

LEGAL WORKPLACE ECONOMY

November 2011

Jobs Report Summary

Based on the BLS Report with October 2011 data

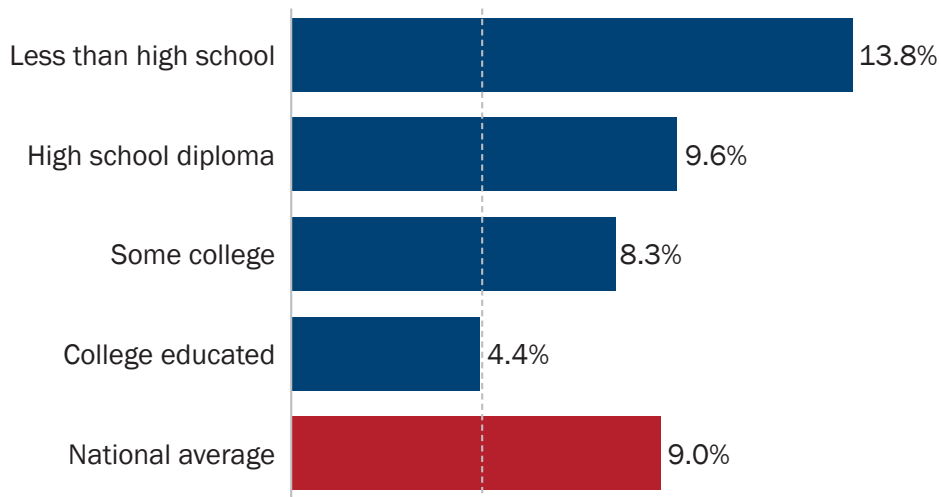
In January 2009, President Barack Obama’s economic team released a report regarding the anticipated projections of his \$775 billion stimulus plan, which, at the time, was expected to reduce the nation’s unemployment rate and create thousands of new jobs amidst a global economic recession. Forecasts of future unemployment rates were included among the stimulus plan predictions. Back then, the depth of the recession was not known and economic advisors believed the national unemployment rate would be approximately 6.5 percent in October 2011 and roughly 6 percent by the end of 2011.

Unfortunately, such forecasts have proven to be far too optimistic. So what are the actual figures – and will there be any noticeable improvement soon? According to the BLS’s “The Employment Situation – October 2011,” the national unemployment rate did drop from September to October, but only minutely so, from 9.1 percent to 9 percent, respectively. Additionally, revisions for both August and September 2011 showed larger growth than previously reported.

Although unemployment has lowered, many economists do not project a positive employment forecast anytime soon. The Federal Reserve recently predicted the unemployment rate will be at least 8.5 percent towards the end of 2012 proving that while growth is happening, it will certainly be a longer process than expected.

While unemployment did decline and the nation added 80,000 new jobs in October, the reality of the country’s current economic situation can easily be recognized. Throughout October, 13.9 million Americans

Education remains a job search differentiator:



Source: BLS

were still unemployed – and 42 percent of these individuals had been searching for work on a long-term basis, for at least 27 weeks.

As President Obama implements new methods for job creation, an array of questions remain. How will the United States economy react to crises that continue to transpire around the world, including Greece's bankruptcy and Thailand's devastating floods? Will retail stores hire enough employees during the holiday shopping season to lower the nation's unemployment rate? When will companies begin to hire at a regular pace again? Although the country's economic forecast remains unclear, hopefully such questions will be answered in a positive manner, sooner rather than later.

For the second consecutive month, employment increased within various industries throughout the United States, including healthcare, leisure and hospitality, and professional and business services.

According to the BLS's "The Employment Situation – October 2011," the following employment figures were documented:

- **Construction:** Following September's positive jobs report, in which 27,000 jobs were added within the industry, construction employment decreased by approximately 20,000 in October.
- **Government:** For yet another month, governmental employment declined quite significantly in October – by nearly 24,000 positions.
- **Healthcare:** Hiring increased again within the healthcare industry with 12,000 jobs added throughout October. Since October 2010, the industry has created 313,000 new positions.
- **Leisure and hospitality:** 22,000 new leisure and hospitality jobs were added during the month. Employment within the industry has increased by 344,000 since January 2010.
- **Manufacturing:** Employment decreased within the industry by approximately 13,000 positions.
- **Professional and business services:** Employment increased by 32,000 in October, as temporary help services and management and technical consulting services noticed extensive job growth.
- **Retail trade:** Job growth in the sector increased 17,800 jobs.

Special Counsel Insights

Ever since the nationwide recession began in 2007, American economists and citizens have searched for evidence that proves slow but steady fiscal growth is occurring. As a sign of economic progress, various success stories were documented in October as employment increased in numerous industries.

First, the nation's unemployment rate decreased for the first time since August, from 9.1 percent in September to 9 percent in October. Although such a decrease appears to be minute, any unemployment rate decline is certainly welcomed, especially during a year in which the rate has regularly been nine percent or higher.

Second, 80,000 jobs were created in October. Although 150,000 jobs need to be generated on a monthly basis just to offset the nation's population growth, considering the lack of job creation that has transpired in recent months, October's jobs report may signify that progress will be even more noticeable during the

holiday hiring season. Also, compared to September, the amount of Americans marginally attached to the labor force decreased in October while the number of discouraged workers declined, in comparison to October 2010.

As hiring continues to increase within a variety of industries, including healthcare and professional and business services, perhaps the holiday hiring season will be a bright one after all, in terms of growth and productivity. The Obama administration, as well as millions of unemployed Americans, can only hope that growth vastly improves in the near future.

Of Interest

From the Experts: Ten Tips to Save Costs in Patent Litigation

Source: www.corporatecounsel.com

Over the past 10 years, litigation costs have skyrocketed, both because of legal fees and structural changes in litigation. In 2001, a typical patent dispute with potential damages of \$1 to \$25 million generated \$1.5 million in legal fees and expenses. A trial over a similar patent dispute today would generate at least \$3 million in legal fees and expenses. In light of these rising costs and the economy's decline, clients have been looking for ways to reduce the cost of patent litigations. To that end, columnist and counsel member at Kaye Scholer LLP Joseph Drayton suggests 10 tips for corporate litigation counsel to consider in order to reduce the cost, but not quality of patent litigation.

- 1. Building a Strong Relationship with Outside Counsel:** The first rule is the most natural one and encourages you to hire attorneys that you trust and have confidence that they will work in your best interest. Before the first pleading is filed, make sure to communicate all issues ranging from how litigations are managed and tried to the impact of positive, negative and settlement outcomes on your company.
- 2. Ensure Your Lead Trial Counsel Attorney Participates in Pretrial Activities:** Although several individuals will assist with a sound trial plan, the lead trial counsel is the architect of the plan. Where possible, your litigation strategies and priorities should be guided by the vision of your lead trial counsel. If so, the litigation team will be more proactive than reactive in their approach to handling the litigation, as well as more efficient.
- 3. Create Your Trial Team Before Discovery Starts:** Patent litigation has multiple phases and can span years if an early resolution cannot be negotiated. To avoid member turnover, try to establish the trial team early and make an attempt to maintain the team's makeup as much as possible. It's important to select key players with varying experience so you can strategically use each member of the team on an as-needed basis throughout the pretrial phase of the litigation. This creates the foundation for an efficient workflow through trial.
- 4. Invest to Save:** Push your outside counsel to invest wisely and early in the most effective and promising avenues of patent litigation. Generally, in the infancy of the dispute, outside counsel should: (i) assess any exposure to the company; (ii) identify key business units relevant to trial; (iii) identify key sales, marketing and engineering personnel likely to have information relevant to trial; and (iv) identify and assess any other potential witnesses.
- 5. Get to Know Your Adversary:** By identifying your most challenging adverse witnesses as early as possible, your outside counsel will be able to focus discovery around knowledgeable witnesses and potential trial witnesses.

- 6. Go for the Win-Win:** Litigation is definitely an adversarial process, but it is also a means to an end. If you follow the preceding rules, you will have knowledgeable outside counsel and the relevant information to make an informed estimate of the settlement value of the litigation at the earliest possible juncture. With the facts uncovered from early investigation, have your team calculate a settlement value that avoids litigation and attempt to settle with your adversary. Don't be dissuaded if settlement seems unlikely.
- 7. Identify Your Winning Theme:** If the case is not resolved in the early stages of the litigation, it is time to focus on preparing a winning trial strategy. The first step is having a theme that resonates with you, your legal team and most importantly, potential jurors. The information gathered during your early assessment process should be sufficient to arrive at a winning theme.
- 8. Don't Go Through the Motions:** Instead of filing various motions – no matter how remote the possibility is of success – try to focus on strategies that have a high probability of success. One method of gauging the strategic value of a motion is to use incentive-based alternative fee arrangements, such as negotiating a lower fee for failed motions.
- 9. Retain an E-Discovery Partner:** A substantial part of the cost of litigation is review, identification and organization of documents produced by all parties. An experienced e-discovery vendor and/or in house technology staff can significantly reduce the cost associated with document production by, for example, using contract attorneys, who have substantial experience reviewing technical and marketing documents, to conduct an initial review of all documents.
- 10. Spend to Save, Invest in Markman:** The outcome of a Markman hearing often decides a patent case or creates a decisive advantage for one party over another. Thus, it is important that your trial team devote significant resources to obtain a favorable outcome at a Markman hearing. Being prepared for success at a Markman hearing requires an understanding of the nuances of the patent, technology and products at issue.

California Governor Sends Message to Jurors: No Tweeting

Source: www.law.com/jsp/lawtechnologynews

In August 2011, California Governor Jerry Brown signed legislation that admonished jury members not to mix their civic duty with social media during trials. Courts will soon be required to warn jurors not to share case details or research potential case information via texts, blogs, internet postings or various social networking sites. The new law also clarifies that judges have the authority to hold in contempt any jurors who don't heed that admonition.

In 2009, a San Francisco Superior Court judge dismissed 600 potential jurors because one admitted he had used the Internet to research the case. In 2008, a Ventura County Superior Court judge chastised a jury foreman for posting details of a homicide trial, including a photo of the murder weapon on his blog. The defendant, found guilty, appealed his conviction.

Technology and social media have improved drastically in the past few years and many courts were already providing such warnings. A council statement in support of the bill claims that, "jurors' use of electronic devices during the course of a trial is becoming an increasingly significant threat to the integrity of the justice system."