

Employment Update

Houston – Highest Employment Level in its History

Houston began this year with more than 2.6 million payroll jobs, the highest employment level in its history. Traffic through the Houston-Galveston Customs District is at an all-time high. Home sales and home construction have started to pick up. Oil sells above the once-magical \$100 a barrel mark. The rig count is near its highest point in 20 years. And the Eagle Ford Shale should keep Houston's energy companies busy for a decade or more. No one is talking about Houston being on the cusp of another boom, but there are no signs that Houston's current prosperity will end any time soon.

30th Anniversary of 80's Recession in Houston

Next month marks the 30th anniversary of the beginning of the '80s recession, an economic disaster that devastated the region for half a decade and did much to shape the Houston of today. During those five years, unemployment hit double digits, population fell, real estate values plunged, foreclosures and bankruptcies skyrocketed, and banks and savings and loans imploded. When the recession ended five years later, Houston had lost 221,000 jobs, one in every seven in the region. At the time, it was the worst post-war recession in U.S. history. Think of Detroit in the last decade, that was Houston in the '80s.

Before the bust came the boom. The beginning of the boom can be tied to two events. In '71, Shell Oil relocated its headquarters from New York City to Houston. The new headquarters, One Shell Plaza, was the first high-rise office building built by Gerald Hines and at the time was the tallest building in Downtown. The move caught the eye of corporate America and over the next 10 years, more than 200 major firms transferred headquarters, subsidiaries or divisions here. The second event was the '73 Arab oil embargo. The United States assisted Israel during the Yom Kippur War. In retaliation, the Arab OPEC members cut off oil shipments to the United States. Crude prices tripled in 90 days and gasoline prices doubled so long lines formed at the pumps. Over the next nine years, the price of crude increased tenfold, the number of drilling rigs working in North America quadrupled, the number of oil wells drilled quintupled, and energy industry employment in Houston tripled.

- Between the '70 and '80 censuses, Houston's metro population grew from 2.2 million to 3.1 million residents, a 43 percent increase.
- From October '73 to March '82, the region added 663,000 net new jobs, a 72 percent increase.

Houston No. 1 for Corporate Relocations/Expansions

Site Selection Magazine has named Houston the number one metro in the nation for corporate relocations and expansions. This is the second time in three years the Houston metro area has taken the top spot. Houston logged in 195 new and expanded facilities last year to garner the honor. To qualify as an expansion or relocation, a project must meet at least one of three criteria—involve a capital investment of at least \$1 million, create at least 50 new jobs, or add at least 20,000 square feet of new floor area. Hotels, retail centers, government projects, schools and hospitals are not counted.

Nationwide Hiring Gains

Nationwide, steady declines in applications for unemployment aid are pointing to another strong month of hiring in February and the lowest levels since early 2009. Employers have added an average of 200,000 net jobs per month in November, December and January. That has pushed the unemployment rate down for five straight months, to 8.3 percent in January. The healthier job market that's lifted the economy in recent months shows no signs of slowing. More jobs and tame inflation are giving consumers more buying power. Their higher spending could further boost growth and lower the unemployment rate.

Wellness Programs Combat Rising Insurance Costs

A growing number of employers are turning to workplace wellness initiatives designed to help employees improve or maintain their health, which in turn curbs rising medical claims that drive up health premiums. Health premiums have increased an average of 8.9 percent in the Houston area for 2012, compared to 7.0 percent nationally. Companies looking to run a worthwhile program need to have a thoughtful plan. Successful wellness programs require engaged leadership, input from employees, and good communication. Companies should look at all the communication tools (posters, email, internal websites, direct mail, and newsletters) when conveying the information. Once a program is established, you should set goals and track progress by looking at healthcare costs, employee morale and productivity. Programs include walking clubs, fitness centers, on-site yoga & Zumba classes, health risk assessments, quit smoking programs, Weight Watcher meetings, and healthy food choices in the cafeteria. Participation incentives come in forms of additional paid days off, employees paying a lower share of their health premium, or discounted or paid membership at a fitness club. Employers in the last two years have also begun to impose penalties for employees who don't participate in a wellness program and are beginning to base incentives on outcomes, such as losing weight or lowering cholesterol, rather than just participation. The Wellness Council of America pegs the average ROI at \$3 for every \$1 spent on wellness.

FMLA Policies

Employees must be given clear, actual notice of FMLA Policies since ambiguity and confusion can be costly. In *Thom v. American Standard, Inc.*, the Sixth Circuit Court of Appeals awarded liquidated damages in a case “arising from confusion as to when an employee should return to work after his leave. The plaintiff, an employee who had worked for American Standard for 36 years, went on medical leave under the federal FMLA to undergo surgery for a non-work related injury. The company granted his leave request and informed him in writing that his leave would extend until June 27. His doctor released him to light duty beginning May 31 and full duty June 13 but the company did not permit employees with non-work related injuries to perform light duty work temporarily after FMLA leave. On June 14, the company contacted the plaintiff to ask why he had not returned to work the previous day. The plaintiff explained that he was suffering from increased pain and would return June 27 as originally scheduled. The plaintiff delivered a doctor’s note to the company on June 18 and was informed that each day since June 13 was an unexcused absence and consequently, his employment was terminated. The FMLA makes it unlawful for an employer “to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided by the FMLA. The plaintiff’s complaint alleged that the company interfered with his FMLA rights by terminating his employment. The company argued that, based upon the method by which it calculated FMLA leave eligibility, the plaintiff actually exhausted his FMLA leave eligibility on June 13. The FMLA allows an employer to select one of four methods for calculating leave. One such method is the “rolling” method, which calculates an employee's leave year “backward from the date an employee uses any FMLA leave.” The “calendar” method is another way to calculate leave, and provides for 12 work weeks of leave per calendar year. In this case, under the calendar method, the plaintiff’s FMLA entitlement would have run through June 27, as the company originally instructed him. However, the company's position was that it used a “rolling” method and, therefore, the plaintiff's FMLA leave was exhausted before his employment was terminated. The district court granted summary judgment for the plaintiff on his FMLA interference claim and awarded him \$99,960 in attorney's fees, \$2,732 in costs, and \$104,354 in back pay. Although the decision does not make new law, it serves as a good reminder to employers of several important lessons. Employers must clearly communicate, in writing, the method used to calculate FMLA leave. An employer may change the method of calculation, but it must promptly and clearly notify its employees of such a change and that change should not result in employees being deprived of accrued FMLA eligibility. Additionally, employers must make sure they accurately calculate an employee's FMLA eligibility before advising the employee. Finally, as a practical matter, it is advisable to consider business judgment principles when long-term, otherwise satisfactory employees, suddenly face termination based on what judges or juries might likely perceive as a mere “technicality.”

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