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FLAGGING FCPA MISCONDUCT IN VIRTUAL WORK ENVIRONMENTS

Traditional compliance structures are facing new challenges from remote and hybrid workforce environments. In this article, the authors begin by describing in detail these challenges and federal regulators' heightened expectations for corporate compliance programs. They then turn to two recent enforcement actions to illustrate that DOJ and SEC continue to emphasize high-risk areas and anticorruption controls breakdowns in their evaluations of violations by companies. They close with six steps a company can take to reduce the risks of enforcement actions and FCPA violations.

By Michael M. Farhang and Jeannine Lemker *

“I believe that every person is born with talent.” Maya Angelou

The last several years presented companies with an unexpected opportunity to tap into global talent, in part because of the accelerated change in how — and where — people work. Our post-pandemic workforce is now largely comprised of people who prioritize flexibility to work in close-by and far-flung locations, and who seek flexibility through hybrid work and agency as to when (if at all) they visit an office. While this led to unprecedented mobility and unlocked that innate talent Maya Angelou spoke of, for compliance and legal specialists it requires us to rapidly adapt to new risks stemming from this dispersed workforce. And it requires us to think differently about how we reach employees to drive a culture of ethics and compliance. Here, we consider what emerging risks look like in a dispersed workforce and propose possible solutions to help compliance and legal professionals with new tools to meet this changed environment.

The COVID-19 pandemic and its effects on the job market dramatically increased the openness of corporate employers to various forms of remote or hybrid work environments — particularly for professional and white collar employees. According to a 2022 Gallup study of more than 140,000 U.S. employees, 81% reported a current remote or hybrid (between 10% and 100% remote) job setup, with 91% expressing a preference for a remote or hybrid job setup in the future.¹ Opportunities² for remote work increased employee job

¹ Ben Wigert, *The Future of Hybrid Work: 5 Key Questions Answered With Data*, Gallup.com (March 15, 2022), available at <https://www.gallup.com/workplace/390632/future-hybrid-work-key-questions-answered-data.aspx>.

² Laura Wronski and Jon Cohen, *Who is the Happiest Working from Home? Here is What the Latest Jobs Market Data Says*, CNBC (May 26, 2020), available at <https://www.cnbc.com/>

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