

2016 NAHR Ram Charan HR Essay Contest:

The Workforce of the Future

The Role of the CHRO in Employers' Evolving Relationship with Workers

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Summary

The traditional model of long-term employment in which a company granted job security, benefits, and career development in exchange for loyalty and good performance has eroded with changing technology and worker preferences. In its place, more informal arrangements in which individuals bid on tasks or projects through a website, serve as independent contractors, or offer on-demand services through apps such as Uber, have dramatically increased. As changes rapidly unfold and uncertainty about the future grows, the CHRO will play a crucial role in leading her organization to future success. In addition to understanding relevant legal principles and potential legal consequences of classifying workers as something other than a traditional employee, the CHRO will need to anticipate changes and lead their organization in implementing a talent strategy that positions the company for success, while grounding the leadership team in the realities of the company's current talent resources and capabilities.

1. The Gig Economy

The gig economy refers to the broad spectrum of alternative work arrangements that differ from traditional long-term, full-time paid employment relationships. These arrangements generally include part-time and temporary employment, as well as independent contractors, on-call workers, and freelancers, but broader definitions account for franchisor-franchisee employment relationships, the "human cloud," and customers performing work. Although Uber often serves as the posterchild for this type of employment relationship, a recent report by Thumbtack's Jon Lieber and Lucas Puente demonstrates that Uber represents only one end of the spectrum with "relatively commoditized, undifferentiated services" that usually provide a

worker with supplemental income rather than replacing a full-time job.¹ On the other end of the spectrum are skilled workers, whose talent is in such demand that he or she can negotiate work on his or her own terms and functions as a contractor or on-demand worker.

According to a recent study by Harvard and Princeton economists, the percentage of workers in alternative work arrangements increased from 10.1% in February 2005 to 15.8% in late 2015.² Those figures are expected to increase, according to a 2016 Deloitte global survey that found that many executives anticipate increased reliance on contingent workers in the next three to five years.³ Among nontraditional employees, the skilled independent contractor represents one of the most critical strategic talent pools since, according to Pricewaterhouse Coopers, 73% of all CEOs worldwide are concerned about their access to skilled labor.⁴ Because this category of the gig economy is the most critical to remaining competitive, this paper will focus on the independent contractor rather than the outsourcing of routine, undifferentiated tasks.

a. Why Do Companies and Employees Like the Gig Economy?

The gig economy offers appeal to both workers and employers. For the worker, lack of a formal employment relationship allows freedom and flexibility, specifically (1) control over work hours and schedule; (2) the ability to pursue work considered meaningful; (3) autonomy in achieving the end result; and, (4) less commitment to a specific company over the long term.

¹ Jon Lieber & Lucas Puente, *Beyond the Gig Economy: How New Technologies Are Reshaping the Future of Work*, Thumbtack (2016).

² Lawrence F. Katz and Alan B. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States* (2016).

³ Andrew Liakopolous, Lisa Berry & Jeff Schwartz, *The Open Talent Economy: People and Work in a Borderless Place*, 2013 Deloitte Hum. Capital Services (2013).

⁴ PricewaterhouseCoopers, *People Strategy for the Digital Age: A New Take on Talent - 18th Annual Global CEO Survey*, PwC HR Mgmt. Services (2015).

Indeed, the gig economy allows many to become their own boss and pursue work about which they feel passionate.⁵ Some workers do not initially choose the gig economy, but are forced to look for work there after little success in finding traditional employment. While some of those workers return to traditional jobs later, others enjoy the “freedom that freelancing affords and choose to stick with it.”⁶

For employers, benefits include (1) lower upfront costs, as contractors rarely receive traditional benefits or training; (2) the flexibility to respond to rapid shifts in work volume; and, (3) substantially lowered recruiting costs, as technology changes can sometimes allow contractors to “bid” on a task nearly instantaneously. Even in cases that are less extreme, lowered commitment between the worker and the employer contributes to less time and expense spent recruiting.

b. The Gig Economy’s Effect on the Traditional Workforce Model

Though it is rising in prominence, the gig economy will likely coexist alongside the traditional workforce model. A 2015 Society for Human Resource Management study revealed that 60% of surveyed HR professionals believe that the traditional workforce model will continue to be a major source of talent in the next 10 years.⁷ Today, most companies use freelancers to some extent (usually in support functions), but some organizations are relying on larger percentages of freelancers in both core and support functions. Moreover, workers in traditional employment relationships now desire some of the perks afforded to gig employees, who by law

⁵ Lieber and Puente, *Beyond the Gig Economy: How New Technologies are Reshaping the Future of Work* (9 March 2016).

⁶ Steve Bates, *Freelance Nation*, 60 HR Mag. Soc’y for Hum. Resource Mgmt (2015).

⁷ *Business and Human Capital Challenges Today and in the Future: A Research Report by the Society for Human Resource Management*, Society for Human Resource Management at 6 (2015).

enjoy autonomy over when and how they complete work. Although traditional employees enjoy the benefits and peace of mind long-term employment provides, many now desire greater flexibility in the timing and location of their work, as remote-work technology now enables them to more effectively balance work and life.⁸ This has led to growth of flexible work arrangements such as flexible time, remote assignments – which 67% of companies permitted in 2014 -- and job-sharing.⁹ In fact, it is reasonable to predict that as companies use more freelancers, they will also have to offer more of these remote-work and flex-work options to keep the best talent in-house. In the near future, organizations will have access to a continuous flow of talent, ranging from traditional “balance sheet” employees, to “partnership talent”, “borrowed talent” independent contractors, freelancers, and “open source” free service providers.¹⁰

c. Moving Forward with the Gig Economy

Given the scope of these changes, the gig economy should be viewed as not merely a passing trend, but a new way to think about talent that impacts the company in all phases of the talent lifecycle. CHROs can use the gig economy to enhance their organizations’ effectiveness by combining their deep HR insight (especially the how, when, why, and where of talent) with their knowledge of their business’s strategy and objectives. Ultimately, the CHRO’s success at adjusting to the gig economy will be based on her ability to understand the legal implications, be knowledgeable of the gig economy’s advantages and challenges, communicate effectively, and execute an adaptable talent strategy.

2. The Legal Question: Employee or Independent Contractor?

⁸ *The Gig Economy: HR’s Role in Navigating the On-Demand Workforce*, 34 Bloomberg BNA at 18 (2016).

⁹ Emily Peck, *Proof that Working from Home Is Here to Stay: Even Yahoo Still Does It*, Huffpost Bus. at 1 (2015).

¹⁰ Liakopoulos, Barry, & Schwartz at 6.

While understanding gig economy trends is important for CHROs to know, relevant legal principles and court interpretations are perhaps even more important for a CHRO to be aware of in order to successfully implement a strategic employment plan that incorporates the use of independent contractors and alternative work arrangements rather than traditional employees. President Lincoln once asked (and answered) his question, “If you call a dog’s tail a leg, how many legs does a dog have? Four. Calling a dog’s tail a leg does not make it a leg.”¹¹ It is one thing for an *employer* to classify a worker as an employee of the company versus an independent contractor; whether or not the *courts* agree with the employer’s classification of the worker is something different entirely.

“Employment Law” and “Labor Law” are largely based on providing certain protections to the working individual, specifically, employees of companies. Title VII of the Civil Rights Act of 1964 protects employees from facing discrimination in hiring processes and harassment within the workplace; the Fair Labor Standards Act and National Labor Relations Act deal with labor issues such as minimum wage, overtime, labor unions, and collective bargaining; the Employee Retirement Income Security Act sets standards for employee benefit plans; the Family and Medical Leave Act gives employees time off for newborn child care and family members with health problems; and the list goes on. Furthermore, individual states have their own laws such as worker’s compensation statutes that provide workers a way to receive money after being injured on the job. As Hirsch, Secunda, and Bales state in their treatise on Employment Law, employers have a strong incentive to classify workers as something other than “employees” to

¹¹ James R. Burkhard, *Agency, Partnership, and LLC* at 7-20 (2016).

avoid application of the above mentioned laws regulating the employment relationship.¹² One way employers avoid application of these laws is through the creation of an independent contractor employment relationship with workers.

a. Underlying Principles

Classifying workers as employees or independent contractors has historically been centered around one main idea: the amount of control the employer exerts over the worker. Historically, tort liability was the only legal issue a court had to deal with regarding an employer and an employee. Based on the common law doctrine of “Respondeat Superior,” and Agency Law Master-Servant rule, an employer was liable for torts committed by a worker if the employer exercised sufficient control over the worker.¹³ As our country’s economy developed and various laws designed to protect workers were enacted, courts were repeatedly faced with the legal question of whether or not a worker was an independent contractor or employee. In answering that question, courts developed tests centered around the idea of employer control over the worker such as the widely used “Control Test”, and lesser used “Economic Realities Test.” Today, based on interpretations and rulings by different state and federal courts, CHROs must be aware of the extent to which the company exercises control over the worker before casually classifying workers into a category and hoping things work out.

The Restatement of Law, Agency (Second) is a non-binding, secondary persuasive authority which provides courts with foundational elements to consider in determining an employer’s control over a worker. The Restatement alone is not binding law, and though courts

¹² Jeffrey M. Hirsch, Paul M. Secunda, & Richard A. Bales, *Understanding Employment Law* at 7 (2013).

¹³ *Id.*

will typically look at most, if not all of the provided factors, they are not required to do so. Section 220(2) of the Restatement of Law, Agency (Second) is the main secondary persuasive authority on the subject and provides ten factors that courts throughout the country have used in making a determination of independent contractor or employee:

In determining whether one acting for another is a[n] [employee] or an independent contractor, the following matters of fact, among others, are considered:

- (a) the extent of control which, by the agreement, the [employer] may exercise over the details of the work;**
- (b) whether or not the one employed is engaged in a distinct occupation or business;**
- (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;**
- (d) the skill required in the particular occupation;**
- (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;**
- (f) the length of time for which the person is employed;**
- (g) the method of payment, whether by the time of by the job;**
- (h) whether or not the work is part of the regular business of the employer;**
- (i) whether or not the parties believe they are creating the relation of master and servant; and**
- (j) whether the principal is or is not in business.¹⁴**

CHROs should be familiar with these foundational elements in order to assess their strategic employment plan centered on workers that they do not intend to classify as traditional employees of their company.

b. Putting Principles into Action: How Courts Decide

Courts around the country are regularly faced with the legal question of whether a worker is an independent contractor or an employee. As mentioned above, courts have turned to the Restatement and common law as foundations for developing their own tests for making such determinations. In addition to being familiar with the underlying principles found in the Restatement, it is essential for CHROs to be familiar with the relevant case law within their

¹⁴ Restatement of Law, Agency (Second) §220(2).

jurisdiction dealing with the classification of independent contractors versus employees, as jurisdictions may differ in their approach. Two examples of court rulings are provided below; one is a 9th Circuit Court of Appeals decision dealing with a contract interpretation, and the second is a South Carolina Supreme Court decision determining a worker's status for the purposes of receiving worker's compensation.

In *Alexander v. Fedex Ground Package System, Inc.*, 765 F.3d 981 (2014), the 9th Circuit Court of Appeals turned to California's Control Test and held that FedEx drivers were employees, even though FedEx characterized the drivers as independent contractors. The 9th Circuit Court of Appeals quoted the court in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341, 769 P.2d 399 (Cal. 1989), stating, "The principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired."¹⁵ Additionally, the 9th Circuit stated that California law is clear that "[t]he label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced,"¹⁶ indicating the court does not take misclassification lightly and enforces strict adherence to the restrictions around contractor status.

In South Carolina, in *Chavis v. Watkins*, 180 S.E.2d 648 at 649 (1971), the South Carolina Supreme Court held that the respondent in the case was in fact an employee of a construction company rather than an independent contractor for purposes of awarding worker's compensation. The South Carolina Supreme Court stated, "An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his

¹⁵ *Alexander v. Fedex Ground Package System, Inc.*, 765 F.3d 981 at 988 (9th Cir. 2014).

¹⁶ *Id.*

own methods, without being subject to the control of his employer except as to the result of his work.”¹⁷ More recently, in *Shatto v. McLeod Regional Medical Center*, 753 S.E.2d 416 (2013), the South Carolina Supreme Court held that a nurse was an employee of a local hospital and was entitled to worker’s compensation benefits. The South Carolina Supreme Court stated, “Under settled law, the determination of whether a claimant is an employee or independent contractor focuses on the issue of control, specifically whether the purported employer had the right to control the claimant in the performance of his work.”¹⁸

c. How Will These Principles Apply to the Gig Economy?

The key question moving forward as the gig economy becomes more popular with workers and businesses is this: will courts continue to use 20th century tests and precedents to address cutting-edge legal questions facing the 21st century gig economy? Joseph Seiner and Benjamin Means, two legal scholars writing on the subject of independent contractor versus employee classification in the “on-demand” economy, do not think traditional court interpretations will be efficient in making such a determination for gig economy companies like Uber and Lyft and the workers who sign up to work for them. In fact, in their most recent publication, Seiner and Means take the position that “worker flexibility” (specifically, how much flexibility an individual has in the working relationship) could be a better way to approach the question of employee versus independent contractor in the “on-demand” economic environment.¹⁹ Regardless of how courts make this distinction in future class action law suits such as *O’Connor v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133 (N.D. Cal. 2015) and *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067 (N.D. Cal. 2015),

¹⁷ *Chavis v. Watkins*, 256 S.C. 30, at 32, 180 S.E.2d 648 at 649 (1971).

¹⁸ *Shatto v. McLeod Regional Medical Center*, 406 S.C. 470, 753 S.E.2d 416 (2013).

¹⁹ Benjamin Means & Joseph A. Seiner, *Navigating the Uber Economy*, U.C. Davis L. Rev. (2016).

CHROs must be prepared for the rapidly evolving legal and cultural changes in this new economic arena. That is why the CHRO position, and the new roles they will be forced to play, will be more vital than ever.

3. Applying the Rules to the Gig Economy

Although the regulatory environment is uncertain moving forward, there can be little doubt that employers must pay close attention to the differences between categories of employees, and seek to use those differences to benefit the company. In doing so, there are four different “roles” that will help the CHRO navigate the ramifications of the gig economy: Keeper, Integrator, Communicator, and Discerner.

a. The Keeper

A keeper is someone who looks after or is in charge of something. As a keeper, the CHRO should set the tone and “own” the gig economy as it relates to her organization. The most important step to being a Keeper is building knowledge about the benefits and challenges of the gig economy and relating that to company and HR knowledge.

i. Benefits and Pitfalls of Project-Based Work

In considering how to optimize the gig economy, the CHRO must understand both the benefits and pitfalls of project-based work. Firstly, project-based work could serve as a serious boon in the search for skilled labor. As these workers will be very mobile and not tied down to a competitor, it should be easier to locate the skills the company needs either through a staffing firm or on one of the many sites that serve as a connecting point between workers and work needing to be done. Instead of spending weeks or even months in the hiring process wooing a high-skilled worker from a competitor, HR departments can fill urgent work needs within a day,

or sometimes within minutes.²⁰ This dramatically increased speed and responsiveness will enable significant efficiency and productivity gains, while lowering recruiting and sourcing costs.

However, once the job is done, these workers will leave without any knowledge transfer, creating a revolving-door effect. If the engineer who built a particular software is no longer around to maintain it, for instance, this extreme turnover could lead to decreased quality and redundancy. A typical freelancer will have little to no company-specific knowledge, which could lead to redundancy or incompatible systems if freelancers are unfamiliar with the systems the company already has in place, or worse, work that actually runs against the company's strategy. As freelancers "aren't typically loyal to a single company,"²¹ they have less incentive to help the company win. And with little company-specific knowledge, a contractor-heavy workforce may be less able to innovate on the company's behalf. Using more contractors will also affect team dynamics. According to Bates, full-time employees often resent contractors because of their high salaries and the increased flexibility they enjoy.²² Poor team cohesion further slows productivity and hampers innovation.

One of the major challenges posed by the gig economy is legal risk due to the uncertain regulatory environment. As addressed previously, there is ongoing litigation against gig economy leaders like Uber and the current patchwork of state and federal employment laws was not designed to address this level of complexity. Because of this ambiguity, it is hard for organizations to maintain consistency when counting their number of "employees." Companies that move too

²⁰ *Bates* at 1.

²¹ *Id* at 5.

²² *Id* at 4.

aggressively to adopt project-based work without meticulously ensuring they conform to all legal regulations could suffer serious legal losses.

ii. Leveraging Knowledge

These benefits and challenges must be addressed in the context of the specific organization. This is where the CHRO's knowledge of the business comes in. If the company chooses to engage in the gig economy, the CHRO will need to know what course of action is appropriate so that the company does not bite off more than it can chew. For example, managing a large number of working arrangements can be logistically difficult, time-consuming, and costly to maintain. Moreover, certain areas of the business may be better suited for gig economy working arrangements, given the impact on culture and structure. The CHRO should constantly monitor the results of using more contractors, preparing to adapt as necessary.

As Keepers, CHROs must also leverage their deep HR knowledge to use the gig economy to the company's advantage. First, compliance should be a priority so that the organization can take advantage of the benefits of the gig economy while minimizing legal risk. Despite the current regulatory ambiguity around the classification of "employees," it is important to make sure the organization is staying ahead of the curve. Moreover, the gig economy is marked by high talent mobility, which has significant implications for the attraction, retention and motivation of employees.

iii. "Keeping" a Diverse Workforce

In leveraging HR knowledge, the CHRO must enable the organization to not only recruit adaptable talent, but also engage both traditional, full-time employees and independent contractors. First, in order to retain the best traditionally-employed talent, it will be essential to

provide flexible hours and remote work options whenever possible. This will make the company more competitive in the marketplace, because many prefer the security that a traditional job with benefits offers.²³ Any company that can offer this stability along with flexible hours and remote locations will secure an advantage in retaining the best talent, because it combines both the flexibility of the on-demand economy and the security of full-time work.

For those positions to be filled by contractors, the optimal strategy for engaging those workers and having them produce the best work possible is problematic, as legally, companies cannot interact with the way the work is done. However, managers can be sure to provide information on the company, its existing systems, its strategy, and the team that the contractor may need to communicate with when he or she accepts the job. One strategy to mitigate this situation includes building relationships with particular contractors or staffing services to ensure that the company has a “reliable network” (Bates 2015, p.5) of on-demand workers. Such a relationship would ensure some quality control and build loyalty and company knowledge among these workers, mitigating the drawbacks of re-work and ignorance of the company’s overall strategy. Finally, it is critical to focus on engagement at the team level. To motivate all types of employees and facilitate a cohesive working environment that works towards the company’s goals and inspires innovation, without crossing the legal barriers in place that protect a contractor’s status, managers will need extensive training and resources.²⁴ The CHRO must work with HR and line managers to ensure that they are equipped to effectively lead their teams.

²³The HR Specialist, *New Classification Aims at ‘Gig’ Economy*, Bus. Mgmt. Daily at 1 (2015).

²⁴Bates at 4.

The CHRO must understand the talent implications of the gig economy in order to be at the forefront of crafting a new talent strategy that is attentive to team performance as well as employee desires, especially those employees who are in strategically important roles. By combining a deep knowledge of the how, when, why, and where of talent, particularly within her industry/organization, the CHRO can proactively shape her organization's talent strategy to succeed in the gig economy.

b. The Integrator

As an Integrator, the CHRO will incorporate the gig economy's benefits with the organization's strategic objectives. The gig economy is beneficial for completing project-based work, creating partnerships, utilizing highly skilled independent contractors, and solving problems through crowdsourcing. First and foremost, the CHRO should recognize how the new workforce model fits in the business strategy and how it will help the organization achieve a competitive advantage. For example, does engaging in the gig economy allow the firm to deliver products/services at a lower cost or with higher speed or quality? Does it allow the firm to serve more geographic areas with less risk/investment, or be available to customers at more times? Answering these types of questions is crucial to being an Integrator. This will help the CHRO maximize success by linking the gig economy to business outcomes such as profitability, growth, product leadership, innovation, and customer satisfaction.

Secondly, the CHRO should create a new talent strategy to optimize the use of gig employees based on the business strategy. The strategy should capture productivity and efficiency gains, while preventing the re-work, confusion, and disengagement that could result from poor incorporation of gig employees. In crafting a talent strategy, the CHRO must work with managers

to determine guidelines around the kind of work that is appropriate for gig employees, and the kind that is not. Bloomberg suggests crafting clear policies “around the duration of such assignments” and “the types of work and decisions such workers are involved in,” as well as “issues related to confidential...information.”²⁵

Once the mix of workers is determined, HR managers must be proficient in a variety of hiring sources, from social media and task boards to the company website. Indeed, the CHRO should consider establishing an online “forum” where gig employees can log in to bid on its available projects, if this would provide an advantage. Furthermore, as adaptability will be a critical organizational capacity, adaptability must become a core competency for candidates seeking traditional and nontraditional employment.²⁶ In determining worker mix, the CHRO must note that company culture is unlikely to be an effective tool in recruiting gig employees. Because this type of worker engages more with a job than with the organization and often stays with the company only for the short-term, the work itself rather than the work environment will drive the ability to get the best talent. For the same reasons, a heavily contractor-based workforce will dilute the company’s culture and render it less effective as a form of competitive advantage. The company’s pay rate, reputation, alignment with the individual’s values, or the nature of the work may be the company’s new worker value proposition. This means retooling the recruiting message, and carefully considering pay rate and division of labor into compelling jobs. Ultimately, the CHRO’s talent strategy to attract and deploy gig employees should be integrated in a manner that supports the business objectives and secures benefits of the gig economy.

²⁵*Bloomberg BNA* at 7.

²⁶*PricewaterhouseCoopers* at 2.

c. The Communicator

The CHRO will educate people within the organization by being a Communicator. Upward (C-Suite/board) and downward communication (employees) will help the CHRO gain buy-in from people at all levels of the organization. Communication with the board and C-Suite should define what the gig economy means to the organization, highlight its added value, and clearly address its risks. From the Integrator role, the CHRO knows that the gig economy adds value to the extent that it addresses the business strategy and enhances the firm's ability to create a competitive advantage. As discussed previously, it would be generally helpful to highlight: increased organizational capabilities (larger/higher quality talent pool), higher productivity, increased adaptability and lower costs. According to Diego Lomanto, vice president of marketing at Work Market, "a W-2, fixed cost workforce alone just won't cut it in a turbulent and hyper-responsive business climate (Ackall)." The CHRO's message should communicate that the gig economy is not just for disruptors like Uber, but it is essential to the organization's competitiveness. For organizations that choose to engage in the gig economy, the rapid changes can appear overwhelming, especially since it is unclear how the future will unfold. To effectively lead the organization through these changes, the CHRO must be knowledgeable, proactive, and forthright in communication. A great deal of speculation exists about the gig economy and the impact it will have on the workplace; in this environment of uncertainty, the CHRO needs to serve the executive team as the informed voice of reason with a plan of action grounded in the realities of the marketplace and the company itself.

In conversations with company leadership, it is also important to address the risks associated with the gig economy. The CHRO should certainly acknowledge legal risk and demonstrate proactive strategies to mitigate that risk. Moreover, the CHRO should address unintended consequences such as issues with maintaining organizational consistency/structure, employee retention issues, and required investments in technology/infrastructure. Once communication has been initiated, the CHRO can move forward to collaboration. For example, in “The Gig Economy: An HR Agility Fitness Challenge,” Nick Horney suggests that HR professionals “collaborate with internal organizational leaders to determine the talent portfolio that will be demanded under a number of business scenarios.”²⁷ Overall, upward communication will ultimately help the CHRO manage expectations, achieve buy-in, and better integrate the gig economy with the business strategy.

The CHRO should also communicate with both traditional and gig employees. Continual and clear communication from the CHRO down through HR and line managers will help the workforce understand the new goals, and work towards those goals with autonomy, independence, and creativity. Such forthright communication will also undercut the confusion, disengagement, and lost productivity that would ensue from rolling out sudden – and potentially threatening -- changes with little or unclear communication. In conversations with employees, HR should address the benefits and risks of alternative work arrangements for employees. Employees value these arrangements due to greater flexibility, autonomy, freedom, and income potential. On the other hand, the gig economy model poses the risk of less job/income security due to the

²⁷Nick Horney, *The Gig Economy: An HR Agility Fitness Challenge*, 2016 HR People & Strategy: SHRM's Executive Network (2016).

unpredictable spacing of project-based work and the ease of termination. Another disadvantage is the lack of benefits such as time off, healthcare, and retirement. HR should lead conversations around culture to promote a sense of belonging and give a voice to all employees. The extent to which these issues are addressed will impact the company's ability to retain and motivate its employees. Open communication with employees should increase transparency and perceptions of fairness, preserve cultural values, provide insight into employee motivations, and decrease conflict.

In addition to addressing the nature of gig economy work, the CHRO should be in touch with the current workforce and involve them in planning for the future. Employees who know the company's strategic goals and are empowered to act in its interest should be consulted for their on-the-ground insight about how to move forward. These employees will be the driving force in the company's success during this period of rapid change and increased competition. As the workforce becomes ever more diverse, the CHRO's ability to communicate and unite talent in pursuit of the company's goals will become a major differentiator.

d. The Discerner

In light of the large influence of the gig economy, it is important for the CHRO to be a Discerner. As a Discerner, the CHRO can understand events in real time, relate different issues, and be visionary while distinguishing reality from hype. The firm's ability to react quickly to new market conditions is paramount. Indeed, the marketplace is changing so quickly that it is becoming impossible to predict what will happen even two years in the future, much less over the next five years. Regarding the on-demand economy, a major variable includes Department of Labor legislation around the classification of employees and independent contractors, which

could significantly impact the way employers manage contractors and may even outlaw or severely restrict many features of the gig economy. As project-based work lowers the barrier to entry and allows individuals to compete with large companies, these shifts may increase competition for some companies, again requiring great adaptability. An even greater change on the horizon is automation: breaking work into discrete tasks will only speed that process as work is separated from individual job roles.²⁸ Indeed, Thumbtack argues that the undifferentiated, routine tasks will be automated within the next 20 years, as Uber, Amazon, and other companies are competing to develop driverless vehicles and drones.²⁹ The CHRO will need to decide, based on labor rates, the company's unique internal environment, and her company's competitors, which work to assign to computers.

Because it is impossible to predict exactly what will happen, CHROs must have multiple plans for the future based on trends that may develop in order to be as flexible as possible.³⁰ This will position the company to be prepared in advance for a variety of outcomes, and pivot quickly to respond. In order to be able to execute this change, the CHRO must also ensure that her organization and its people are able to adapt quickly as well.³¹ This means developing an agile workforce where workers possess more than one skill in order to be able to pivot on the job, as well as company systems, networks, and culture that is not bogged down in bureaucracy.

While adaptability will be central to success, the CHRO must maintain a healthy amount of skepticism, exercising judgement and foresight to avoid chasing every "shiny new thing," which

²⁸ *Lieber & Puente* (2015).

²⁹ *Id.*

³⁰ *PricewaterhouseCoopers* at 1.

³¹ *Id.* at 12.

would overwhelm employees and leave the company stretched too thin. Discernment on the part of the CHRO will help maintain stability at the company's core.

Conclusion

In conclusion, the decline of the traditional employment relationship and corresponding rise of skilled contractors and on-demand workers will require the CHRO to anticipate change and proactively manage its ramifications across recruiting, retaining, and engaging a workforce with varying levels of commitment to the company. In order to effectively lead this change, the CHRO must be deeply in tune with her organization and engage in constant dialogue with managers, the leadership team, and line workers to develop a talent strategy that unites them around the company's goals. While some of the ramifications of commoditized talent, such as growing automation, are impossible to predict, a proactive strategy combined with organizational adaptability and outstanding organization-wide communication will ensure that the company is prepared to confront these challenges.

To conclude, the gig economy presents an opportunity for CHROs to make a significant impact on their organizations. CHROs should combine their deep HR insight with their knowledge of the business objectives to shape a strategy that takes full advantage of the gig economy. Ultimately, the CHROs who are successful at adapting in multiple roles (Keeper, Integrator, Communicator, and Discerner) will thrive in today's volatile, rapidly changing business climate.