

The Rise of the Contractor: 2023 Contingent Workforce Predictions and Challenges Q&A

By Hieu Williams, Partner at Hirschfeld Kraemer, LLC and Member of the ELA

1. What are your predictions for the remote employee workforce (not gig contractors) in 2023?

I predict that there will be a push for return to office in early 2023 and more companies will adopt a hybrid model in order to meet employee demand for flexibility. Companies will be forced to adapt and be more flexible with schedules, benefits and workplace arrangements. I predict that some roles will now be 100% remote and that will become normalized. I expect there to be a lot of opportunities for global candidates who are looking to get in the door with companies who would not have considered their application prior to the pandemic.

2. Is the misclassification issue eliminated/vastly reduced if an employer hires contractors through an agency that treats the contractors as W2 employees?

It would be significantly reduced, however, there are many factors that need to be taken into consideration (which may vary depending on jurisdiction). For example, an employer could engage a third party to hire a contractor, but if the contractor is treated like an employee (given a performance review, supervisors others, receives benefits, performs the same work as an employee) then those factors would outweigh the third party contract.

3. From an employee/contingent worker perspective how does working as a temporary worker reflect on your potential for future FTE employment opportunities?

If a company is not currently hiring for FTEs, an individual starting as a contingent worker or temporary worker would definitely have the opportunity to demonstrate that they possess the skills to perform an FTE role. However, the company should be wary of hiring someone as a contingent worker/contractor and converting them to an FTE, as this could create liability for a misclassification claim. But if the contingent worker is in a temporary role and applies for a different FTE role that would have minimal risk.

4. If the gig economy isn't going to go away how can employers take advantage of the benefits of hiring contractors, but limit their legal risk from employment law and/or employment legislation regardless of where you are in the world?

Employers should thoughtfully look at roles and determine whether the business needs would be better served with a contingent worker and why. Once they determine that it makes sense from a business perspective, they should engage counsel and a reputable third-party provider such as Globalization Partners to ensure that contracts are appropriately drafted, and risks are reduced as much as possible. The Employment Law Alliance, an employment law network of which my firm founded, gives employers access to amazing attorneys worldwide. If you needed to hire someone in Peru, Japan, or Finland, etc., we can put you in touch with a dear friend and colleague within minutes.

5. Does this apply to hiring contingent workers on a short-term basis?

Yes, all the risks and benefits are potentially the same.

6. Is the jurisdiction where we are or where the worker lives?

Typically, an individual will assert a claim against a company in the jurisdiction where the individual resides.