

Economic Update

What a difference a year makes. Last January, there were only hints of a recovery. This January, it's apparent the recovery is well underway. The Houston-Sugar Land-Baytown Metropolitan Statistical Area gained 9,500 jobs during the 12 months ending November '10 according to the Texas Workforce Commission (TWC). By comparison, TWC reported that Houston had lost 103,500 jobs during the same period in '09, the worst 12-month job loss of the recession. November marked the third consecutive month of year-over-year increases, another sign that the Houston economy is recovering. The private sector added 10,600 jobs (0.5 percent) while the public sector lost 1,100 jobs (-0.3 percent). Several sectors have posted notable job gains over the past 12 months: healthcare, durable goods manufacturing, leisure & hospitality, food services, oil & gas extraction, and oilfield services.

Per Economist Kenneth Goldstein, "We're starting to see a pickup in job growth in the U.S.". He expects the economy to generate 100,000 to 150,000 jobs a month by spring, up from an average 86,500 a month in 2010. Lay-offs have fallen back to pre-recession levels and companies are optimistic about hiring now more than they've been in the past two years. A survey of CEO's at America's biggest companies suggests hiring will pick up in the next six months.

The economy is turning the corner slowly, per Mark Dotzour the Chief Economist & Director of Research at A&M's Real Estate Center, 48% of all job growth in the nation last year was in Texas. The Federal Reserve Bank of Dallas reports that the manufacturing production index in Texas remained in positive territory for the third consecutive month in November suggesting Texas is seeing more demand in the sector.

Workforce Solutions reported an average of 22,198 residents per month filed initial claims for unemployment insurance in the 13-county Gulf Coast Workforce Development Area during the 12 months ending November '10. By comparison, initial claims averaged 25,572 during the same period in '09. The 2-month average peaked at 28,761 in August of '09. Nationwide, applications for unemployment benefits dropped in December to the second-lowest level in 2010, fresh evidence that companies are cutting fewer jobs. Applications are at their lowest level since July 2008, the Labor Department says.

The local unemployment rate remains stubbornly high at 8.6 percent in November '10, up from 8.1 percent in November '09. Houston is definitely on the mend, but like a patient who has suffered a long illness, it will take time before the economy fully regains its stamina. Houston's November unemployment rate stood at 8.6 percent, an increase from 8.2 percent the month before. Texas' unemployment rate stood at 8.3 percent, up from 7.9 percent in October. The

U.S. rate is 9.3 percent, up from 9.0 the month before. The increase in unemployment rates is not a sign of a weakening economy. The increase in unemployment rate is most likely a sign that unemployed workers who rode out the recession on the sidelines have decided to re-enter the game. The unemployment rate may continue to rise as the economy improves and more people resume their job search.

Houston's economy is forecasted to continue to grow next year, adding more jobs in '11 than in '10. By December, Houston will have replaced many of the jobs lost during the recession and be closer to a full recovery. Growth will be fueled by the ongoing U.S. recovery, growth in the developing world, a weak U.S. dollar and rising oil prices. For Houston, the recovery began in April '09, and employment, a lagging indicator, began to grow again this past February. From the start of Houston's recession in September '08 to the bottom in January '10, the region lost 135,400 jobs, one in every 19 in the region. Houston fared better than most other metros. This recession also was not as significant as the one Houston experienced in the mid-'80s. That recession dragged on for nearly five years and saw 221,000 jobs—one in every 7—slashed from local payrolls. The '08-'09 recession lasted 17 months and saw a third fewer jobs lost. The region has already recovered some of those losses. In the 12 months ending October '10, Houston posted a net gain of 6,200 jobs. While that's far off Houston's normal pace of adding 50,000 to 60,000 jobs per year, it is an improvement over the job losses suffered in '09.

The recovery that began this year in manufacturing, transportation, wholesale and retail trade, professional services, personal services, hotels and dining services should continue in '11. Energy employment will rise as growth in exploration and production more than offsets shrinkage in oilfield services. Houston is benefitting from a backlog of engineering projects such as work on chemical plants and gas processing plants, much of the work is for overseas clients. Health care employment will continue to grow. Regardless of the weak real estate market, the defacto moratorium in the Gulf, and government budget woes, Houston will continue to grow for the second consecutive year.

Greater Houston Partnership's forecast calls for the region to add 23,300 private sector jobs in '11 with the greatest gains in health care, professional & business services, accommodation & food services, retail trade, oil & gas extraction, manufacturing, and exploration & production. The recovery in manufacturing that began in '10 will continue into '11. The durable goods sector, which lost 12,000 jobs during the recession, has added 1,000 jobs since January. That trend should continue as the U.S. and global economies continue to recover. Most economists expect growth in the developing world to exceed that of the U.S. over the next few years, further increasing demand for Houston's exports. Employment in chemicals and plastics has been flat since before the recession, but low prices for natural gas, a key input in the manufacturing process, may support some marginal growth in employment.

Legal Update

Second Circuit Says Complaining of Harassment to Harasser May Constitute Reasonable Availment of Reporting Procedures

The Second Circuit has ruled that an employee who is subject to sexual harassment by a supervisor may demonstrate that he or she reasonably availed himself or herself of the employer's harassment reporting procedures when the employee complains to the harassing supervisor alone yet does not also register a complaint with any other member of management. In the *Gorzynski v. JetBlue Airways Corp.* case, an employee brought a hostile work environment claim against her employer based on multiple sexual comments made by her supervisor. The court found that the employee provided sufficient evidence of harassment. Because the harassment was by a supervisor, JetBlue would be liable for the conduct unless it could establish the *Faragher/Ellerth* affirmative defense (named after a pair of landmark 1998 U.S. Supreme Court cases concerning hostile work environment sexual harassment). The *Faragher/Ellerth* defense consists of two principal elements: (1) that the employer exercised reasonable care to prevent and correct promptly any discriminatory harassing behavior, and (2) that plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise. In the *Gorzynski* case, JetBlue attempted to prove the *Faragher/Ellerth* defense by providing evidence that it maintained a formal written sexual harassment policy in its employee manual. JetBlue argued that it was shielded from liability because Gorzynski only complained of sexual harassment to her supervisor, who was also the harasser, rather than pursuing the alternative options listed in the employee manual such as complaining to other managers or to the company's human resources department. The Second Circuit court rejected JetBlue's argument that it was unreasonable as a matter of law for Gorzynski to complain of sexual harassment to her harasser because he was designated as one of several persons with whom to lodge complaints. The court reasoned that it is not "intended that victims of sexual harassment, in order to preserve their rights, must go from manager to manager until they find someone who will address their complaints." In examining the facts of the *Gorzynski* case, the court found evidence that other JetBlue managers were not receptive to receiving complaints from employees and Gorzynski could have reasonably perceived these reporting channels to be ineffective or threatening. Thus, the court concluded that whether Gorzynski acted reasonably in complaining only to the harassing supervisor was a factual question for the jury to decide.

Sources: Greater Houston Partnership; Houston Chronicle; Houston Business Journal; HR Houston