



HERBERT
SMITH
FREEHILLS

FUTURE OF WORK

ADAPTING TO
THE DEMOCRATISED
WORKPLACE

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Research methodology

In recent years, we have seen our clients around the world experiencing an increase in a wide range of employment-related issues including complaints and grievances, collective action and challenges around the use of social media by employees. Our aim in this research is to discover whether there is firm evidence for this rise in workforce activism and, if so, to explore the reasons for it.

Results highlighted within this report are based on a survey conducted by Coleman Parkes. 375 C-suite executives - at companies with more than 1,000 employees and upwards of £250 million in annual sales volume - were interviewed across the US, UK, Europe, Middle East, Africa, Asia and Australia.

For the purposes of the survey, we asked respondents for their views on two groups of the workforce: employees, defined as those working full time or part time under an employment contract, with full employment rights; and casual workers, defined as contractors, agency workers, zero-hours workers, self-employed freelancers and others who are hired for a specific role or limited-term task.

All charts can be found in the appendix section of this report.

Activism (definition)

The use of direct and noticeable action to achieve a result.

Cambridge English Dictionary

Welcome

We are all living through an unprecedented change in the world of work. Inevitably, much of the focus is on technology and digital innovation, but we believe the transformation is much more profound.

The very reason why companies exist is being questioned. The drive to create value for shareholders is being replaced with an aspiration - driven largely by the workforce - to create value in the widest possible sense; for the company, for the community it serves, and for the world in which it operates. People want to work for employers who make them proud, and they want the time they spend at work to be fulfilling. In this new world, purpose increasingly matters over profit.

Navigating an organisation's route to value creation in this new world takes extraordinary leadership. Leaders must strike the right balance between collaboration and competition and find a way to align resources and people in order to maximise a much broader definition of value. Above all, they must bring the workforce along on the journey and respond to their need for work that is rewarding in every sense.

This research springs from our long-held view that getting the people equation right in this new world of work - a world where individual and collective voices have prominence like never before - is the most important challenge of all. The expectations of the workforce have changed and their willingness to speak up or take action when something feels wrong brings far greater risks in the age of digital communication. We hope that the results give you a new and thought-provoking perspective on the future of work.

Mark Rigotti, CEO



In times of change, people look for someone to trust. Trust binds people, organisations and wider society together and in this rapidly changing world of work, trust is the most valuable commodity that employers will hold.

The bond of trust between employers and the people who work for them (in any capacity) is being tested like never before. Technological change and the advent of artificial intelligence in the workplace is threatening jobs. At work, people are often being asked to do more with less - and are seeing their productivity monitored by employers in increasingly imaginative ways. And the future of the planet itself is under threat unless society, governments and business find a common way forward.

Protecting and nurturing the trust and engagement between employers and the workforce in this environment is paramount. The organisations that will thrive will be those that find a way to redefine the workforce relationship, manage tensions and create a common, compelling vision. In this report, we track the warning signs in the form of rising workforce activism and discuss what employers need to focus on to protect the relationship of trust and succeed in this new world of work.

Alison Brown, Global Head of Practice

Executive summary: The rise of workforce activism

The paradox of the robotic age is that automation will only make human skills more valuable. The World Economic Forum estimates that 75 million jobs will be lost to automation by 2022 but 133 million new jobs will be created – jobs requiring uniquely human qualities such as emotional intelligence and fine judgment. But unlike robots, humans have opinions – and that presents its own challenges for employers.

Our survey warns of an unprecedented rise in workplace activism ahead, across all sectors and geographies. As employers explore different working models and advanced technologies, those working for them are becoming more vocal in articulating their views – about the workplace, their employer and about wider social issues – enabled and amplified by social media. The voice of the workforce will insist on being heard as never before. If traditional, internal communication channels fail to meet their needs, external means of raising concerns will fill the gap. Employers need to be prepared for what's ahead.

Respondents say workforce activism could cost them up to 25% of global revenue per year (between £121 million and £177 million)

25% 
of global revenue per year

81% 
of companies anticipate a rise in employee activism in the future

59% 
of those in Asia expect this increase to be significant

AI and automation (identified by 57%) and surveillance or monitoring of employees (50%) are key triggers of activism

Values are becoming a significant trigger for activism, including **CSR/environmental issues/climate change (46%)** and **lack of diversity (45%)**

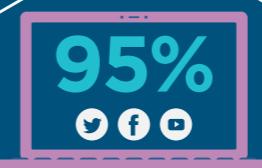
84% 
of those in banking and **86%** in pharmaceuticals/healthcare expect a rise in employee activism

86% of companies with annual revenue of £1 billion or more predict an increase in internal complaints and grievances and **74%** see **more digital petitions ahead**

But large companies see pay and benefits (57%) and the status of casual workers (54%) as significant triggers of activism

77% 
expect to see **more crowdfunded legal challenges**

83% foresee an increase in activism among casual workers in the future

95% 
envisage a rise in employees making their voices heard via social media over the next 5 years

59% of mining companies expect a **significant rise** among casual workers



55% of respondents name workforce actions as **a potential risk to reputation**, only exceeded by cyber threats and economic recession

49% see activism as a **positive force for change**



48% choose to engage with employees **only through external channels**, rather than use an internal forum

The new world of work

The world of work is undergoing a transformation on a scale we have not seen since the Industrial Revolution. Automation and digital technology is changing how and where we work, introducing new jobs and making others defunct. The skills that organisations need are changing and the scale of the cultural shift for the workforce is unprecedented. Organisations are navigating a rapidly evolving environment that could imperil the essential (and valuable) relationship of trust between employer and worker.

Employers are testing out new working models and that has implications for employees. Flexible and remote working, widely seen as a strategy that could increase productivity and workforce engagement, is one of the policies being reassessed in some sectors; the importance of collaboration and diversity of thinking, especially when it comes to sparking innovation, has led some companies to reconsider their approach (see box).

Meanwhile, legislation on workers' rights is still catching up with the pace of change in the workplace, driven largely by case law being developed across Commonwealth countries (such as issues surrounding the employment status of gig economy workers).

Employees – and, increasingly, casual workers employed at arm's length through contracts, agencies or in the gig economy – are making their feelings known, in any way they can. While union membership in many countries is on a steady decline, coordinated action still has an impact. In September 2019, for example, almost 50,000 members of the United Auto Workers union (UAW) walked out of General Motors, shutting down 33 manufacturing plants and 22 distribution warehouses across the US. The Financial Times noted that the strike – calling for fair wages, affordable healthcare, profit sharing, job security and a path to permanent employment for temporary workers – represented “the resurgence of organised labour activity in America” (a country where fewer than 10% of employees hold union membership) and “the rebirth of labour as a political and economic force”.

Equally, in mainland Europe, employee representation, in the shape of works councils, continues to play an important role in day-to-day business operations.

The flexible working conundrum

In 2009, the IBM Institute for Electronic Government published a report, Working Outside the Box, which tracked the ‘growing momentum in telework’, using IBM itself as a case study. The report said that in 2009, 40% of the company’s 386,000 employees in 173 countries ‘do not have a traditional office and many tens of thousands more work outside their office at least some of the time’. As a result of its telework policy, the company had reduced its office space by 78 million square feet since 1995, the report added, and 58 million square feet had been sold at a gain of US\$1.9 billion.

IBM’s own research argued that teleworkers were more highly engaged, more likely to consider their workplaces as innovative and less stressed than their office-bound colleagues. Nevertheless, in March 2017 an article in the Wall Street Journal revealed that thousands of US-based IBM teleworkers were being asked to relocate back to six regional offices.

While IBM has not discussed its decision publicly, in a leaked internal video its Chief Marketing Officer said that there is “something about a team being more powerful, more impactful, more creative, and frankly hopefully having more fun when they are shoulder to shoulder. Bringing people together creates its own X Factor”.

Conversely, in early 2019, BNY Mellon reversed its plan to ban home-working in the face of staff opposition and wider criticism. The lesson is that there is no one-size-fits-all approach for all organisations. What’s needed is balance, giving employees enough flexibility to enhance engagement and productivity while making sure that there are still opportunities for interaction and collaboration with team members and a careful weighing of the pros and cons of a remote working policy.

Flexible working, for example, is widely seen as a way of helping reduce the gender pay gap, given its attraction for working mothers, and as important in improving mental health, another key issue rising up the corporate agenda.

Unionisation and employee representation are familiar, formal and regulated methods of interaction between employer and employee – but they are rapidly becoming matched by unregulated, unpredictable forms of worker activism, amplified and coordinated through digital communication. Employers are in a new world of employment relations and, at times, it feels like the Wild West.

The big question for employers is what they can (and should) do to prepare themselves for the future. This rise in workforce activism will require an entirely new mindset, from new

ways of engaging with the workforce to a more proactive and transparent discussion of corporate values. Trusted techniques will have to change; attempting to limit what employees can say in public seems increasingly unrealistic in a hyperconnected, social media-dominated environment. The previously distinct boundaries between corporates, their workforces and society are fading; if organisations are to win the war for future talent and avoid the rising risks of worker activism, they need to be one step ahead.

Activism on the rise

In every region and sector, workforce activism is a significant concern.

More than 80% expect to see a rise in activism among both employees and casual workers in the future, and almost four out of 10 think this increase will be significant. Only 4% think there will be a decrease in activism from either group in the future (Figures 1 and 3).

Respondents in the pharmaceuticals/healthcare and banking sectors are more likely to predict a rise in workforce activism (86% of respondents in pharmaceuticals and healthcare say they expect to see an increase in both employee and casual worker activism, while 84% of banking respondents anticipate an increase in employee activism and 83% expect to see a rise in activism among casual workers). This most likely reflects the fact that both of these sectors have specific concerns about potential triggers of activism – automation in both cases and increased surveillance and monitoring of employees in the case of pharmaceuticals and healthcare.

Concerns about a rise in casual worker activism are stronger in some sectors and regions.

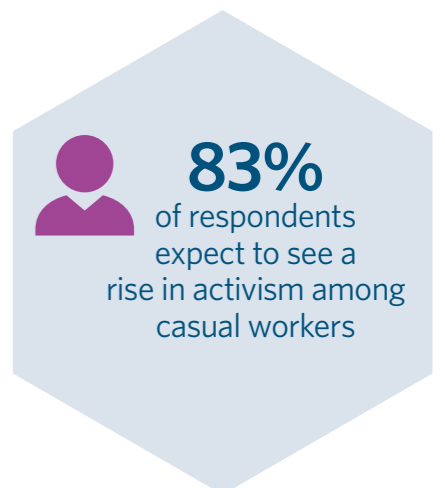
85% of those based in Australia, for example, think there will be an increase in casual worker activism in the future (compared with 75% of those in Europe and the UK).

This may be connected to the fact that 59% of respondents in the mining sector – an important employer in Australia – expect to see a ‘significant’ increase in casual worker activism in the future.

“Unions and some political parties have been very critical about contracting out as an employment model because the jobs can be insecure and Australia is not alone in experiencing that,” says Anthony Longland, Partner, Australia. As a result, casual employment has recently become a focus for class action funders. Anthony adds: “In these cases, typically the plaintiff and plaintiff’s lawyers will push out a lot of advertising in the hope of persuading more people to join the class action and that raises awareness – and engenders a response in employers.”

Criticism of casual employment models is growing in other countries too, although in the UK activism and legal claims have so far been focused mainly on groups of gig economy workers. These claims, orchestrated by claimant law firms and unions, concern the right to claim pay and holiday as ‘workers’, rather than being treated as self-employed. Tim Leaver, Partner, UK, says: “What status and rights these workers should have remains a topic of political debate across Europe, while gig workers themselves are increasingly turning to digital platforms to coordinate petitions and strikes to demonstrate their dissatisfaction with pay.”

Moritz Kunz, Partner, Germany, adds: “The German union IG Metall is increasingly concerned with protecting the precarious rights of workers in the gig economy and is also working with unions in other EU countries to defend the rights of ‘crowd workers’, who anonymously take on small tasks through online platforms.”



The changing forms of activism

Workplace activism can take many forms. Tighter legal restrictions around organised strike action in many countries, notably in the UK and parts of the Asia Pacific region, have reduced its frequency in recent years. Instead, with the emergence of digital communication and social media, employers must navigate a far more unpredictable landscape.

95% say they expect to see an increase in their workforce making its voice heard through social media channels in the future.

That said, other forms of activism are also on the increase, although to a lesser extent.

For example, 79% predict a rise in formal internal complaints and whistle-blowing activity.

Large companies (those with annual revenue of £1 billion or more) are more likely to expect a rise in activism than their smaller counterparts – 86%, for example, think they will receive more internal complaints and grievances from their workforce in the future, compared with 79% across all companies, and 74% expect to face more digital petitions compared with 63% of all respondents (Figure 5).

While companies in Asia are more likely to report a rise in activism, Fatim Jumabhoy, Partner, Singapore, makes the important point that the way in which activism manifests itself at a country level is often culture-specific: “Because many North Asian countries have consensual societies, public displays of dissent have been less common. Nevertheless, sizeable political protests over the years in Malaysia, Thailand, Taiwan, Korea, and Hong Kong indicate that the region is by no means immune to collective protest.”

Culture can play a significant role too. “Restructuring, for example, might be more likely to trigger a reaction in countries where the cultural norm is a job for life, such as Japan, whereas workplace changes that could be interpreted as restricting individual rights are more likely to be a trigger in jurisdictions with a history of civil rights activism,” says Tess Lumsdaine, Senior Associate, Hong Kong.



The role of social media

Digital technology and social media have provided a convenient way for the workforce to express their views, compare their experiences with others and, when needed, mobilise a response. This has an impact on an organisational scale: grievances that were once private can now become public – and globally public – at the touch of a button. But it also has an impact on labour policies globally. Social media campaigns can put pressure on sectors and organisations, through the mobilisation of consumers across the world, to force through change to working practices. For example, this has already been seen in practice in the campaign against modern slavery and to improve working practices in the South African wine industry.

Employee and casual worker voices are being heard more clearly and more widely than ever before and they are also better informed. A growing range of digital tools, including rights-checker apps, along with the ability to make data subject access requests under data protection legislation, mean that the workforce has access to far more information than before.

“We see an increased use by employees to publicise their claims against their employer through social media in parallel with legal proceedings, which in some cases has also been crowdfunded via social media”

CHRISTINE YOUNG, PARTNER, UK, HERBERT SMITH FREEHILLS

“All it takes is one particularly vocal, particularly difficult individual to raise concerns through social media and whether or not there’s any basis to it, often you can’t defend yourself publicly.”

SURVEY RESPONDENT

Wayfair’s internal dispute goes viral

The experience of the online furniture company Wayfair shows how social media can amplify employee activism. In June 2019, a group of its employees objected to fulfilling an order for furniture for a detention centre on the US-Mexico border. The company’s management messaged all of its employees, noting their concerns but saying that it was the company’s business “to sell to any customer that is acting within the laws of the countries in which we operate”.

An employee shared a screenshot of the message with a friend, who tweeted it. The tweet went viral and Wayfair employees grasped the initiative; a @wayfairwalkout Twitter account was set up within two hours, gaining more than 22,000 followers. A Facebook page publicised a planned protest rally, which was attended by hundreds and attracted media interest from around the world. Wayfair shares fell by 5% on the same day.

Social media arguably does a more efficient job at mobilising groups of people than unionised collective action did in the past, as the example of Wayfair’s recent experience shows (see box). There is no shortage of help, advice and support available to workers with a grievance; not-for-profit organisations such as Organise in the UK or United for Respect in the US provide digital tools, including online surveys and template letters, which allow workers to coordinate anonymously with workmates.

“In a sense, social media can be seen as a proxy for unionisation,” says Barbara Roth, Partner, US. “What is interesting in the US is that some aspects of the National Labor Relations Act have recently been expanded. Section 7 of that law, for example, gives employees the right to act together for their mutual aid and benefit, and that has been extended to workers who are not unionised. It is conceivable that employees could use social media to get together to discuss issues that concern them.”

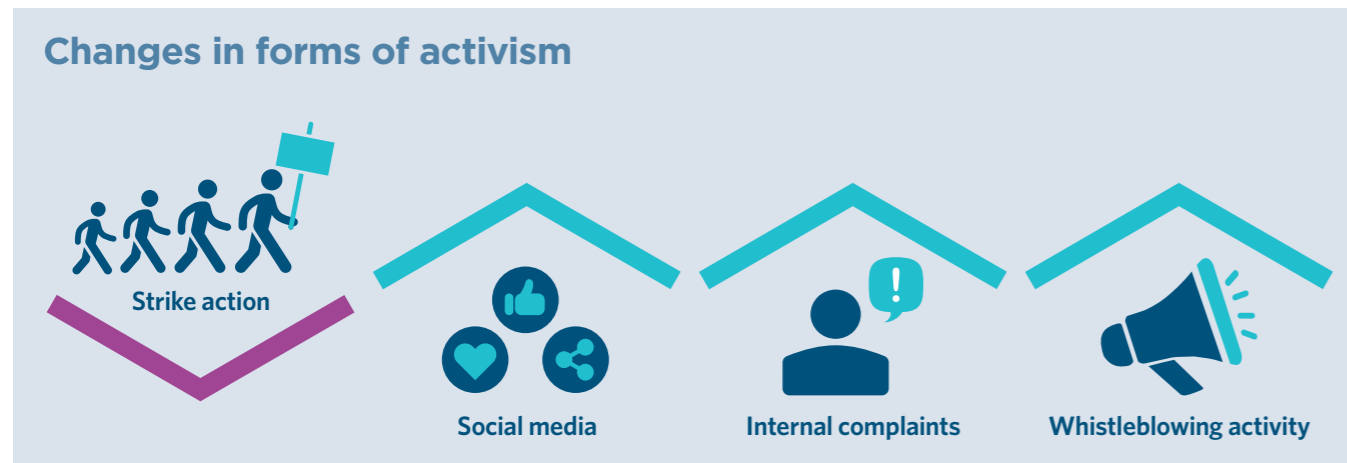
This ability to coordinate and collaborate rapidly could lead to more employment-related class actions, whether formal or informal, providing safety in numbers and an opportunity to share legal costs for those involved.

“Social media are undoubtedly driving activism. Employees are using social media proactively and effectively, and this means that employment cases and campaigns are far more prominent. The #MeToo campaign may be past its peak but its impact cannot be overstated – and employers have had to rethink their strategies in order to deal with the increase in claims”

EMMA RÖHSLER, PARTNER, FRANCE, HERBERT SMITH FREEHILLS

“We have seen a spike in workplace misconduct investigations recently, especially around sexual harassment. The employee voice is starting to make itself heard.”

FATIM JUMABHOY, PARTNER, SINGAPORE



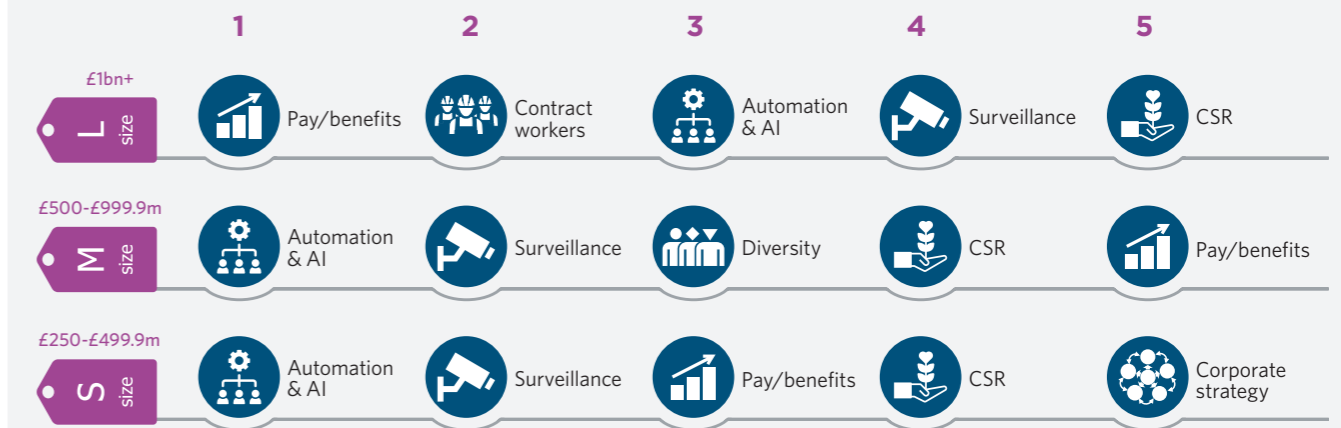
The new magnets for activism

Since worker activism first became commonplace during the Industrial Revolution, actions have invariably been in response to disagreements over pay and/or working conditions; the Gdańsk Shipyard strikes in the 1980s were a relatively rare example of industrial action that was driven by politics and civil resistance.

More recently, a significant shift has taken place. The range of issues that trigger activism among the workforce is widening, bringing in not only concerns around the changing nature of work in the digital age, but environmental, political and social issues. Whereas previously the blame was attributed mostly to government or State bodies, the new era holds companies to account in equal measure, and many have not yet adapted to the challenges. This is consistent with the structural shift underway in most countries towards mixed economies and from public to private sector employers.

Those taking part in our survey agree that a change is underway. When asked what they perceived to be the main triggers for increased workplace activism in the next five years, pay inequalities and pensions are not seen as the dominant issue. (Figure 7)

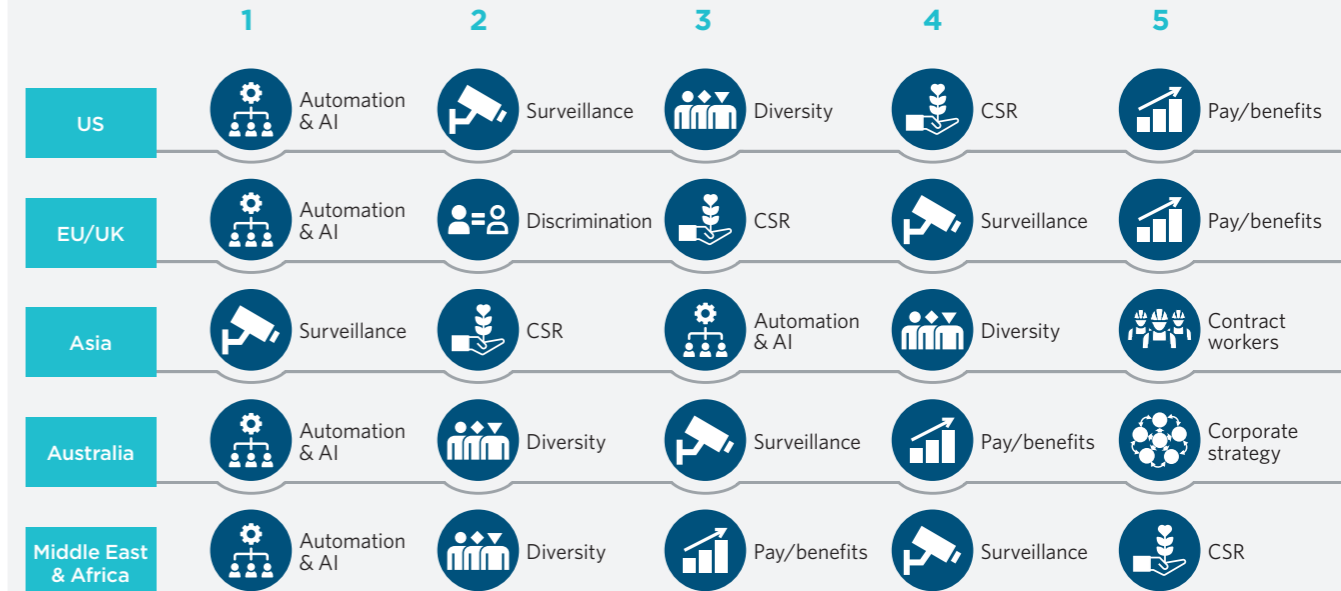
Top triggers of activism by company size



The global top triggers for activism



Top triggers of activism by region



The risk of unequal pay

That's not to say that pay and benefits are no longer a magnet for activism.

57% of companies with annual revenue of more than £1 billion name pay inequalities as a trigger, compared with 47% overall.

The risk is that years of wage stagnation in some developed nations could raise problems for employers in the future; the disconnect between worker and executive pay and pensions has already prompted shareholder activism and corporate governance reform in the UK. Low wage growth leads to perceptions of inequality, which encourages left-leaning activism. Across all industries, the debate over what is 'fair' remuneration and an appropriate reward for innovation will continue to rage.

Employees are only aware that they may have an equal pay claim if more highly paid comparators can be identified. In the past, contractual prohibition on discussing pay (as well as natural human reticence on the topic) has limited claims, but over the last decade this has been eroded.



Legislation in a number of jurisdictions (including the UK, France, Germany, and US federal law) has been introduced expressly permitting discussions about pay, or requiring larger companies to report on their gender pay gap data or respond to individual information requests. Both are fuelling litigation. Platforms like Glassdoor have also made pay comparison easier, while the scope for sharing pay information through anonymised apps is clear.

Once the potential for a claim has been identified, claimant lawyers have used technology to great effect in building group claims – the numerous ongoing equal value claims against UK supermarkets are an obvious example. Alleged pay discrimination is also the subject of a long-running class-action arbitration by thousands of women against a subsidiary of Signet Jewellers in the US.

Andrew Taggart, Partner, UK, notes that in the future UK employers could be required to undertake and publicise equal pay audits. The UK Government Equality Office is considering when mandatory audits could be appropriate and the idea has also featured in Labour Party policy: "If this does become a requirement, the publication of equal pay audit data could act as a significant catalyst for employee and trade union activism as well as for equal pay litigation."

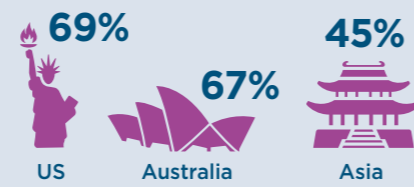
Automation and AI in the workplace

The future of jobs in an increasingly automated workplace is seen as the most likely trigger of employee and casual worker activism in the near future. Predictions about the impact of automation on jobs vary widely – a study by the University of Oxford in 2013 predicted that 40% of US jobs could be automated out of existence by 2030. Meanwhile, more recently, research by the Organisation for Economic Co-operation and Development (OECD) in 2018 estimated that 14% of jobs would be lost in its 32 member countries – but it remains irrefutable that automation and artificial intelligence (AI) will replace tasks and roles in many sectors.

Reskilling will become a high priority for both employers and workers. This disruption could present an opportunity for organisations to re-shape how, where and when people work, perhaps instigating a flatter corporate structure with greater allocation of responsibilities to teams, or the development of an 'internal gig economy'. But organisations will need to bring the workforce along on the journey or face disruptive activism.

In a recent survey carried out for the Commission on Workers and Technology, 80% of UK workers said technology introduced at their workplace had already impacted on their role, and 58% felt frustrated and powerless at their employer's failure to consult or give them any say over how this was done. It also found that women's jobs make up 70% of the total at high risk of automation, raising the risk of reduced diversity and a widening of the gender pay gap. Concerns about job losses run deep; there have even been reported incidents of employees deliberately assaulting and sabotaging their robot co-workers.

Automation & AI as a trigger for activism



Overall, 57% of respondents to our survey identify automation and AI as a trigger for activism in the next five years, although concerns are not evenly distributed geographically or across industries.

69% of respondents based in the US and 67% of those in Australia identify automation as a significant trigger for activism, compared with just 45% of those in Asia. This is not to say that automation should be less of a concern in Asia – most predictions see the impact affecting all regions over time. Rather, it's possible that workforces in Asia simply don't yet see automation as a serious threat.

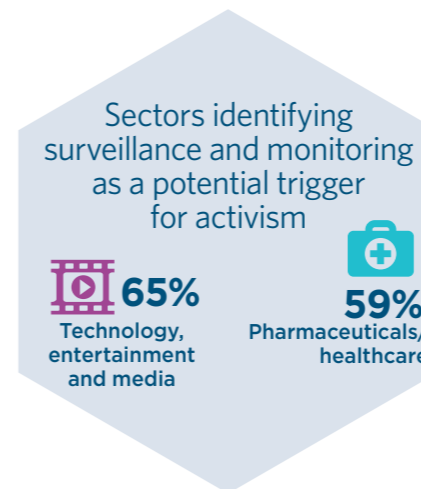
In terms of sectors, respondents in the pharmaceuticals and healthcare sector, and in banking, are more likely than others to name automation as an activism risk, perhaps reflecting the fact that both sectors have relatively recently begun to explore the use of AI.

Anthony Longland, Partner, Australia, points to the experiences of the mining sector as an example of companies effectively addressing the risks of automation: "The mining sector has been heavily affected by automation but there have not been any major disputes around it. So far, mining companies have implemented automation in a progressive way, reskilling where they can and, as a result, have managed to maintain their social license to operate."

Tim Leaver, Partner, UK identifies the adoption of automated decision-making and algorithms in recruitment and promotion as another potential trigger for activism. 60% of respondents opposed its use in a recent YouGov poll and there is growing public and governmental concern over the need for ethical guidelines, a subject that is currently also the focus of EU attention.

Employee surveillance and monitoring

Half of companies identified issues connected to the surveillance and monitoring of the workforce as a potential trigger for activism. Companies in the technology, entertainment and media sector, and in pharmaceuticals/healthcare, are more likely to see this as a concern (with 65% and 59% respectively identifying it as a trigger of activism).



There are many valid reasons why an employer would want to monitor their workers, from safety and the need to meet regulatory requirements to protecting its confidential information. As monitoring technology and software has become more sophisticated, though, employees, casual workers and the general public have become more alert to the possibilities and to their privacy rights. According to a 2018 survey by Gartner, more than half of 239 large organisations surveyed were using "non-traditional" monitoring techniques, including analysing the text of social media messages and the use of genetic data, an increase from 30% in 2015.

Legislation around surveillance and monitoring of the workforce has expanded in recent years, particularly in Europe. Some EU nations require employers to consult with employee representative bodies before subjecting workers to surveillance measures. In the US, a number of states have introduced legislation that prevents employers from requiring employees to supply their login details for social media accounts.

Most forms of monitoring will involve processing personal data which, across Europe, is subject to restrictions under the General Data Protection Regulation. Monitoring is permitted only if the employer has assessed that it's truly necessary and proportionate to achieve legitimate interests, and usually only if employees have been fully informed as to what monitoring is taking place and why. Covert monitoring will usually only be justified if the employer has strong grounds to suspect wrongdoing. It also engages the European Convention human right to privacy; Eduardo Gómez de Enterría, Partner, Spain notes that in a recent Spanish case, the European Court of Human Rights made clear that the covert use of CCTV to record supermarket staff was a serious intrusion to privacy, but in that case was proportionate given the employer's reasonable suspicion of serious misconduct and the limited duration and nature of the surveillance in an area that was open to the public.

There are complex implications for employers, which will only increase as technology becomes more sophisticated over time and as the law catches up with developments. Whether it's location tracking, time recording, heartbeat monitoring, facial recognition technology or voice recording, employers must think carefully whether and how to introduce surveillance technology or face a possible backlash. Even if the workforce is on board with the monitoring, this will not necessarily be a complete answer given that in Europe employees can never genuinely be considered to have given their consent freely in an employment context. As Christine Young, Partner, UK says: "It's very much a case of 'just because you *can* do it doesn't mean you *should*'. Can you achieve the same objective in a less intrusive way?"

"Like a lot of companies we will probably end up going down the road of facial, retinal or fingerprint recognition security programmes and there's a sense that employees are uneasy with that. I think that's something everyone will face in the future"

SURVEY RESPONDENT

Fingerprint scanner falls foul of the Privacy Act

In early 2019, Australia's Fair Work Commission (FWC) heard a case brought by Jeremy Lee, who had been dismissed by his employer for refusing to provide his fingerprint for a new entry system used to check workers in and out of its site. Mr Lee argued that he should not be required to provide his fingerprint, on the grounds that the biometric data contained within it was 'sensitive data' under the 1988 Privacy Act and therefore could only be collected with his consent.

Employers in Australia were granted an exemption from the Act for employee records when it was first introduced, over concerns of the cost of compliance. Mr Lee's employer argued that his fingerprint formed part of his employee record and should fall under the exemption. The FWC, though, found that the exemption wording related to personal information that is 'held' in an employee record – and as the employee's fingerprint had not yet been collected, it could not already be held and the obligations of the Act applied. The FWC found in the worker's favour and he was awarded compensation.

Arias vs Intermex Wire Transfer

In 2015, a former sales executive for money transfer service Intermex filed a state court lawsuit in California claiming that she had been fired after she disabled an app that tracked her movements 24 hours a day through her company-issued phone. Myrna Arias said she and her colleagues had been required to download the job management app and she had complained that monitoring her location during non-work hours was an invasion of her privacy. The case, in which the plaintiff claimed damages of more than US\$500,000, was settled out of court.

Social and environmental concerns

Our survey shows that workplace activism is increasingly focused around social and environmental issues, particularly climate change; employers are feeling the pressure to 'do the right thing'.

46% of companies expect social and environmental concerns to become an increasing focus for workplace activism in the near future, rising to 53% in Asia.




The largest companies are more likely to predict this trend, along with those in sectors that are at the front line of the environmental debate - 53% of mining companies predict a rise in activism triggered by environmental and social issues.


53% of mining companies predict a rise in activism triggered by environmental and social issues.



In September 2019, 4,600 climate protests took place in 150 countries. What was striking was the role that employee groups, notably from technology companies including Microsoft, Google, Amazon, Facebook and Twitter, played in coordinating the action. Amazon Employees for Climate Justice say more than 1,800 employees joined the marches (it has 8,000 members) specifically to protest the company's failure to take more action to address the climate crisis. Meanwhile, the hashtag #TechClimateStrike coordinated the involvement of more than 3,000 technology workers in Seattle.

Amazon employees have also used a more direct method to try to persuade the company to take action on climate change. A group of workers used shares they had been awarded as part of their compensation package to file a resolution at Amazon's annual general meeting, asking the company to report publicly on its plans to reduce its use of fossil fuels. The resolution did not pass, but the point was made.

In September 2019, 4,600 climate protests took place in 150 countries



Corporate strategy meets employee values

37% of companies (rising to 47% of those in Australia) expect to see more activism triggered by employees' objections to strategic management decisions



In recent months, there have been several high-profile instances of workforces collectively protesting companies' actions or decisions that they feel are not in keeping with the organisation's mission statement.

Perhaps the best known is the collective action of Google employees in 2018 against Project Maven, a contract with the US Pentagon that used AI to interpret camera footage gathered by drones. Some engineers refused to participate in building security tools connected with the project and others resigned. As a result of the pressure, Google announced that it would not renew its contract with the Pentagon. Shortly afterwards, hundreds of workers at Microsoft protested the company's work for the US Immigration and Customs Enforcement when it became apparent that migrant children were being separated from their families on the US-Mexico border.

This is activism that goes well beyond compensation and even culture. One of the frequently noted characteristics of the Millennial generation is the wish to work for an employer whose values reflect their own. The rise in activism centred on corporate behaviour shows that employees are increasingly willing to translate this trait into action. This presents a dilemma for employers, who must balance the potential damage to reputation and the employer brand with the reality of creating value for shareholders. If they are to avoid public declarations of hypocrisy, employers need to be clear on the values they hold - and live them.

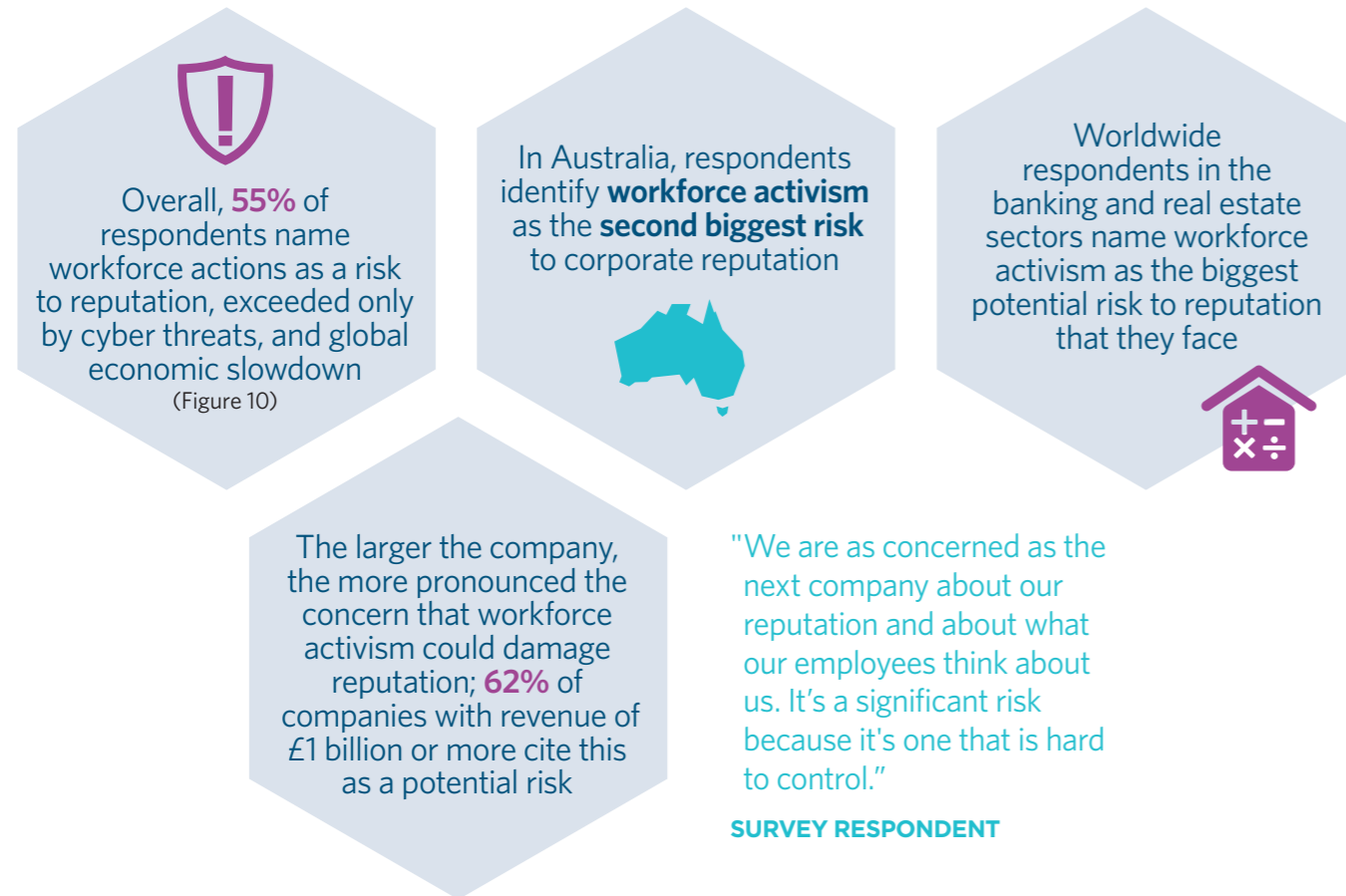
"Companies are being democratised. Employees increasingly feel that organisations belong to them. When they see an issue they don't like they want to force their employer into taking action, even if the employer would have done that anyway. Speed is everything. The problem is that you can't always make the right decisions in a hurry."

EMMA RÖHSLER, PARTNER, FRANCE, HERBERT SMITH FREEHILLS



The reputational risk

The expected rise in workforce activism is important because companies see it as a major risk to corporate reputation – and reputation matters, not only to customers and clients but also to current workers and potential recruits. A war for talent is raging and it is difficult to fight with a damaged employer brand.

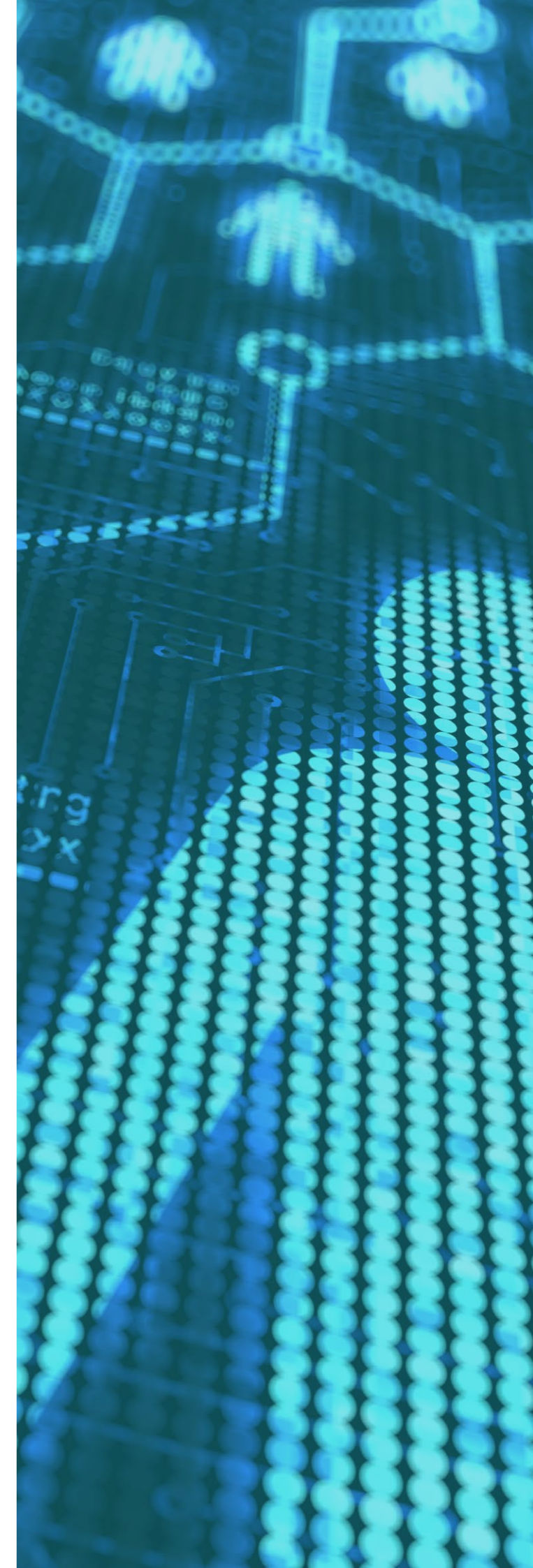


The financial impact of workforce activism

The financial impact of workforce activism can be huge. A two-day strike by British Airways pilots in September 2019, which resulted in the cancellation of 2,325 flights, cost the airline's parent company, IAG, at least €137 million.

Activism could be costly – as much as **25%** of global revenue per year

Companies taking part in the survey are clear that activism relating to any of the key triggers could be costly – as much as 25% of global revenues in some cases. Considering the size of the companies taking part in the survey, in real terms this could mean an annual hit to revenue of £121 million to £177 million.



Unlike a cyberattack or global economic event, however, employers have a degree of control over a workforce dispute or protest, whether it becomes public or not. The challenge for employers is to find a way to adapt to the evolving workplace and work environment. We tested organisations' readiness by asking for their reactions to two fictional scenarios:

Scenario 1

A current employee has organised a legal crowdfunding page, in relation to an age discrimination claim that was brought against your organisation, which is trending on social media and has received support in excess of £1 million in 24 hours.

85% of respondents would actively defend their position on social media and in the press.
27% of banking sector respondents are the most likely to ignore any trial by social media



When a workplace issue hits social media, the short-term impact can be intimidating. The temptation for organisations, from a public relations perspective at least, is often to engage at some level with the debate, on the grounds that ignoring it takes away any semblance of control over the story.

The majority of respondents (85%) say they would actively engage in the debate in this scenario, on social media and in the press, to defend their position. Those in the banking sector are the most likely to ignore any trial by social media (27%), perhaps alert to the more stringent compliance requirements in the sector – financial services firms are specifically required by regulators in many jurisdictions to ensure their communications, including social media communications, are clear, fair and not misleading.

Engaging with a social media storm brings risks, particularly when there are legal questions involved. This underlines the importance of legal, compliance, HR and media communications departments being closely involved in crisis management strategies; a situation like this is not exclusively the domain of PR. "When something goes wrong, employers want to deal with it internally without causing external damage," says Emma Röhsler, Partner, France. "They don't want their mistakes splashed over the media, but social media means that events can be taken out of their control very quickly."

Christine Young, Partner, UK, says that taking a transparent approach and engaging publicly with events can pay dividends in terms of good publicity, but there is a risk: "If you go public and, for example, say that you will act on the results of a review, you are effectively committing to taking steps before you know what they might be."

One other point raised by this scenario is the way in which the case is funded. Shiv Jhinku, Executive Counsel, Sydney warns that crowdfunding for individual litigation may become more common in the future as its availability and success stories become more widely known.

Scenario 2

You represent an organisation that openly promotes sustainability and ethical business practices. An investigative journalist, helped by an internal whistle-blower, claims that one of your suppliers employs modern slavery workers and your firm failed to act. How would you respond?

Once again, employers' instincts to engage quickly and publicly when a crisis hits are on display – 64% say in this situation they would immediately apologise and 74% would announce an internal investigation.

Instincts, however, are not always helpful – 46% would react by immediately suspending their relationship with the supplier in question even before an investigation has begun. This could have legal ramifications in some jurisdictions; in France, for example, suppliers could claim compensation and damages if a business relationship is subject to 'brutal cessation'. In the US, a claim for tortious interference with business or contractual relationship, or breach of contract, could be asserted.

In recent years, legislation to protect whistle-blowers has been strengthened in many regions of the world. In the UK, well-established legislation protects whistle-blowing workers from detrimental treatment. Emma Röhsler comments that even in France, which has historically been reluctant to encourage whistle-blowing, protection for anonymous whistle-blowers is in force and has gained greater acceptance since France implemented the Sapin II Act in 2018. She explains: "We're starting to see greater use of anonymous hotlines, for example, to report poor conduct. It's a way for employees to protect themselves." Protection will be

strengthened further when new EU-wide rules come into force in 2021, including an obligation on larger companies to provide an effective internal reporting channel.

In Australia, Shiv Jhinku says private sector whistle-blowing legislation was amended early in 2019 to expand the categories of people that can make disclosures and the matters that they can raise. As a result, employers will need robust policies and procedures in order to respond quickly and effectively.

Even so, almost half of respondents (47%) tell us that they don't have a formal whistle-blowing policy in place, rising to 52% in Africa and the Middle East. As Ben Hopps, Of Counsel, UAE, explains, whistle-blowing policies in the Middle East have historically seen low levels of adoption because of a lack of protection for whistle-blowers in law. However, over the past decade, more and more Middle East countries have implemented specific whistle-blower legislation, following an increased anti-corruption drive across the region.

Employers in Asia are more likely to have a formal whistle-blowing policy, with just 35% of respondents from this region saying they do not. In the current climate, a formal policy outlining the rights and treatment of whistle-blowers is advisable for businesses in any sector, even if one is not yet required by law.

The role that cultural influences play in workplace disputes can be seen in respondents' reactions when we asked what methods they use to communicate with workers.

Overall, 83% say they would continue to use employee forums as a primary method of engagement in this situation but this rises to 95% in the more consensual societies of Asia.

Employers' instinct is to engage quickly and publicly in times of a crisis:
64% would apologise
74% would announce an internal investigation



46% of respondents would immediately suspend their relationship with the supplier before an investigation has begun.



47% of respondents don't have a formal whistle-blowing policy in place


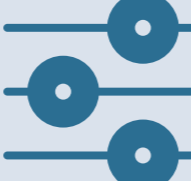


in Africa and the Middle East (up to 52%)
in Asia only 35% don't

What next? Adapting to the democratised workplace

Given this evolution in both the nature and focus of workplace activism, what steps should employers take to prepare themselves?





We believe there are two priorities for employers:

<p>1</p> <p>Provide an effective channel for the internal voice</p> 	<p>2</p> <p>Consider an appropriate level of controls for the outside voice</p> 
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The internal voice

A number of academic studies have highlighted the importance of providing the workforce with an effective voice.

Benefits to providing employees with an effective internal voice


 <p>Management understand employees' views and can inform their decisions on work-related issues</p>	 <p>Employees see the employment relationship as reciprocal, resulting in more cooperative employment relations</p>
<p>More efficient diffusion of information, knowledge and experience through the organisation</p> 	<p>Improved engagement, leading to higher productivity</p> 

The Chartered Institute of Personnel and Development has argued that traditional approaches to the employee voice – representative committees and whole workforce surveys – are too limited in scope because they focus mainly on improving organisational performance. The CIPD argued that the focus should also be on the individual benefits of being heard, such as its contribution to human wellbeing, fulfilment and mental health.

The real danger for employers is that, if they fail to provide an effective forum internally where the issues the workforce cares about can be discussed, employees and workers will take the discussion outside the organisation's walls. This risk has increased in the age of instant electronic communication. Companies spend a great deal of time and effort collecting the views and feedback of their clients and customers but have been much slower to adopt the same approach for their workforce.

Our survey shows that most organisations are still relying on traditional forms of employee representation to engage, and probably setting the agenda for discussion.

4 out of 5 companies have put in place a formal forum or mechanism for employee consultation and the remainder say they will in the near future.



It appears that employers rely on these mechanisms in practice – 83% say that in a case such as scenario 2, their employee forum or committee would be an important channel of engagement. However, when asked what channels they would use to respond to issues employees want to discuss, 48% say they engage solely on external channels rather than internal forums, despite the greater reputational risk.

Employee representative committees or works councils are an important workplace mechanism in many regions, notably in northern Asia and mainland Europe. In contrast to the US, worker representation is embedded in day-to-day operations across many European countries. "These mechanisms are good for transparency," argues Emma Röhsler, Partner, France. "They help employees to accept decisions that are made, because they better understand the reasons. But it does mean that, in some cases, employees have access to the same information as company boards or even the company's auditors, and that can be difficult. Sometimes they become a forum for nuisance value."

For organisations that do want to engage on issues raised by the workforce, technological solutions may provide an answer if the right moment is seized. UPS's slowness in setting up an internal social network meant that, when it finally did, employees had already organised their own external site and were reluctant to transfer to the in-house platform. The advantages of internal sites are clear – organisations can much more easily tap into and influence views and cyber security is stronger. But if they are to achieve the aim of keeping the workforce voice internal and constructive, management needs to engage, to listen and to respond.

"Use of social media does present risks that need to be managed through effective guidance and policies. Apart from the obvious risks around posting inappropriate content, personal data or intellectual property, hackers are increasingly using social media to profile organisations and employees for the purpose of phishing attacks or other attempts to breach companies' security."

ANDREW MOIR, PARTNER, UK, HERBERT SMITH FREEHILLS

While employers seem engaged with the idea of formal consultation with employees, it is notable that this doesn't always extend to casual workers.


Fewer than half of respondents say they have a forum or mechanism for consulting with this group of workers (Figure 14).

This is surprising given that:

83% of employers expect to see an increase in activism among casual workers in the future and 37% expect that to be significant, rising to 60% in Asia.



Employers also expect the rights of casual workers to become a likely trigger for activism in the future – 54% of large companies view casual workers as a magnet for activism.



Together, these form a strong argument for extending the concept of employee forums or leveraging the technology used to gather customer feedback to casual and remote workers as soon as possible. Tim Leaver, Partner, UK, notes that employers in the gig economy are perhaps ahead of the curve here. Hermes, Deliveroo and Uber have all created various channels for staff to discuss issues of concern, including online forums, WhatsApp groups and other apps, drop-in centres, phone lines, or opportunities for all individuals or independently selected representatives to meet regularly with local management.

“Employee representation helps to head off activism because employers become aware earlier of potential problems. If employees don’t have any valve through which to vent, that can encourage activism.”

NATALIE GASPAR, PARTNER, AUSTRALIA, HERBERT SMITH FREEHILLS

The external voice



Digital platforms have created a Catch 22 situation for organisations seeking to protect their public image and reputation. The instinct of younger generations is to turn to social media in almost any situation.

Even when they feel engaged at work and heard through internal channels, this instinct is hard to contain. Attempting to close down the public expression of their opinions can itself fuel further public accusations of Big Brotherism.

Where opinions are critical of an employer, the company’s ability to require employees to keep quiet is increasingly being curtailed by legislation if exposure is in the public interest. In addition to the recent growth in whistle-blowing legislation, the #MeToo campaign has reset the dial on the extent to which employers should be allowed to use confidentiality provisions to prohibit or deter victims of harassment or discrimination from speaking up. There is growing acceptance that, if organisations can sweep grievances under the carpet by buying silence, there is little incentive to improve workplace culture.

In the US, employers’ ability to require staff to sign up to mandatory confidential arbitration of discrimination and harassment claims is coming under increasing pressure. Large employers such as Google and Facebook have dropped the practice in the face of substantial employee activism, and a number of States have introduced legislation imposing limits on the use and drafting of Non-Disclosure Agreements (NDAs) in settlement agreements. Some States have also banned forced arbitration for discrimination (although this is currently pre-empted by federal law favouring the enforcement of arbitration agreements).

In the UK, calls to ban NDAs outright for discrimination claims (with an exception for when the victim is seeking confidentiality) have been resisted so far, but the UK Government announced in summer 2019 that it will legislate to require agreements to make clear that disclosure to the police, legal professionals or regulated health and care professionals is permitted. Aware of the reputational risk associated with accusations of cover-up, some organisations are re-evaluating their use of NDAs even where their use would be within the confines of the law.

The external voice is also an opportunity for the workforce to push employers into taking a position on an issue (even where there is no direct relevance to the business), to criticise them for their failure to do so or to expose their failure to live up to their publicised values. Having taken a public position, organisations can then find themselves having to deal with a worker prompted to publicly disagree with that view. What’s clear is that employers can’t put the genie back in the bottle. A failure to recognise this and plan for it puts an organisation on the back foot.

The digital age requires employers to look beyond traditional thinking when it comes to the external voice. There is a strong temptation to restrict or control what the workforce can and should say on social media, including where comments are posted outside working hours through personal accounts on pages without full public access. But this raises many difficult questions, not least: does the policing of opinion invade the right to privacy?

“It’s very easy to figure out how to discipline an employee for any activity or misconduct during working hours within the workplace, or while working at home on the clock, or for something that happened while they are representing the company. But when it’s outside working hours, outside the workplace, and when it’s lawful conduct that doesn’t breach our respectful workplace policies, that’s far more difficult.”

SURVEY RESPONDENT

46% of companies say they have placed restrictions on what employees and casual workers can say or do, including what they say about the company on social media, attending marches, signing petitions, or taking strike action (Figure 15).

The content of such policies will be key considerations in determining what disciplinary action is appropriate. As Fatim Jumabhoy, Partner, Singapore, points out, the severity of organisations’ responses may vary from country to country: “In Singapore there is a swift recourse to defamation law if someone makes an adverse comment on social media.” In the UK, employment tribunals have generally upheld unfair dismissal claims where an individual has been dismissed for private posts or WhatsApp messages, as there is a reasonable expectation of privacy. Andrew Taggart, Partner, UK, adds that the position is likely to be different for individuals working in regulated industries or professions where a higher standard of personal conduct is required.

“Publicity around specific cases is causing people to stop and ask whether restrictions on what employees can say or do are permissible,” says Anthony Longland, Partner, Australia. The legal proceedings between the rugby player Israel Folau and his former employer (see box) has focused minds on this issue in Australia, and there are similar examples across the globe.

Israel Folau and Rugby Australia

The line between an individual’s employment-related capacity and their private capacity is a difficult one that has been made more complex by social media. In May 2019, Rugby Australia announced that it had terminated its contract with Israel Folau, the national team’s former fullback. It came after a tribunal set up under the Professional Player Code of Conduct found him in breach of the Code for posting on Instagram that Hell awaited various categories of people, including homosexuals, if they did not repent. In August, Folau began legal proceedings against Rugby Australia and Waratahs Rugby under s772 of the Fair Work Act, which says it is unlawful to terminate employment on the basis of religion. A crowdfunding campaign launched by Folau reportedly raised in excess of AUD\$2 million towards his legal costs.

“Generally, courts are being quite sensible on this issue, protecting the right to an individual’s private life and to have their own views, but recognising that we all have a responsibility not to publish something that’s damaging or defamatory,” says Emma Röhsler. “Many companies will have guidelines in place but are very careful about saying what employees can and cannot say. Generally, this means employees mustn’t damage the business.”

“I think it’s important to have as few regulations restricting off-duty conduct, activity or speech as you possibly can. It’s an area where internal regulation can be overreaching, problematic and ineffective.”

SURVEY RESPONDENT

A stricter line may be appropriate where comments are made by senior managers likely to be seen as representing the organisation’s views. Moritz Kunz, Partner, Germany, points to the recent example of Airbus, which moved quickly to distance itself from comments about the recent Extinction Rebellion action tweeted by its head of public affairs for Germany. Airbus made it clear that it felt the comments were inappropriate and didn’t reflect the company’s opinion. The executive later deleted the posts and apologised for their tone. This highlights the need for training to help staff find a way to express their own views without disrespecting different opinions – and to understand when and how to make clear that the views are not those of the employer.

Finally, both employers and the workforce need to be mindful of the indelible nature of electronic communications. Despite the deletion of the Airbus tweets, Extinction Rebellion supporters had already screenshotted the exchange. As Barbara Roth, Partner, US, points out: “Digital sources of information are also playing a major role in the adjudication and investigation of disputes. There is evidence out there that was not available years ago. Social media posts are forever, email is forever; the interactions between employees and between employees and employers are much more easily proved than they used to be.”

Six steps to success

The change-management programmes underway as we move to a new world of work are expensive and critical to the future success of organisations. The potential for workplace activism is a significant risk in their deployment, and it's clear that both the nature and focus of workforce activism has changed. Employers must learn to navigate this new landscape, or suffer the consequences.

The rise in workplace activism in the age of digital communication calls for a new mindset from employers. The workplace is more democratised and employees and casual workers have different expectations (as do the generations within the workforce). Leadership styles may have to change. Established procedures and policies will certainly have to be adapted. The old rules no longer apply.

While the transition will be different for everyone, there are six key areas of focus:

1 Don't forget casual workers

Employers see casual workers as holding as much potential for activism as employees – 83% expect to see a rise in activism in the future compared with 81% for employee activism. Even so, there are signs that many are not fully prepared to hear the views of casual workers. Only 45% have a forum already established for casual workers, while 79% have one for permanent employees. If the risk is seen as equal, it makes sense to give both sections of the workforce a voice, even if different types of channel are appropriate.

2 Recognise the triggers and prepare

The survey results show that employers expect activism in the near future to be centred on technology-driven workplace issues such as the introduction of AI and automation, and the surveillance and monitoring of workers. Issues that align with the values of the future workforce – such as climate change – are a further likely trigger. The potential for activism is no longer confined to pay, benefits and working conditions.

As well as recognising these new triggers, employers should prepare for their consequences. For example, employers need to have a clear vision of the values that they want to reflect as an organisation – and then follow and reinforce them every day. To do otherwise could open organisations up to accusations of hypocrisy. Employers should also stay informed about the rapidly developing body of regulation around new technology that could affect the workplace – such as the European Commission's five-year plan to create a framework for the implementation and use of AI.

3 Pay has not gone away

While new triggers for activism have emerged, it would be a mistake to assume that pay no longer matters. Almost half (47%) of respondents say they expect pay and benefits, especially pensions, to be a target for activism, and 38% name discrimination as a potential trigger, which can often be centred around pay, particularly as gender pay gaps continue to make headlines.

4 Supplement old skills with new

The changing forms and triggers of workplace activism call for a different set of skills to manage employee relations. HR teams of the past may have needed the skills and experience to deal with industrial action but in the world of social media large-scale conflicts take a very different form; crisis prevention and management skills are becoming the norm.

5 Resist temptation

Social media encourages an atmosphere of immediacy – so, when something goes wrong, the temptation is to respond and engage at once. Employment issues are typically complex, calling for a measured analysis and strategy (albeit still at speed). It is essential to involve the right (legal, compliance, HR and media communications) minds from the outset so you have the systems and relationships in place to enable a rapid response where necessary.

6 Activism can be good

Half of the companies surveyed – and 58% of smaller companies – see activism as a positive force for change. This far outnumbers the 31% who see worker activism as only a risk to be managed. Sometimes employees lead change; when the workforce make their views known, employers should take the opportunity to learn what is important to them.

Where to next?

Digital communication has created a world where anyone can be heard, where everyone expects to be heard, and yet where many feel unheard by those in authority. The workplace is also affected by this wave of change. We are entering a world where new rules apply. The voice of the workforce is a force to be reckoned with – employers should listen and learn.

Six steps to success

1

Don't forget casual workers

2

Recognise the triggers and prepare

3

Pay has not gone away

4

Supplement old skills with new

5

Resist temptation

6

Activism can be good

Research methodology

Overview

Who we surveyed

- A sample of board members/senior management who are part of the strategic leadership team or wider management team making decisions surrounding workforce.
- Companies with more than 1,000 employees and more than 250 million in annual sales volume.
- Number of respondents: 375

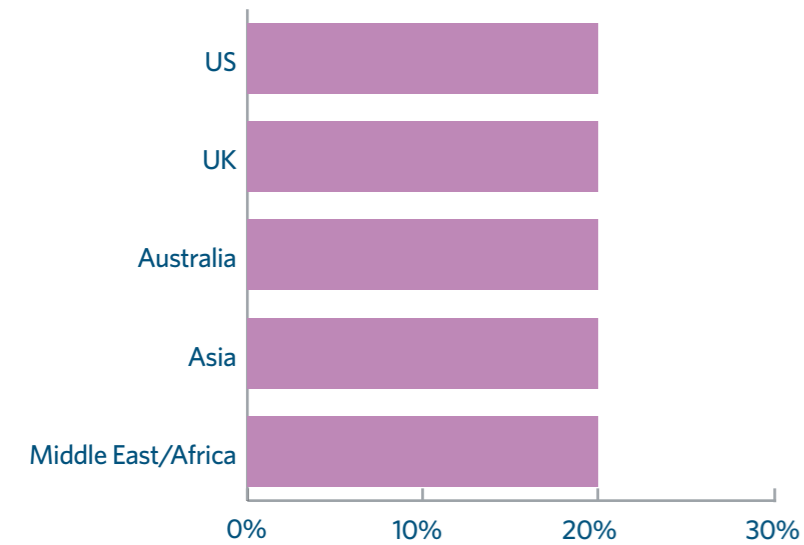
How we surveyed them

- Telephone interviews and phone to web interviews

When we surveyed them

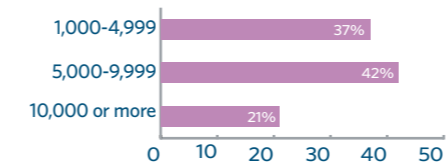
- 21st August - 11th September 2019

Country/region organisation headquartered

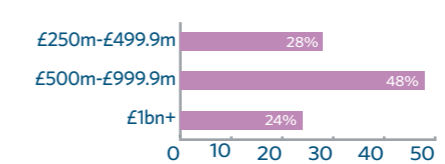


Respondent profile

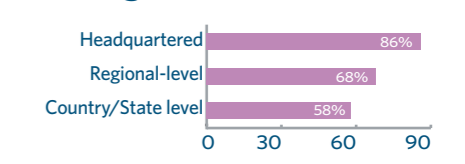
Size of workforce



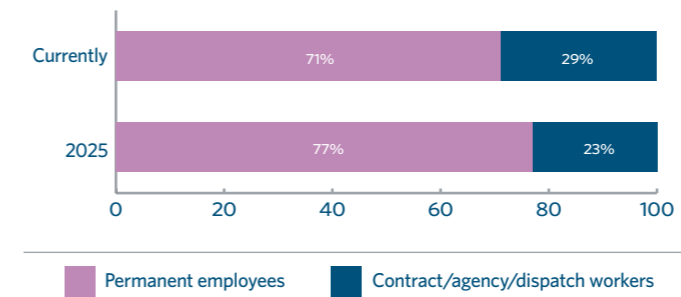
Annual revenue



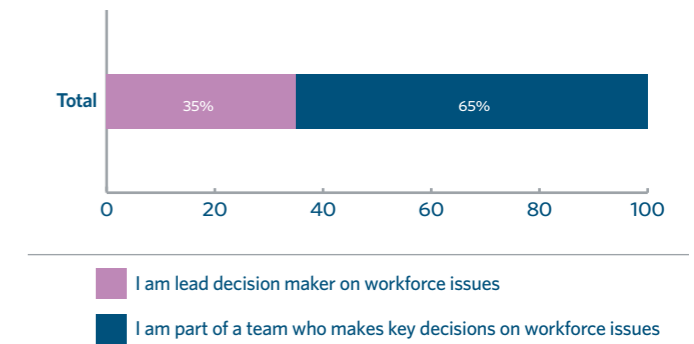
Centralised decision making



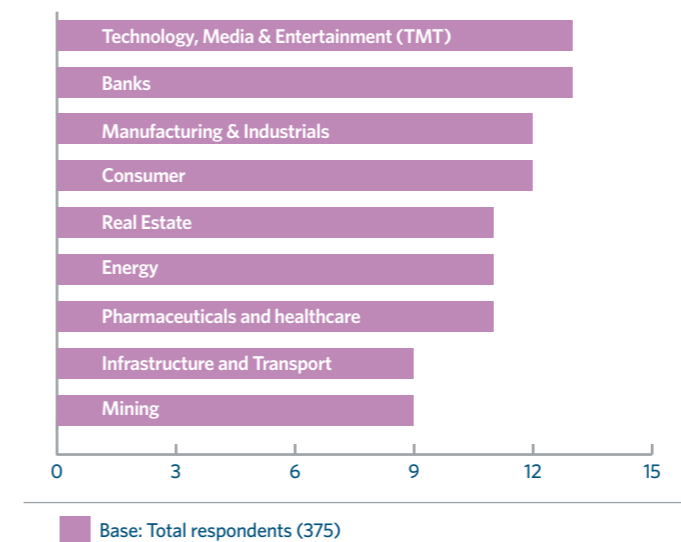
% split of employees



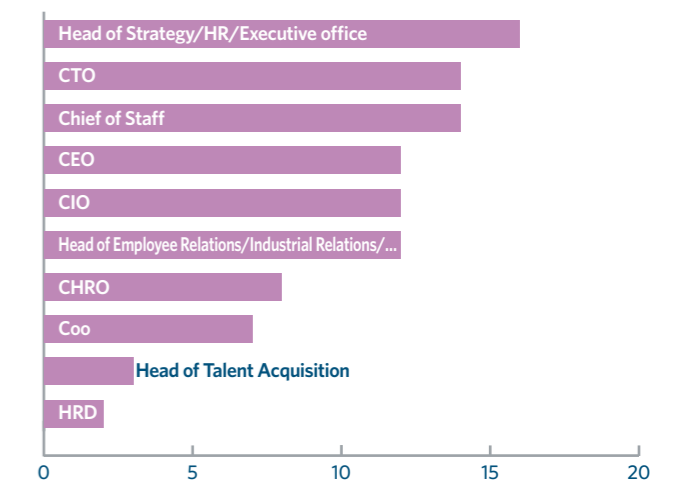
Decision making



Sector



Job title



Base: Total respondents (375)

Appendix

Figure 1: To what extent do you expect to see an increase or decrease in activism among employees in the future?

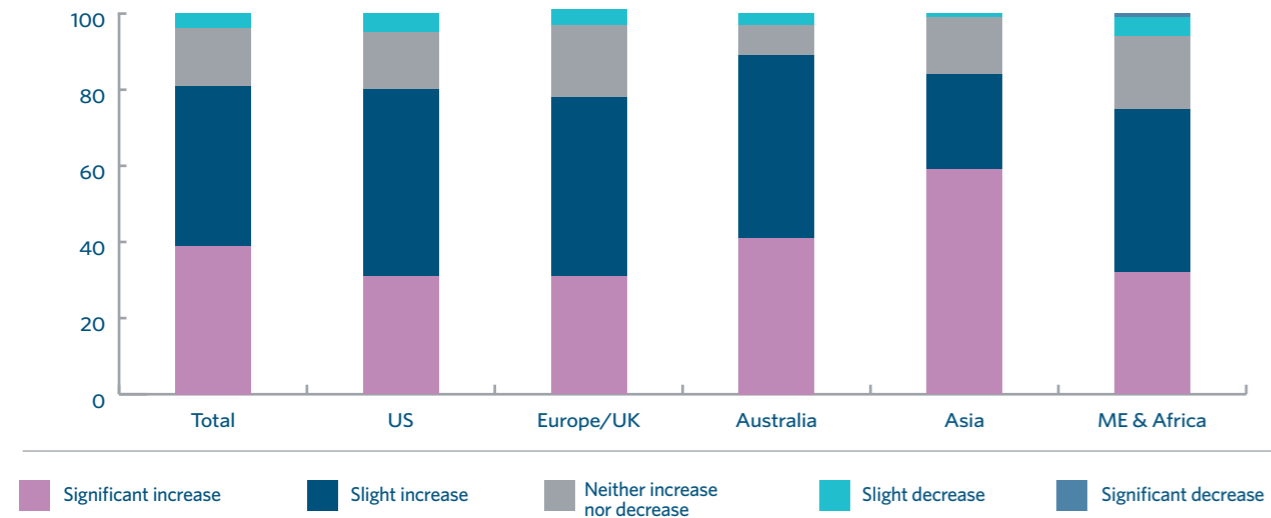


Figure 2: To what extent do you expect to see an increase or decrease in activism among employees in the future? By sector

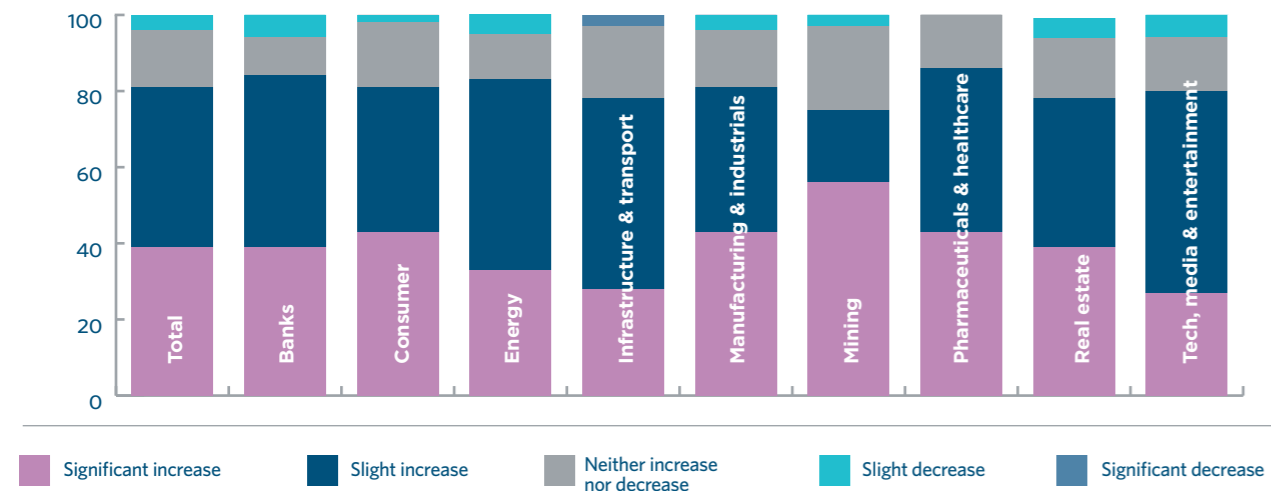


Figure 3: To what extent do you expect to see an increase or decrease in activism among casual workers?

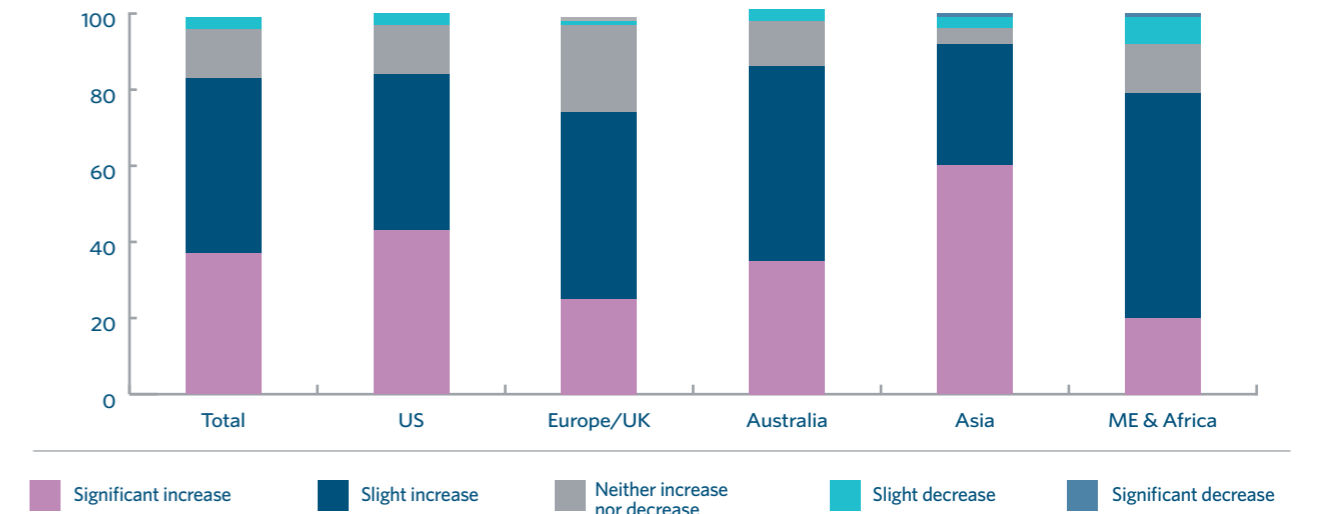


Figure 4: To what extent do you expect to see an increase or decrease in activism among workers? By sector

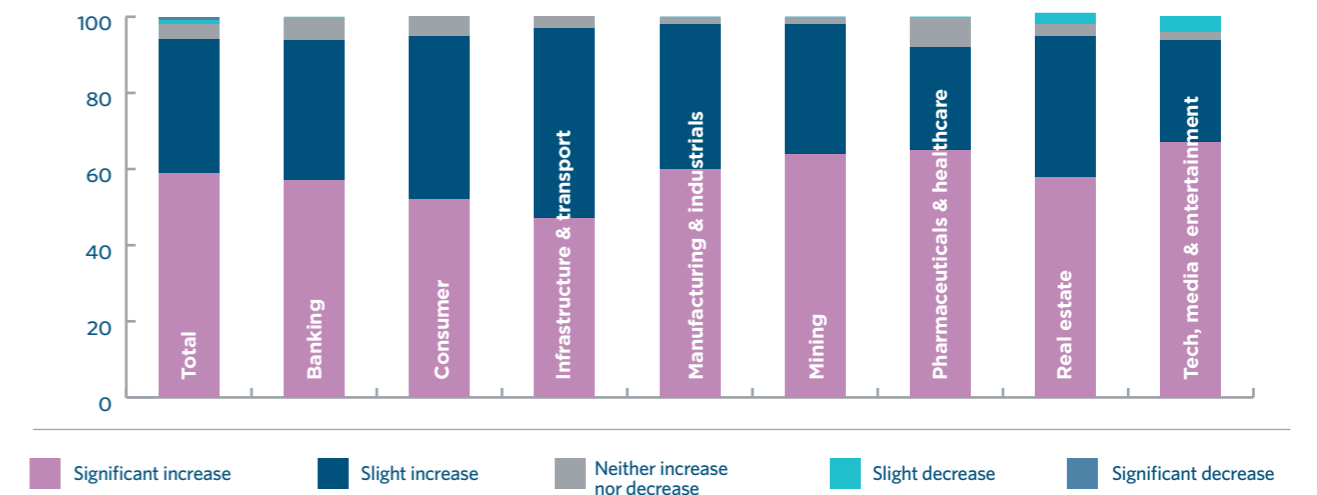


Figure 5: Over the next five years, do you expect the following actions that workers make to have their voices heard will either increase or decrease? (Those saying 'significantly increase' or 'slightly increase')

RISE IN ALL FORMS OF ACTIVISM

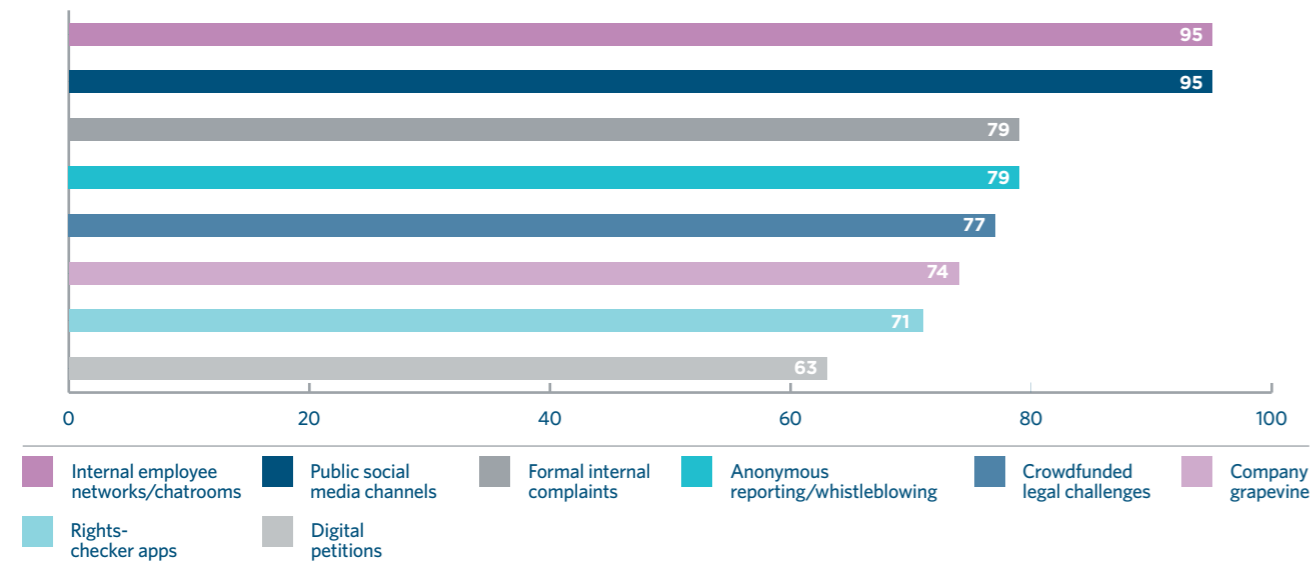


Figure 6: Respondents expecting employees to become more active on social media, by sector

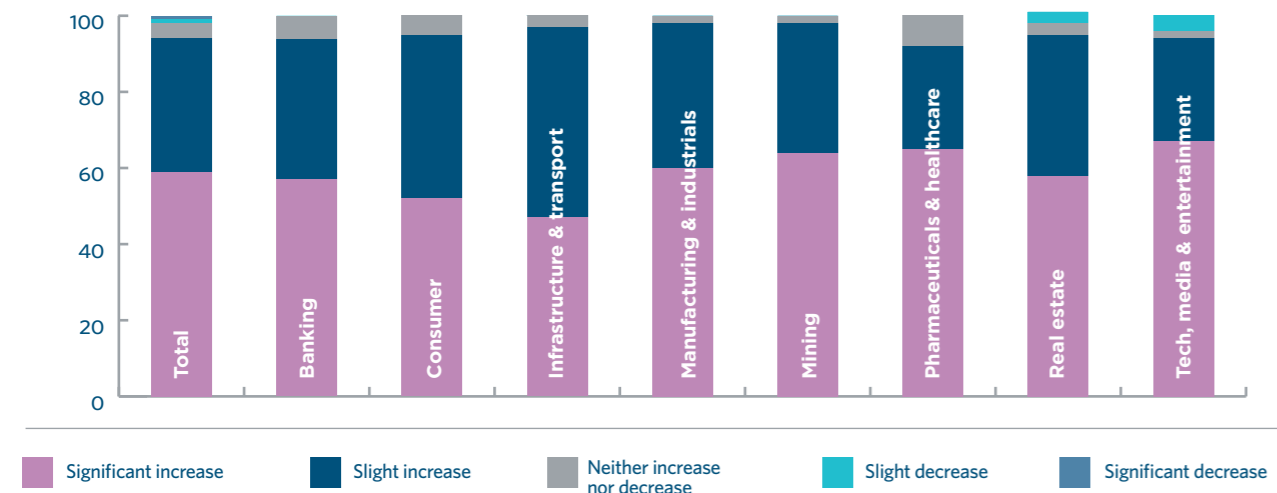


Figure 7: Triggers of activism

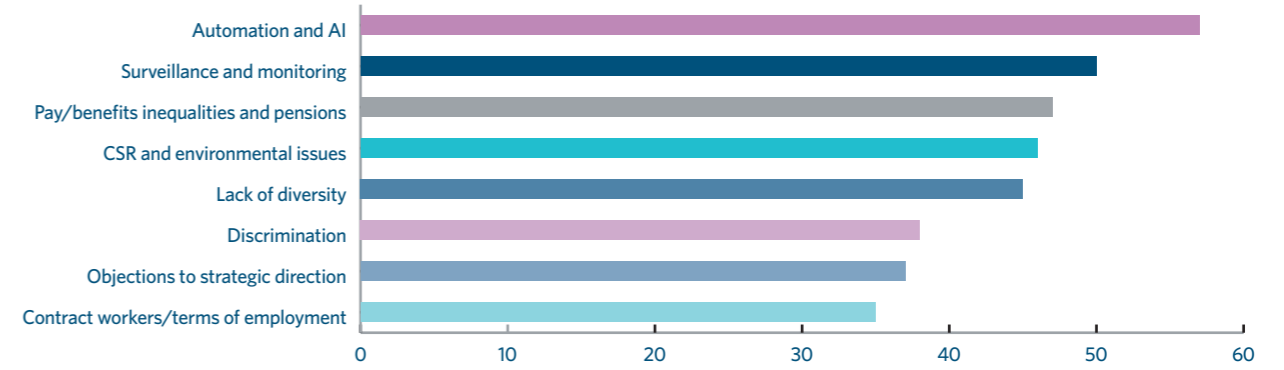


Figure 8: Triggers of activism, by company size

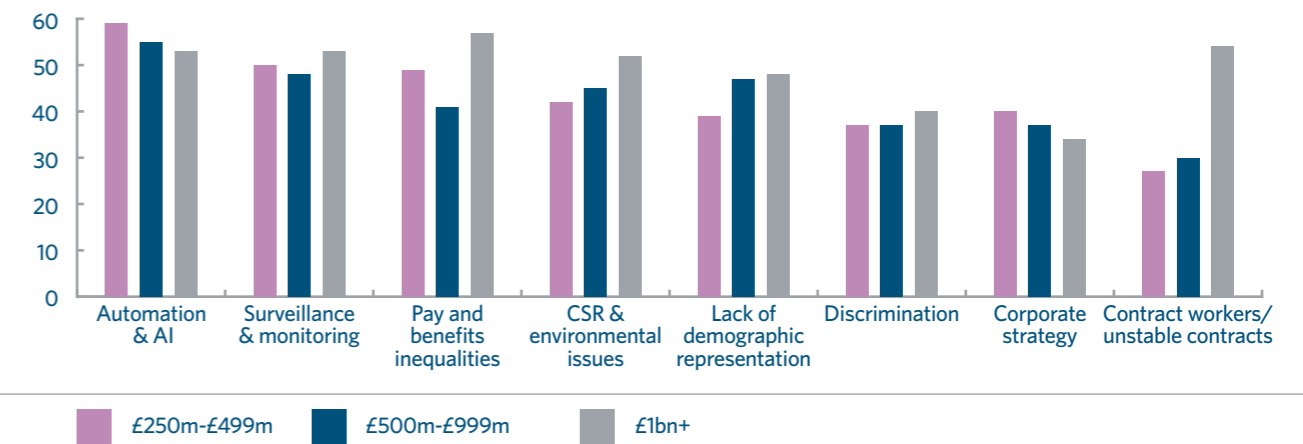


Figure 9: Triggers of activism, by region

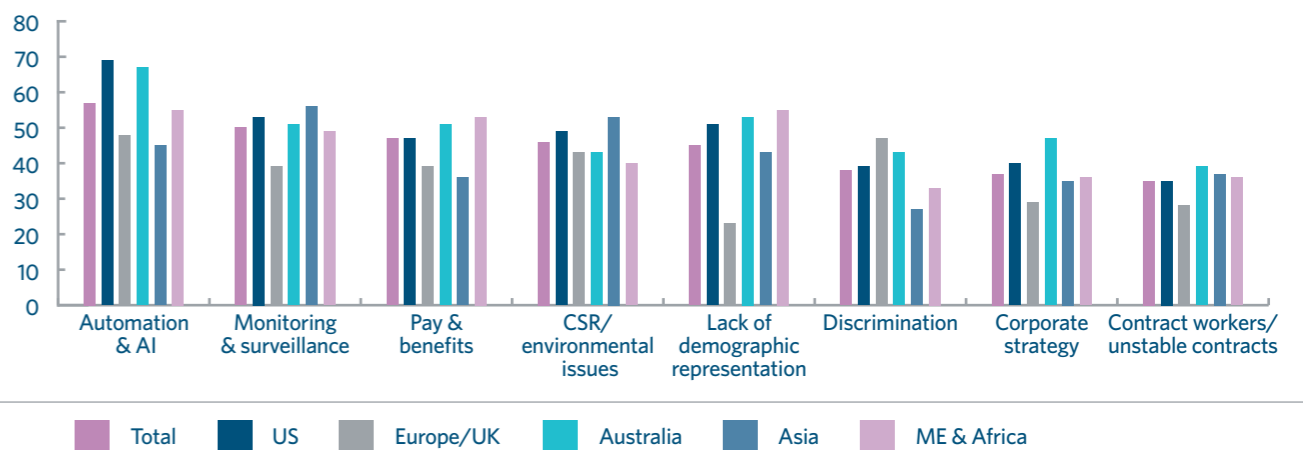


Figure 10: Potential risks to corporate reputation

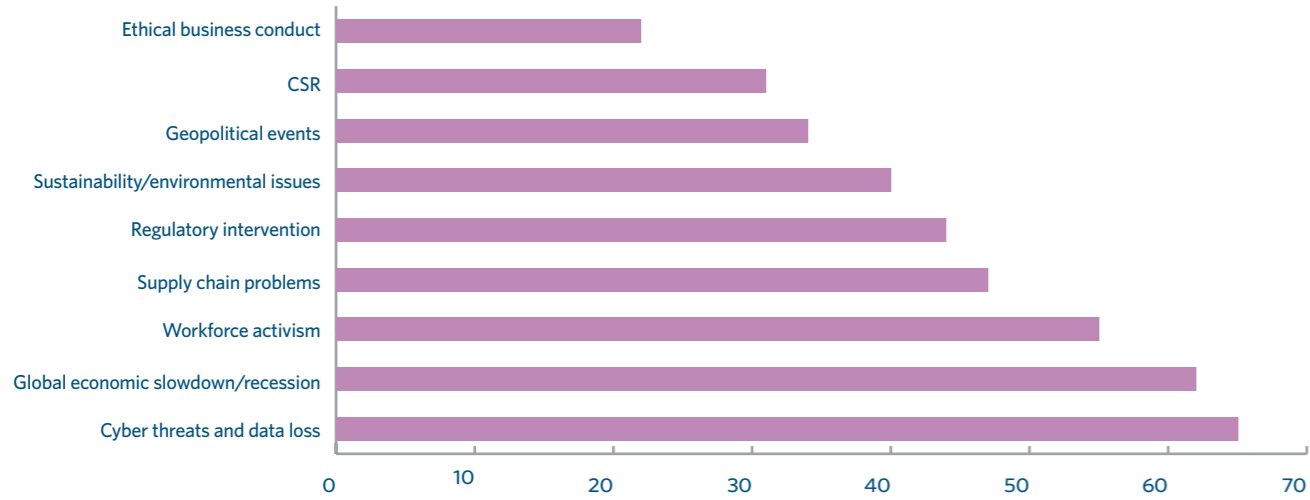


Figure 11: Concern over workforce activism by region

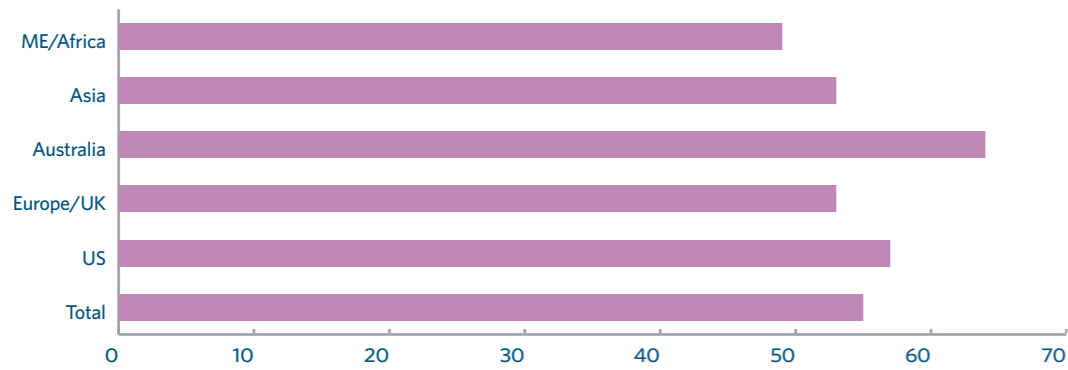


Figure 12: Beyond crisis management, would you continue to use your employee forums as a method of engagement?

USE OF EMPLOYEE FORUMS

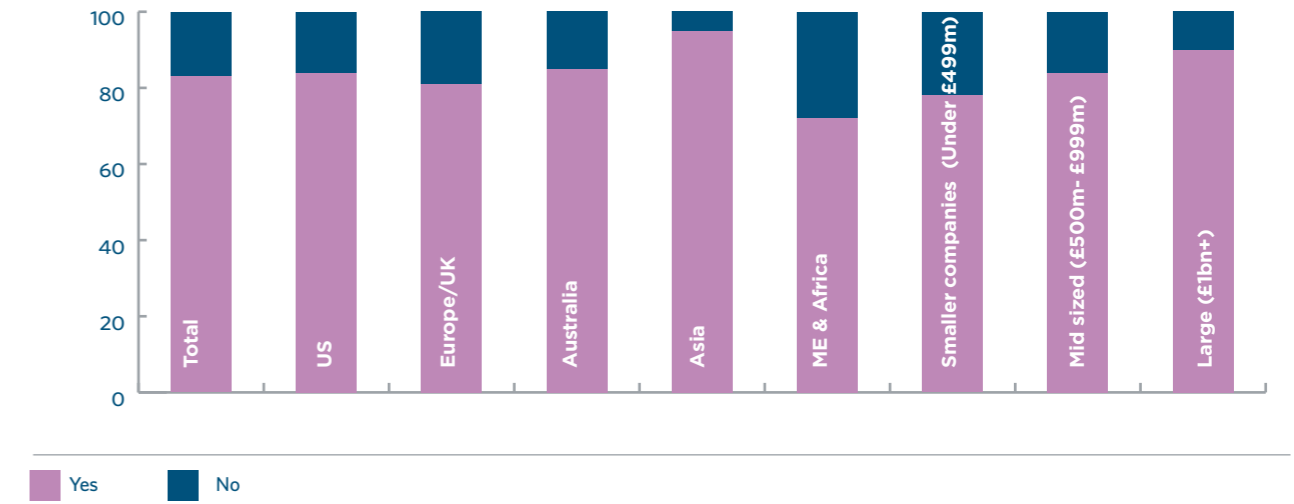


Figure 13: Forums or mechanisms for employee consultation, by region



Figure 14: Consultation forums for casual workers, by region

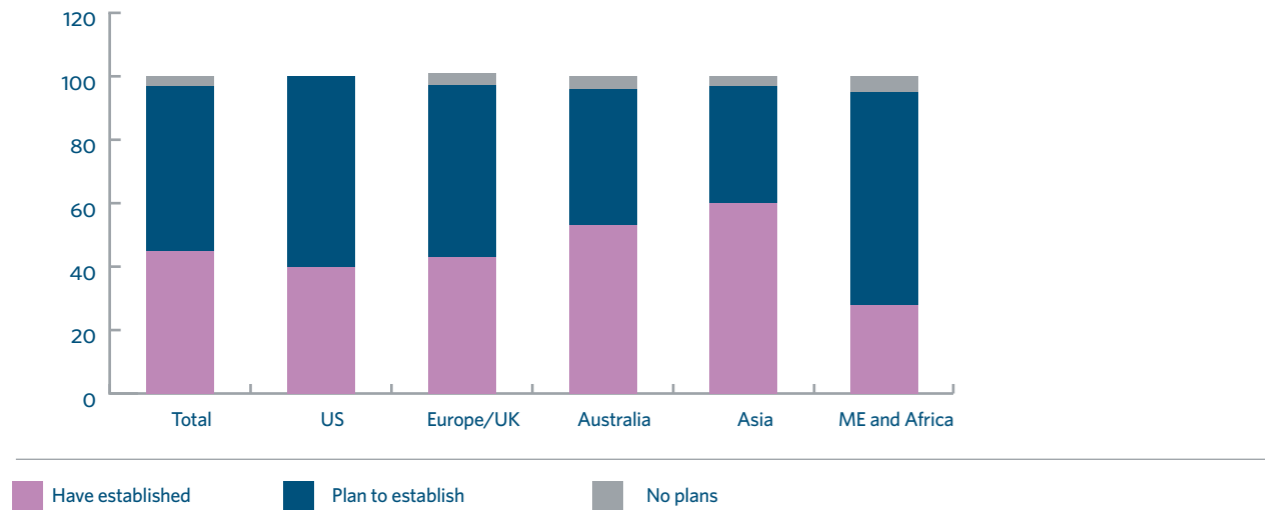
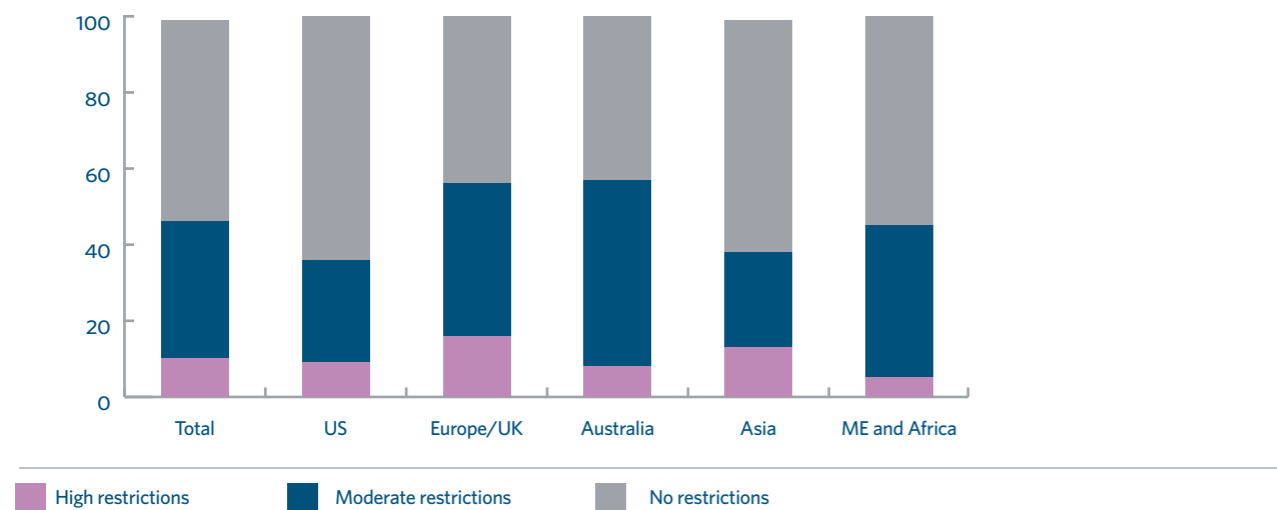


Figure 15: Extent to which employee/casual worker actions are controlled, by region



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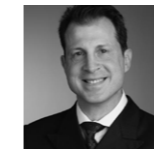
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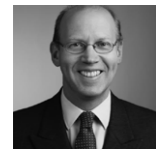


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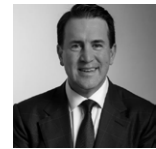
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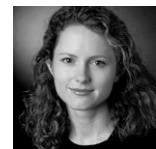


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