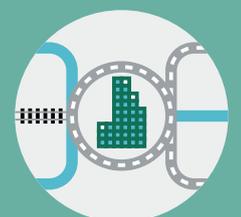
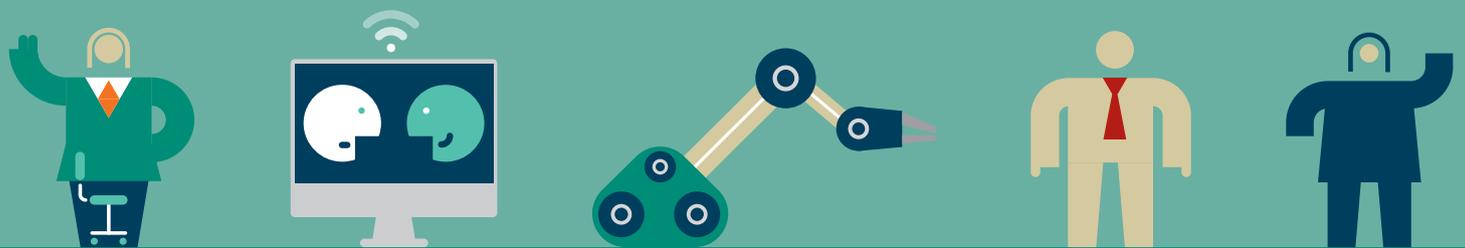


The Future of Work
Understanding the major trends



This future of work report summarises the main findings of our research into new trends emerging in the world of work. It is based on in-depth interviews with HR directors and senior business leaders at a wide range of businesses, including Accenture, Dyson and Hargreaves Lansdown, as well as Osborne Clarke's experts.

This report focuses on:

- how investments in automation and robotics are affecting the workforce;
- the impact of the growing use of contingent workers;
- whether working practices are changing as a result of millennials entering the workforce; and
- how businesses can attract and retain a talented, diverse workforce.

The term "contingent worker" includes everyone from traditional temps and agency workers, and newer types of gig worker and zero-hours worker, through to higher-paid consultants and independent contractors.

Understanding the human consequences of automation

Our series of interviews found that businesses are ramping up investment in automation, through technologies such as data analytics, machine learning, artificial intelligence and robotics. Precisely what investments are being made very much depends on the individual company's business model. That said, there are some similarities across the sectors at companies interviewed for this report.

A natural question that arises when it comes to automation is whether companies' significant investments in technology will displace the role of human workers. There is no simple answer to this and it very much depends on the type of automation a company introduces, the company's business model and the extent to which the organisation is growing.

"The impact won't be that people lose their jobs, but they will need to retrain to serve more customers using the technology."

Debbie Lombard, Chief HR Officer, VocaLink

For the majority of companies we interviewed, the primary impact of their investments in automation is expected to be not a reduction in the need for human roles but rather to free up human workers to undertake higher-value tasks.

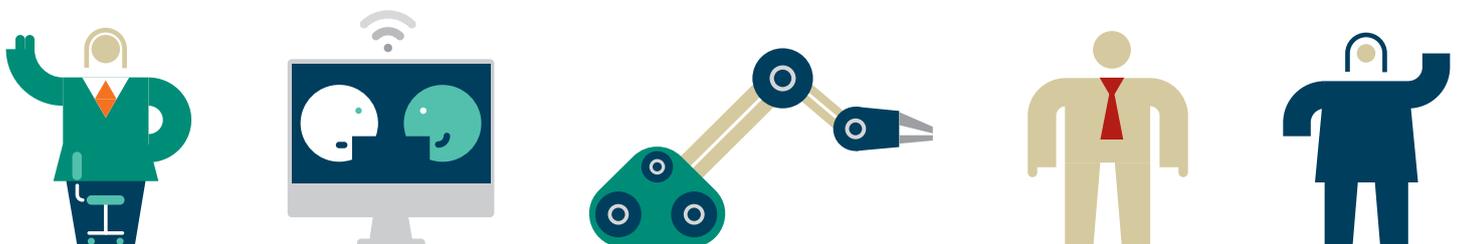
Debbie Lombard, Chief HR Officer at VocaLink, provides an example. "We are currently running a program called SEED, which is short for speed, efficiency, effectiveness and discipline," she says. "Its objective is to modernise the working environment so that we can deliver quality at greater scale and speed than ever before. From a technology perspective, for example, servers and computer environments that were traditionally built manually will be automated. The impact won't be that people lose their jobs, but they will need to retrain to serve more customers using the technology."

However, this is not the case for all investments in automation. Some innovations in automation are so disruptive that they might not only replace humans but entire business models.

"Our developers are working on high frequency trading, especially algorithms that enable us to compete with the big boys, but it will mean some people lose their jobs and it may kill us off completely."

The head of HR at an international investment bank

"The greatest innovations I've seen in this industry are direct market access, where people purchase stock directly rather than going through us," explains the head of HR at an international investment bank. "People can literally log onto an app and do everything for a fraction of the price. This is causing our industry lots of problems because these customers won't buy any research or anything else like that, so income across the industry is dropping massively. Then there is high frequency trading. Our developers are working on this, especially algorithms that enable us to compete with the big boys, but it will mean some people lose their jobs and it may kill us off completely."



“We have made very significant investments, particularly in training, to move our people out of ‘rinse and repeat’ work and help them move up the value chain to roles that are better suited to their human skills.”

Richard Phillips, Director, Global Compliance, Employment Law, Accenture

While technology will undoubtedly create job losses in some sectors, many businesses are using technology efficiencies as a way of moving employees up the value chain. “We have made very significant investments, particularly in training, to move our people out of ‘rinse and repeat’ work and help them move up the value chain to roles that are better suited to their human skills. This is not only about cost, it’s about deploying the best talent in the right way,” explains Richard Phillips, Director, Global Compliance, Employment Law at Accenture.

But the jury is still out as to whether this will materialise across all businesses. “One intriguing issue in the current debate about the Future of Work and productivity problems in many countries across Europe will be the extent to which job losses in many industries, the growth in low-paid work in others, and widespread talent shortages caused by demographic changes and immigration changes can be alleviated by a better commitment to building skills, and retraining and redeployment of existing workforces,” says Thierry Viérin, Employment Partner at Osborne Clark in Belgium.

“It may be impossible to protect certain jobs against automation but business should look to proactively manage the desire of governments to protect jobs and fix talent shortages in the process.”

Eva Otaegui, Employment Partner, Osborne Clarke, Barcelona

The investment in liberating humans to focus on higher-value work will be reassuring to policymakers, who have become increasingly concerned about the impact on jobs of AI, robotics and automation. Those policymakers are facing calls for increasing job protection and statutory rights to retraining for affected people (as has been called for in countries such as France) and tax on the use of technologies (as suggested by Bill Gates, among others) to help manage the impact of job losses. “It may be impossible to protect certain jobs against automation but business should look to proactively manage the desire of governments to protect jobs and fix talent shortages in the process,” says Eva Otaegui, an employment Partner in Osborne Clarke’s Barcelona office.

Contingent workers accounted for **20%** of workforces in 2017. This is a significant increase on the 15% share in 2014 according to Staffing Industry Analysts research.

Use of contingent workers is on the rise

The use of contingent workers has grown significantly in recent years. According to a survey of large companies (those with more than 1,000 full-time equivalents) conducted by Staffing Industry Analysts, contingent workers account for 20% of workforces in 2017. This is a significant increase compared to the 15% share in 2014. By 2020 respondents expect the share of contingent workers to rise to 25%.

Why is the use of contingent workers growing? It’s partly because both employers and employees prefer the flexibility that contingent working affords. For employers, the contingent working model enables individuals with specific expertise to be engaged to run projects for the fixed duration of an initiative rather than on an open-ended basis. For many individuals with skillsets that are in high demand, this model enables them to work when they want, for whom they want and on the projects that interest them.

“Broadly speaking, there are two camps of contingent workers,” confirms Gene Zaino, president and CEO at MBO partners. “On one side are people that offer undifferentiated services, where it’s not really about their skill but more about supplementing their income. For example Uber drivers and cleaners fall into this category.

“The other camp includes people who have niche skills and experience. They are often highly educated and are very confident about the particular skill they have. They tend to do project orientated work that lasts three to six months. They provide more of a strategic service to their customers rather than an undifferentiated commodity service. They usually bring in a certain expertise that is not core to the business but is necessary to build new capabilities.”

Our series of interviews reveals that the second type of contingent worker is most frequently used to run transformational projects. For example, in financial services companies contingent workers are mainly engaged to run digital change and artificial intelligence projects, as well as programmes to ensure compliance with GDPR and specific banking regulations. In digital and technology businesses contingent workers are usually engaged for their expertise in complex technologies such as machine learning, artificial intelligence, big data and virtual reality.

There are, however, some important risks and considerations that businesses need to pay attention to when engaging contingent workers.

The risk of ‘worker misclassification’ and ‘co-employment’ is by far the most important. These US terms refer to the risk that authorities or employment tribunals decide that a contingent worker, either for tax or employment law purposes, should be classified as a traditional employee. The financial consequences of this can be severe.

There are a number of different considerations that feed into this assessment. These include the degree to which workers are supervised, whether they are receiving training or have been provided with company equipment to do their job; and whether, in fact, there is little or no difference between the way contingent workers are treated compared to the way permanent employees in the same organisation are treated.

“...tax and employment tribunals in countries like the UK, USA, Spain and Germany are well versed in looking behind a written contract to determine what happens in practice and what the employment status and tax status of any individual should be. Businesses need to be mindful of that and implement protective measures.”

Julian Hemming, Employment Partner, Osborne Clarke, UK

“Certainly tax and employment tribunals in countries like the UK, USA, Spain and Germany are well versed in looking behind a written contract to determine what happens in practice and what the employment status and tax status of any individual should be,” explains Julian Hemming, UK Employment Law Partner at Osborne Clarke. “Businesses need to be mindful of that and implement protective measures.”

“...we are rather sensitive about certain areas of the business and to whom we open up our most secret commercial and technical information.”

Martin Bowen, Group General Counsel, Dyson

Misclassification risk aside, many respondents also stated there can be issues regarding retaining intellectual capital when using contingent workers for high-value tasks. “As a technology business we really need to be careful about where we use contingent workers,” explains Martin Bowen, Group General Counsel at Dyson. “On the face of it there shouldn’t be a problem with the right contractual protections, but in reality contingent workers do sometimes think differently and could quickly up sticks and move on. And while they have a professional reputation, you have to wonder whether they have as much loyalty to the business as a full time employee would. Therefore we are rather sensitive about certain areas of the business and to whom we open up our most secret commercial and technical information.”



“Keeping records of contractual arrangements long term is also essential, in case the business needs to prove ownership of IP 20 years after the person who created it has moved on.”

Thomas Leister, Employment Partner, Osborne Clarke, Germany

“Companies must bear in mind that a lot of the normal legal protections employers rely on in relation to their employees (relating to confidentiality and fiduciary duties) do not automatically apply to contingent workers, which means that carefully drafted express contractual protections will be needed,” explains German flexible workforce specialist Thomas Leister of Osborne Clarke. “Keeping records of contractual arrangements long term is also essential, in case the business needs to prove ownership of IP 20 years after the person who created it has moved on.”

Please see our *The Future of Work: Contingent workers and new employment models in focus* report for more information on these issues.

Millennials: are they really that different?

Many companies are grappling with how best to meet the different work requirements and aspirations of millennials. Many HR directors interviewed for this series of reports stated that their younger generation of workers desire greater flexibility in where, when and how they work than previous generations. “It’s dangerous to say that all millennials are the same, but we do see that they generally want a better work life balance and demand it,” explains Teresa Harding, Head of HR Operations at Hargreaves Lansdown.

“It’s dangerous to say that all millennials are the same, but we do see that they generally want a better work life balance and demand it.”

Teresa Harding, Head of HR Operations, Hargreaves Lansdown

“Millennials certainly want more flexibility than earlier generations and want the ability to take chunks of time off,” explains Martin Bowen, Group General Counsel at Dyson. “We try to accommodate that when we can. They also like more space to intermingle, work informally, meet people and not have such rigid work and desk space patterns. So smart working, open plan and hot desking is something that millennials actually like.” But is it just millennials who want this change and what is the downside to this new working model? Craig Fines-Allin, Group HR Director at MetaPack, provides an answer.

“More and more people want to work remotely for a better work life balance and it’s not just millennials.”

Craig Fines-Allin, Group HR Director, MetaPack

“More and more people want to work remotely for a better work life balance and it’s not just millennials,” says Fines-Allin. “We have some of this at the moment and manage requests on an ad-hoc basis dependent on the requirements of each role and each situation. At the moment we are primarily office-based and this aids collaboration which is key to our work. I am sure the debate around remote vs office working will continue and the crux of the debate will be around the potential impact on collaboration and the tools which are emerging to assist with that.”

Clearly, maintaining a collaborative culture is a hurdle all businesses with flexible working policies will need to overcome. It is therefore incumbent on HR teams and line managers to ensure that workers have the tools they need to communicate with their colleagues when working from home. “Technology enables you to engage and connect with your colleagues even when working remotely,” explains VocaLink’s Debbie Lombard. “It’s also important that team leaders and line managers support this and put mechanisms in place to ensure that everyone is engaged through, for example, regular meetings so people find a way to stay connected. Social media demonstrates you can be connected without physically being there. So I don’t have any concerns about the risks of people working remotely.”

“Putting cybersecurity processes and crisis management procedures in place, and testing them via full-scale simulation exercises is essential as risks increase as a result of people working remotely.”

Marco Lanzani, Employment Partner, Osborne Clarke, Italy

Another risk associated with remote working is security. Employees may be vulnerable to cyber-attacks if they are working on computers at home as their data security software might not necessarily be up to date. “Putting cybersecurity processes and crisis management procedures in place, and testing them via full-scale simulation exercises is essential as risks increase as a result of people working remotely,” explains Marco Lanzani, Employment Partner at Osborne Clarke, Italy.

It is also more likely that physical documents may be lost if they are frequently transferred from the office to a home environment and vice versa. The changes can, however, be overcome if companies invest in providing their employees with the secure equipment and training they need to work at home.

Attracting and retaining top talent

In order to ensure that businesses can attract and retain skilled workforces, it is essential that they have access to a large enough pool of skilled workers. Where there are skills shortages nationally, access to an increasingly mobile international pool of workers can fill the gaps.

“We want the best engineers from around the globe working for us. It doesn’t matter where they are from, we care about what they can do.”

Martin Bowen, Group General Counsel, Dyson

While this is an international issue, it is currently a particular concern for those with operations in the UK, who are looking to understand how Brexit might impact their staffing needs. “The UK simply does not produce enough engineers to service its own requirements and demand let alone generate a surplus it can send abroad,” explains Bowen. “So inevitably there has to be a net inflow of engineers to meet demand. If that is impacted by changes to immigration rules and policy then that is something of enormous concern. We want the best engineers from around the globe working for us. It doesn’t matter where they are from, we care about what they can do.”

Many sectors will depend heavily on a skilled and mobile international workforce. Businesses with operations in the UK are considering what impact Brexit might have on their staffing needs. Gavin Jones, Head of Immigration at Osborne Clarke, explains: “Immigration rules are unlikely to prevent businesses in the UK from recruiting or retaining skilled workers from the EU. However, the immigration process, when EU free movement rules no longer apply, may be seen as off-putting for individuals and businesses.”

“The type of benefit offered will vary greatly depending on the size and stage of the business within its lifecycle but this will be an increasingly important consideration for HR teams.”

Michael Carter, Head of Incentives, Osborne Clarke, UK



While there are concerns around talent access, there is also a broader issue around retention of talent. "Businesses will need to think smarter about how they incentivise staff as employees, particularly those in high-skilled roles, become more sophisticated when looking for benefits," explains Michael Carter, Head of Incentives at Osborne Clarke, UK. "The type of benefit offered will vary greatly depending on the size and stage of the business within its lifecycle but this will be an increasingly important consideration for HR teams." A recent article in *The Times* by James Hurley suggested that European growth-stage and technology-led companies looking to attract and retain the best staff should look at incentivising employees with equity share schemes, which are more popular in the US than Europe. Mr Hurley explained, "On average employees own 20% of the equity in late stage start-ups with only 10% in Europe."

Michael Carter continues, "Interestingly, the UK, the home to more than one in three of European start-ups, has even higher levels of employee ownership than the US. Offering equity incentives to key employees, to both align their interests and provide high levels of commitment, is really important in most sectors and lifecycles of companies, and may prove even more important for millennials than for previous generations."

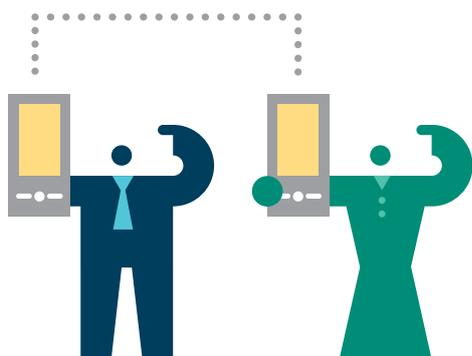
Diversity (and inclusion) matter

Diversity and inclusion are increasingly a board-level issue for large corporates that recognise a diverse workforce – in terms of characteristics including gender, race, age, disability, sexuality and social mobility – can bring the alternative views and thinking needed to succeed in tomorrow's world.

Many of the companies interviewed for this report are embracing diversity and inclusion as a means of accessing talent and to reflect the society we live in and diversity of their customer bases. "There are a lot of women who have had professional careers prior to having children but who have found it difficult to get back into positions when there has been a big gap in their CV. We are also expanding evening part-time working into our operations which attracts a range of talent from the local community," explains Teresa Harding at Hargreaves Lansdown.

"Diversity is an important issue that isn't going to go away. Businesses must set their diversity strategy now to recruit and retain talent and avoid government penalties and reputational damage in future."

Greg Chambers, Employment Associate Director, Osborne Clarke, UK



And it is not just businesses that are shining a light on diversity. Governments across Europe are emphasising the importance of diversity and encouraging businesses to increase diversity. "For example, the UK Government estimates addressing diversity could generate a further £24 billion for the UK economy each year. While gender pay gap reporting is already here, there are calls for businesses with more than 50 employees to report on other diversity statistics such as race," explains Greg Chambers, Associate Director at Osborne Clarke, UK. "This is an important issue that isn't going to go away. Businesses must set their diversity strategy now to recruit and retain talent and avoid government penalties and reputational damage in future."

Understanding and embracing the Future of Work – our top tips for success

Businesses will undoubtedly benefit substantially from new technologies in the workplace, the use of new and flexible employment models, new staff incentive arrangements/retention models and diverse workforces. But with great opportunity comes risk and the law in relation to the future of work is constantly evolving.

Businesses will need to monitor these legal changes over the next few years, and make sure that governments hear their views. Those that succeed will be the ones that implement legally compliant and commercially sensible measures now to support their workforces and businesses of tomorrow.

Our top tips to succeed in tomorrow's world are:

1. Understand the human impact of technology – recognise that training and development will be increasingly important in pushing people up the value chain and in dealing with reputational and legal risks around job losses.
2. Take care about corporate strategies based on the availability of low-cost workers – will low-cost workers, with production units in low-cost labour areas, still be a compelling strategic differentiator in the future?
3. Build trust – recognise that workers will be aware of all these changes and want to be involved in discussions about them.
4. Flexible workforces – understand where tax and employment liabilities sit when using contingent workers, recognising that this is changing and may vary greatly across borders.
5. Consider potential intellectual property, cybersecurity and data risks – take care to maintain confidentiality and protect your business when using flexible workforces and working arrangements.
6. Think about your future obligations as an employer in terms of employment contracts and diversity – set your strategy now to recruit and retain the best talent.
7. Think about how you might steal an advantage over your competition with innovative reward and retention schemes, and participation in ownership, focusing on millennial aspirations.

Acknowledgements

Companies interviewed for this report include:

- Accenture
- Dyson
- Hargreaves Lansdown
- MBO Partners
- Nationwide Building Society
- MetaPack
- Siemens UK
- Staffing Industry Analysts
- Talent Intelligence Partners
- The Curve Group
- VocaLink

For more information, please contact:

Greg Chambers
Employment Associate Director, UK
greg.chambers@osborneclarke.com

Julian Hemming
Employment Partner, UK
julian.hemming@osborneclarke.com

Marco Lanzani
Employment Partner, Italy
marco.lanzani@osborneclarke.com

Thomas Leister
Employment Partner, Germany
thomas.leister@osborneclarke.com

Eva Otaegui
Employment Partner, Spain
eva.otaegui@osborneclarke.com

Maxime Pigeon
Employment Partner, France
maxime.pigeon@osborneclarke.com

Jorgo Tsiris
Employment Partner, The Netherlands
jorgo.tsiris@osborneclarke.com

Thierry Viérin
Head of Employment, Belgium
thierry.vierin@osborneclarke.com

Fredrik von Baumgarten
Managing Partner, Sweden
fredrik.vonbaumgarten@osborneclarke.com

Osborne Clarke in numbers

725+
talented lawyers

working with

240+
expert Partners

in

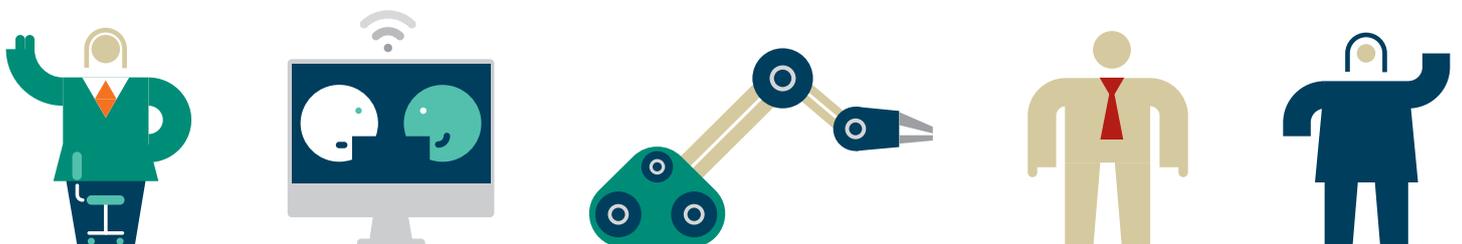
25
international locations

advising across

8
core sectors

with

1
client-centric culture



Our locations around the world

Europe

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Hamburg, Munich

Italy: Brescia, Busto Arsizio, Milan, Padua, Rome

The Netherlands: Amsterdam

Spain: Barcelona, Madrid, Zaragoza

Sweden: Stockholm

UK: Bristol, London, Reading

USA

New York, San Francisco, Silicon Valley

Asia

China: Shanghai

Hong Kong

India: Mumbai*

Singapore

Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: osborneclarke.com/verein/

* Relationship firm

osborneclarke.com