO VS. MICROSOFT'S IMPACT ON SHORT-TERM TEMPORARY AND PERMATEMP RISK ASSUMPTIONS

The Microsoft ruling did not have an impact on short-term temporary employees. They still have no rights to company benefits. Consequently, the Microsoft ruling did not reduce the risk neutrality advantage for short-term temporary employees. Since the risk-neutrality advantage is still present, short-term temporary employees should continue to be attractive to management.

Since permatemps had no stake in the principal's organization, they shared risk neutrality along with the short-term temporaries and principals (Henley, Cotter and White 2001). This risk neutrality made the permatemps' goals compatible with the risk-neutral principal's goals. However, the risk assumptions have changed for permatemps as result of the Vizcaino vs. Microsoft decision.

The essence of the Microsoft ruling gave permatemp employees interests in the company's benefits. Consequently, they have a much greater concern for the long-term welfare of the principal's company. With a stake in the company's benefits, the permatemp employees have something to lose. For example, if management misreads a market and makes a poor product decision, it could result in layoffs of the company's personnel. Management hired short-term temporary and permatemp employees as a buffer against terminating their permanent workforce. The short-term temporary and permatemp employees would not lose their jobs, in effect, because they would be assigned to a new company by their temporary staffing agency. However, permatemp employees would now stand to lose future organizational benefits granted by the

Microsoft decision. This loss of benefits could cause the motivations of a permatemp to resemble that of a permanent employee rather than a short-term employee.

Since the permatemp employees have a greater concern for the company and their benefits, their willingness to accept risky decisions is diminished. Consequently, the permatemp employees are no longer risk neutral. The classic assumption of risk aversion would now apply to permatemp employees receiving company benefits just as it does with the company's permanent employees. In the view of the principals, the new risk aversion of permatemp employees means that they no longer have a risk neutral advantage over permanent employees. The loss of this advantage makes permatemp employees less attractive to management. The following proposition on risk flows from the discussions of permatemps and short-term temporaries.

> P_1: The Supreme Court's acceptance of the Ninth District Court of Appeals ruling does not change the risk neutrality of short-term temporaries. However, giving benefit rights to permatemp employees causes them to become risk averse. The recent perspective of risk aversion by permatemps makes them less attractive to management.

AGENCY THEORY ASSUMPTION OF A DYNAMIC ENVIRONMENT

Agency theory recognizes the principals and agents have only limited control of the environment (Bergen, Dutta and Walker 1992). In addition to the organization's actions, changing technology, social trends, and economic cycles are examples of events out of the organization's control. However, agency theory does consider the implications of a dynamic environment on principals and agents.

The problem with permanent agents in this environment is the difficulty in reducing the labor force when a major environmental shift occurs. With permanent employees, the organization made a commitment to their well-being. Although the organization may reduce their labor force to adapt to a changing situation, it is not an action most organizations prefer. When an organization needs more employees for a short time, the organization may be reluctant to hire them because they know that the situation is only temporary, and management will lay off the employees. Consequently, permanent employees in a dynamic environment reduce the flexibility of the organization.

Contingent Employees in a Dynamic Environment

Contingent employment offers a considerable advantage over permanent employment in a dynamic environment. This could have been a factor in the growth of contingent employment (Henley, Cotter and White 2001). Contingent agents can be laid off because they have diversified their risk. If they are employed by a temporary service, the service can place them in new jobs. To take advantage of a temporary opportunity, the organization can turn to contingent employees for the opportunity's duration. Consequently, the use of contingent temporary agents has brought management tremendous flexibility in approaching a dynamic environment. If the job were appropriate, management would prefer the contingent employee's flexibility to the inflexibility of permanent employees.

Vizcaino vs. Microsoft□s Impact on Short-Term Temporaries and Permatemps in a Dynamic Environment

Prior to the Microsoft ruling, contingent employment offered management bolstered flexibility in the face of a dynamic environment. Both short-term temporary and permatemp contingent workers could be hired in times of growth and terminated when the growth slowed. The Vizcaino vs. Microsoft ruling did not alter this relationship for short-term temporary workers. Consequently, the flexibility of short-term temporary workers is still present and they should continue to offer an advantage over permanent employees.

After the court ruling, a company may be more committed to permatemp employees and, therefore, have less flexibility in their use. By granting permatemp employees certain benefit rights, the court ruling has the impact of reducing the flexibility of management when hiring and terminating permatemp employees. In times of growth, for example, a company that would have normally gone to permatemp employment to fill a personnel need may not be as eager to take that route now. When they allow a short-term temporary employee to become a permatemp employee through the length of service, the permatemp employee may gain rights to benefits offered by the company. Knowing that the permatemp employee will eventually be terminated, the company may be hesitant to commit to the higher cost of permanent employee benefits such as stock options. Consequently, the Vizcaino vs. Microsoft ruling has diminished the advantage of permatemp employees over permanent employees in a dynamic environment. Management may not be as quick to turn to permatemps over permanent employees. The following proposition on the effect of a dynamic environment follows from the discussions of permatemps and short-term temporaries.

> P_2: The Supreme Court's acceptance of the Ninth District Court of Appeals ruling giving benefit rights to permatemp employees does not reduce the advantage of short-term temporaries over permanent employees in a dynamic environment. The ruling does diminish the advantage to management that permatemp employees have over permanent employees in a dynamic environment.

THE AGENCY THEORY ASSUMPTION OF SELF-INTEREST

In agency theory, the assumption is that both principals and permanent agents act in their own self-interest (Bergen, Dutta and Walker 1992). The principals' self-interests include higher profits, market shares, and stock prices. The permanent agent has self-interests in personal benefits such as salaries, insurance, or job promotions. In the relationship between the principal and permanent agent, each party has the ability to grant the other their self-interest wishes. The agents work toward improved profits and market shares and the principal awards their efforts with increased wages and benefits. Management can use this relationship to motivate their permanent employees.

Contingent Employment and the Self-Interest Assumption

In situations where the principal hires contingent agents, the agents are still assumed to act in their own self-interest. However, the ability for the principal to motivate the contingent employee through rewards is not as strong as in the case of permanent employees (Henley, Cotter and White 2001). In many cases, an employment service hired the contingent employees and placed them in jobs. The contingent employees know the temporary service may move them in a few weeks or months. Consequently, their primary loyalty may not be with the organization utilizing the contingent agents. Except in the case where the contingent employee wants to become a permanent employee, the principal does not have the ability to offer promotions or other benefits to the contingent employee. About 53 percent of temporary employees want to become permanent employees (BLS 1999). Those satisfied in their contingent status will be much harder to motivate beyond basic expectations. Consequently, it is much more difficult to use self-interest to motivate a contingent employee than a permanent employee (Henley, Cotter and White 2001).

Vizcaino vs. Microsoft's Impact on Short-Term Temporary and Permatemp Self-Interest Assumptions

The Microsoft ruling did not give short-term temporary employees any rights to company benefits. Consequently, the situation after the ruling offers no additional rewards that could be used as a motivator for short-term temporaries. This lack of incentives for temporary employment has not changed for short-term temporaries.

Other than the offer of permanent employment, the principal did not have much to offer the permatemp. Just as in the case of short-term temporaries, self-interest was not much of a motivator for permatemps. However, this assumption changed with the Vizcaino vs. Microsoft ruling. The ruling forces companies to offer benefits to their permatemp employees. Although management may view this negatively, it may have a positive side. Since the firm has to offer the benefit package, this could become a motivating factor to the permatemp employees. Management could offer continued contingent employment to short-term temporaries making them permatemps. With the permatemp status, benefit packages would also be given to these permatemp employees. By offering the packages, the benefits once again become a self-interest motivator and management's ability to motivate permatemps increases. The following proposition on self-interest motivation comes from the discussions of short-term temporary employees and permatemps.

> P_3: The Supreme Court's acceptance of the Ninth District Court of Appeals ruling giving benefit rights to permatemp employees does not offer management any increased ability to motivate short-term temporaries. The ruling does give management an increased ability to motivate permatemp employees through self-interest.

INCOMPLETE INFORMATION

Another assumption of agency theory is that the principal has incomplete information about the agent (Eisenhardt 1989). Employers need to know information about their employees such as their skills and work habits. Incomplete information makes it more difficult to control and monitor an agent's progress. For example, the principal may not know if the permanent employee is shirking his or her duties in meeting organizational goals. Since principals and permanent agents have different degrees of risk aversion and, consequently, different goals, the principal especially needs to know the progress toward meeting the organization's goals. To compensate for this lack of information, agency theory considers both outcome-based contracts and behavior-based contracts (Eisenhardt 1989).

The outcome-based contract states the agent's goal or task, and compensation is based on the completion of the task. For example, a salesperson on a pure commission system would not be paid unless a sale is made. Other types of jobs are not as easily compensated on an outcome-based contract. If the goal is not as visible, a behavior-based contract is better suited for monitoring the agent. Consider a territory sales manager's job. It is concerned with motivating and monitoring the salespeople in his or her territory. This type of behavior is harder to monitor, and it calls for more developed and expensive behavior-based contracts (Eisenhardt 1989).

While acknowledging the appropriate contract is job-specific, advocates of agency theory have posited general situations that would be appropriate for behavior-based contracts (Eisenhardt 1989). If the agent is risk averse, then the agent may try to avoid accepting the risk. If the environment is also uncertain, the agent may be even more resistant to accepting risk. Since the principal is risk neutral, the goals for the principal and agent are incompatible. All of these conditions would indicate that the best contract for the agent would be a behavior-based contract. With a behavior-based contract, the principal can monitor the agent's progress to see that the agent is accepting the risk and meeting the principal's goals. Finally, a long-term contract may be better suited as a behavior-based contract (Eisenhardt 1989). For these reasons, many permanent employees need the more expensive behavior-based contract.

There are also general conditions that favor the use of an outcome-based contract (Eisenhardt 1989). These conditions are the opposite situations indicated above. With a risk neutral agent, the principal does not need to monitor the agent as closely since their goals are compatible. Consequently, an outcome-based contract would be appropriate. In addition, short-term contracts will work better as outcome-based contracts (Eisenhardt 1989).

Contingent Employment and Incomplete Information

Contingent employees are more risk neutral and willing to accept more risk from the principal resulting in compatible goals between the principal and contingent agent (Henley, Cotter and White 2001). With the acceptance of the principal's goals, the contingent employees require less monitoring. This situation would indicate the outcome-based contract would be appropriate (Henley, Cotter and White 2001). Finally, for short-term temporary workers, the short-term nature of the agreement lends itself to an outcome-based contract (Henley, Cotter and White 2001). In a short-term contract, the principal may not have enough time to effectively monitor the agent's behavior. Since the outcome-based contract is less expensive, contingent employees offer a cost-saving advantage over permanent employees needing a behavior-based contract (Henley, Cotter and White 2001).

Vizcaino vs. Microsoft's Impact on Incomplete Information

The court ruling did not alter the factors for contract determination for short-term temporary employees. Consequently, the outcome-based contract should still work best for the short-term temporary employee. Since the outcome-based contract is less expensive, its use with short-term temporary employees is still attractive to management.

After gaining benefit rights as a result of Vizcaino vs. Microsoft, permatemp employees were shown to be risk averse with goals incompatible with the principal's risk neutrality. The permatemps now have benefits to lose if the company fails. Consequently, the permatemp employee may not want to accept the risk, especially in an uncertain environment. Eisenhardt (1989) proposed a behavior-based contract would be better suited for risk-averse employees. Since the permatemp is also in a long-term relationship, the principal has time to monitor the permatemp's actions with a behavior-based contract. In essence, permatemp employees after Vizcaino vs. Microsoft behave no differently from the permanent employee. Unlike the short-term temporary employees, the permatemp needs a more expensive behavior-based contract. This eliminates a big advantage permatemp employees once had over permanent employees. The following proposition comes from the short-term temporary and permatemp discussions.

> **P_4:** The Supreme Court's acceptance of the Ninth District Court of Appeals ruling giving benefit rights to permatemp employees does not affect short-term temporary employees, therefore the less expensive outcome-based contract remains appropriate for them. The ruling changes the permatemp from risk neutral to risk averse. Consequently, given the appropriate job conditions, the use of a behavior based-contract is best suited for permatemp employees.

THE FUTURE OF SHORT-TERM TEMPORARY AND PERMATEMP EMPLOYMENT

In the past, all contingent employees had an advantage over permanent employees by acting as exceptions to many agency theory assumptions. These exceptions may have been a factor in the growth of contingent employment (Henley, Cotter and White 2001). Permatemp employment lost many of these advantages with the Vizcaino versus Microsoft decision. Now permatemps have similar advantages and disadvantages of permanent employees. However, short-term temporary employees continue to enjoy several advantages over permanent employment. Table 1 illustrates these points.

The growth of short-term temporary employees that work only a few weeks or months should continue to grow because they still offer more advantages over permanent employees than disadvantages (see Table 1). Short-term temporaries have the advantages of risk neutrality, flexibility in a dynamic environment,

TABLE 1
Agency Theory Assumptions and Permanent, Temporary, and Permatemp Employment

Agency Theory Assumptions	Permanent Employment	Short-Term Temporary Employment	Permatemp Employment
Risk	Risk Averse *Disadvantage*	Risk Neutral *Advantage*	Risk Averse *Disadvantage*
Dynamic Environment	Inflexible *Disadvantage*	Flexible *Advantage*	Inflexible *Disadvantage*
Self-Interest	A Motivator *Advantage*	Not a Motivator *Disadvantage*	A Motivator *Advantage*
Incomplete Information	More Expensive Behavior-Based Contract *Disadvantage*	Less Expensive Outcome-Based Contract *Advantage*	More Expensive Behavior-Based Contract *Disadvantage*

and a less expensive outcome-based contract. A disadvantage may be that the principal has little ability to motivate the short-term employee through self-interest. Of course, this paper only considered agency theory, and other factors such as total cost of temporary and permatemp employees versus permanent employees were not considered. Cost could still offer an advantage.

After the court ruling, the permatemp has more disadvantages than advantages. Permatemps now have the disadvantages of being risk averse, being inflexible in a dynamic environment, and requiring a more expensive behavior-based contract. However, the principal may have the advantage of being able to motivate the permatemp through self-interest. As Table 1 shows, these are the same advantages and disadvantages of permanent employment. With the loss of the advantages for permatemp employment, its future growth may not be as rapid as it has been during the last two decades. The following proposition summarizes the discussions on the future of short-term temporary and permatemp employment.

P_5: The Supreme Court's acceptance of the Ninth District Court of Appeals ruling in the Vizcaino vs. Microsoft case giving benefits rights to permatemp employees does not affect short-term temporary employment. Consequently, its popularity should remain unchanged. However, the ruling eliminates the advantages that permatemp employment had over permanent employment. The loss of these advantages could result in the slowing of the growth of permatemp employment and its use in marketing.

RECENT TRENDS IN CONTINGENT EMPLOYMENT

The issue over granting benefit rights is still very controversial. Those opposed to granting benefit rights to permatemps have advised companies that ERISA allows companies to exclude permatemps from benefits as long as the companies state so in writing (Nicholson 2000). Advocates for permatemps have also argued vigorously that ERISA does not allow companies to misclassify permanent workers into the contingent worker category of permatemp

(Nicholson 2000). With the controversy raging, the sure route for marketers is to reduce their permatemp workforces.

There is evidence that the contingent workforce is declining in numbers. The Bureau of Labor Statistics report that contingent workforce is 4.0 percent of the workforce in 2001, which is down from 4.3 percent in 1999 (BLS 2001). The American Staffing Association reported that temporary help reached a peak in the third quarter of 2000 and has declined through the second quarter of 2001 (the last quarter reported) (ASA 2001). Both the BLS and ASA reported statistics for total contingent employment and did not distinguish between short-term temporary employment and permatemps. However, managers are making decisions to reduce their contingent workforce today. Many factors including the economy could be influencing the downturn, but the Microsoft ruling could also be a factor in the recent decline in contingent employment.

CONCLUSIONS

This manuscript analyzed contingent employment and its subsets of short-term temporary and permatemp employment after the Vizcaino vs. Microsoft decision using agency theory as its basis for analysis. Short-term temporary employment was not affected by the court ruling. It was shown that short-term temporary employment continues to have advantages over permanent employment. It was also proposed that these advantages will continue to be a factor in the future growth of short-term temporary employment.

Permatemp employment was analyzed in light of the Vizcaino versus Microsoft decision granting benefits to permatemp employees. It was proposed that after this ruling, permatemp employment did not offer any advantages in the agency theory assumptions over permanent employment. With no advantages over permanent employment, the authors proposed that the future growth of permatemp employment could slow.

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