

## Economic Update

The economic recovery hit three benchmarks recently. For the 12 months ending September '10, the Houston-Sugar Land-Baytown metro area added 3,300 jobs, a 0.1 % increase in employment, the Texas Workforce Commission (TWC) reported. This marks the first year-over-year gain since January '09. TWC also reported that the Houston metro area added 4,800 jobs from August '10 to September '10, the first September gain since '07. The gain represents a 0.2 % increase in employment. Houston's unemployment rate dropped half a percentage point to 8.2 % in September, the first month since April '08 that the month's unemployment rate was lower than the same month the previous year. The 3,300 annual jobs gain is a far cry from typical job growth for Houston. In a healthier economy, Houston would be adding jobs at a rate of 55,000-65,000 per year. In the '06 boom, Houston ended the year with 105,000 more jobs than it started with. In '07, it ended the year 87,000 jobs ahead of where it started. On the other hand, this time last year TWC reported the loss of 104,300 jobs during the previous 12 months, so the labor market has begun to improve, albeit slowly.

Though job growth remains weak, there are signs the labor market is slowly improving. Initial claims for unemployment insurance in the 13-county Gulf Coast Workforce Development Area totaled 20,203 in September, down 18.3 % from 24,720 initial claims filed in September '09, according to Workforce Solutions. This is the lowest number of initial claims filed since November '08. In the three Septembers prior to the recession ('05, '06 and '07), initial claims averaged 12,386, or about 60 % of this September's level, so there remains substantial room for improvement. Continuing claims for unemployment benefits totaled 89,941 in September, down 35 % from 138,267 in September '09. The 12-month average stood at 112,206 in September and has declined consistently since March. As with initial claims, continuing claims remain high by historic levels. In the three years prior to the recession, September's continuing claims averaged 89,443 per month. Note: Gulf Coast Workforce Development Area includes Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Waller, Walker and Wharton Counties.

Houston has a lot going for it: a robust energy industry, a vital manufacturing sector, and a housing market that escaped the dramatic plunge in value that has plagued so many other large cities. Manufacturing is doing relatively well largely because of the energy industry and exports to the rest of the world.

Three sectors of Houston's economy – oil & gas exploration & production, retail, and government – will lead local job growth next year, per Ted C. Jones, University of Houston's Institute for Regional Forecasting Chief Economist. Area

employers will add a little more than 30,000 jobs next year, a 1.2% increase. That would be a sharp improvement from Houston's current rate of job creation. The energy sector will add new jobs because of the demand for fuel from China and other emerging nations. Improvement in retail will come from increased consumer confidence and better job growth overall. And government historically has been a job producer and will continue to be.

Texas ranks No. 3 on Site Selection magazine's list of states with the top business climates for 2010. The annual business climate ranking are determined 50% by performance of the state in new & expanded business facility activity and 50% by a survey of corporate site seekers across the country. The top three factors this year are workforce skills, state & local tax schemes, and transportation infrastructure.

The U.S. economy added 151,000 jobs in October. The gain was certainly a welcome change after four months of job losses and was better than what economists had expected. Still, it was not nearly strong enough to make a dent in unemployment which remains stubbornly high at 9.6%. The U. S. service sector, the nation's predominant employer, expanded in September for a ninth straight month, although the growth has not been consistent enough to dent the high unemployment rate. Weak consumer spending has kept the service industry, which employs 83% of workers in the private sector, from gaining momentum after the recession ended.

## Legal Update

### Smartphones & Security Issues

A recent survey by Juniper Networks found that about 65% of smartphone and tablet device users are extremely concerned about information security issues arising out of using these devices. Despite this, 81% of those surveyed admit to accessing their employer's network on their smartphone or tablet without their employer's knowledge. About 60% do so every day. And almost 20% admit to accessing their employer's sensitive proprietary information on such devices. This survey is probably causing heartburn in corporate IT departments around the globe. Can an employer do anything about this? Sure. First, consider measures to limit how an internal network can be externally accessed. Second, make sure you have a policy prohibiting or strictly limiting employee access to internal networks on personal devices. Finally, enforce the policy. I can't emphasize this last point enough – the best policy in the world is worthless if it's not enforced or is inconsistently enforced.

## **National Labor Relations Board (NLRB) Challenges Employer's Termination of Employee Based on Violation of Social Media Policy**

In what appears to be the first shot in an approaching battle, the NLRB's Office of General Counsel issued a press release on November 2, 2010, announcing that the Board had filed a complaint alleging that American Medical Response of Connecticut, Inc. (AMR) violated the NLRA by terminating an employee for posting negative comments about her supervisor on her Facebook page. Like many companies, AMR has a social media policy that prohibits employees from disparaging supervisors in social media posts, even when posting while off-duty and using a personal computer. It appears that unlike some employers, AMR did not include in its policy a statement that the policy would not be construed or applied in a manner that interferes with employees' rights under the NLRA. The NLRB's complaint charges that AMR's application of its policy unlawfully interfered with the employee's right under Section 7 of the NLRA to engage in "concerted, protected activity," *i.e.*, to communicate with coworkers about the terms and conditions of employment. Notably, Section 7 protects employees *regardless of whether their workplace is unionized*. Whether AMR ultimately will be found to have violated the NLRA is very much an open question.

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