



# Space for Agility:

## Making Co-working Work

Co-working spaces are being leveraged by every level of the workforce to keep up with the volatile and ever-changing business landscape. From gig workers and freelancers to project teams, modern workforce needs are being met through the short-term nature, reduced costs, and diverse and agile environments that these innovative workplaces offer. But before employers dive headfirst into co-working arrangements, there are several risk factors to be aware of to make co-working work:

**1. KEEPING SECRETS:** Shared working spaces encourage interaction and informality, but when separate businesses find themselves working shoulder to shoulder, how can sensitive information and intellectual property be protected and trade secrets kept safe?

Casual conversations over the communal coffee bar, unattended laptops, documents and notebooks, and overheard telephone conversations all create risks for a business' confidential information. Businesses using co-working spaces need to be aware of the reputational, financial and legal risks posed by these communal environments and ensure their workers are aware of these risks. To help mitigate this exposure, businesses should ensure that:

- Workers have a sound understanding of the types of information that must be kept confidential

- Confidentiality obligations are explicit in employee and contractor/consultant contracts
- Company policies address the use of personal devices, personal email accounts, and other file share programs/folders, with processes put in place to ensure protocols and policies are complied with

Businesses using shared workspaces may also consider the use of sophisticated tools to monitor and analyze a remote workforce's activities. Monitoring emails and chats, tracking the creation, deletion and copying of files, tracking location, logging key strokes and even taking webcam photos of freelancers are all potential avenues for managing risks. However, businesses need to be mindful of local privacy laws when engaging such strategies. As legal and regulatory requirements vary across the world, it is tricky, but important, to strike the right balance between advancing business interests while protecting employee/contractor privacy rights.

**2. COHESION AND CULTURE:** Co-working spaces offer their own culture, with perks to enhance the employee experience, including innovative design, social areas like *"in-office"* bars and coffee shops and wellness features, such as yoga classes. Companies inhabiting these spaces are buying into a product that encourages creativity and conversation; aiming to get the best out of workers, while accommodating flexibility to adapt to the changing nature of work.

However, as organizations look to adapt to short-term needs and economic uncertainty, they also need to ensure they maintain a sense of cohesion in their workforce if they wish to retain the right talent. According to a survey jointly conducted by **Baker McKenzie and Wired Consulting**, 51% of senior business leader respondents acknowledged that a frictionless workplace, such as hot-desking or renting flexible workspaces, weakens cohesion and corporate culture.

Businesses using co-working spaces to place physically remote workers need to be mindful of the risk of dilution to their culture and identity – smaller groups of workers, or individuals working alone may feel disengaged and lack the sense of unity a more centralized group of employees may have. This can adversely affect productivity and morale. Companies can protect their cohesion by integrating flexible workers into the culture and values of the firm by:

- Having a sound on-boarding process and maintaining regular communication with workers
- Finding effective ways for teams to collaborate, for example using technology, or implementing new approaches to team working
- Encouraging teams to be inclusive, to allow for diverse perspectives and input to be shared
- Choosing a **co-working space that is consistent with the image** they want to project

There is a delicate balance to strike in maintaining cohesion and culture, while enjoying the benefits of a flexible and fluid workforce.

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**3. EMPLOYEE CLASSIFICATION:** Businesses also need to be mindful of the risk of contingent workers or freelancers being misclassified as employees. Combining the internal and external workforce on projects that use agile working methods such as Scrum, or allowing them to work under the same arrangements within a co-working space, can make it difficult to distinguish between the different categories of staff engaged by the business. This leads to the risk of misclassification challenges. Ways of managing this include:

- Being conscious of the work being done by freelancers and contingent workers; for example only assigning tasks to freelancers that will not be carried out by employed staff. A clear separation of tasks can help to mitigate misclassification risk and also enhance cohesion and culture amongst internal, employed staff

- Making arrangements for workspaces that set a clear distinction among different categories of staff within the workforce and only a selective collaboration where necessary

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**4. DIGITAL FATIGUE:** While co-working spaces can promote collaboration and flexibility, for the remote workers being deployed to them, there is an ever-present risk of **“digital fatigue.”** Workers are often bombarded with social media, email, and workplace chat apps to stay connected to the traditional workforce. Constant stimulation and the lack of a formal work environment perpetuates the sense of always being available and the need to immediately respond to every communication, which may lead to a distracted workforce, and ultimately burnout.

Legislators around the world are beginning to recognize this problem and are taking steps to address it, with new and emerging regulations around digital disconnection as well as increased compliance obligations to protect the limits on employee working hours. In addition, businesses are implementing their own **“right to disconnect”** policies and steps to help employees manage techno stress. For example:

- Adopting purposeful and conscious strategies and policies in relation to the use of communication tools, and clear guidance on managing workplace engagement, both online and offline
- Ensuring workers are cognizant of the fact that they have the ability to decide when and how to best engage in communication platforms and face to face conversations, and they have a right to ‘disconnect’ outside of core hours
- Opting to use a co-working space that offers quiet areas, private offices, and yoga and meditation rooms to allow workers to decompress and take a break from the onslaught of technology and social interaction, and the feeling of always being on-call

**5. ONE SIZE FITS ALL?** An agile and innovative workspace is likely to attract bright and dynamic talent from all ages. It will supply amenities and provide an attractive culture putting an organization ahead of the competition when recruiting different generations. However, businesses should remember that one size does not fit all. Generation Z are true digital natives but may prefer private working spaces. Employees who have spent their entire careers working in private offices may also find the open plan/“**hot desking**” culture difficult to adjust to, and an environment devoid of personal space may make some less extroverted personalities uncomfortable. Some workers may wear headphones to prevent being approached, or senior people may try and commandeer the ‘**pods**’ as their own offices.

Businesses need to accommodate the diversity of the entire workforce and ensure shared workspaces are a universally appealing environment. For example:

- Overcome a lack of employee privacy through privacy screens on monitors and provision of easily accessible ‘pods’ for more private or sensitive telephone calls and conversations
- Noise-cancelling headphones may also be an effective solution to those who struggle to work in a busier environment, along with having sound absorbing walls installed to reduce background noise
- Choosing a workspace that has a balance of ‘quiet zones’ and sociable spaces where people can talk in a more informal environment will assist in catering to different working styles

Boundaries will need to be set, and the right balance met, to ensure that the benefits of a shared workspace are enjoyed by everyone.

**6. THE COMPANY YOU KEEP:** As shared workspaces are occupied by a variety of different businesses, bound by different workplace policies, this presents a challenge for both employers trying to manage expectations and for employees who need to understand their employer’s requirements. Monitoring and addressing issues relating to, and liability arising out of, performance, attendance, workplace aggression, bullying or harassment can become complex with a remote workforce.

To manage these challenges, businesses could consider:

- Ensuring that employees working in a shared workspace receive regular training on key company policies and codes of conduct. The employer could provide this training on an e-learning platform which has mandatory modules covering the range of core requirements to ensure that expectations of staff in the shared workspace are clear
- Implementing additional policies relating to behavior and conduct within the shared workspace, which will be necessary due to the greater security risks associated with a shared workspace

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**7. LEAKING TALENT:** Working alongside energetic start-ups helps to foster a creative and innovative environment and enables employees to build business relationships, but there is always a risk of employees being poached by other companies in the shared workspace.

Arguably, the risk of employees being poached is outweighed by the benefits for retention that may be reaped by a shared workspace. Charlie Green, co-chief executive of The Office Group, says:

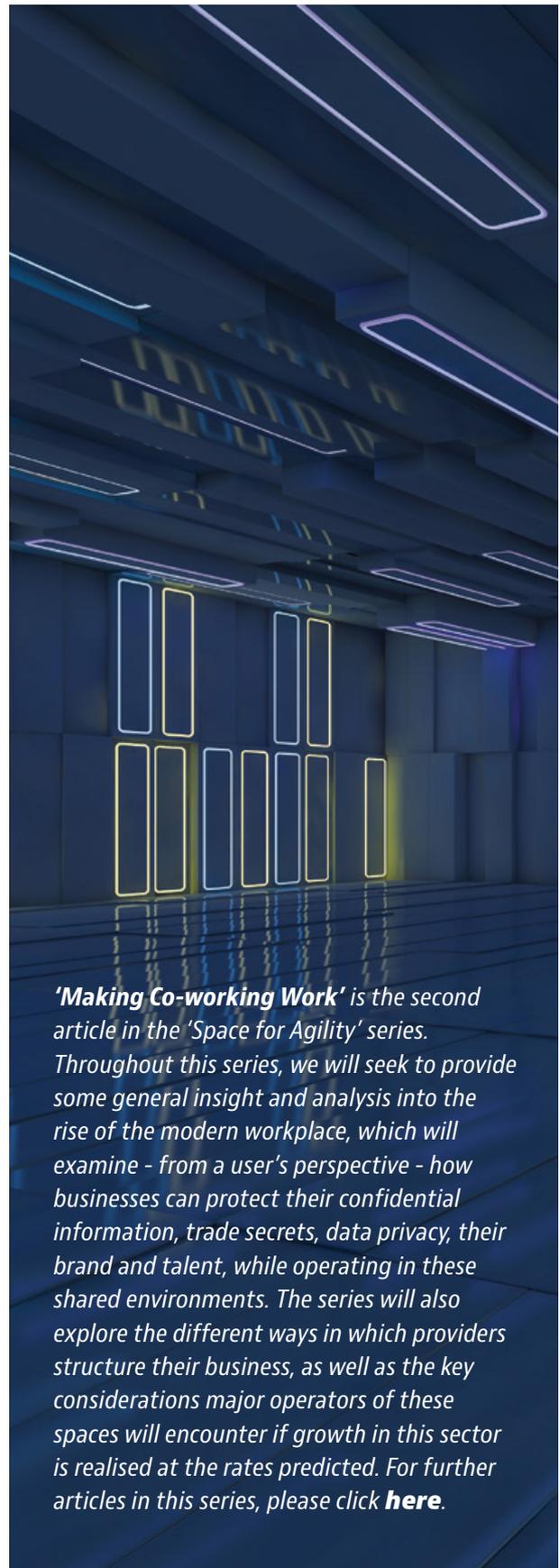
***“many big businesses aim to attract and retain staff with an entrepreneurial mindset by offering them the chance to be part of a wider community”***

Fundamentally, people are less likely to be attracted by a competitor if they are made to feel part of an innovative and entrepreneurial community, working in a shared workspace alongside other entrepreneurs and start-ups rather than feeling like a small cog in a huge organization.

To protect the talent pipeline, businesses can implement non-solicitation and non-compete agreements with existing employees where permitted; but these protections can only go so far in preventing leakage. Given the increase in **antitrust scrutiny of HR practices** across the globe, companies and staff who agree not to poach each other's employees, or agree to fix wages, put themselves at risk of breaking antitrust laws. Instead, to protect their talent, businesses should consider:

- Identifying potential areas of exposure to risk, seeking information from landlords about other occupiers of the co-working space where possible
- Reviewing non-solicitation clauses in employment contracts and ensuring appropriate protection against losing valuable customers and suppliers is included in agreements with independent contractors
- Reviewing working arrangements to ensure that sensitive tasks are allocated appropriately
- Seeking to ensure employee engagement and cohesion throughout the workforce

Co-working spaces are likely to continue to gain in popularity as the future generation of talent seeks increased flexibility and innovation from employers. To make co-working work, businesses must address the employment and HR risks to their talent, brand, and values before jumping into these arrangements, taking steps to balance the legal risks while enjoying the benefits of these workplaces.



*'Making Co-working Work' is the second article in the 'Space for Agility' series. Throughout this series, we will seek to provide some general insight and analysis into the rise of the modern workplace, which will examine - from a user's perspective - how businesses can protect their confidential information, trade secrets, data privacy, their brand and talent, while operating in these shared environments. The series will also explore the different ways in which providers structure their business, as well as the key considerations major operators of these spaces will encounter if growth in this sector is realised at the rates predicted. For further articles in this series, please click [here](#).*

For further information and assistance on  
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