

Economic Update

Last year won't go down as one of robust job creation in Houston, but it wasn't bad either, compared to the staggering job losses the area suffered in 2009 as effects of the recession took hold. Barton Smith, professor emeritus of economics at the University of Houston, credits the surge in oil prices for Houston's recent job growth in energy employment. Houston is also benefiting from continued strength in healthcare. Local recruiting firms have seen an uptick in requests for workers that began September 2010 and hasn't let up. Finance and energy are doing better than most industries. The 10-county Houston-Sugar Land-Baytown Metropolitan Statistical Area added 10,300 jobs in February – the largest gain since November 2008. The area added 13,100 jobs, growing 0.5 percent, from December '09 to December '10, according to Texas Workforce Commission. The private sector added 14,100 jobs (0.7 percent), while the public sector lost 1,000 jobs (-0.3 percent). December marked the fourth consecutive month of over-the-year increases, another sign that the Houston economy is recovering. Several sectors posted notable job gains over the past 12 months: health care; durable goods manufacturing (oilfield equipment); hospitality; food services; oil & gas extraction; and oilfield services. Construction employment posted a net loss of 1,700 jobs, (-1.0 percent)—the smallest over-the-year decline since the industry turned negative in January '09.

Texas employment is expected to grow by 1.5 million jobs, or 2.3 percent during the next five years, according to HIS Global Insight. Texas is one of six states in the nation projected to grow by more than 2.1 percent between 2010 and 2016. The other states are Utah, Idaho, Nevada, Arizona, and Florida. Texas has been growing in high-tech manufacturing, one of the industries expected to be strong in the coming years.

The Federal Reserve said hiring was firming and businesses in most regions planned to increase hiring at the same or faster pace this year. Per Obama, the economy added 1.3 million jobs last year. Even with high unemployment nationwide, five metropolitan areas reports large job gains last year: Washington D.C.; Dallas-Fort Worth; Boston; Phoenix; and Minneapolis-St. Paul. Boston, Dallas, & Washington D.C. have benefitted from growth in the information technology sector. Activity at manufacturing and service companies nationwide has reached a level not seen since before the recession, suggesting a stronger year for hiring. Some economists are even hopeful that today's jobs report maybe better than anticipated. Manufacturing added 49,000 jobs, the most since August 1998. The service sector is expanding at its fastest pace in five years. Per a survey by National Association of Business Economics in January 2011, 42 percent of businesses nationwide said they anticipate an increase in hiring within the next six months. Per Federal Reserve Chairman, Ben Bernanke, the U.S. can't fully recover from the worst recession in decades until hiring improves. The economy is strengthening and will likely grow at a faster pace this year as more confident consumers and companies spend more.

Houston's unemployment rate fell slightly in February to 8.5 percent from 8.8 percent in January. Employment hit bottom January '10 and has trended up ever since. Houston was slower to lose jobs and lost fewer than many other U.S. cities allowing the city an easier time moving forward. The number of people applying for unemployment benefits has reached its lowest point since July 2008, raising hopes that hiring is about to accelerate. The unemployment rate is sinking at the fastest rate in half a century nationwide because a surprisingly large number of people say they're finding work. It has fallen eight-tenths of a percentage point in the past two months which is the steepest two-month drop in nearly 53 years. The U.S. rate was 9.1 percent, down from 9.3 the month before. The unemployment rate fell or stayed the same in December in two-thirds of the nation's largest metro areas, fresh evidence that employers are slowly adding jobs. Fed Chairman, Ben Bernanke, is optimistic the economy will strengthen this year but warned it will take up to five years for unemployment to drop to a historically normal level of around 6 percent.

Houston's economy is at a fragile turning point. Credit is getting a tad looser and energy prices, which are central to the region's key industry, are relatively high and stable. Houston is well into the recovery, but the state, county and city are only now feeling the squeeze on their budgets. As the state cuts spending and employment, the impact will be felt in the economy. The U.S. Bureau of Economic Analysis estimates government activities accounted for \$25.9 billion, or 6.4 percent, of the Houston Metro Area's gross domestic product in '08. The public sector (federal, state and local) accounts for 375,000 jobs - one in every seven in the region. However one measures it, the public sector plays a major role in Houston's economy. Until state and local budget woes are resolved, the fiscal problems in the public sector will be a drag on Houston's recovery.

The U.S. economy ended last year on an encouraging note, with all parts of the country showing improvements. Factories produced more, shoppers spent more, and companies hired more – pointing to a stronger economy in 2011 per the Federal Reserve. With a little more money in their wallets and a little less fear in the hearts, U.S. consumers helped pull the economy up by its bootstraps in the final months of 2010. The gross domestic product, a broad measure of the goods and services produced in the country, grew at an annual rate of 3.2 percent in the fourth quarter, up from 2.6 percent in the previous period. Thanks to modestly higher paychecks and swelled investment portfolios, Americans appeared more comfortable buying again and stashing away a little less in savings. For 2010, incomes rose 3 percent after having fallen 1.7 percent in 2009. Consumer spending grew at an annual rate of 4.4 percent in the October-December period, its quickest pace in nearly five years and almost double the growth rate from the previous quarter. The payroll tax cut and the extension of the Bush-era tax cuts, both passed in December, are expected to further buoy consumer spending.

Legal Update

February 2011 Visa Bulletin

The U.S. Department of State (DOS) has released its February 2011 Visa Bulletin. The Visa Bulletin sets out per country priority date cutoffs that regulate the flow of adjustment of status (AOS) and consular immigrant visa applications. Foreign nationals may file applications to adjust their status to that of permanent resident, or to obtain approval of an immigrant visa application at an American embassy or consulate abroad, provided that their priority dates are prior to the cutoff dates specified by the DOS. Visit the DOS website at http://travel.state.gov/visa/bulletin/bulletin_5228.html.

Reporting Time Pay: A Wage & Hour Winter Wonderland

Winter has arrived. Employers must be aware of and comply with state “reporting time pay” laws that require non-exempt employees be paid a minimum amount whenever the employee reports to work as required or requested by the employer, even if no work is provided. Although federal law has no such requirements, some states have “reporting time pay” laws that require non-exempt employees be paid a minimum amount whenever the employee reports to work as required or requested by the employer, even if no work is provided.

- Reporting Time Pay: A wage obligation may exist under a state reporting time pay law or a wage agreement. Once an employer determines that a reporting time pay law exists, the following must be considered:
 - Does the law apply to all non-exempt employees or only to those scheduled to work a specific number of hours?
 - If applicable, how much must the employee be paid?
- Scheduled Hours: Although reporting time pay laws vary from state to state, the majority of such laws require that an employee be scheduled to work a specific number of hours to be eligible for reporting time pay. As a general matter, employees who are not scheduled to work the applicable threshold number of hours are not eligible to receive reporting time pay.
- Hours Owed: When a reporting time pay law exists and an employee who is scheduled for the requisite number of hours reports to work, the employer must next determine both: (a) how many hours of compensation that individual is owed; and (b) the rate at which those hours must be paid. Again, requirements vary from state to state.
- Exceptions: Exceptions vary by state. For instance, some states do not require employers to provide reporting time pay if:
 - employer makes a good faith effort to notify an employee not to report to work;
 - interruption of work is caused by an “Act of God” or other cause not within the employer’s control; or

- employer previously provided enough hours during the week to meet any minimum number of hours agreed to between the employer and employee.
- Overtime: It is important for employers to determine how the states in which they operate treat reporting time pay for purposes of state overtime law. First, the employer must determine whether reporting time pay counts as “hours worked” for purposes of the state overtime law. Second, if reporting time pay does constitute hours worked, the employer should determine whether such pay must be factored into the employee’s regular rate for that week.
- Wage Agreements: Although a state may not have a reporting time pay law, certain employers have wage agreements that provide employees with a guaranteed minimum number of work hours and/or pay. In these situations, employers must abide by the agreement’s terms and conditions.

Employers should consider taking the following actions now, so that they can be prepared before the next big winter storm:

- Ensure that employee contact information is current;
- Obtain multiple forms of contact information if possible, e.g., home telephone number, mobile telephone number, email address;
- Ensure that staff who are responsible for notifying other employees of closures or delayed openings have ready access to employees’ contact information;
- Make certain open lines of communication exist between decision-making employees and supervisory staff to guarantee adequate notice is provided if and when operations will stop due to weather conditions;
- Develop a protocol for providing notice and designate primary and secondary staff charged with providing notice; and
- Train payroll staff on if, when, and how much reporting time pay is due employees and ensure that timekeeping records can and do accurately reflect the difference between regularly-worked and reporting time pay hours for overtime purposes.

Sources: Greater Houston Partnership; Houston Chronicle; Houston Business Journal; HR Houston; Kerry Notestine, Shareholder at Littler Mendelson