

Economic Update

The 10-county Houston-Sugar Land-Baytown Metropolitan Statistical Area gained 6,200 jobs, growing 0.2 percent, from October '09 to October '10, according to estimates by the Texas Workforce Commission. After 19 consecutive months of year-over-year job losses, the Houston employment picture is showing some signs of life. October marked the second consecutive month of year-over-year increases, another sign that the Houston economy is slowly recovering. Several sectors posted job gains over the past 12 months: health care and social assistance, 8,100 jobs (3.1 percent); durable goods manufacturing, 5,100 jobs (3.7 percent); mining and logging, 3,700 jobs (4.2 percent); leisure and hospitality, 3,600 jobs (1.6 percent); private educational services, 700 jobs (1.6 percent); and retail trade, 500 jobs (0.2 percent). The new jobs in durable goods manufacturing is a bright sign which includes the making of oil field equipment. Within professional services, architecture and engineering added 1,100 jobs (1.8 percent) and employment services added 600 jobs (1.3 percent) over the past year. However, legal services lost 300 jobs (1.3 percent), accounting lost 1,300 jobs (7.6 percent) and administrative support and waste services lost 3,000 jobs (1.9 percent) respectively, erasing job gains elsewhere in professional services. On a month-to-month basis, October saw a significant jump in construction employment, which was up 2,400 jobs (1.4 percent) since September, but down 4,700 jobs from October '09 and 37,500 jobs from its peak in October '08. Retail trade added 1,000 jobs in October due to additional hiring for the holidays. Though the government sector added 8,400 jobs in October (6,500 jobs in state and local education), the sector is down 1,200 jobs (0.3 percent) from October of last year.

In another positive sign, fewer Houston-area residents filed initial claims for unemployment benefits in October than they did a year earlier. Last month 22,280 workers filed for claims, 13.8 percent fewer than in October 2009. The Houston area unemployment rate remained at 8.2 percent and Texas showed an 8.1 percent in October.

Nationally, the number of people applying for unemployment benefits barely rose last week, offering some hope that the job market may be improving. But claims need to fall further to bring down the 9.6 percent unemployment rate. Claims have fallen in three of the past four weeks and remain near their lowest level in two years. The downward trend in both figures suggests companies are laying off fewer workers and some hiring is taking place.

Newsweek has compiled a list of the 10 American cities best situated for the recovery from the recession. These are places where the jobs are plentiful, and the pay, given the lower cost of living, buys more than in bigger cities. The cities fall into three basic groups: Texaplex, New Silicon Valleys, and Heartland Honies. These locales not only grew during the boom of the mid-2000s, they suffered least in the Great Recession. Texaplex – Austin Dallas, San Antonio & Houston – which has become the No. 1 destination for job-seeking Americans, thanks to a hearty energy sector and a strong spirit of entrepreneurship. Texas now has more Fortune 500 companies – 58 – than any other state, including New York. New Silicon Valleys – Raleigh-Durham, Salt Lake City, and urban northern Virginia – which offer high-paying high-tech jobs. Heartland Honeys – Oklahoma City, Indianapolis, and Des Moines – which are enjoying a revival thanks to rising agricultural prices and a shift toward high-end industrial jobs.

The nation's workers may be struggling, but U.S. companies just had their best quarter ever. U.S. businesses earned profits at an annual rate of \$1.759 trillion in the third quarter which is the highest figure recorded since the government began keeping track more than 670 years ago. Corporate profits have been doing extremely well for a while since their cyclical low in the fourth quarter of 2008, at some of the fastest rates ever. This breakneck pace can be partly attributed to strong productivity growth – which mean companies have been able to make more with less people – as well as some of the profits of U.S. companies coming from abroad.

There was a tiny sign of hope in a monthly survey of small-business owners recently, one that could mean they're getting ready to hire. Small businesses weren't cutting jobs since the average employment change per company was zero in October. A net 8 percent now think the economy will get better over the next six months and a net 1 percent of small-business owners plan to add jobs in the coming months.

Legal Update

Genetic Information Nondiscrimination Act (GINA)

Nearly a year after the employment provisions of the Genetic Information Nondiscrimination Act (GINA) took effect, the EEOC has issued a final rule implementing these sections. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers, and strictly limits the disclosure of genetic information. Title II also prohibits retaliation against employees who complain about genetic discrimination. According to the EEOC, the final rule implements the various provisions of Title II consistent with Congress's intent, provides some additional clarification of those provisions, and explains in greater detail

those sections where Congress incorporated by reference provisions from other statutes.

Although the final rule does provide additional clarity on key provisions of GINA, some uncertainty remains. What is clear is that employers must revisit their policies and practices to ensure compliance with GINA. Employers should take the following steps:

- Train human resources personnel, managers, recruiters about compliance with GINA.
- Revise EEO policies to include prohibitions against discrimination based on genetic information and associated retaliation.
- Discontinue any request or requirement to provide family medical history or other genetic information in connection with an employee's request for a reasonable accommodation under the ADA, for FMLA leave for the employee's own serious health condition, or pursuant to a leave or disability policy; add the "safe harbor" warning that the employee and/or health care provider must not provide genetic information.
- Discontinue any request or requirement to provide genetic information during an employment-related medical examination such as in connection with a post-offer, pre-employment medical examination, or a fitness-for-duty exam. Employers must instruct health care providers not to collect genetic information as part of the employment-related medical examination.
- If the employer offers a financial inducement for completing a health risk assessment that includes questions about family medical history or other genetic information, the employer must specifically identify such questions and clearly state that the inducement will be provided whether or not the participant answers the questions concerning family medical history or other genetic information.
- Inventory personnel records – such as FMLA certifications seeking leave for the serious illness of a family member – that contain genetic information about an employee, store those records in a confidential medical file, and strictly limit access to those with a need to know.
- Implement procedures to prevent the disclosure of genetic information in response to a subpoena or civil discovery and to permit disclosure only when specifically required to comply with a court order.

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