

6 REASONS WHY EMPLOYERS NEED TO JOIN THE BLOCKCHAIN REVOLUTION AND CONSIDER SMART CONTRACTS

Insights
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Employers are increasingly operating in a world where business and workplace operations are becoming technology driven and data-intensive. More frequently, employers are relying on technology to collect, store, and process data securely, as well as to manage transactions and payments with other businesses, employees, or independent contractors.

Smart contracts and blockchains are increasingly popular buzzwords. However, their increased prevalence has not necessarily brought with it understanding about the many benefits they can bring to the modern workplace. Employers should be starting to ask: what is a smart contract and how can it help me run my business? This Insight will shed some light on this fascinating technology and six of the potential use cases for employers – along with some compliance issues to consider as well.

What are Smart Contracts?

Smart contracts are self-executing contracts where the parties agree on various stipulations and exceptions, which are then represented on a blockchain in the form of digital code. Once these pre-determined conditions are met, the contract automatically executes, triggering next steps without human filing, errors, or fees. The code contained in the smart contract controls this execution – and because the transactions are recorded on the blockchain, they are trackable and irreversible. Unlike traditional contracts, these contracts do not leave room for interpretation as all of the

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terms are predetermined and automatically enforced by the contract.

6 Potential Workplace Benefits of Using Smart Contracts

Smart contracts are widely utilized in logistics and trade. For example, when a shipment arrives at its destination, "IoT" sensors ("internet of things," a system allowing trade devices to communicate with each other) can confirm that the contents – whether they be vaccines, food, or even designer handbags – were properly stored, unaltered, and legitimate.

However, smart contracts need not be limited to logistics. There are a myriad of potential beneficial uses smart contracts can offer to employers, which include the following six:

- 1. Automation:** Smart contracts can automate workflow, triggering the next action without human involvement. They can also send notifications and automate processes such as dispute resolution, document reconciliation, and discrepancy identification.
 - As an example, businesses such as insurance companies, law firms, and real estate firms can automate the release of money held in escrow upon the satisfaction of terms set forth in a contract.
 - Another example: restrictive covenants and enforcement mechanisms, which have become a significant issue during the pandemic as more individuals are working remotely and changing jobs more often, can transform into code. They could automatically impose penalties, forfeitures, and revoke access upon a certain event occurring.
- 2. Ensuring Risk Management:** When companies are dealing with large contracts that depend on both sides satisfying numerous conditions, there are a multitude of things that could go wrong or delay work on a project. Using smart contracts, two parties can enter into a smart contract that establishes a series of milestones for payment to be released. This way, the service provider has incentive to make sure they maintain the agreed upon schedule and the paying party can have assurance they will not have to pay for work that has not been completed.

- This process could be especially helpful when dealing with independent contractors, which are known for walking off projects, failing to complete jobs, or asking for additional funds mid-way through an assignment. Indeed, utilizing smart contracts creates an environment where both parties can begin working without the fear of loss or the need to build trust.
- Stated simply, smart contracts create the ability for multiple parties to operate in a trustless system – all you need is the code.

3. Cost and Time Savings: Transferring funds using blockchain technology and smart contracts is much faster than traditional bank transfers, or direct deposits, which can be time consuming and costly.

- For example, employees can record their time or completed tasks into a blockchain, which can then trigger smart contract conditions to automatically pay the employees. This, in turn, eliminates the need to rely upon third-party institutions, such as banks, to transfer funds to employees.
- Similarly, smart contracts can be used to facilitate international payments, whether to another business or an international employee, without having to absorb the multiple costs. Currently, charges such as wire fees and exchange rates, levied by centralized entities such as banks and other trusted intermediaries, are required to facilitate such payments.
- In short, smart contracts remove the middle men, and in turn allow businesses to reduce operations costs and settle payments much faster.

4. Confidence: Because smart contracts are recorded on the blockchain, parties can be confident their counterparts are not changing the terms following their agreement or prior to signing. These cryptographic assurances may all but eliminate costly legal arguments over the battle of the forms and incumbent debates on whether terms are additional or different, material or incidental.

5. Simplifying the HR Process: Smart contracts are designed to execute the terms and penalties outlined in the agreement. From a Human Resources perspective,

this makes it much easier for the HR Department and business leaders, as well as employees, to satisfy their obligations and comply with company policies and regulations.

- In addition, the onboarding process, which typically requires extensive coordination between the new employee, the finance department, the legal department, security, HR, and IT, can be smoothly managed. You can program actions into a smart contract to ensure all terms of the contract are clear, all documents are signed, and all permissions are granted to the new employee.
- Smart contracts can also be programmed to follow specific Human Resources processes, such as those involving corporate and personal data, pay, benefits, rewards, and their restrictions.
- Further, once employees complete or file documents such as security clearance or harassment training, the smart contract can immediately and automatically activate their employee status and company access, while immutably and transparently recording the data.

6. Certainty: The certainty of standard contracts is finite. While parties spend enormous amounts of time negotiating an agreement, parties back out of deals and breach contracts all the time in the real world. Obtaining relief, either through damages or performance, then requires judicial intervention, expenditure of legal fees, and lost time. Smart contracts, however, leave no room for interpretation. All parties can see the terms set forth in the code, whether conditions have been satisfied, and what dispute resolution process corresponds to each step of the contract. As a result, there is no doubt what will happen.

Challenges of Smart Contracts

Although smart contracts have exciting potential for employers, there still are various challenges related to implementation.

- While automated contracts are indeed powerful, they are only as smart as their code. If the code is flawed or the data they're fed is inaccurate, the result will not be as intended.

- Moreover, once executed, these contracts are non-reversible; there's no ability for ad hoc decisions on late fees or full performance standards. For example, if a party inputs an incorrect address, the funds may be forever lost.
- Speaking of contract terms, parties cannot leave ambiguous terms or unaddressed possibilities, even though many person-to-person negotiations do not consider every possible scenario.
- Similarly, smart contracts cannot be changed once entered into, which can pose a challenge should new factors arrive that would typically require an addendum to the contract.
- Employers should also be careful if they decide to use a hot wallet (a wallet downloaded to your computer or phone as opposed to a ledger hardware wallet), as the use of such a wallet increases the likelihood of hacking.
- In addition, employers will need to take care to ensure that the wallets involved in the transactions are timely funded so that on completion, payment may automatically issue.

Legal Implications

Another question that you may be asking: these contracts may be smart – but are they legal? Currently, there is not a uniform federal contracts law governing typical agreements across the country, so states may vary in their adoption of smart contracts as legally binding. That said, based on existing precedent, there is a legal framework in place for courts to rely upon as grounds to accept and enforce these contracts.

The Uniform Electronic Transactions Act (UETA) provides that electronic records and signatures have the same legal effect as their handwritten counterparts. Further, smart contracts may be considered “electronic agents” which are defined in the Act as “a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records of performances in whole or in part, without review or action by an individual” (15 U.S.C. § 7006(3)). Likewise, the federal Electronic Signatures Recording Act (E-Sign Act) accepts electronic signatures and records as valid in interstate and foreign

commerce, also providing that documents or contracts relating to a transaction “may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound” (15 U.S.C. § 7001(h)).

While there appears to be a roadmap for the adoption of smart contracts into existing precedent, states such as Nevada and Arizona have already amended their respective versions of the UETA to explicitly incorporate smart contracts and blockchain. However, some states are still arriving at an understanding of the technology and its application to their society. In addition, it still is unclear how different jurisdictions involved in a transaction would determine how to resolve a dispute, especially when considering the current legal status of smart contracts. Should more states follow this trend, scholars may create a treatise on the subject akin to the Uniform Commercial Code.

Conclusion

Smart contracts provide a host of benefits ranging from speed, efficiency, and accuracy, to trust, transparency, and security. As discussed, because the contracts are automated, there is no paperwork to file, no third party required, and administrative overhead is vastly reduced. Further, encrypted records of the transaction are available to all parties, assuring participants that the other party did not change anything following their agreement and augmenting security. In addition, business rules can be translated into software that can cross organizational boundaries, further enhancing the operational ability of employers to implement policies with minimal friction. However, because smart contracts are not under the purview of a single jurisdiction, jurisdictional arbitrage is both a highly sought-after perk and a source of consternation.

Given that smart contracts are in their infancy, with new applications continually being developed, employers will need to consider the potential risks to implementation and enforcement. As blockchain becomes more pervasive in our lives, chances are it won't be too long before you're using smart contracts in your daily lives without even knowing it, which means that use in the employment context won't be too far behind.

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