

# Ethics in Information Technology, Second Edition

## *Chapter 8* *Employer/Employee Issues*

### Objectives

- What are contingent workers, and how are they frequently employed in the information technology industry?
- What key ethical issues are associated with the use of contingent workers, including H-1B visa holders and offshore outsourcing companies?

### Objectives (continued)

- What is whistle-blowing, and what ethical issues are associated with it?
- What is an effective whistle-blowing process?

### Use of Nontraditional Workers

- Bureau of Labor Statistics (BLS) develops 10-year projections of
  - Economic growth
  - Employment by industry and occupation
  - Composition of labor force
- Period from 2002 to 2012
  - Employment growth will be concentrated in the service-providing sector of the economy
  - 9 out of 10 positions in health and IT

## Industries with Fastest Employment Growth (2002–2012)

**TABLE 8-1** Industries with fastest employment growth (2002–2012, numbers in thousands of jobs)

Industry	EMPLOYMENT		CHANGE		ANNUAL GROWTH
	2002	2012	Number	Percent	Rate (%)
Software publishers	256.0	429.7	173.7	67.9	5.3
Management, scientific, and technical consulting services	731.8	1,137.4	405.6	55.4	4.5
Community care facilities for the elderly and residential care facilities	695.3	1,077.6	382.3	55.0	4.5
Computer systems design and related services	1,162.7	1,797.7	635.0	54.6	4.5
Employment services	3,248.8	5,012.3	1,763.5	54.3	4.4
Individual, family, community, and vocational rehabilitation services	1,269.3	1,866.6	597.3	47.1	3.9
Ambulatory healthcare services except offices of health practitioners	1,443.6	2,113.4	669.8	46.4	3.9
Water, sewage, and other systems	48.5	71.0	22.5	46.4	3.9

## Industries with Fastest Employment Growth (2002–2012) (continued)

**TABLE 8-1** Industries with fastest employment growth (2002–2012, numbers in thousands of jobs) (continued)

Industry	EMPLOYMENT		CHANGE		ANNUAL GROWTH
	2002	2012	Number	Percent	Rate (%)
Internet services, data processing, and other information services	528.8	773.1	244.3	46.2	3.9
Child day-care services	734.2	1,050.3	316.1	43.1	3.6

Source: United States Department of Labor, Bureau of Labor Statistics, "BLS Releases 2002-2012 Employment Projections," [www.bls.gov/news.release/ecopro.nr0.htm](http://www.bls.gov/news.release/ecopro.nr0.htm), February 11, 2004.

## Use of Nontraditional Workers (continued)

- Number of computer science candidates
  - Dropped 33%
- Number of master's candidates
  - Dropped 25%
- IT firms are concerned about the shortfall
  - Turn to nontraditional sources including
    - Contingent workers
    - H-1B workers
    - Outsourced offshore workers

## Contingent Workers

- Include:
  - Independent contractors
  - Workers brought in through employment agencies
  - On-call or day laborers
  - On-site workers provided by contract firms
- Represents 4 to 7 percent of the U.S. workforce
- Needed for pronounced fluctuations in staffing needs
- Workers are there for the life of the project only

## Contingent Workers (continued)

- Sources
  - Temporary help
  - Employee leasing
- Firms that provide temporary help
  - Recruit, train, and test their employees in a wide range of job categories and skill levels
  - Assign them to clients

## Contingent Workers (continued)

- Employee leasing
  - Business outsources all or part of its workforce to a professional employer organization
  - Subject to special regulations regarding workers' compensation and unemployment insurance
- Coemployment relationship
  - Two employers have actual or potential legal rights and duties with respect to the same employee or group of employees

## Contingent Workers (continued)

- Advantages of using contingent workers
  - Business does not pay for benefits
  - Can continually adjust the number of contingent workers to stay consistent with its business needs
  - Does not customarily incur training costs

## Contingent Workers (continued)

- Disadvantages of using contingent workers
  - May lack a strong relationship with the firm
    - Low commitment to the company and its projects
    - High turnover rate
  - Workers gain valuable practical experience working within a company's structure and culture
    - Lost when workers depart at the project's completion

## Contingent Workers (continued)

- When deciding to use contingent workers
  - Recognize the trade-off between
    - Completing a single project quickly and cheaply
    - Developing people in the organization
  - When staffing is truly temporary
    - Use of contingent workers is a good approach
  - Think twice about using contingent workers
    - When they are likely to learn corporate processes and strategies that are key to the company's success

## Contingent Workers (continued)

- Deciding to use contingent workers
  - Can raise ethical and legal issues
  - Potential liability for
    - Withholding payroll taxes
    - Payment of employee retirement benefits and health insurance premiums
    - Administration of worker's compensation

## Contingent Workers (continued)

- Deciding when to use contingent workers
  - Contingent workers can be viewed as permanent employees by
    - Internal Revenue Service
    - Labor Department
    - State's worker compensation and unemployment agencies
  - *Vizcaino v. Microsoft* lawsuit
    - Employers must exercise care in the treatment of contingent workers

## Manager's Checklist for the Use of Contingent Employees

TABLE 8-2 Manager's checklist for the use of contingent employees

Questions	Yes	No
Have you reviewed the definition of an employee in your company's pension plan and policies to ensure it is not so broad that it encompasses contingent workers, thus entitling them to benefits?	___	___
Are you careful not to use contingent workers on an extended basis? Do you make sure that the assignments are finite, with break periods in between?	___	___
Do you use contracts designating the worker as a contingent worker?	___	___
Are you aware that the actual circumstances of the working relationship determine whether a worker is considered an employee in various contexts, and that a company's definition of a contingent worker may not be accepted as accurate by a government agency or a court?	___	___
Do you avoid telling contingent workers where, when, and how to do their jobs?	___	___
Do you make sure that contingent workers use their own equipment and resources, such as computers and e-mail accounts?	___	___
Do you avoid training your contingent workers?	___	___
When leasing employees from an agency, do you let the agency do its job? Do you avoid asking to see résumés and getting involved with compensation, performance feedback, counseling, or day-to-day supervision?	___	___
If you lease employees, do you use a leasing company that offers its own benefits plan, deducts payroll taxes, and provides required insurance?	___	___

## H-1B Workers

- Temporary working visa
- Granted by the U.S. Citizenship and Immigration Services (USCIS)
- For people who work in specialty occupations
- Meet critical business needs
- Obtain essential technical skills and knowledge not readily found in the United States
- Employers must pay H-1B workers the prevailing wage for U.S. workers to do equivalent jobs

## H-1B Workers (continued)

- Maximum continuous period of six years
  - After six years the foreign worker must remain outside the United States for one year before another H-1B petition can be approved
- Make up less than 0.1 percent of the U.S. workforce
  - Nearly 40 percent are employed as computer programmers

## H-1B Workers (continued)

- Top five source countries
  - India
  - China
  - Canada
  - United Kingdom
  - Philippines
- Congress sets a federal cap on the number of H-1B visas
  - Applies only to certain IT professionals at private technology companies

## H-1B Workers (continued)

- Continued use of H-1B
  - Symptom of a larger, more fundamental problem
  - United States is not developing sufficient IT employees with the right skills to meet corporate needs

## Number of H-1B Visas Granted by USCIS

TABLE 8-3 Number of H-1B visas granted by USCIS

Fiscal year (October 1–September 30)	H-1B visas cap
1998	65,000
1999	115,000
2000	115,000
2001	195,000
2002	195,000
2003	195,000
2004	65,000
2005	65,000

## H-1B Workers (continued)

- English as a second language
  - Workers are not fluent in English
  - May find it difficult and uncomfortable to participate
  - May create their own cliques
    - Stop trying to acclimate
    - Can hurt a project team's morale and lead to division
- Managers and coworkers should
  - Strive to help improve H-1B workers' English skills and cultural understanding
  - Be sensitive to heritage and needs

## H-1B Workers (continued)

- H-1B application process
  - Person must have a job offer from an employer who is also willing to offer sponsorship
  - Application has two stages
    - Labor Condition Attestation (LCA)
    - H-1B visa application
  - If the H-1B contingent makes up more than 15 percent of a workforce, a company must prove that it first tried to find U.S. workers before it can hire more H-1Bs

## H-1B Workers (continued)

- American Competitiveness in the Twenty-First Century Act
  - Allows current H-1B holders to start working for employers as soon as their petitions are filed
- Using H-1B workers instead of U.S. workers lessens the incentive for U.S. companies to educate and develop their own workforces

## H-1B Workers (continued)

- Potential exploitation of H-1B workers
  - Salary abuse
  - Recent study found H1-B workers are paid an average of \$13,000 less than U.S. workers in the same job
  - What happens at the end of the six-year visa term?

## Offshore Outsourcing

- Outsourcing
  - Companies receive services from an outside organization with expertise in providing a specific function
- Rationale
  - Lower costs
  - Obtain strategic flexibility
  - Focus on core competencies

## Offshore Outsourcing (continued)

- Variation of outsourcing
  - Work done by an organization whose employees are in a foreign country
- Companies can save up to 70 percent on some projects
- Increasing in IT industry
  - Common to use offshore outsourcing for major programming projects

## Offshore Outsourcing (continued)

- Contract programming is flourishing in
  - Brazil
  - Bulgaria
  - Canada
  - China
  - Ireland
  - Israel
  - Malaysia
  - Malta
  - Mexico

## Offshore Outsourcing (continued)

- Contract programming is flourishing in
  - The Philippines
  - Poland
  - Russia
  - Singapore

## Offshore Outsourcing (continued)

- India
  - Rich talent pool
  - English-speaking citizenry
  - Low labor costs
  - Best source of programming skills outside Europe and North America
  - Exports software to more than 100 countries
  - Companies now employ more than 400,000 software engineers

## Leading Countries for Providing Offshore IT Services

**TABLE 8-4** Leading countries for providing offshore IT services

Country	Comments
India	Low cost, highly skilled labor pools
Canada	Close to United States, no language barrier, highly skilled labor pool
China	Low cost, large pool of skilled labor, lack of English-language proficiency
Poland	Low overall cost of business operations
Czech Republic	An emerging contender
Russia	Unpredictable political and business climate

Source: McDougal, Paul, "India, Canada, and China Are Top Outsourcing Destinations: Study," *InformationWeek*, www.informationweek.com, September 21, 2005.

## Partial List of Offshore IT Outsourcing Firms

**TABLE 8-5** Partial list of offshore IT outsourcing firms

Firm	Number of employees	Headquarters	Recent annual revenues	Key clients
Tata Consultancy Group	49,000	India	> \$2 billion	
Infosys Technologies	49,000	Bangalore, India	\$2.1 billion	
Wipro	42,000	Bangalore, India	\$1.9 billion	
Satyam Computer Services, Ltd		Hyderabad, India	\$800 million	Texas Instruments
HCL InfoSystems	30,000	New Delhi, India		
EPAM systems	1,000	Princeton, NJ, and Budapest, Hungary	NA	Empire Blue Cross Blue Shield, Mandalay Resort Group, Visa International
Luxoft	1,400	Moscow, Russia	\$25 million	Boeing, Dell, Caterpillar, IBM
Aplana	200	Moscow, Russia	NA	General Electric, Procter & Gamble
Huport Interactive	NA	Davao City, Philippines	NA	Rancho Palos Verdes Golf and Country Club
Outsourcing Solutions, Inc.	NA	Cebu City, Philippines	NA	Kaui Publishing Company, Mother Earth News, and Sound Choice
Interxion	170	Amsterdam, The Netherlands	NA	Coca Cola, IBM, Siemens
Delphi Technologies	NA	Dublin, Ireland	NA	IBM, Siebel Systems



## Offshore Outsourcing (continued)

- Pros and cons
  - Low wages
    - Increasing due to demand
  - Dramatically speeds up development efforts
    - Make progress on a project around the clock
  - Additional time to select an offshore vendor
  - Additional costs for travel and communications
  - Same ethical issues as H1-B and contingent workers
  - Difficulty of communicating directly with people over long distances

## Offshore Outsourcing (continued)

- Five basic prerequisites:
  - Expertise in technologies involved in the project
  - Project manager who speaks the employer company's native language
  - Large staff available
  - Good telecommunications setup
  - Good on-site managers available from outsourcing partner

## Offshore Outsourcing (continued)

- Tends to upset domestic staff
- Cultural differences can cause misunderstandings
- Potential compromise of customer data

## Whistle-Blowing

- Effort to attract public attention to a negligent, illegal, unethical, abusive, or dangerous act by a company that threatens the public interest
- Whistle-blower
  - Usually has special information based on
    - Personal expertise
    - Position of employment within the offending organization

## Whistle-Blowing (continued)

- Whistle-blower
  - May not be an employee
    - But a person with special knowledge gained from reliable sources
  - Risks own career
  - Might even affect lives of friends and family

## Protection for Whistle-Blowers

- Protection laws allow employees to alert the proper authorities to employer actions that are unethical, illegal, or unsafe, or that violate specific public policies
- No comprehensive federal law
- Each law has different
  - Filing provisions
  - Administrative and judicial remedies
  - Statutes of limitations

## Legal Overview: False Claims Act

- Also known as “Lincoln Law”
  - Enacted during the Civil War
- Goal
  - Entice whistle-blowers to come forward
  - By offering them a share of the money recovered
- Qui tam provision
- Violators liable for three times the dollar amount that the government is defrauded
- Provides strong whistle-blower protection

## Protection for Whistle-Blowers (continued)

- Laws that encourage the reporting of any wrongdoing that would damage the environment
  - Clean Air Act
  - Toxic Substances Control Act
  - Clean Water Act
  - Safe Drinking Water Act
  - Comprehensive Environmental Response, Compensation, and Liability Act

## Protection for Whistle-Blowers (continued)

- Energy Reorganization Act
  - Safeguards workers in nuclear power and nuclear weapons industries
- Many states have created laws to prevent workers from being fired because of the employee's participation in "protected" activities

## Dealing with a Whistle-Blowing Situation

- Assess the seriousness of the situation
- Begin documentation
- Attempt to address the situation internally
- Consider escalation within the company
- Assess the implications of becoming a whistle-blower
- Use experienced resources to develop an action plan
- Execute the action plan
- Live with the consequences
- Very serious consequences – for the individual and the company

## Summary

- Contingent workforce includes
  - Independent contractors
  - Workers brought in through employment agencies
  - On-call or day laborers
  - On-site workers provided by contract firms
- Whistle-blowing
  - Employee's effort to attract public attention to negligent, illegal, unethical, abusive, or dangerous acts by his or her company