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34th annual WORKFORCE MANAGEMENT BRIEFING

High Stakes and High Priorities

Labor and Employment Law in the Digital Age:
Getting Control of Hot-Button Issues

Thursday, October 15, 2015
New York Hilton Midtown
New York, NY

Your Workplace. Our Business.®

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Agenda

- **The Shared Economy & the Rise of the Contingent Workforce**
 - Contingent Workforces at a Glance
 - Special Case: Uber
- **Data Privacy and Security / Organizational Cyber Security**
 - Data Breaches and Resulting Litigation
- **Social Media, Social Engagement & the Workplace**
 - Recruitment
 - Developing and Enforcing Workplace Policies Governing the Use of Social Networking
 - Termination of Employees
- **Lightning Round**

The Shared Economy & the Rise of the Contingent Workforce

The Contingent Workforce

BuzzFeedNEWS

TECH

Meet The On-Demand Workers Who Say They're Living The Sharing Economy Dream

By working collaboratively, these TaskRabbiters have achieved the free and flexible lifestyle sharing economy advocates are always talking about. But can it last forever?

posted on Jul 8, 2015, at 9:55 am

The New York Times

ECONOMY | A SHIFTING MIDDLE

142 COMMENTS

Growth in the 'Gig Economy' Fuels Work Force Anxieties

Cost was unquestionably an advantage of the new approach.

Workers were typically cheaper when off the corporate payroll than on it, and the arrangement allowed a company to staff up as needed rather than employ a full complement of workers at all times.

Prevalence of the Contingent Workforce

What percentage of the American workforce is identified as contingent workers?

- A. 9.3%**
- B. 18.9%**
- C. 40.4%**
- D. 58.3%**

The Perfect Storm?

- Silicon Valley (Alley) Rising
 - Organizing campaigns targeted at new-media companies (Gawker, Salon, Facebook, etc.)
- New NLRB Joint-Employer Standard
 - The actual or potential ability to exercise control v. whether the company has, in fact, exercised such authority
 - *Browning-Ferris Industries*
- Ambush Election Rules
 - The median number of days between the filing of a representation petition and the day on which employees vote has fallen by 40%, to approximately three weeks from petition to vote.
- Micro-Units
 - What is an appropriate bargaining unit?





Chicago Tribune

Editorial: What's riding on Uber's lawsuit? The future of work

- Key Issue: Are drivers employees or independent contractors?
- Two lawsuits in California:
 - California Labor Commissioner's Office held that an Uber driver was an employee (not an independent contractor)—currently appealing decision
 - Federal class/collective action—court certified case as class action in August
 - Putative class of 160,000 drivers
- Arguments:
 - Plaintiffs: Uber exercises considerable control and supervision over both the methods and means of its drivers' provision of transportation services
 - Uber: Drivers set their own hours and work schedules, provide their own vehicles, and are subject to little direct supervision

“The Interview” Leads to a Hack

THE WALL STREET JOURNAL.

BUSINESS | JOURNAL REPORTS: LEADERSHIP

How the Sony Breach Changes Cybersecurity

Richard Bejtlich and Shuman Ghosemajumder Say the Key Is Limiting Damage

If you're a sufficiently interesting target, you will be breached. There is no company or organization in the world that can stop it, including the U.S. government.



Sony Settling Employees' 'Interview' Breach Class Action

By Kurt Orzeck

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Settling claims on behalf of 15,000 current and former Sony employees

Data Breaches in 2015

...left vulnerable the information of as many as 78.8 million people...



The New York Times

TECHNOLOGY

Ashley Madison Chief Steps Down After Data Breach

By NICOLE PERLROTH AUG. 28, 2015

...roughly 34 million users...

...personnel data of 4.2 million current and former Federal government employees had been stolen.



What Happened

OPM recently discovered two separate but related cybersecurity incidents that have impacted the data of Federal government employees, contractors, and others:

Social Media, Social Engagement & the Workplace

The Challenges of Social Media in the Workplace



Recruitment

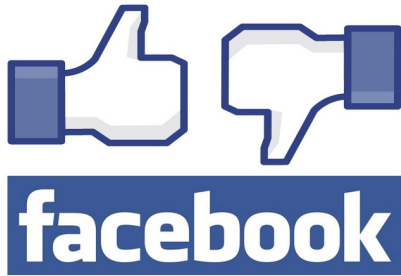
What percentage of private employers are currently relying upon social media for recruitment purposes?

- A. 19%
- B. 33%
- C. 51%
- D. 77%

What if an Applicant or Employee Had One of These Pictures on His/Her Profile?



Fired for Facebook?



**Did the posting constitute
“concerted” activity?**

Was the activity engaged in:

- with or on the authority of other employees?
- to solicit or induce group action?
- to advance truly group complaints?

The use of social media to air
INDIVIDUAL GRIPES is not
protected



Workplace of Tomorrow?

