The Truth About Offshore Outsourcing
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Question
What are the liability laws regarding offshore outsourcing, and is it detrimental to our economy and employment?

Background
• Offshore outsourcing refers to work being performed in another country by an external organization.
• It started as a cost cutting incentive and to increase productivity.
• A 1% increase in offshore outsourcing causes a 1.72% increase in unemployment, which is not significant.

Process
• The process of offshore outsourcing a business is a multifaceted activity which first requires initiation and planning.
• After the goals have been set, there are periods of set-up and transition after which settlement can occur.

Advantages
• It cuts costs, saves time, and allows for a wider range of employees.
• It creates more flexibility to expand and contract overseas staff, and allows for more retention and loyalty from employees.
• Labor laws and unions can be avoided.

Disadvantages
• Data security and privacy is not as emphasized in other countries as in the United States.
• Complex dispute resolution can arise due to varying legal systems and laws.
• The culture, language, and political climate may pose an issue to the working environment.

Liability
• An Arizona State law review exemplifies how in an agency relationship, the principal is responsible for monitoring costs, the agent is responsible for bonding costs, and residual loss consists of any costs caused by discrepancy.
• The nature of offshore outsourcing increases likelihood of malpractice action being filed due to difficulty of tasks and high risk involved.
• Determining civil liability is difficult due to a wide range of tasks that are outsourced. However, liability cannot be limited if the outsourced work is deficient.
• Decreasing liability is possible by differing the outsourcing structure through operating a foreign branch, partnering with a foreign firm, hiring a foreign entity to have foreign individuals from that entity perform the work, or directly employing a foreigner.
• Relevant policies include consumer protection, losses in the “ordinary course of business,” and the scope of obligation.

Theories of Accountability
• Employers can be held responsible under personal liability if they are negligent and have not properly exercised their duty of care.
• Employers can also be held vicariously liable under respondeat superior, apparent agency, or nondelegation duties.
• The laws are applied differently for actions conducted by employees, independent contractors, and business partners.

Ethics
• Ethical dilemmas include giving away American jobs to foreign workers, the environment of the workplace, the quality of the work, whether the workers are knowledgeable and competent, and if the employers are overseeing the work.
• The Florida International Law Review determined offshore outsourcing was ethical because the amount of jobs lost was not significantly increasing unemployment.
• Through a Kantian lens, offshore outsourcing is ethical because the workers are getting paid and therefore not being treated only as a means to an end. Also, it is reversible and universalizable.

Corporate Social Responsibility
• Employers are fulfilling their CSR when offshore outsourcing by creating shared value for the principal, agent, and consumers.

Conclusion
Due to its various areas of effectiveness and advantages for both businesses and consumers, offshore outsourcing is unique to each business regarding operations and liability rules. With proper research, planning, and communication, offshore outsourcing may prove to be extremely useful and efficient for American employers.