

LEGAL WORKPLACE ECONOMY

October 2011

Jobs Report Summary

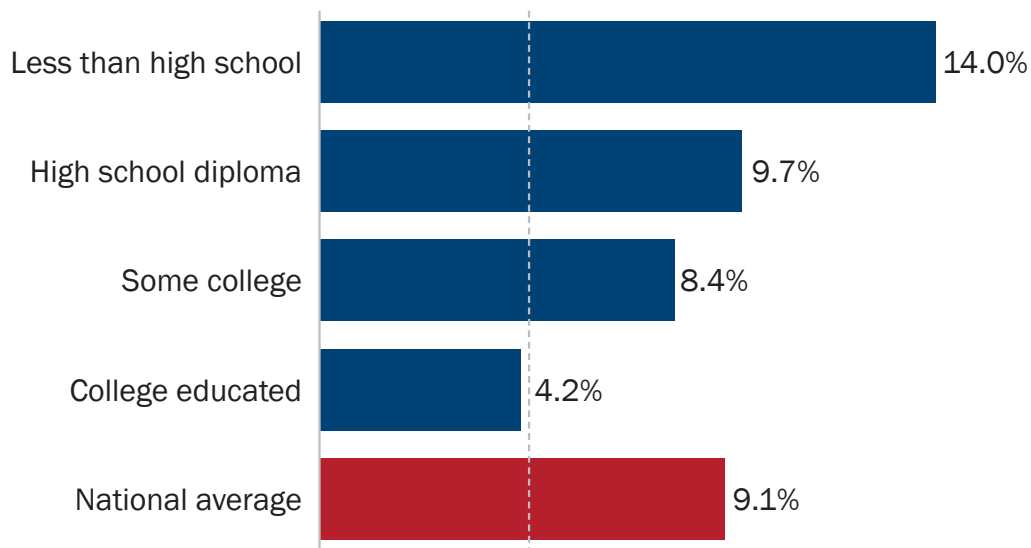
Based on the BLS Report with September 2011 data

Throughout the first half of 2011, President Barack Obama maintained his confidence in the nation's economic recovery, promising millions of Americans that, although job growth had been slower than he had hoped for, the nation was still well on its way to eventual economic reclamation. But, after the Bureau of Labor Statistics (BLS) released the jobs report showing that zero net jobs had been created in August, President Obama and his administration realized that a different job creation solution would need to be developed – and soon.

Hence, the conception of the American Jobs Act, a bill proposed by President Obama on September 8th. The bill, which is believed to ultimately cost the nation \$447 billion, will, if enacted, utilize a variety of measures, including tax relief, infrastructure spending, and an extension of unemployment benefits, to stimulate the nation's economy, further job growth, and ultimately lower the nation's unemployment rate.

But what exactly has occurred in the United States, in terms of job development and economic progress, since President Obama's bill proposal? According to the BLS's recently released "The Employment Situation – September 2011," 103,000 Americans were hired for full-time positions during the last few weeks, as employment within an assortment of industries, including construction, healthcare, and information, increased quite noticeably.

Education remains a job search differentiator:



Source: BLS

Still, some facts are impossible to ignore. First, according to a majority of economists, national employers must hire at least 150,000 employees per month – just to maintain the nation’s current unemployment rate. In order to begin to notice considerable economic growth, roughly 200,000 to 250,000 jobs would need to be created on a monthly basis, according to projections. Also, the nation’s unemployment rate remained at 9.1 percent for the third consecutive month and has not been lower than eight percent since January 2009.

Moreover, nearly 14 million Americans were unemployed in September as the civilian labor force participation rate – the percentage of the population’s working age individuals who are currently employed – was 64.2 percent. Finally, the United States’ comprehensive gauge of labor underutilization, which includes individuals who have stopped looking for work or are unable to find full-time positions, was 16.5 percent in September – the highest it has been in 2011.

Since the proposal of President Obama’s American Jobs Act, the nation has indeed reported job growth. But as the president, his administration, and all fellow Americans look ahead to the future, one fact remains clear – economic progress, across all industries, will require patience, resolve, and, perhaps, the implementation of job creation tactics that have not been fully utilized before. Will the president’s proposed act turn-around an economy that is currently near recessionary figures? Unfortunately, only time will tell.

As the nation began to recover from August’s lack of job growth, employment increased in September within a variety of industries, including construction, healthcare, and IT.

The BLS recently released employment statistics regarding the following industries:

- **Construction:** Employment within the construction industry increased by 26,000 in September, particularly in the nonresidential construction industry, as thousands of heavy and civil construction professionals were hired.
- **Government:** Governmental employment decreased by 34,000 in September, as local governments especially took a hit – employment decreased by 35,000 throughout the month and has steadily declined during the last three years, by roughly 535,000. The United States Postal Service also eliminated approximately 5,000 positions.
- **Healthcare:** Hiring continued to increase within the healthcare industry as nearly 44,000 professionals were lately employed. Ambulatory healthcare services and hospitals especially enjoyed job growth while adding 26,000 and 13,000 new positions, respectively.
- **Information:** Over 11,000 professionals were hired within the IT industry throughout the month of September.
- **Manufacturing:** For the second consecutive month, employment decreased within the industry; hiring plummeted by approximately 13,000 positions.
- **Professional and technical services:** Employment increased by 48,000 in September, as the temporary help services added nearly 20,000 jobs.

Special Counsel Insights

For the third consecutive month, the national unemployment rate remained unchanged. Although 103,000 positions were added in September, at least 150,000 positions need to be added on a monthly basis to start bringing the unemployment rate lower. Additionally, almost 14 million Americans are still unemployed – 6.2 million have been unemployed for at least 27 weeks. At the same time, national unemployment benefit extensions are projected to expire at the end of 2011.

2.5 million Americans were marginally attached to the labor force in September, while one million citizens had given up on their job searches. Another 9.3 million employees who were unable to find full-time work, worked on a part-time basis.

President Obama, Congress, and the Senate are currently implementing plans to increase hiring and, ultimately, national morale for the remainder of the fourth quarter. As millions of Americans continue to look for jobs, they can only hope economic progress will be steady – and will occur earlier than many economists presently anticipate.

Of Interest

When Everyone's a Publisher, It's Time for 'IP Law 101'

Source: www.law.com

In today's era of blogging and networking, traditional news and publishing outlets aren't the only ones producing editorial content. All types of businesses are increasing their web presence to attract new customers. But these new marketing opportunities could also cause potential legal violations, including copyright infringement, defamation, and invasion of privacy – doctrines the average general counsel might not have contemplated since the bar exam.

"Intellectual property is becoming much more of an issue these days, as companies become more involved in the web and social media," says Nahum Kianovsky, vice president and associate general counsel at HealthFirst, a Manhattan-based non-profit healthcare company that markets itself on the web and on Facebook. "A key part of working in-house is having to learn about these new aspects of law in order to spot red flags. So I'm required to think about the IP aspects of all these activities. That's not necessarily something the business or marketing people are thinking about."

In cases similar to Kianovsky's, this means reading up on copyright and trademark law, historically the domain of media lawyers, not general counsel. He believes that now part of his job is to make his colleagues aware of exactly what it is they need to do be compliant in this new digital age.

Because of its interactive nature, Facebook is a fertile breeding ground for potential liability, says Kianovsky. "Facebook inherently invites readers to talk back, which implicates privacy issues." In HealthFirst's case, its customers are also medical patients, so public exchanges on social media can easily violate rules governing doctor-patient confidentiality. Kianovsky thinks that if a company wants to create a Facebook page, for example, it may want to consider limiting the ability of customers to post on its "wall" for all to see.

Kianovsky also turned to HealthFirst's outside counsel at Kane Kessler for assistance. Adam Cohen, chair of the firm's intellectual property practice group, walked HealthFirst employees through a PowerPoint presentation on basics of publishing law. "I make companies knowledgeable about IP issues just enough so

that they know when their antennae should perk up,” he says. “It’s all about making the people on the ground aware of the issues, so they can spot an issue before it becomes a bigger problem.”

Can ‘Moneyball’ Principles Be Applied to the Valuation of Legal Services?

Source: www.abajournal.com

Paul Lippe, founder and CEO of the Legal OnRamp, a Silicon Valley-based initiative founded in cooperation with Cisco Systems to improve legal quality and efficiency through collaboration, automation and process re-engineering, recently contributed his thoughts on the valuation of legal services and how he believes they correlate with the principles from the movie, Moneyball.

The movie profiles how Billy Beane, general manager of the Oakland Athletics, built a competitive team despite a payroll one-fourth that of teams like the Yankees, Red Sox or Phillies. Beane’s approach was to analyze what created wins (runs and outs), and then assess which ballplayers produced wins most cost effectively. In contrast to scouts who focused on a “good baseball body,” Beane sought overlooked sources of value: a player who earned a lot of walks, for instance.

But the fact that the Oakland As haven’t won every World Series since 2002 doesn’t detract from the basic lessons of Moneyball – conventional shortcuts for understanding performance are often limiting and an astute effort to really understand what drives value is wise.

Lippe believes that the Moneyball-style analysis can be applied to law based on three factors:

1. The value of service is inherently more nuanced than value in goods and law is toward the more nuanced end of the spectrum of service.
2. The value discussion has to be specific – value in sell-side mergers and acquisitions is different from buy-side and altogether different from counseling to avoid employment discrimination claims.
3. Discussing value is always going to be useful, even though it doesn’t lead to one absolute standard.

Pennsylvania Appeals Court Rules Text Messages Were Inadmissible Hearsay

Source: www.abajournal.com

A Pennsylvania appeals court has overturned a woman’s drug conviction because text messages on her phone were admitted as evidence at trial. The Pennsylvania Superior Court said that there was no showing that the defendant wrote the 13 drug-related text messages and they were inadmissible hearsay, the Legal Intelligencer reports. The defendant had been convicted of possession with intent to deliver marijuana and possession of marijuana as an accomplice.

The trial court had reasoned that doubts about the identity of the sender or recipient of text messages went to the weight of the evidence rather than admissibility. The appeals court disagreed and said, “authentication is a prerequisite to admissibility. ... Circumstantial evidence, which tends to corroborate the identity of the sender, is required.”

Such authentication evidence was not offered in the defendant’s case, the court said. “Glaringly absent in this case is any evidence tending to substantiate that the appellant wrote the drug-related text messages. No testimony was presented from persons who sent or received the text messages. There are no contextual clues in the drug-related text messages themselves tending to reveal the identity of the sender.”