

Harvesting attention capital and reducing the risks of the frictionless workplace

 By Johan Botes

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The modern workforce is evolving to keep pace with rapid technological change and the increasing need for agility. The rise in demand for contingent workers, changing skill requirements, and the rapid increase in remote working and job sharing means that companies have begun to adapt their strategies in order to engage diverse talent and unlock future productivity. These companies are being aided by continuous technological advancements, which have made it easier for them to increase workplace flexibility, streamline communications, reduce costs and administrative burdens and speed up access to high-level talent.



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The evolution of the flexible age means that the business world is desperate to eliminate friction, seeking to remove any obstacles that stand in the way of maximising customer satisfaction, attracting the best talent and improving operational efficiency. This desire for a frictionless environment, however, has given rise to new challenges.

A global survey by Wired Consulting, in collaboration with Baker McKenzie, explored how companies are balancing the risks and benefits of the flexible age. The advantages of a flexible workforce extend beyond the obvious cost-saving benefits. Flexible workforces are bigger and more diverse and the talent pool is wider, all of which encourage innovation and creativity. But this flexibility comes with notable downsides.

Misclassification risk

Inherent in the employment of flexible workers is the risk of legal misclassification. Businesses need clearly delineated employment categories to avoid misclassifying freelance workers and falling foul of labour obligations such as minimum wages, pension contributions, and holiday and sick pay.

In South Africa, contract workers are presumed to be employees when triggering statutory presumptions in section 200A of the Labour Relations Act, 1995 and 83A of the Basic Conditions of Employment Act 1997. However, these sections only apply to employees who earn less than the earnings threshold, determined by the Minister of Labour in terms of section 6(3) of the BCEA. The existing earnings threshold is R205,433.30 per year.

In a 2017 case, *South African Broadcasting Corporation SOC Ltd v Padayachi and Others*, the Labour Court confirmed that the statutory presumptions on employment do not apply where the individual earns more than the earnings threshold. Absent the statutory presumption, a tribunal or court must consider the following factors when establishing the true nature of the relationship between parties: an employer's right to supervision and control; whether the employee forms an integral part of the organisation with the employer; and the extent to which the employee was economically dependent upon the employer.

Recent amendments of the LRA show more active regulations of non-standard employment (staff employed through labour brokers and fixed-term contract employees). The local employment tribunal has seen a number of disputes arising from these statutory amendments where workers demand employment with the client of their employer, or equal treatment when compared with others doing similar work. And as the flexible workforce gathers momentum, we can expect these types of disputes to increase.

Other risks

In addition to employment law considerations, the survey found that external consultants could be privy to sensitive intellectual property or strategic insights, and boundaries needed to be set to protect corporate information. Employers may exercise inherent rights to take action where employees owe a duty of good faith to the employer. Disclosing confidential information is readily actionable in the employment relationship context, but decidedly more difficult with arms-length contract work relationships where contractual rights are the best way of managing this risk.

Further, survey respondents noted that it could be difficult to track compliance with stringent global privacy regulations where it was unclear as to where the labour force started and ended. A blurred edge created all sorts of data privacy conundrums.

The report also noted a subtler downside to the rise of the remote workforce – a lack of cohesion which can dilute a company's culture and identity. Flexibility and remote working may do wonders for employees seeking greater say in their daily lives but can play havoc with efforts to form or maintain a cohesive corporate culture.

Another interesting identified negative factor was the impact on attention capital – which is simply defined as employees' ability to focus on value creating work. Thanks to frictionless communications delivered in an always online, open-plan, hot desking environment, employees are continuously bombarded with information from which there is no escape. This never-ending distraction can have a detrimental effect on an employee's ability to get the job done. Here the salient advice to employers is to ask why further methods of communication are introduced, rather than why not. Adopting an approach whereby the benefits need to be explored, rather than allowing new methods of communication to slip in by default, allows the business to protect staff from constant bombardment of communication which drastically impacts on fatigue and burnout.

It is evident that the Wired-Baker McKenzie survey respondents had a deep-seated ambivalence about the frictionless era.

Notably, 64% of participants agreed that a flat organisational structure lead to more innovation and 53% said that a frictionless workforce increased creativity and innovation by bringing together diverse views, skills and cultures. However, 51% acknowledged that a frictionless workplace, such as hot-desking or renting flexible workspaces, weakened cohesion and corporate culture. Further, 43% respondents agreed that the increased use of freelancers was creating a fragmented workplace culture, which was burdening the organisation. When it came to technology, 75% of survey participants said that frictionless internal communications (email, chat, video calls, document sharing and professional social media) helped their organisation be responsive and agile, but four out of 10 participants thought these same tools could cause distraction and burnout. And 74%, said that companies needed rules to avoid an always-on work culture.

To manage these challenges, the report noted that it was important for companies to hire outside help because they needed the talent or wanted to address specific bottlenecks, and that it should never be because they wanted to avoid responsibility. Further, companies should know where the organisational border was in terms of intellectual property so that trade secrets were not put at risk. An atomised workforce should also be avoided - cohesion, physical proximity and stable teams are also markers of successful companies. The survey noted that companies should also adopt a purposeful, conscious strategy to address new frictionless communications tools; and they should nurture attention capital amongst their workforce.

As we enter the age of flexibility, it is clear that businesses should assess how they will adapt and manage the risks brought about by their changing workforce, whilst also ensuring they are tapping in to the many advantages of operating in a frictionless environment.

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