

Economic Update

Houston's economy is doing well in spite of the weakness in the nation's economy. When will Houston's economy return to normal? To answer that question, one must first define what's normal for Houston. That poses a challenge considering that over the past 30 years Houston has slogged through four recessions, sprinted through three employment booms, endured three employment busts, and watched a host of industries—housing, construction, manufacturing, real estate, energy and trade—soar, plummet, rebound and soar again. Watching Houston's economy makes one dizzy.

Job growth is the most important of all economic indicators. Most adults know what it means to have a job, and unfortunately too many know what it means to lose one. Job growth influences everything—home construction, retail sales, airport traffic, energy prices and tax revenues, to name a few. The lack of job growth plaguing the nation is both a sign and a symptom of a weak economy, but not in Houston. The Texas Workforce Commission (TWC) reports that Houston added 65,600 jobs between August '10 and August '11. That compares well with historic patterns. Over the past 30 years, nonfarm payroll employment in Houston grew at a compound annual growth rate (CAGR) of 1.89 percent. Houston's job growth was stable during most of the '90s. The region experienced a moderate recession during the first part of the decade but logged consistent job gains thereafter. Nonfarm payroll employment grew at a 2.65 percent CAGR from Jan '90 to Jan '01. The two CAGRs suggest normal growth for Houston falls between 47,800 and 67,100 jobs per year. The recent jobs numbers from TWC place Houston at the high end of that range. Current job growth also fits with the long-term forecasts of two outside (*i.e.*, not from Houston, thus presumably un-biased) consulting firms. Washington, D.C.-based Woods & Poole forecasts a 2.11 percent CAGR for Houston over the next 10 years. The Perryman Group, a Waco-based firm, forecasts a 2.35 percent CAGR. Based on their projections, job growth for Houston over the coming decade should average 53,300 to 66,000 per year. Again, recent jobs numbers reported by TWC place Houston near the high-end of that range. Clearly, job growth has returned to normal in Houston.

Houston Employment Booms

Jan '80 – Mar '82

235,000 net new jobs

July '96 – Dec '98

250,600 net new jobs

Jan '05 – Oct '08

324,000 net new jobs

Economic uncertainty is not slowing Houston energy IPO's. Stock market volatility and shaky economies worldwide may impact whether some companies go public, but the energy sector's unique properties leave it open to penetrating the capital market. During August and September, three Houston energy companies – Dynamic Offshore Resources Inc., Forum Energy Technologies Inc. and Sanchez Energy Corp. – filed initial public offerings. Energy is an industry where participants are not strangers to volatility. They take a long-term perspective on their business models. They have plenty of reserves and it's a sector that's more able to weather these volatile times.

Economists say it may seem like the US is heading back into a recession, but the country is really experiencing a longer period of slow growth. Growth has been slowed in part by a number of issues that hit the country in a short period of time: the Japanese earthquake, the Federal Reserve increasing the money supply, floods & tornadoes across the country, an increase in oil prices, the government stalling on a debt-ceiling agreement, the Standard & Poor's downgrading of the country's credit rating, and debt issues in Europe. The national economy is showing signs of modest improvement – not enough to reduce high unemployment but enough to ease fears that another recession might be near. Fewer people applied for jobless benefits and the economy grew slightly more from April to June than anticipated. Growth is also expected to tick up in coming months. Per a survey by a trade group, the Business Roundtable, only about a third of the CEO's of the nation's largest companies plan to hire or boost spending in the next six months – down from about half who said so in June. The economy grew at a 1.3 percent annual rate in the April-June quarter, up from an estimate of 1 percent a month ago.

NLRB Orders Businesses to Post Labor Rights Notice

The National Labor Relations Board will require as many as 6 million businesses to post notices informing employees of their right to organize a union. Under a rule that goes into effect November 14, 2011, businesses will be required to post an 11-by-17 inch poster at work sites that lists employees' rights under the National Labor Relations Act. These include the right to join a union; engage in collective bargaining on wages, benefits, hours and working conditions; and go on strike. The notice also informs workers they can "choose not to do any of these activities." The notice also must be posted on internet or intranet sites if businesses customarily post personnel policies there. Small businesses that engage in little or no interstate commerce are exempt.

New ADA Regulations: With Disability Protections Now Even Broader, Employers Must Prepare to Comply

New regulations under ADAAA became effective May 11, 2011. The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. Three-pronged coverage remains: actually disabled, record of disability, and regarded as disabled.

New regulations further expand listed major life activities. MLA's include caring for oneself, performing manual tasks, seeing, hearing, eating sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communication, interacting with others, and working. Operation of bodily functions including the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Whether something is a MLA is not determined by reference to whether it is of central importance to daily life. Impairment must still be substantially limiting. List of impairments covered in virtually all cases: deafness, blindness, intellectual disability (formerly termed mental retardation), partially or completely missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV Human Immunodeficiency Virus infection, multiple sclerosis, muscular dystrophy; major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.

Key Questions: Is an individual otherwise qualified to perform the essential job functions of the job? Does the individual meet the basic qualifications of the job? Can the individual perform the essential functions of the job with or without reasonable accommodation?

Job descriptions are a useful managerial tool in setting forth job requirements, productions standards, basic qualifications and environmental factors for any particular job. When reviewing job descriptions, also review any other documents which describe job functions (past job description, production specification, job posting, requisition, etc.). Poorly drafted job descriptions can be worse than no job descriptions at all. Well drafted ADA job descriptions should: define the overall purpose of the job, set forth basic job qualifications and essential job functions, and describe environmental and other relevant job related factors. Duty is to provide reasonable accommodation to those who have an actual disability or a record of a disability but not to those who are regarded as disabled.

Developing a Reasonable Accommodation Process

- Phase One
 - Reasonable Accommodation Policy
 - Job Descriptions
 - Determining Who Will Handle Requests
 - Train Managers to Recognize Accommodation Requests and Handle Properly
- Phase Two
 - Interactive Process with Employee
 - Medical Documentation
 - Document Every Step of Process
- Phase Three
 - Follow-up with Employee to Determine if RA is Assisting the Employee in Performing the Essential Functions of the Job
 - Monitor Short-Term Accommodations
 - Make Certain Employee is Working Within His/Her Restrictions
 - Monitor Light Duty Assignments

Investigations & Compliance

Safeguarding Company Training, Policy and Procedure Documents Upon Separation

It's usually one of the last things managers and HR professionals worry about when Suzy of 30 years retires, or when Jason is terminated for failing to perform at work. Where are the company training materials, policies and procedures that we gave them while they were employed? In some organizations, the policies or training materials are so generic; it wouldn't really matter if they walked out of the door. In other organizations, the policies or training materials could be very specific with regards to the organization's safeguards, security controls, reporting requirements, trade secrets, operating procedures, contain certain litigation issues, etc. If your organization has never thought about this, here are some basic steps that you should consider to curtail data leakage and protect your organization:

- Assess all training material, handbooks and policies that employees receive for sensitive, confidential and/or proprietary information. You may even want to code your material into categories: Generic, Sensitive/Confidential, Proprietary.
- Set records management requirements on the handling, destruction and return of material falling in to each of the above mentioned categories.
- Set additional standards and expectations followed by training and communication on who ultimately owns the material and highlight the employee's requirement to safeguard it and return it upon separation. You may also want to prohibit the emailing of these materials outside of the company network or prohibit the taking of physical copies off the premises.
- Make sure that your termination checklist has a requirement to retrieve from the employee any Sensitive/Confidential or Proprietary training information, both in electronic and hard copy.
- Work with in house or external counsel to determine if any internal training and policy documentation would pose a hindrance to any current, pending or future litigation if it were to escape the confines of the organization. If the answer is yes, then develop additional controls to safeguard and track these documents.
- Include as part of all employment agreements that each employee is responsible to safeguard all company documents (you may want to include a significant list of examples) and further highlight each employee's responsibility to turn over or return those documents upon separation.

Why is it important that these training records, policies and procedures be returned? They could be used as exhibit A. in numerous types of employment related lawsuits.

Specifically, that training was inadequate, outdated, or irrelevant. They could also give competitors an insight in to the internal operations of your organization, and ultimately exploit your operations, services, and/or trade secrets. Proper planning and safeguarding of internal training, policies and procedures could save your organization significantly down the road.

For more information about Employee Investigations and Compliance, you can contact Ryan Hubbs CFE, CIA, PHR, CCSA, Senior Manager, Matson Driscoll & Damico LLP at rhubbs@mdd.com or 713-621-3010.

Sources: Greater Houston Partnership; Houston Chronicle; Houston Business Journal; HR Houston; Ryan Hubbs, Senior Manager, Matson Driscoll & Damico LLP