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Contractors and compliance

An interesting article in *The Wall Street Journal* reported on the growing role of contract employees in companies. While exact figures are uncertain, the percentages have increased, and the article says there may be as many as 20 million in the US workforce.¹



Murphy

These contractors are treated almost as if they are not there, yet they may perform important work in the company. Their functions may include information technology, customer service, research, human resources, and sales. The article notes that “They keep quiet because only full-time employees are expected to speak up.” They fear “anything that might backfire” and hurt their positions.

Therein lies a concern for compliance and ethics professionals. These contractors are part of our work environments. They are not employees, but they still have many characteristics of employees. Thus they represent compliance risk and opportunity. Given the element of fear and distancing they are experiencing, we need to ask whether such a contractor would feel free to speak up when they witness questionable conduct. Is it clear to them that they are welcome to use the helpline? Does your commitment to prevent retaliation have the legs to protect those merely under contract? If a contract employee witnesses or experiences harassment, is it clear that your company welcomes their report? If they hear a questionable discussion with a competitor’s salesperson or see an unsafe

work practice, or know that a customer is being cheated, what will they do? What steps do you take to reach them?

Of course, as a lawyer I have to add an unfortunate caution. Whether someone is really an employee or a contractor is subject to a multifactor test. The more control your company exercises over someone working there, the more likely it is that the person would be considered an employee and not a contractor; this has implications in terms of benefits, tax withholding, and other legal elements. This does not mean, however, that you cannot consider contractors in your compliance program, but you do need to check with your legal staff on how best to do this. This is another area where the legal system in its current state may impede effective compliance programs, and where changes are needed to protect compliance efforts.

For now it is important to address this aspect of your program. Do contractors working in your company know the rules? Do they know your policy on retaliation? Have they been told about the helpline? Do they know who to contact on compliance issues? Have contractors been considered in your risk assessments and included in surveys? As with many changes, this brings more tough questions for compliance and ethics professionals. *

1. Lauren Weber: “The Second-Class Office Workers” *The Wall Street Journal*, September 14, 2017. Available at <http://on.wsj.com/2x69yPq>.

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