

# LEGAL WORKPLACE ECONOMY

January 2012

## Jobs Report Summary

Based on the BLS Report with December 2011 Data

As millions of Americans gathered together with their friends and loved ones on New Year's Eve, many counted down the final ten seconds of 2011, eagerly anticipating the dawn of a new year and with it, new promises for a better future.

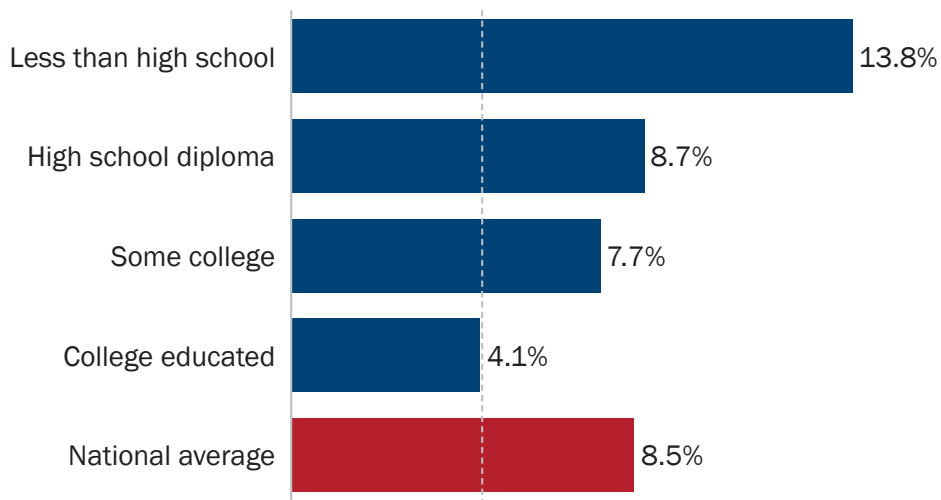
And who could blame them? 2011 was another year of economic hardships – high unemployment rates, salary reductions, and layoffs, leaving thousands of Americans without a paycheck. It was also a year in which some negative unemployment records were either set or nearly matched.

The national underemployment rate, which includes unemployed and discouraged workers who have given up on the prospect of finding work, was 17.4 percent in October – an all-time high. The employment-population ratio, which measures the share of the population that has a job, fell to 58.5 percent in 2011, which is about as low as it has been throughout the last 30 years.

In addition, this past December was the 35th straight month that the unemployment rate was at least eight percent and, as a result, 13.1 million Americans were still looking for work at the end of the year.

However, despite all these elements, there was still a glimmer of light at the end of the tunnel for many Americans, who either found new employment opportunities in 2011 or received promotions. In December alone, 200,000 new jobs were added to the economy as the unemployment rate dropped to 8.5 percent, the lowest in nearly three years, even though many economists had predicted a year-end unemployment rate of 8.7 percent, with much less job creation.

## Education remains a job search differentiator:



Overall, 1.6 million new jobs were gained throughout 2011, almost twice as many as in 2010, when only 940,000 jobs were created. December also marked the sixth consecutive month in which at least 100,000 jobs were added to the economy – a very positive streak that had not occurred since April 2006. And, to top it all off, many industries reported considerable growth in 2011.

Although there was some negative economic news to report in 2011, the year was also one of continuous economic progress, as noticed by a lower unemployment rate and an increase in annual hires. Maybe unemployed Americans really will find a light at the end of the tunnel after all – and sooner than many economists predicted.

### Industry Insights

As 2011 concluded and millions of Americans celebrated the holiday season, many employers prepared for 2012 by hiring new employees.

Such hiring increases were noticed in the following industries:

- **Healthcare:** For yet another month, hiring rose within the healthcare industry in December, as just under 23,000 jobs were added to the national economy. Hospitals created approximately half of these new positions.
- **Leisure and hospitality:** As entertainment purchases increased during the holiday season, so did hiring, especially within the leisure and hospitality industry. 21,000 new positions were added to the industry in December.
- **Manufacturing:** Of all the nation's major industries, perhaps the manufacturing industry noticed the most substantial hiring increases throughout the month. After five successive months of stagnant growth, employment increased by 23,000 within the industry in December.
- **Professional and business services:** Monthly employment figures rose by 12,000 within the industry in December. On average, nearly 42,000 jobs were added each month in 2011.
- **Retail trade:** Monthly employment figures rose by 12,000 within the industry in December. On average, nearly 42,000 jobs were added each month in 2011.

### Of Interest

#### In-House Legal Department Predictions For 2012

[www.inhouseinsider.com](http://www.inhouseinsider.com)

The good news is that in-house counsels are starting from a relatively positive position in 2012. Salaries and hiring improved in 2011 and though somewhat anemic, the trend is expected to continue.

#### In-House Legal Hiring

Corporate in-house legal departments are expected to hire new personnel in 2012; however, many positions will not be full-time attorneys. Increased use of paralegals and contract attorneys will continue with departments experiencing flat to declining budgets. Currently, 67 percent of in-house teams are attorneys with the remainder comprised of paralegals and support staff.

Attorneys that are in demand have five to ten years of corporate legal experience and possess good business sense and management expertise. In-house departments also want individuals with a national law firm background, specific industry experience and stability in their careers.

#### **In-demand Practice Areas**

- General Business/Corporate Law
- IP/Licensing
- Contracts & Compliance
- International

#### **Compensation**

A modest increase in total compensation is expected in 2012. Base salaries should rise by 3 percent and raises may be handed out based on specific actions such as saving the company money or performing unique tasks. Bonuses are dependent on individual and corporate performance, not just the discretion of the manager.

#### **Other Benefits**

With cash in shorter supply, corporate legal departments may choose to reward new hires with additional vacation time, flexible schedules and work-from-home options.

#### **Summary**

In-house legal department hiring will continue to grow, modestly, in 2012. Signs are pointing to an improving economy, but industry has yet to recover from the recession and that encourage companies to be frugal and conservative in their hiring practices. There will be small increases in starting base salaries but most increases will come in the form of bonuses and perquisites. Legal winners are those with greater experience and legal specializations.

#### **5 Predictions for Social Media Law in 2012**

[www.mashable.com](http://www.mashable.com)

As social media use continues to expand we can expect increases in lawsuits and court decisions. Here are five predictions for social media law for 2012.

##### **1. Facebook Litigation Brings Attention to the Right of Publicity**

Maintaining commercial control over your personal likeness is at the heart of the right to publicity. This legal right varies from state to state and is not well understood. We may have clarification this year. Last December, Facebook failed to have a class action lawsuit dismissed in federal court that will rule on the legality of its “Sponsored Story” ads. The plaintiffs claim that use of the names of Facebook users’ friends who like the ad is “commercial appropriation” of their likenesses.

This sharing of “friends” information is not limited to Facebook, so many social media sites will be watching closely for this decision.

##### **2. Better Guidance on “Concerted Activity”**

In a surprise move in 2011, the National Labor Relations Board brought suit against a number of employers for firing employees based on their use of social media. It had been assumed that companies were justified in firing employees who posted disparaging and often profane remarks and

comments about them. No longer the case, the NLRB now considers this “concerted activity” between employees for the purpose of improving workplace conditions. Concerted activity is protected under federal statute.

Most of these cases have been settled without going to court but 2012 may be the year in which a case will be heard – and decided – by a federal court. This will help clarify the rules for employers and employees alike.

### **3. Standardized Privacy Rules**

Facebook is again at the forefront of privacy issues by agreeing to submit to privacy audits by the Federal Trade Commission for the next 20 years. It is expected that the standards that the FTC chooses will be used for other social media companies.

### **4. More Use of Social Media Evidence in Courts**

If you’re part of a jury or a witness in a lawsuit, you can be certain that your social media profiles are being reviewed for anything that “can and will be held against you.” Companies involved in lawsuits can expect their profiles – and those of key company employees – to be scoured for any damaging revelations.

Even so, courts are becoming more sophisticated about how they treat social media evidence. A case from Maryland’s highest court was reversed because of concerns about authenticity of an alleged Myspace post from the defendant’s girlfriend. The court recognized the ease with which individuals can be impersonated and moved to improve reliability of social media evidence.

### **5. No Bright Lines to Govern Students’ Use of Social Media**

Is it free speech protected by the First Amendment or words that can warrant disciplinary action by the student’s public school? Current precedent from the Supreme Court states that student speech can be punished when it “causes a substantial disruption” in the classroom. This is sufficiently vague so that when viewed with the lens of social media it is especially problematic. Although several student speech cases have been decided there is no clear standard on the issue. Expect this to continue until the Supreme Court agrees to take this up in future terms.