LITTLER MENDELSON
EXECUTIVE EMPLOYER SURVEY REPORT
JUNE 2012

Littler

Employment & Labor Law Solutions Worldwide™

This report summarizes and analyzes the results of Littler Mendelson's recent Executive Employer Survey. The survey results provide insights into the timely issues of how the 2012 election cycle and the U.S. economy are impacting the perceptions, actions and priorities of in-house counsel, human resources and C-suite executives with regard to labor and employment issues.

DISCLAIMER: Survey questions and resulting findings do not represent any specific political affiliation or preferences of Littler Mendelson, nor do they constitute any legal, economic or political advice.

EXECUTIVE SUMMARY

Those in charge of hiring and the management of human capital at America's corporations have expressed guarded optimism about their own hiring outlook for 2012. They think the next president, regardless of who he is, will assign a great deal of priority to policies thought to create jobs. They also recognize today's job market presents some incredible barriers for workers.

The confluence of these three factors – the market for new jobs, the presidential election, and the various issues impacting workers – come together to form a portrait of today's job market as corporate decision-makers see it.

Specifically:

- A full 71 percent of respondents plan to hire, either cautiously or aggressively, during the next 12 months, while just nine percent plan to lay off full-time employees. Expectations for more outsourcing are virtually non-existent.
- Most respondents think that either a second-term President Obama or a newly elected President Romney would assign a high priority to policy they think would create jobs. However, Romney fares better than Obama on this issue, at 85 percent to 70 percent.
- Underemployment, difficulty transitioning away from a job that is not a good fit to one that is, and a removal of resources, continue to be barriers to today's job market. Sixty-seven percent of respondents say that underemployment is continuing to impact the workforce, while 85 percent say that job immobility is still an issue and 91 percent indicated workers today are being asked to do more with less.

As respondents see it, there is not a great deal of uncertainty regarding *how much* the next president will focus on job creation. Respondents expect both candidates would take a proactive role in job creation. What those job-creation measures end up being, and whether or not they complement an improving labor market or just get in its way, is another matter entirely.

Either way, most respondents expect their companies will hire new workers, while far fewer say that more layoffs are looming. This supports other positive signals on the jobs front. Namely, that during the past three years, the low months for job growth have been faring progressively better. This is true even though job creation is far below what has been experienced immediately following past recessions.

Respondents balanced this guarded optimism with a reminder that today's job market has barriers that are preventing more productivity. Underemployment, job immobility, and a removal of resources are three primary barriers respondents noted, and they serve as a reminder of the magnitude of the jobs crisis that both workers and corporations face.

ANALYSIS

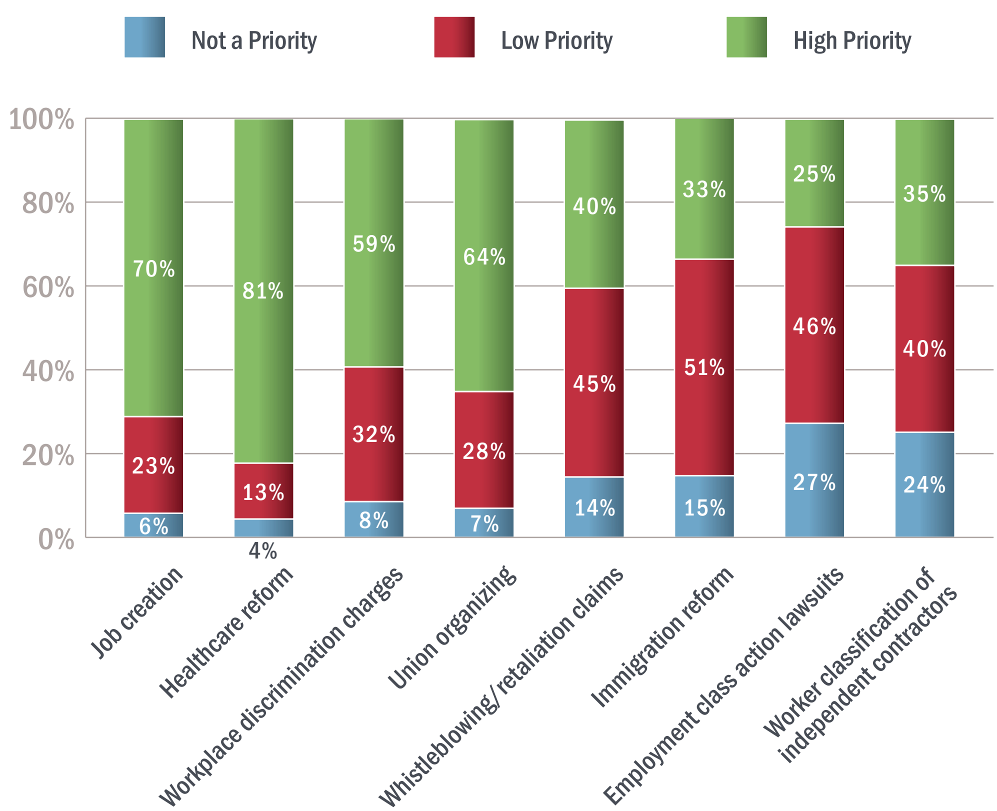
QUESTIONS 1 AND 2: THE 2012 PRESIDENTIAL ELECTION

> *If elected (or re-elected) President, how much of a priority do you think each candidate is likely to make the following issues in their Administration?*

The survey begins by measuring what issues respondents think the next president will prioritize.

A strong majority of respondents think that either a second-term President Obama or a President Romney would assign a high priority to policy thought to create jobs. A President Romney scores higher than a second-term President Obama on this issue by a score of 85 percent to 70 percent.

OBAMA:

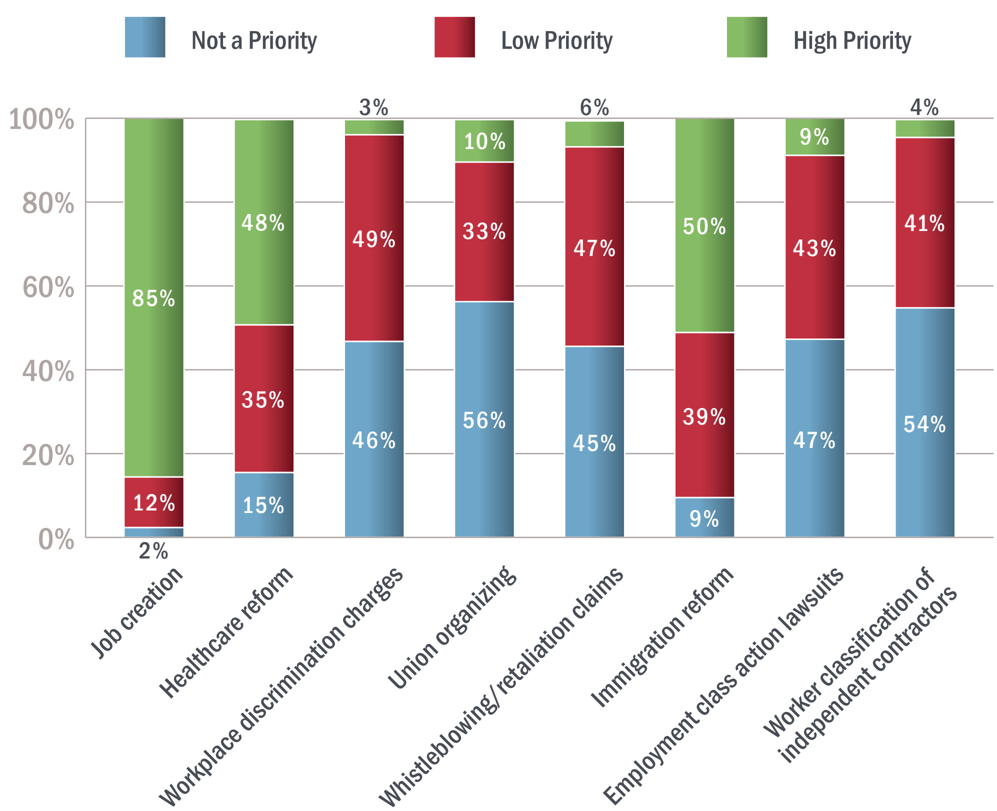


QUESTIONS 1 AND 2: THE 2012 PRESIDENTIAL ELECTION

If elected (or re-elected) President, how much of a priority do you think each candidate is likely to make the following issues in their Administration?

It has become conventional wisdom to assert that the results of the 2012 presidential election will be largely a referendum on the candidates' perceived ability to create jobs. That is what beltway insiders have been saying publicly, and that is also what the candidates are currently campaigning on – and recent academic research suggests candidates almost invariably do attempt to carry out their campaign promises. The high marks for both candidates on prioritizing job creation make sense.

ROMNEY:



But, respondents also indicated they think a second-term President Obama would also assign a high priority to healthcare reform, while a President Romney would not. Further, more respondents said they think a second-term President Obama would assign a higher priority to healthcare reform (81%) than to job creation (70%).

Why? Consider a few potential explanations for this data-point:

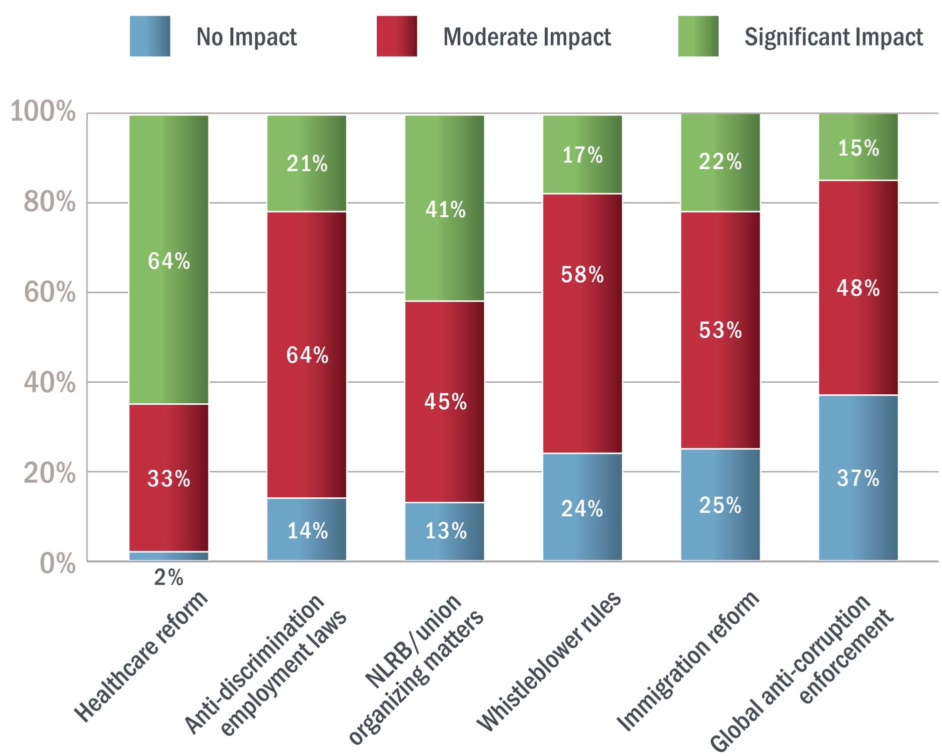
- President Obama's political reputation has become very closely associated with healthcare reform after he presided over the Affordable Care Act (ACA).
- Some respondents may think the Supreme Court will declare unconstitutional the ACA's individual mandate, leading a second-term President Obama to seek a second piece of healthcare legislation.
- Some respondents may think a second-term President Obama would prioritize *further* healthcare reform measures, such as a public option or a single-payer healthcare system, though the president has not been campaigning on this platform.
- Some respondents may think a second-term Obama White House would assign a high priority to healthcare *regulation*.

QUESTION 3: REGULATION

How much impact do you expect the following regulatory issues will have on the workplace over the next 12 months?

Collectively, respondents agree that healthcare reform will have the greatest impact of these regulatory issues over the next 12 months.

Virtually all respondents think healthcare reform will have some impact, with just two percent saying it will have none. A strong majority of respondents also think that anti-discrimination laws and union organizing will have some impact on the workplace. Whistleblower rules, immigration reform, and global anti-corruption measures are viewed as less influential.



Healthcare reform's high level of influence over the workplace is clear. The vast majority of non-retired individuals acquire healthcare through their employers, making the cost of worker health insurance a material matter for most companies.

The ACA does include provisions – both incentives and penalties – related to employer-sponsored insurance. "The microsimulation models estimates from RAND, the Urban Institute, the Lewin Group and the Congressional Budget Office (CBO) show net changes to employer sponsored insurance (ESI) ranging from –0.3 percent to + 8.4 percent compared to baseline projections without ACA implementation – not major changes in the market," states a research note from Avalere Health. Additionally, most provisions related to employers do not go into effect until 2014 under the ACA.

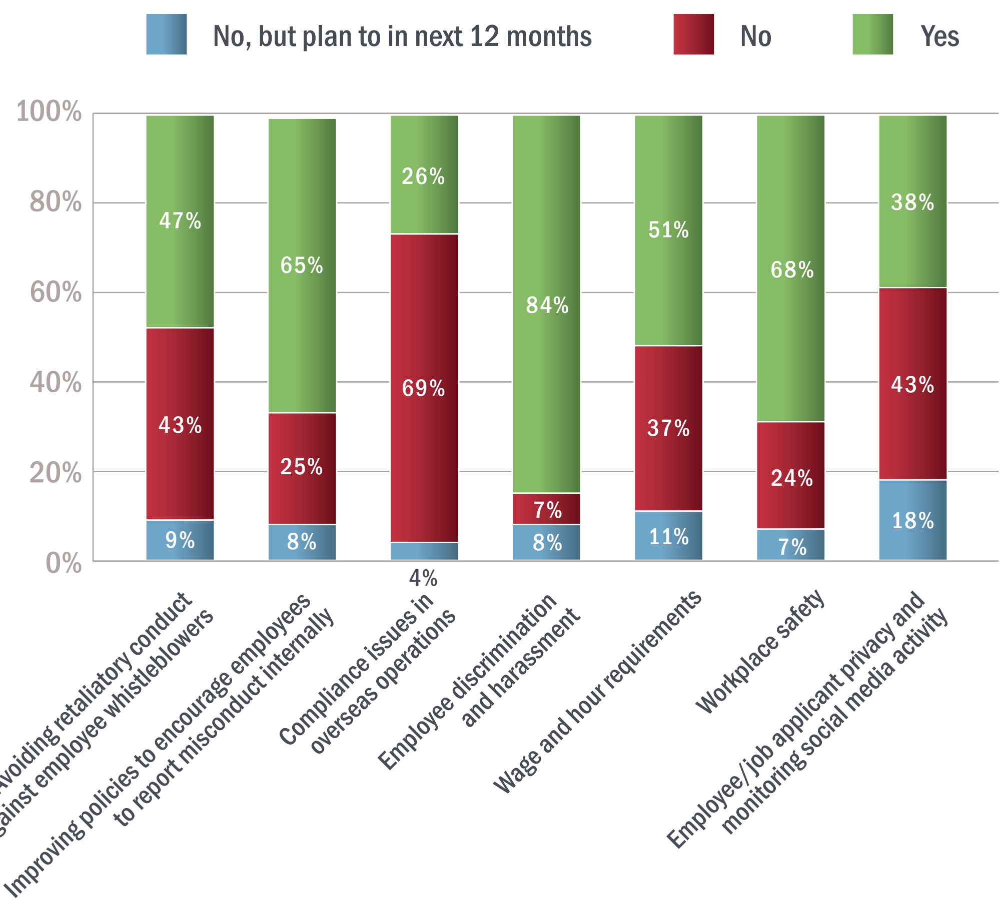
However, the ACA is a massive piece of complex legislation. Simply understanding and preparing to comply with it could easily be thought of as a workplace issue for this group of respondents. Though the ACA is not directly impacting the workplace to a high degree now, it may indirectly do so throughout the next 12 months.

Respondents also consider union organizing matters to be an influential workplace issue. This is likely attributable to controversial "right to work" legislation in states including Wisconsin and Indiana and its effect on organized labor.

QUESTION 4: TRAINING

In the past 12 months, has your organization held training programs on ethics and compliance issues in any of the following areas?

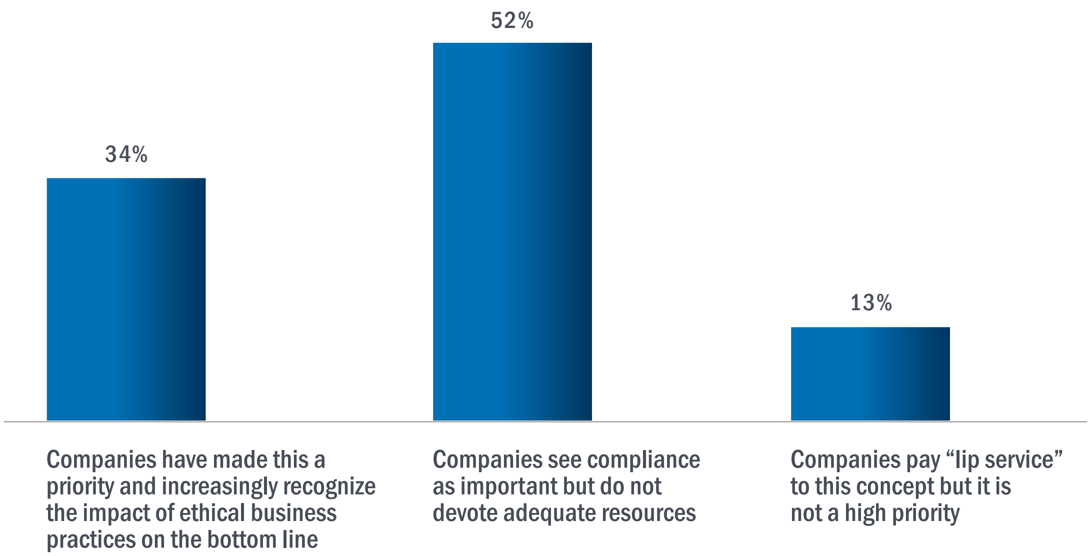
Employee discrimination and harassment was the most popular topic for respondents to address with employees via training and seminars, with 84 percent of respondents indicating they had done so. However, even global compliance training is starting to receive significant interest from U.S. based HR professionals and corporate counsel handling employment and labor matters.



QUESTION 5: AUTHENTICITY

Which of the following best characterizes your opinion on the extent to which companies have a genuine commitment to creating a "culture of compliance" and encouraging employees to report fraud or misconduct in the workplace?

A majority – 52 percent – of respondents indicated they think, in general, that corporations have a genuine commitment to creating a culture of compliance, but that such programs are not adequately funded. Fortunately, just 13 percent of respondents think that companies' devotion to compliance, including an atmosphere that encourages employees to report fraud or misconduct, amounts to lip service and is not genuine.



Respondents from the energy, financial services/banking, and healthcare sectors were more likely to say that companies' commitment to a culture of compliance is genuine, while respondents from the nonprofit and professional services sectors were more likely to say that such commitments are purely lip service.

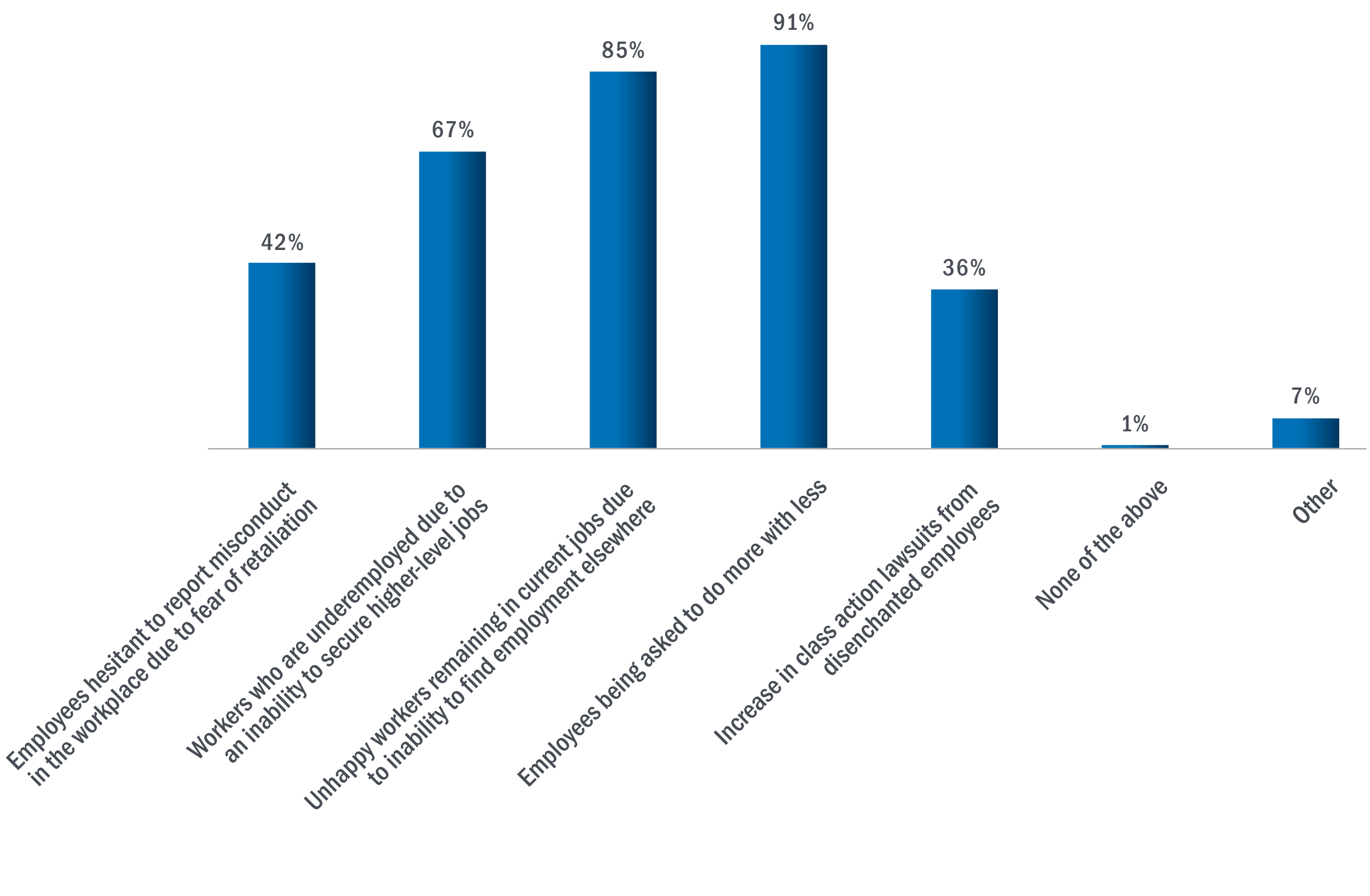
In other words, respondents from highly regulated industries were most likely to believe that corporations encourage employees to report fraud or misconduct in the workplace.

Respondents who work for the government were most likely to think corporations consider compliance important but do not devote adequate resources to it.

QUESTION 6: THE ECONOMY

In which of the following areas do you feel current economic conditions are continuing to impact the workforce? (please check all that apply)

For employees, the economy is challenging. Respondents identified underemployment and an immobile labor force as specific problems borne from the Great Recession.



An overwhelming percentage of respondents say the current economy is causing unhappy workers to stay in their current positions because the job market precludes a reliable transition to a better fit. Additionally, 67 percent indicate that too many workers are involuntary underemployed.

But the measure that the most respondents agreed on is that employees today are being asked to do more with less.

Increases in efficiency – "doing more with less" – are economically beneficial and a timeless goal. As relevant today as it was in 1845 when he wrote this, economist **Claude Frédéric Bastiat** posited that:

> "No one has ever seen, and no one will ever see, any person who works, whether he be farmer, manufacturer, merchant, artisan, soldier, writer, or scholar, who does not devote all the powers of his mind to working better, more quickly, and more economically – in short, *to doing more with less*."

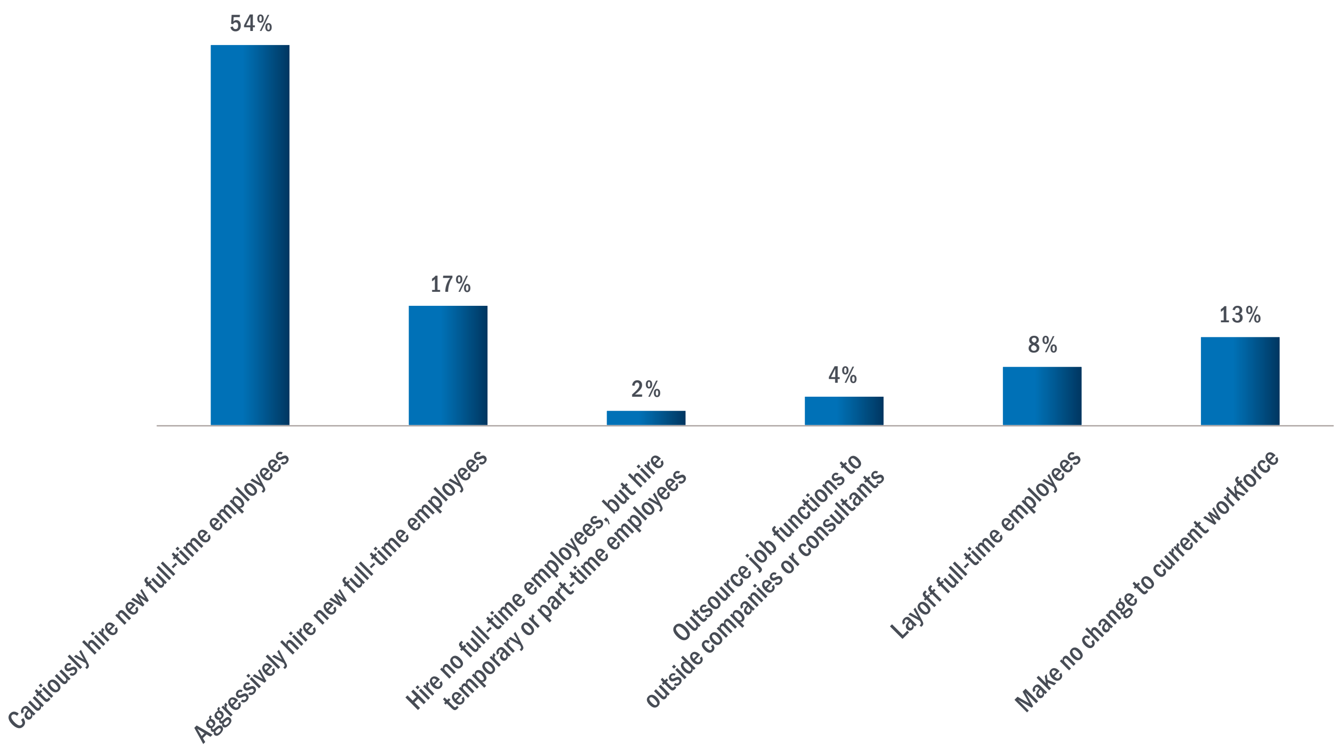
Because labor is a valuable and costly resource, companies should aim to achieve their goals by using fewer resources. Doing so can have broadly positive systemic effects on the economy because it simply replaces old jobs with new ones over the course of time. An obvious example of this economic churn is the massive decline in agricultural employment: In 1800, it took 95 out of every 100 Americans to feed the country; in 1900, it took 40; today, it takes just three[1].

[1] Cox and Alm, 1999.

QUESTION 7: JOBS

In the next 12 months, does your company plan to:

Most survey respondents – 71 percent – say their company plans to hire new workers during the next 12 months. This is encouraging.

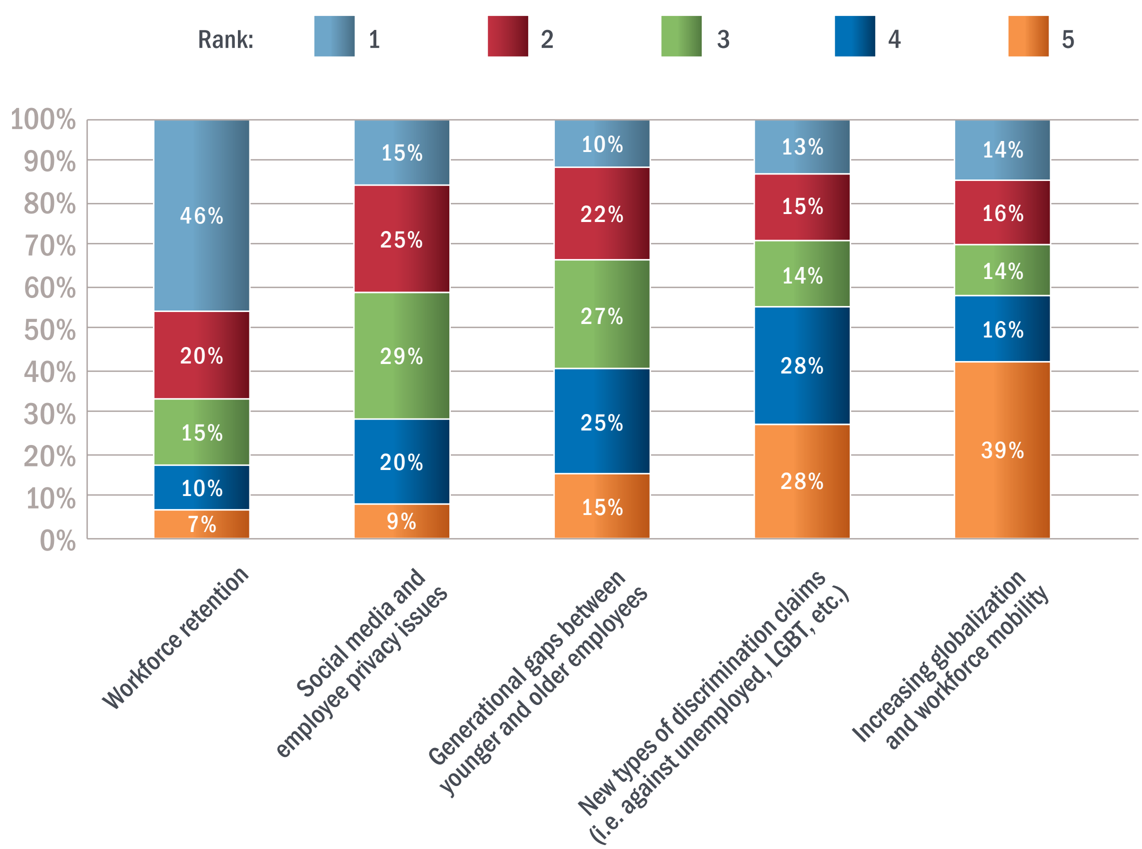


The job market is not good, but it is faring progressively less bad. The current job market, coupled with the survey responses that affirm *most companies surveyed expect to hire*, indicate a welcome departure from disappointing hiring trends.

QUESTION 8: WORKFORCE MANAGEMENT

Which of the following issues do you feel present the most difficulty for employers in managing their workforce? (rank in order of 1 being the greatest impact to 5 being the least)

Overwhelmingly, respondents identified workforce retention as the issue presenting the most difficulty in managing their company's workforce. It so follows that workforce mobility is viewed as the least-pressing challenge among the respondents.

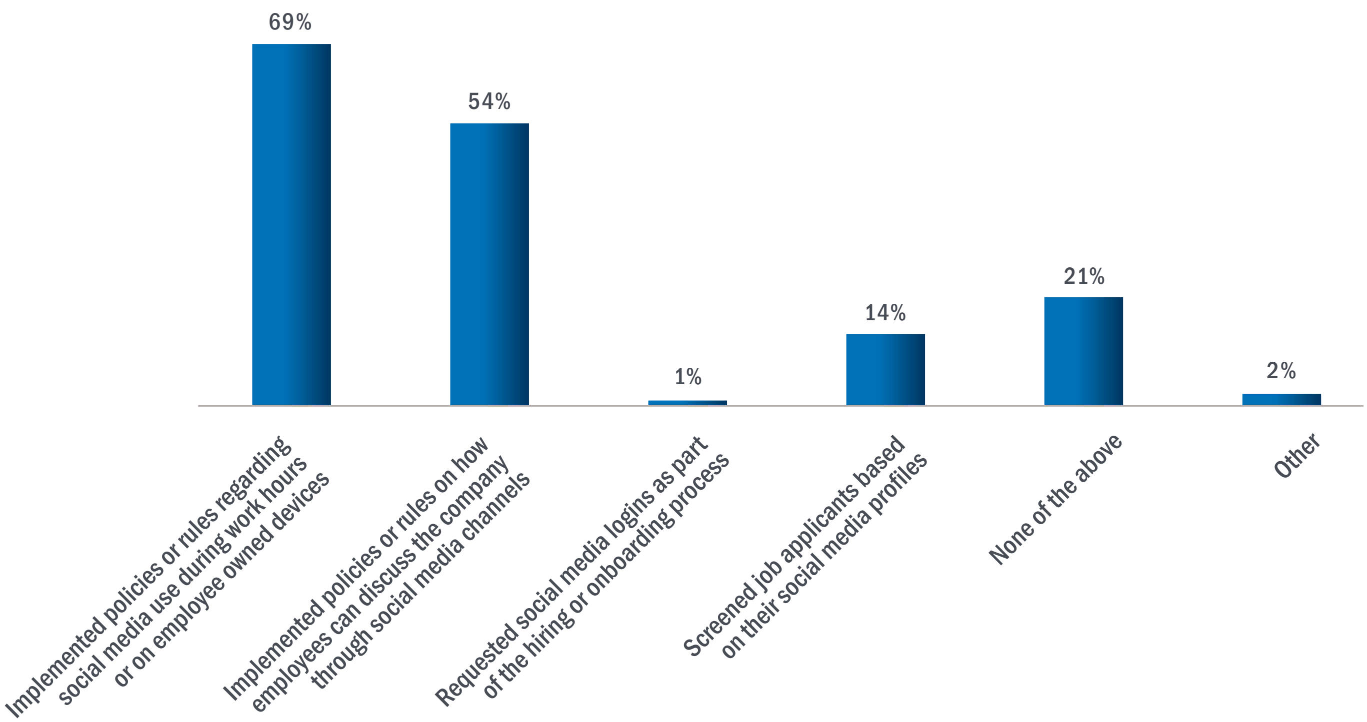


This begs the question: If workers are largely unable to transition away from jobs they do not like, as respondents indicated in Question 6, why are employers feeling challenged to retain them? A healthy outlook for a positive economy going forward might explain this apparent contradiction. However, just as likely is the mismatch of skills with critical positions. Those key employees with hard to find skills are able to move and keeping them is a priority.

QUESTION 9: SOCIAL MEDIA POLICIES

Has your organization done any of the following with respect to employee social media use or use of social media to screen job applicants? (please check all that apply)

Question 9 depicts new sentiment surrounding how often employers say they are vetting candidates based in part on their social media profiles.



The question asks if respondents screen the social media profiles of their job candidates, to which just 14 percent say they do. Other research differs significantly.

Specifically:

- Thirty-seven percent of respondents from a recent CareerBuilder survey indicated they use social networking sites to research job candidates.
- In 2009, a similar study, conducted by Harris Interactive, determined that 45 percent of employers perused a candidate's social network activity prior to a job interview.

This disparity among the research findings suggests this particular topic needs further examination.

Either way, it is surprising that this figure is not significantly higher. **New research** suggests a job candidate's Facebook profile is indeed a reliable indicator of job performance. And, of course, Facebook is far from the only social network of potential value to hiring managers. More than 6,000 organizations, including 75 of the Fortune 100, use a recruiting utility called LinkedIn Hiring Solutions. Ostensibly, this leads them to review the LinkedIn profiles of job candidates because the vetting takes place on the LinkedIn platform. [Source: **LinkedIn**]

One potential explanation for the lower-than-expected rate of affirmative responses is the recent uproar over potential employers that have asked for a job applicant's Facebook password, a demand so ludicrous that **several states have moved** to legislate the behavior away. The backlash from this reported trend could have caused human resources professionals to steer clear of candidates' social networking profiles altogether. Even the use of publicly available data to vet candidates – an entirely reasonable act – now has a worse reputation than it did just several months ago.

Question 9 also suggested proactive social media policies are popular among today's corporations.

- Many, if not most of, companies today allow employees to use their personal mobile devices for business purposes, which highlights the strong majority (69%) of respondents who said their company has rules in place regarding social media use on employee-owned devices or during work hours. (A recent Littler report on the "bring your own device to work" movement is accessible **here**.)
- Additionally, 54 percent of respondents indicated their company has policies regarding how employees can use social channels to communicate about the company.

Generally, the corporate world seems to be progressing from simply blocking or restricting access to social media outlets. In 2010, research from Manpower **stated** only 29 percent of companies had formal policies regarding employee use of social media. The growth of formal social media policies that dictate how employees should behave online appears to be significant.

METHODOLOGY AND DEMOGRAPHICS

In April and May of 2012, Littler distributed the Executive Employer Survey via email to in-house counsel, human resources and C-suite executives primarily throughout the U.S. The results were tabulated, analyzed and released in June of 2012.

Respondents included:

- C-suite executives (7%)
- In-House Attorneys/Corporate Counsel (45%)
- Human resources professionals (41%)
- Other professionals (7%)

Companies represented were of a variety of sizes:

- LargeCap; Greater than $4b in market capitalization (21%)
- MidCap; $1b to $4b in market capitalization (21%)
- SmallCap; Less than $1b in market capitalization (36%)
- Other/Did not answer (22%)