

Economic Update

The Federal Reserve has offered its most optimistic view of the U.S. economy since the recession ended. The recovery is on “firmer footing” and the job market is “improving gradually” the Fed declared. The unemployment rate has dropped nearly a full percentage point in just three months – the sharpest decline in unemployment since 1983.

If the rest of the nation is warming up after a numbing economic freeze, Texas is “hotter than a fur coat in Marfa”, to borrow one of the state’s more colorful expressions. Houston has been one of the top performing cities for sustaining jobs and economic growth over the past few years. Houston doesn’t have steel or machinery-based industries that were hit very hard nationally and the city has been doing much more to diversify into the medical sciences, which has been a source of stability overall. Statewide, the economy – which gained 231,700 jobs last year – has been bolstered by hi-tech manufacturing, a strong military presence and solid housing market.

The recovery is further along in Houston, and last year proved to be stronger than previously thought. The 10-county Houston metro area added 46,300 jobs last year, up from the previous estimates of 13,100 jobs. Job growth occurred in 9 of 11 sectors, with the largest percentage gains occurring in natural resources and mining, professional and business services, and educational and health services. The data suggest that Houston has recovered half of all jobs lost during the recession.

The new insights into Houston’s economy come from the benchmark revisions to the employment data issued every March by the Texas Workforce Commission (TWC). The employment estimates released throughout the year are based on a sample survey of area employers. Starting in the fall, TWC revises the job numbers based on data available from unemployment insurance accounts. In revising the data, TWC looked back over the previous 21 months. TWC “re-benchmarked” the data back to March ’09. Since posting revisions to ’09 and ’10 employment data, TWC has released employment estimates for the 12 months ending February ’10—the Houston metro area has added 50,700 jobs, growing 2.0 percent. This suggests Houston is returning to normal. In a non-recession/non-boom year, Houston creates 50,000 to 60,000 net new jobs. In some cases, the revisions were minor, in others, the revisions were significant. Key revisions:

- The goods producing sector added 9,200 jobs, 3,000 more jobs than previously estimated.
- The service sector added 37,100 jobs, up 30,200 jobs from the previous estimate.

- Natural resources and mining added 5,700 jobs, an upward revision of 1,200 jobs. The oil and gas industry continues to grow as it looks for opportunities outside the Gulf of Mexico.
- Construction added 1,800 jobs, a reverse from the original estimate of 1,700 jobs lost last year. Recent reports from McGraw-Hill suggest residential construction in the Houston area may have flattened out and commercial construction may be picking up.
- Though manufacturing was revised downward it remained positive, adding 1,700 jobs. Declines in chemicals and refining employment offset gains in machinery and fabricated metal products.
- Trade, transportation and utilities added 7,800 jobs, a reversal from the original estimate of 1,900 jobs lost. Increased retail sales and port activity has supported job growth in these areas.
- Professional and business services added 12,100 jobs, a reverse of the 1,700 jobs lost first posted. Legal, accounting and computer services are all experiencing growth.

The energy sector recruiting pipeline is flowing again. According to a report by the TWC released March 10, 2011 the exploration & production sector added about 5,700 new jobs in February alone, boosting total employment in the sector to about 83,000. The energy industry faces an unprecedented talent shortage as baby boomers plan to retire over the next few years. Fierce competition has emerged to replace these key employees from a shrinking group of highly qualified talent. According to a recent report by Rigzone, an energy industry website, average annual compensation across the global sector this year has increased 7 percent to \$103,000 compared to 2010.

Houston's February unemployment rate stood at 8.4 percent, a decrease from 8.8 percent the previous month. Texas' unemployment rate stood at 8.2 percent, down from 8.5 percent in January. The U.S. rate was 9.5 percent, down from 9.8 the month before. The decline in the unemployment rates coincides with the decline in claims for unemployment insurance. Initial claims in the 13-county Gulf Coast Workforce Development Area dropped 22.4 percent from 20,574 claims in February '10 to 15,957 in February '11, Workforce Solutions reports. Initial claims are down 44.5 percent from the most recent peak of 28,729 in March '09.

The most-awaited sign that the U.S. economic recovery is firmly taking root arrived April 1, 2011 in a Labor Department report that showed vigorous private-sector hiring as the unemployment rate fell for the fourth straight month. The gains pushed the nation's unemployment rate to its lowest level in two years. Employers added a robust 216,000 jobs in March as the unemployment rate ticked down one-tenth of a percentage point to an 8.8 percent. The job market is kicking into full gear. Job growth has accelerated to 200,000 per month, which is sufficient to meaningfully bring down unemployment. It is also encouraging the job growth is increasingly broad-based across industries.

More CEO's plan increased hiring per a survey by the Business Roundtable. It showed U.S. chief executives to be the most upbeat about the economy since before the global financial crisis. Asked about the employment outlook, 52

percent said they expect to increase hiring vs. only 11 percent who expect to decrease their workforce and the other 37 percent predicted no change.

Corporate profits grew 36.8 percent in 2010, the biggest gain since 1950. Over the past six months, the economy has gathered steam, and demand is up – from factory orders for parts needed in assembly, to a rebound in automotive manufacturing, to consumer purchases rising.

Per Matt Ferguson, CEO of CareerBuilder, stronger employment trends are expected for the U.S. in 2011 since more employers plan to add full-time headcount with an emphasis on hiring in technology and revenue-producing fields. According to their 2011 Job Forecast, sales is the most popular functional area employers said they will be recruiting for in 2011 as they focus on expanding their customer base and market penetration. This year will be characterized by steady, moderate gains across various industries. Forty-one percent of employers are concerned that their best talent will leave their organizations once the economy improves, as heftier workloads and longer hours take their toll on worker morale. Therefore they plan to increase compensation for their existing staff and provide higher initial job offers to candidates.

Americans' household net wealth climbs 3.8 percent in the final three months of 2010 boosted by gains in stock portfolios. Companies added to their cash stockpiles which reached their highest point in more than a half-century. Per the Federal Reserve, household net worth rose to \$56.8 trillion in the October-December quarter even though the value of real estate holdings fell 1.6 percent. It is well above the bottom hit during the recession: \$49 trillion in the January – March quarter of 2009. Still, it would have to rise an additional 16 percent to reach its pre-recession peak of \$66 trillion. Further gains in wealth could lead Americans – especially higher-income consumers – to spend more boosting the economy.

Houston population grew 7.5 percent between 2000 and 2010, according to figures released by the U.S. Census Bureau. The Census puts Houston's count at nearly 2.1 million and Harris County remains the largest county by population at nearly 4.1 million, a 20.3 percent growth since 2000. The Hispanic population in the Houston-Sugar Land-Baytown MSA grew by more than 745,000 since the last census, according to the U.S. Census Bureau. The Hispanic population growth accounted for more than 60 percent of the region's population gains over the past 10 years. The Asian population grew nearly 70 percent, while the black population grew 27.4 percent and the white population by 3.8 percent.

Legal Update

Beware the Sharp Claws of the Cat's Paw: U.S. Supreme Court Endorses Employer Liability for Personnel Decisions Influenced by Biased Supervisors

In *Staub v. Proctor Hospital*, the U.S. Supreme Court for the first time recognized the cat's-paw theory of liability, holding that an employer may be liable for

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employment discrimination based on the unlawful intent of supervisors who directly or indirectly influenced but did not make the ultimate employment decision. In so doing, the Court declined to adopt an inflexible rule that the decision maker's independent investigation of the employee's allegations of discrimination would suffice to negate the effect of the secondary discrimination. Instead, the Court held that a supervisor's biased report would be deemed a causal factor if the investigation took the report into account without determining that the adverse action was justified apart from the supervisor's recommendation.

The Staub case involved allegations of egregious conduct that (one would hope) are seldom present in the workplace: supervisory employees who openly expressed hostility toward and a desire to cause the firing of a member of a protected class, and who took action that ultimately resulted in achieving that goal. The case underscores the need for employers to conduct the necessary training to ensure that all employees – and particularly those to whom it has delegated supervisory responsibility – are aware of and agree to abide by all anti-discrimination laws. Arguably the cat's-paw analysis will create the need to conduct anti-discrimination training at the same level of importance as most employers currently apply to anti-harassment training.

Patient Protection and Affordable Care Act

Many of you now should be aware of last year's Fair Labor Standards Act amendments (29 U.S.C. section 207(r)) set forth in the Patient Protection and Affordable Care Act, requiring employers to provide lactation accommodations for many, if not most, of your nursing mother employees. The Act requires employers to provide reasonable break time and a place for nursing mothers to express breast milk for one year after their child's birth. A bathroom, even if it offers privacy, does not meet the requirements of the statute.

While the DOL has issued a Fact Sheet (No. #73) and FAQs, the DOL has not and does not plan to issue regulations implementing these amendments because of the wide variety of workplace environments, work schedules and individual factors that impact how an employer complies with the break time and space requirements. However, the DOL has issued preliminary interpretations and a Request for Information to the public on the Act as it considers how best to help employers and employees understand the Act's requirements. If the DOL finds either through enforcement or through the comments received in response to its Request for Information that regulations are necessary, it will initiate the rulemaking at that time.

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