

**University for Business and Technology (UBT)**



**Course: IT, Ethics, Law and Communication**

**“Ethics of IT Organizations: Contingent Workers, Outsourcing”**

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## **Abstract**

Gone are the days of only the standard workforce. Nowadays, many companies also opt to have another type of workforce, the so-called contingent workers. These are workers that are only contracted to work for a short time, sometimes just to help on a project, sometimes as consultants. There are many upsides and downsides to both the company and the worker, and many ethical considerations ( such as the problematic concept of “permatemps” ). When companies hire another company to do part of the work, this is called outsourcing, and it usually to places where cost are lower, with the goal of saving money, but at the risk of lower productivity. All these are explored further and in more detail in this critical review paper. The main goal of it is to show the history, the legality and ethicality of contingent workers, and also the benefits and issues of outsourcing.

## **Keywords**

Non-traditional work, Contingent work, outsourcing, ethics, legality

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## 1. Introduction

Usually most companies have employees which have a long-term contract, have a salary, and sometimes other company benefits such healthcare, paid time off etc. Let's call this the *traditional workforce*. This has been the *standard* way of working for a long time. In the last decades though, there has been a rise on the use of non-traditional workers. According to Reynolds[1] this can mostly be attributed to the shortage of qualified IT workers in the last couple of years, mainly the declining number of graduates on computer science and related fields, as represented in the figure below.

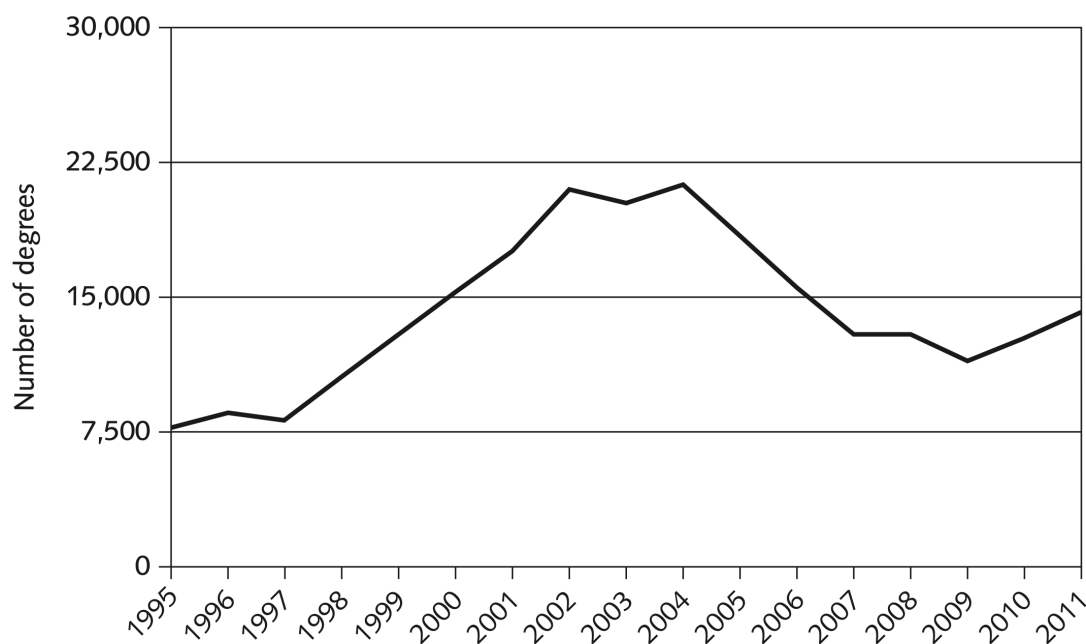


Figure 1: Number of undergraduate degrees awarded in computer science, computer engineering, and information systems  
George Reynolds. 2014. *Ethics in Information Technology* (5th. ed.)

A direct result of this shortage of qualified workers has been the usage of contingent workers. According to Reynolds[1] and U.S. Bureau of Labor Statistics[2], a worker is said to be *contingent* if they do not have a long-term contract with the company in question. These workers

might be hired for various short term reasons, like helping on the development of a specific project as part of the team for that duration, or just as a consultant. There are several reasons that companies might do this. For some, this is an easy way of getting some help when needed, without making long-term commitments, and then just letting go of that worker when no longer needed, something which would be difficult to do with a normal employee. In the case of hiring consultants, this has the benefit of being able to short-term hire some of the best people of the field, that can bring tremendous contributions to the project.

But usually, where there are benefits, there are some disadvantages too. Reynolds[1] lists as disadvantage of contingent workers the fact that these workers don't have a real connection with the company (e.g. don't care as much as the normal employees), and this can possibly lead to reduced performance, or them quitting abruptly. Or even if they stay for the duration of the project, all that experience gained is of no further benefit to the company since the employee leaves, and when if you need new contingent workers again, you'll have to re-train and acquaint them with the project. Another risk that companies will have to take is regarding IP and confidentiality. Nothing stops your contingent worker from going to work at your competitor next, and using skills and ideas that they learned here. One could argue that normal workers can do the same, but generally they are more loyal to the company than contingent workers. NDAs are useful to an extent in this regard, but skills gained aren't something you can stop an employee from using.

Other than (or in some cases in addition to ) contingent workers, some companies also use *outsourcing*, or more specifically *offshore outsourcing*. This is the practice of hiring ( contracting ) another company to provide some service. Usually outsourcing is done to drive down costs, since hiring someone from for example India, is much cheaper than hiring someone in Europe or USA to do the same job.

## 2. Literature Review

### 2.1 History of contingent workforce

Contingent workers are not a new phenomenon. The term is first thought to have been coined by economist Audrey Freedman in the year 1985, in a speech to the *American Productivity Center* [3]. She made up this term to describe in work relationships that are considered flexible according, like temporary work, part-time work, or even self-employment. This type of work has been part of the workforce for a long time, and contrary to popular belief, has not fluctuated a lot in regards to the percentage of the workforce it comprises. Lenz[4] notes that in the interval 1971-1995 the number of contingent workers has risen only slightly, about 3.3%. But as he notes, while the total number has not budged a lot, the proportion of those who are involuntary contingent ( e.g. not by choice) has risen over the years.

Because of that, legislation has been proposed quite a few times in the USA Congress in order to add some federal law protections to the contingent workers.[5]. To date, there have been 5 such bills, all sponsored by *Patricia Schroeder* from 1987 to 1996, but none of them have been enacted. Even though that due to the reduced hours that contingent workers may work per week, some work laws may not apply to them, these workers are still covered by variety of other laws relating to minimum wage, safety, overtime etc. And courts have also agreed in some rulings that these workers are covered by anti-discrimination laws and may bring discrimination lawsuits before said courts[5].

Legally speaking, the most problematic thing to come of contingent workforce has been using it for misclassification by companies. They have often tried to report normal workers as if they were temporary, or independent contractors in order to avoid paying taxes and benefits. Some others have hired contingent workers and used them for a long time, as if they were normal workers, but avoiding classifying them as such, for reasons explained above. Microsoft was sued for this behavior in 1992, a class action lawsuit brought by 10,000 of *temporary* workers

there [1]. Some of them had been working in Microsoft for years, without enjoying all the benefits of a normal Microsoft employee. It cost the company \$95 million in order to settle the lawsuit. Due to this and similar cases, now employers have to take to categorize employees correctly and not misuse them. A good way to avoid this is by using a staffing agency to hire contingent workers, such that the agency is fully responsible for them.

## 2.2 Contingent workers demographics and characteristics

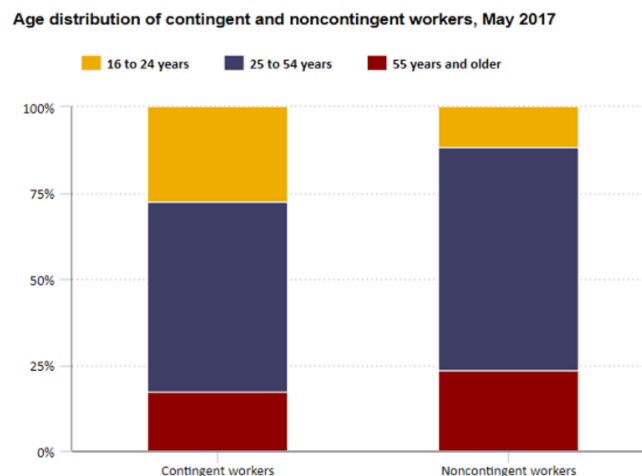
The most up to date data regarding the demographics of the contingent workers comes from the United States Bureau of Labor Statistics, published on 2018. [2]

The first important data point in their survey is that there were calculated to be around 5.9 million contingent workers in the United States at the time the survey was taken. That number comprises about 3.8% of the total number of workers.[2]

If we do comparisons on the data set by dividing the respondents by age, by sex, race, education etc. then we get the following statistics:

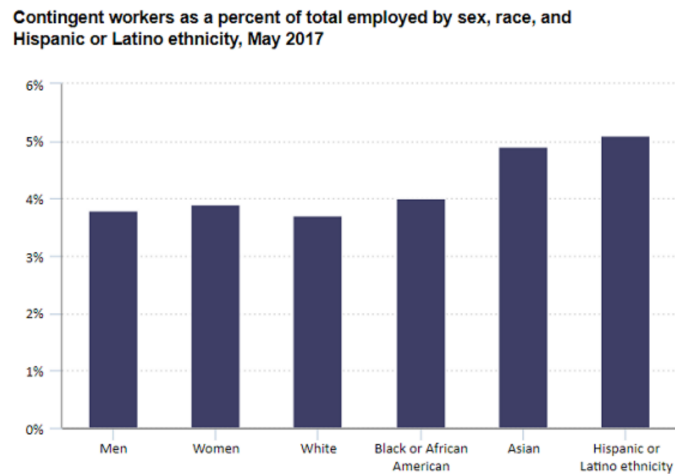
- Contingent workers are generally younger compared to the non-contingent ones.

*Figure 2: Age distribution*



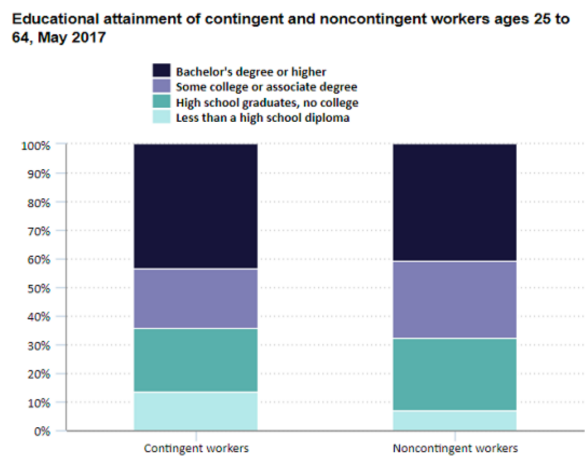
*A Look At Contingent Workers (Sep 2018 ) U.S. Bureau of Labor Statistics*

As seen in the image, the number of young people ages 16-24 is almost twice larger in the contingent workforce, while the number of those aged 55+ is noticeably lower. Lenz[4] suggests that the reason for age disparity is because a large portions of contingent work is for entry level positions without too much responsibility, so the young population more suited to gravitate towards that kind of jobs.



*Figure 3: Sex and race distribution of contingent workers  
A Look At Contingent Workers (Sep 2018 ) U.S. Bureau of Labor Statistics*

With regards to gender, it seems that while there are a more women than men, the difference is not significant. More significant is the difference when taking into account race. The number of Hispanic/Latino worker is highest, while the number of white people was lowest, with black and Asian races in between them.



*Fig 4: Educational distribution of contingent workers: A Look At Contingent Workers (Sep 2018 ) U.S. Bureau of Labor Statistics*



If we take a look in the differences in education, we can see on the figure that education between contingent and non-contingent workers is similar. By a small margin though, contingent workers are more educated. The difference is most noticeable when comparing the numbers of people that don't even have a high school diploma. As can be seen in the graph, there are almost twice more people with high school diploma in the group of contingent workers.

The U.S. Bureau of Labor Statistics study did also find that:

1. A larger percentage of contingent workers work part time ( less than 35 hours a week) than contingent workers
2. More than half of contingent workers would prefer to be non-contingent ( e.g. have a permanent full time employment )
3. Contingent workers have less or worse health insurance coverage, mostly due to it not being provided by the employer for this type of worker.
4. They earned in median, less than non-contingent workers. Though there are differences here depending on skills and education of the worker.

Vaiman et.al. [6] compares contingent workers and traditional workers in the areas of personality and motivation. Due to their *temporary* status, contingent workers are found to be less satisfied and less committed to the company. For the same reason they considered to be more of risk takers. One of the more interesting output of this paper was finding the factors that are important more to them. While pay was an expected factor, there were several others that held lots of weight: the quality work and the work environment and career improvement ( growth ) paths.

## 2.3 Legal and ethical implications of contingent workforce

It is perfectly legal for a company to hire contingent workers, according to their business needs. Legality problems arise when companies mis-use and miss-classify their contingent workers.

One of the most famous cases for this was Microsoft's use of long-term "*temporary*" workers back in the 90s [Reynolds, 1]. These workers were for all intents and purposes like the normal workers, they worked same jobs and worked in them for years. But the compensations differed compared to other workers. For example, they weren't eligible for the Microsoft stock options plan that allowed employees to buy Microsoft stock with a significant discount. These 10000 temporary workers sued Microsoft for the practice and got a huge settlement.

Sadly, Microsoft isn't the first or only company engaged in this kind of behavior. In 1993, Jimmie Ruth Daughtrey, in a testimony in front of *Senate Labor and Human Resources Subcommittee on Labor* told of committee how the company *Honeywell Information Systems* where she had been working as a computer programmer had fired her and then re-hired her as an *independent contractor* [7]. Work-wise nothing had changed, she still worked in the same place, doing the same job as before, just now in a new capacity, as a consultant. As such she was no longer eligible for the benefits that she received before as a regular employee, and had to pay Social Security taxes herself. Then when she was fired, she tried to sue the company because she suspected that the firing was due to her getting old, and it constituted age discrimination. Sadly she found out that due to her new status, she wasn't afforded protections by law for such discrimination.

As can be surmised by the two examples above, there are some legal implications of being categorized as a contingent workers. While some laws protecting employees are still valid for contingent workers, not all of them are. And being a contingent worker, it is much easier for the company to fire you.

The two examples taken were quite old, but these problems are still alive today. A new concept of the 21st century is the “gig” economy, which according to Tran et.al.[8] is a term used to describe the contingent work that is ‘transacted’ digitally. An example is Uber. The company built and manages the platform, and has thousands of corporate employees, but maintains that the drivers themselves are not to be considered employees. They, -Uber says-, are independent contractors. As such, Uber doesn’t have to follow some labor which don’t apply to contingent workers ( so no health insurance ). The drivers don’t even have contracts. They can be “fired” at any time just by deleting their accounts from the Uber platform. Due to this type of employment, Uber can easily undercut in price the normal employees of Taxi companies, and hurt the Taxi industry as a whole.

Seeing the rise of the gig economy, several states have started implementing and enforcing laws to protect employees. In UK for example, a court ruled that all Uber drivers should be classified as employees. The state of California in USA passed *California Assembly Bill 5 (AB5)* [10] which specifies 3 questions in order to classify someone as an employee of contractor:

1. Is the person free from control of the hiring company?; [10]
2. Is the person providing a service that is not the hiring company’s core business?; [10]
3. Is the person engaged in running his/her own business of the same nature of the service provided to the hiring company?[10]

If the answer to all three is yes, then the person can be categorized as an independent contractor, otherwise it’s an employee. Uber doesn’t pass the test, and is forced to categorize the drivers as employees ( they applied for exception from this, but it was not granted).

We’ve explored the legality of contingent workers, but we have yet to consider the ethical ramifications. Contingent temporary workers are sometimes classified contingent only in order for the company to avoid paying benefits. Contingent workers are sometimes also treated badly and considered disposable. Amazon regularly hires temporary workers to staff their warehouses during peak season, and sometimes keeps those hires without re-classifying them as employees.

These workers work tough hours, under exhausting conditions, and are heavily monitored in order to track they do their job fast, lest they be fired and lose their job without any sort of severance package.[11] This causes them to continue working in any condition, even when not feeling al-right, and sometimes leads to hospital trips or even deaths, like it was the case of *Jeff Lockhart Jr* from Virginia, USA, as reported in an expose by The Huffington Post news agency. He died of while working, due to an irregular heartbeat, which is thought to have been caused by overwork and over exerting himself

While the companies in these cases may be covered legally, in **my opinion**, this is not very ethical, and such behavior should not be the norm. Especially from a company as tremendously rich as Amazon, who could easily afford better conditions for their workers.

Other companies mistreat their temporary workers too. An article by Shea[12] tells the case of two temp employees that were fired after complaining about overtime. They were in this case engaging in protected concerted activity ( as later confirmed by the courts ), but the company thought that since they are temps, they have no rights and can be fired just for complaining. Which is again ethically dubious.

To summarize, while there are companies with contingent workers that are treated good, paid good, and valued, there are still far too many reports of companies doing the opposite. Those companies might know that it's ethically and morally wrong to do this, but continue to do it either by hubris, or by knowing that while not ethical, it's legal in some cases to behave as such.

## **2.4 What is outsourcing?**

Reynolds[1] defines outsourcing as a long-term business arrangement in which a company contracts for services with an outside organization that has expertise in providing a specific function. This means that the company doesn't hire the employees or consultants directly, only the partner company deals with them. The partner is then responsible for the staffing and

management of those employees. The trend of outsourcing for IT companies started back in the 70s, and continues to this day, with many companies choosing to outsource entire services or departments, like their tech support, or IT support departments.

While local outsourcing still happens, the majority of outsourcing is what is known as remote or offshore outsourcing. This type of outsourcing happens when a local company chooses a partner in another country for outsourcing.

Outsourcing is done for several reasons:

- 1) Not enough local talent to handle the project in house
- 2) Due to time constraints, the company cannot complete the project by itself
- 3) It's cheaper to outsource the job, then to hire employees locally to do it.

Depending on the company, some or all three of the reasons mentioned above are the cause of outsourcing. Although more often than not, the monetary reason is why companies do it. The main reason why outsourcing can drive down the cost in a project, is because of the *offshore* outsourcing type, whereas companies outsource the task to a country where wages and cost of living are lower.

For example, if we compare what an IT worker in USA makes versus an IT worker in India, the ratio used to be a staggering 6:1, which meant you could have 6 people working in India instead of a single 1 in USA. That gap is closing now though with those wages in India increasing about 15% per year.

The figure below represents the countries that were most attractive and most used for offshore outsourcing. Lately, companies have started to also use workforce from their region, which is called *nearshoring*. This might be less profitable than using one of the countries on the list if we look at sheer numbers, but it is sometimes more preferable for several reasons: timezones, language, culture etc.

Country
1. India
2. China
3. Malaysia
4. Egypt
5. Indonesia
6. Mexico
7. Thailand
8. Vietnam
9. Philippines
10. Chile

*Figure 5: Most attractive offshoring destinations*  
*George Reynolds. 2014. Ethics in Information Technology (5th. ed.)*

## 2.4 Outsourcing benefits , problems and ethical considerations

There are many benefits for the company in regards to outsourcing, but there can be several downsides; so a company should be very careful and mindful of the trade-offs before deciding to outsource some of their work.

The main benefit, and the one that mostly drives the companies to outsource is the financial gain of doing it. It's almost always cheaper to outsource the work offshore, at least in the short-term. Whether that will lead to long-term savings is another matter.

Another pro to outsourcing is gaining access to a talent pool that is not available locally and that you might've not had access otherwise. A good example of this is the outsourcing of some hardware R&D and manufacturing to China. The production, manufacturing and supply chain logistics in China are much better than in most countries, and there is a lot of technical workers that are experts on the field. It would be difficult for smaller companies to directly leverage the expertise if not for outsourcing to there.

Now for the hurdles of outsourcing, I'll begin with the process of choosing the outsourcing partner. It will take a considerable amount of time and money to sift through potential partners, to vet them, identify potential road-blockers and finally choose someone reliable. This is a step that should be taken with great care and not hastily, because choosing someone good beforehand will save you a lot of trouble down the road.

Second possible problem is one of culture, language and distance. If you outsource to a country and company where your engineers and staff mostly don't speak the same language as you, then communication is an obvious problem. You might get around the issue by having translators, or having the partner hire managers that speak the language, but still the communication is going to be a problem when not everyone can understand each other.

The other problem is the loss of skills, when an employee of the partner company leaves or just switches to another project. If it were your own employee, you'd still retain the knowledge and skills, but now all those are lost. An even larger problem though can be loss of IP ( Intellectual property ). It can happen if that worker then goes on to work at a competitor, or if the partner company is not very trustworthy. This risk is especially big in countries where IP laws are lax , or just not enforced so much for outside companies. From experience, without going into much details due to NDAs, I can attest that China is one such country where this is a very real problem. So this should be taken into consideration when choosing what parts of your organization to outsource. Parts that don't deal with any confidential company information are less risky to outsource.

And the last problem that I would like to mention is regarding quality of the end product. This is a big problem usually in cases when the thing being outsourced is software development. Either due to lack of skills of the employees in the partner company, or due to negligence, a lot of times the deliverables are not up to the standard that they should, as shown by Earl[13] . This will surely depend on who the part company and the outsourcing companies are, and this is why the first step of choosing and vetting the partner is of utmost importance.

To summarize, there are a lot of pros and cons with regards to outsourcing, and companies should do the due diligence and consider everything before committing to outsourcing.

Due to the fact of you contracting a company, and not an employee like with the contingent workers, most of the ethical problems mentioned there are not present now. This is because any problems that arise, fall onto the purview of the partner company. It is worth mentioning though that even if it might not be your problem per se, it would be ethical to make sure that employees helping build your product are treated correctly. For example, Apple outsources the iPhone manufacturing to the Foxconn, a Taiwanese company operating in China. As reported in an article by Merchant[14], the worker's conditions are dire there. They work long hours, are paid too little, and have bleak prospects for improvements. The situation has gotten so bad that there are "safety nets" below the balconies, to catch employees that try to commit suicide, because it started happening very often. Apple is not directly to blame here, Foxconn is. But Apple is in a position to force their hand to improve condition, and it is ethically wrong of them not to use that.

### **3. Contingent work and outsourcing case-studies**

There is such a large number of contingent workers and companies using them that it's difficult for me to list all. So I'm going to focus on companies that are more well-known globally:

- 1) Uber considers all their drivers as contingent workers ( e.g. independent contractors ) and not as employees. Some jurisdictions have forced it to classify them as employees[9], but generally the company tries to avoid that as much as it can. The reason they do this is because they don't have to either pay benefits to them, or deal with them unionizing asking for better conditions.
- 2) Google has so many temporary workers that according to New York Times article by Wakabayashi [15], they outnumber normal employees ( 121,000 to 102,000 ) . They are used



for many functions, from recruiting to transcribing voice data, to working on AI training. Google differently from other companies I've gathered data on has a 2 year time limit on using a temp worker.

- 3) AirBnB also considers their hosts as independent contractors, even though they make money by providing services through AirBnB's platform.

From personal experience, in Kosovo there are many software developers that can be considered contingent, because they work on projects temporarily for a couple of months and then move on to the next. Most of these projects are for companies located outside the country. I couldn't find any study with statistics available to reference though.

Security researchers and standard compliance and certifications specialists are also a group of workers that tend to get hired on a temporary basis, usually every 6 months or a year, to do testing and verifications, and then are let go.

Outsourcing in Kosovo is more prevalent though. Kosovo is a place where many foreign companies outsource their work. This is due to relatively low taxes and low wages compared to EU countries. Some companies that specialize on outsourcing are:

- 1) LinkPlus has worked on many projects for remote customers, including an airline company, for which it was outsourcing app development jobs.
- 2) Kosbit has worked in an IT services outsourcing capacity for many big name companies such as Cisco, Intel, Microsoft etc.
- 3) Baruti works as a call center, outsourcing its capacities for German and Swiss companies.

## **4. Conclusions and recommendations**

Contingent workers have been part of the workforce for a long time, and it is projected that their numbers will keep rising[1]. Some companies hire contingent workers when they need extra help on some projects, or periodically on times of need. Other companies try to classify as many workers as they can as contingent, in order to avoid giving benefits such as health insurance, or paying them as well as normal employees. On the other hand some workers actually enjoy the freedom moving between different jobs, while some would prefer permanent positions.

After reviewing many published papers, books and news reports, I've come to the conclusion that while many contingent workers are treated good, there is still a systemic problem on many companies and countries with regards to treatments of contingent workers. I would recommend that employers be more mindful of temp workers, and not treat them as disposable people. I would also recommend that more countries enact legislation to protect the rights of contingent workers.

With companies looking to earn more and drive down costs, many of them are turning towards outsourcing as a way to save money.

I would recommend that when they decide to do outsourcing, they do some research and get to know the possible downsides and problems that can arise with outsourcing. I recommend this so that they will know to deal with those obstacles if they happen to encounter them. Outsourcing sometimes can bring more problems than solutions, as shown in this paper, so it's not a solution that is applicable for all.

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