

# Demystifying Compliance:

Priorities for a Workforce Advantage



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# Introduction

Regulations influence nearly every aspect of the employer-worker relationship. From privacy to worker classification and talent acquisition, companies must navigate a constantly changing and sometimes vague landscape of rules influencing workforce engagement. At the same time, the risks of non-compliance can reach a company's bottom line, ranging from legal costs and fines to reputational damage, lost time, reduced workforce supply, and limitations on business agility.

The good news is addressing regulatory needs does not have to be burdensome. In fact, many related best practices (e.g., updated technology, process transparency, workforce visibility, and fairness in hiring and talent engagement) benefit an organization's overall performance.

When it comes to addressing the challenges, one overriding theme applies: get proactive. With a strategy that looks ahead of key regulatory issues, companies can prepare for new demands, monitor their operations, and adjust swiftly to align with current needs. The result is a compliance posture that improves access to critical workers and better controls the risks of connecting with talent across the spectrum of engagement models.

Two keys to success contribute to a proactive approach to managing evolving workforce regulations. First, understand the issues at play and their implications on the business. Having a basic knowledge of trends and risks goes a long way in fostering awareness and developing a strategy. Second, apply best practices that not only drive compliance but also contribute to overall talent and business performance. Together, a focus on awareness and best practices will enhance an organization's ability to access and engage the talent it needs to grow and succeed.



# Understand **Key Issues** and **Implications**

Organizations face a host of regulatory trends and issues as they engage an increasingly complex workforce in a global business environment. For many line-level managers and talent decision-makers, assuming someone else is monitoring these issues may be easier than recognizing and learning about them when they arise.

Unfortunately, in-house legal experts and front-line talent acquisition and workforce management experts may often operate in isolation. This challenge may result in overlooked issues, last-minute finds, and ensuing panic as the employer scrambles to face an audit or legal action. Avoiding such fire-fighting begins with everyone involved in procurement or talent acquisition understanding potential areas of risk.

## **Data Privacy and Information Security**

Companies cannot underestimate the role of data in today's workforce. Data privacy and information security go hand-in-hand, and they play a large role in recent regulations enacted around the world. Data privacy refers to the application of rules that govern the collection and handling of personal information. Information security refers to the practices aimed at protecting data from unauthorized access, misuse, or destruction.

*Issues:* Laws such as the General Data Protection Regulation (GDPR) in Europe and the California Consumer Privacy Act in the U.S. represent the latest push by regulators to hold those in possession of personal data accountable for their use. While laws enacted in one region were created specifically for those areas, the global nature of today's digital environment means that privacy mandates apply globally. From externally facing websites and career portals to internal systems, employers must be intentional about their collection and handling of data from employees, flexible workers, and job candidates.

*Implications:* Control over the digital environment is essential. Ask questions about the technology that is used to collect and process data about flexible workers and employees. Are the systems adequately protecting personal information, and are the people with access to that information using it in a compliant fashion? Are the partners, including staffing organizations, talent solutions organizations, vendor management systems, background check vendors, and other parties, compliant with the latest regulations? The answers can determine your own organization's level of exposure to regulatory risk.

## **Data Protection:** What Should You Expect From a Talent Solutions Partner?

An effective talent solutions partner brings several best practices to the handling of worker information. With Allegis Global Solutions' (AGS) approach as an example, employers may consider the same elements in their own approach to data security. Areas of focus and questions to ask include:



**Data Security:** Do your technology solutions and processes utilize industry-standard security controls such as encryption access controls based on "least privilege"?



**Testing:** How often are your systems tested for vulnerabilities?



**Training:** What type of education do you provide to users, and how often do you deliver it?



**Audits:** Do you review user accounts and activity consistently? Do you regularly audit processes to identify gaps in security controls? Are your legal, compliance, and security teams aware of these processes?



**Certification:** Does your team's development plan include updated security certification?



## Worker Classification

As a perennial challenge when engaging talent outside the traditional employee model, the issue of classification raises many questions as companies navigate the engagement of freelancers and contractors in the growing gig economy. For example, in a 2018 California ruling, *Dynamex Operations West, Inc. v. Superior Court*,<sup>1</sup> the state adopted what is known as the ABC test for determining worker classification. That test requires a worker to be classified as a contractor if the person is: A) free from the control of the hiring entity, B) performs work that is not central to the hiring organization's business, and C) is customarily engaged in an independently established trade of the same type of work performed for the hiring entity. Other notable rulings, such as a U.S. finding that Uber drivers are not considered employees,<sup>2</sup> will likely continue to be challenged around the world.

**Issues:** Worker classification gained widespread attention as an issue in the late 1990s, as companies had to determine whether they needed to afford flexible IT workers the full advantages enjoyed by traditional employees, such as vacation and benefits. Today, that issue has expanded as organizations lean on gig economy workers across a variety of fields through technology platforms such as Uber, freelancer systems such as Upwork, or as traditional contractors through consulting arrangements.

**Implications:** Visibility into the entire current workforce is key to staying ahead. Most organizations know how many employees they have. However, many do not know how many total people work for them, including contractors, contingent workers, freelancers, consultants, and employees of services providers.

## Best Practices in Action:

### Contract Analysis Helps UK Employers Address IR35 Uncertainty

IR35 is a set of UK regulations going into effect in 2020 that hold employers accountable for handling tax obligations of all workers. If the employer misclassifies a consultant or contractor working through a third party — and that worker performs under typical employee parameters — that worker must be taxed as a regular employee. Non-compliance can lead to millions of pounds in fines.

#### Challenge: Evolving Requirements

The challenge for many companies is that there are many unanswered questions and updates due from the government leading up to the actual go-live date. To help prepare and position for quick adjustment to the IR35 requirements, many employers are leveraging AGS' contract analysis service.

#### Solution: Address the Largest Issue of Classification

AGS' service aims to accelerate the classification of contractors and other flexible workers so companies can quickly adapt how they handle those workers as IR35 requirements become active. Key elements include:

**Automated Classification:** Contractor statement of work (SOW) information is processed through DocuSift, a proprietary technology enabled by artificial intelligence (AI). The solution applies SOW data to more than 250 test points to determine optimum worker classification. The process raises red flags for issues such as worker day rates, titles, and other factors that may cause a contractor to be subject to employee regulations.

**Assessment:** Processes and policies, including sourcing and scoping processes, are evaluated to identify areas of improvement to better enable accurate worker classification across the workforce.

**Documented Recommendations:** Based on the assessment and classification, a strategic recommendation framework is applied to provide direction for addressing issues and facilitating improvement.

#### Advantages: Speed and Clarity

Automated analysis provides the speed to process volumes of SOW information while analysts deliver the expertise to recommend a clear path to accurate classification. Both are essential elements to help UK employers position themselves for new and unfolding regulatory developments quickly and effectively.



## Background Checking

As one of the most basic functions in the onboarding process, the background check requires workers to disclose personal information to the employer. For employers, background checks may provide challenges due to their varied requirements for hiring in different skill sets or industries.

*Issues:* Many regulations cover the amount and type of background information that can be disclosed, from the basic name and identification verifications (i.e., Social Security numbers in the U.S. or National Insurance Numbers in the UK) to education history, certifications, and reference checks. Beyond the basics, employers are subject to various rules according to the location and type of industry or work being done. For example, the finance, law, education, and healthcare fields require a deeper look at the applicant's background but for different criteria in each field. In many cases, certain professions require additional checks (i.e., incidents of financial fraud in the finance industry or child abuse in education fields).<sup>3</sup>

*Implications:* Rules vary by location and type of work. In all cases, the employer must ensure that the right checks are made, even if the process is outsourced to a background check provider or third-party recruitment vendor. Companies must also ensure that they are complying with varying regulations that differ by location.

## Bias and Discrimination

When recruiting and engaging talent, several issues can bring an organization into conflict with applicable laws about bias in hiring. From targeting candidates to interviewing and screening processes, bias can influence all parts of employee engagement.

*Issues:* Today, much of the risk associated with discrimination stems from unconscious bias when the employer, through language, processes, or other means, unknowingly creates a disadvantage or disincentive for people of particular groups or backgrounds. In job advertising, for example, a seemingly innocent phrase like "looking for a digital native with emerging skills" may be interpreted as age discrimination as the term "digital native" generally refers to those born after 2000. Likewise, some interview questions can be discriminatory even if the interviewer had no conscious, negative intentions (e.g., "Where are you from?").<sup>4</sup>

*Implications:* No organization wants to be seen as discriminatory in the eyes of the law or in the perception of the workforce as such a reputation could reduce its ability to attract and retain workers. Addressing bias and discrimination issues requires regulatory expertise to recognize specific areas of risk, as well as the resources and commitment to create a bias-free culture of inclusion and diversity.

## Other Regulatory Demands

Companies must monitor a constant stream of new rules and court decisions, interpreting existing regulations that influence their workforce strategies. While the topics vary, recognizing the changing landscape and the factors that influence such changes can build awareness and create a proactive approach to addressing these evolving rules of engagement.

*Issues:* New regulatory demands extend across interactions with candidates and employees. For example, the legalization of marijuana in many parts of the U.S. creates questions about drug screening. "Ban the box" rulings that prevent employers from asking candidates about previous convictions have become newsworthy over the last five years. Additionally, immigration issues continue to create controversy and bureaucratic challenges as employers struggle to access, assess, and document out-of-country talent with today's high-demand skills.

*Implications:* No single expert can stay abreast of all regulations, as rules may vary or even contradict each other between states or countries. Managing the landscape requires a network of expertise led by an employer's counsel and talent leaders with input from external talent and technology partners. This network of expertise brings the input needed to drive an informed strategy that meets new demands as they arise.



# Applying a Compliance Approach to Strengthen Business Success

In managing compliance, organizations face several challenges. First, employers may underestimate the preparation needed for new regulations and find themselves scrambling for solutions when those new rules go into effect. Companies also may suffer from redundant or misfocused activity, particularly as they wrestle with regulations that vary by country, state, or territory. Finally, anxiety weighs heavily on many organizations as HR or procurement decision-makers recognize the need to address new regulations but have limited ideas of where to begin their efforts.

Legal counsel alone will not provide the solution to many of these issues. With that in mind, employers can take advantage of several approaches and resources to stay ahead of regulatory needs. Among these enabling forces are the power of data to improve workforce visibility, the influence of communication to build a culture of compliance, and the power of internal and external resources to address changing conditions.

## Data Provides Workforce Visibility

While the proliferation of data raises privacy risks, it also provides a tremendous opportunity to improve alignment with certain regulations, most notably those surrounding worker classification. The challenge is that many companies may not be aware of who hiring managers are engaging as contractors, freelancers, or other non-employee talent. As a result, the organization not only lacks such visibility, but it also lacks any understanding of how that talent is managed.

The right combination of technology and human expertise can address the issue. Through a focused strategy, an organization can bring worker data into a shared environment and then apply AI tools to analyze it and determine any misclassified talent. With visibility into the entire workforce, an employer can quickly adjust to a variety of regulatory demands with a level of precision and measured outcome not possible even a few years ago.

## Sound Practices Strengthen Talent Engagement

Key compliance-enabling practices and objectives give employers a competitive talent advantage:

**Process Transparency:** Create transparency in everything from the job application to performance management and deliver positive experiences that boost talent attraction and retention.

**Up-to-Date Technology:** Solidify your control over data and related technology and improve trust, worker engagement, and resulting productivity.

**Workforce Visibility:** Know all your available employee and non-employee resources and make more cost-effective decisions on who to engage and how to get work done.



## Communication Enables Compliant Operations

The many processes and interactions involved in managing talent contribute significantly to an employer's risk exposure. These issues can only be handled if the employer recognizes and acknowledges an ongoing need to monitor them as both processes and regulations evolve constantly. Socializing the do's and don'ts, as well as best practices, will also require management and leadership buy-in, training, and continuous monitoring.

Bringing practices to bear across an organization is an effort in educating and informing multiple resources and players. For example, educating high-level decision-makers is not enough. A proactive strategy creates clear paths of cascading communication across all levels of leadership, management, and operations. Likewise, an established process for escalation provides a quick way to better respond to issues before they create larger problems.

## Internal and External Resources Drive Proactive Compliance

The responsibility for monitoring regulatory demands typically falls on internal counsel, followed by HR and procurement functions that engage workers, and everyone involved in managing the affected people and technologies. A culture of awareness, communication, and education are all essential for staying ahead of workforce regulations.

Externally, a capable talent solutions partner can provide valuable input and support. For example, a partner with significant experience in managing workforce engagement issues can help the employer recognize, prioritize, and address areas of need. The right provider can also introduce technology tools that identify and classify all worker types, as well as help the employer better handle and protect worker data.





# Two Compliance Lessons That Apply Across Industries

The influence of changing regulatory demands creates real-world challenges for organizations working in every industry and location. A look at how two financial services companies addressed unique compliance needs reveals that a strategic approach to compliance is essential regardless of geography or sector.

## **Defining the Flexible Workforce Now a Priority Under New Regulations**

Worker classification represents one of the most critical challenges for addressing multiple compliance topics today. In the case of one financial services leader, a lack of common definitions to classify the myriad of workers engaging with the company was seen as an urgent business risk.

The challenges of classification touched on several recent and emerging regulatory developments. For example, GDPR (the European Union's data privacy regulation) and the California Consumer Privacy Act would require the company to know what types of workers were interacting with different systems and data around the world, as well as determine how that data is handled. Similarly, the IR35 law in the UK would demand that the company treat taxes on employee and contractor pay appropriate to their classifications.

To help clarify and address the challenges ahead, the company turned to AGS for insight based on its experience supporting clients facing similar needs around the world. The refocus effort included roundtable discussions that brought together senior management in an unprecedented strategic workforce compliance workshop.

## **Collaboration Brings New Compliance Advantages**

The result of the initial collaboration and subsequent follow-on activities have led to three advantages that position the financial services company to address future classification issues better. Those advantages include the following.

### *Clarity on the Regulatory Landscape*

To complement the primary view of the internal legal team, AGS offered a perspective that directly connected regulatory demands to the practical aspects of workforce strategy. Areas of concern included a need for visibility into all workers engaged by the company, a system for defining their status as employees or non-employees, and a strategy for addressing the implications in terms of taxes, benefits, and other employer requirements.

### *Insight on Classification Taxonomy*

An effective classification strategy begins with developing a taxonomy that guides the determination of each worker type. In the knowledge-sharing sessions, AGS worked with the company to set the groundwork on fundamental worker types and their associated definitions. Areas of focus included terminology such as staff augmentation, management consulting, professional services, and outsourcing. Each term represents a model for engaging workers that has specific regulatory implications.

### *Available Resources and Technology to Boost Workforce Visibility*

While the collaboration established essential awareness and support for enterprise-level worker classification, the AGS partnership left the option for accelerating the effort, if needed, leading up to the effective date of new regulations. This option is enabled through a resource management solution that uses technology driven by artificial intelligence to automatically assess contractor and services provider data faster than a manual approach. This process ensures proper classification and identifies potential risk points (i.e., contractors who likely should be treated as employees in the eyes of the law).

## **A Vital Strategy for the Gig Economy**

With the foundation for worker classification that spans all parts of the organization, the financial services company is now on a path to keep ahead of new regulations. From payment and benefits to termination, taxation, and a host of related employment law issues, clarity about who is, and who is not, considered an employee will be essential for a future involving an increasingly flexible and varied workforce.

## **Evolving Employee and Contingent Recruitment for Changing Immigration Demands**

In another example, a leading U.S. financial institution recently experienced an incident related to compliance with federal regulations. That incident stemmed from increased scrutiny on how the company processed candidates in its recruitment efforts. Due to inconsistent approaches in sourcing candidates from suppliers, the company could not always supply relevant information when oversight agencies such as the U.S. Citizenship and Immigration Services (USCIS) sought data to confirm a contractor's visa status.

To address the issue, the company worked with its AGS talent partner to establish a roadmap for aligning a complex array of talent engagement processes involving pre-identified workers. While the organization had transparency around activities such as posting requests, managing candidate information, and performing drug screening for sourced contractors, the same level of consistency did not extend to suppliers with pre-identified contractors. But through its AGS partnership, the company successfully launched a strategy focused on correcting key workflow needs across its entire workforce supply chain.

### **A Standardized Flow of Candidate Submissions**

Among the initial topics tackled was the fact that talent suppliers varied their approach to candidate submissions. Often, a supplier with a pre-identified contractor would provide potential candidates to the company's managed services provider (MSP) with a job title and little or no documented job responsibilities. The newly updated process establishes a more consistent workflow, requiring that managers submit a request before identifying a candidate.

This improvement allows the MSP to document a role's true need and its requirements, after which suppliers must provide candidate resumes that match the need. If USCIS later audits the hire, the request and resume will verify the selected worker's role and previous activity, and it would confirm that they correspond with the candidate's visa letter while satisfying the requirements.

### **Establishing Consistency**

Based on a true partnership between the employer and AGS, the company now has an opportunity for change that will ensure the correct workflow goes into effect for all talent suppliers. In a regulatory environment where accurate information is a must, a consistent process flow promotes active talent engagement and positions the organization to have the right data to meet increasingly demanding regulatory needs. Reducing risk and improving workflow is not only good for compliance; it is essential for driving an effective workforce strategy in a challenging industry.



# Looking Ahead: Compliance Will Continue to be Good for Business

In an increasingly complex and global environment for managing business and talent, the practices that boost compliance all support an improved talent engagement capability. Transparent and compliant recruiting and talent engagement processes create a positive experience that can help increase candidate attraction and worker retention. Likewise, visibility into the entire talent population not only limits worker classification issues, but it also helps employers make the right decisions about who to engage in getting work done.

In short, compliance is good for business. For organizations looking to stay ahead of a changing regulatory landscape and better compete for scarce talent, a focus on proactive strategies can help deliver a critical advantage in engaging the workforce.

## Endnotes

<sup>1</sup> Kim, Timothy. "The Dynamex Decision: The California Supreme Court Restricts Use of Independent Contractors," Sheppard Mullin. 1 May 2018. laboremploymentlawblog.com.

<sup>2</sup> Wiessner, Daniel. "Uber Drivers are Contractors, Not Employees, U.S. Labor Agency Says," Reuters. 14 May 2019. reuters.com.

<sup>3</sup> "Understanding How Background Check Compliance Works," IMI Data Search, Inc. 27 Apr 2017. imidatasearch.com.

<sup>4</sup> Van Steenwyk, Jason. "These Four HR Mistakes Are Causing the Most Lawsuits," Human Resources Today. 9 Dec 2015. humanresources.today.com.



## Stay in Front of the Changing Regulatory Landscape

Check out the quarterly **AGS Compliance Monitor** for insight on global trends influencing talent and business today.

[AllegisGlobalSolutions.com/Compliance](https://AllegisGlobalSolutions.com/Compliance)

### Compliance Monitor

Highlights of the Evolving Employment and Regulatory Landscape



Allegis Global Solutions (AGS), an Allegis Group company, is a leader in global talent solutions. We have reimagined the human work experience. Through decades of industry experience, and with services across 60+ countries we understand what it takes to consult, design and build successful workforce management solutions regardless of the workforce category.

Whether our customers require an MSP, RPO, Services Procurement (SOW), Freelance solutions or a combination of services either regionally or globally, AGS has the experience, state-of-the-art technology and sustained investments in innovation to ensure your workforce solutions will make your company better.

**We live to match exceptional organizations with outstanding people.**

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