The U.S. economy in 2023 was much more resilient than experts had anticipated. Despite forecasts of an impending recession in the face of inflation and high interest rates, the economy outpaced economic expectations and last year we enjoyed three quarters of economic growth instead of the anticipated three quarters of slowing growth, much of it driven by consumer spending.

While this may seem unlikely given the expectations, it comes as little surprise to us at The Workplace Advisors. No, we are not economists and no, we are not in the habit of predicting markets or economic conditions. However, we do work with clients of all sizes in a wide variety of industries across the country. And one thing we heard throughout the year was that, despite predictions that high interest rates would drive up the unemployment rate and plunge us into recession, no one – not a single client – planned to lay off employees. Rather, they continued to lament the difficulty of operating with vacancies in key positions, struggled to hire qualified employees, and paid more in wages, bonuses, and incentives than they had planned. The key driver of these trends? Persistently low unemployment and fierce competition for talent across the country. Expect these trends to continue and what follows are our recommendations for how to prepare for the year ahead.

Hiring and Unemployment

Although the number of job openings decreased last year compared to 2022, especially for technical and professional level positions, the lack of qualified candidates continues to be an obstacle for many organizations seeking to hire and corporate reputation matters.

- In a recent survey of Human Resource professionals conducted by iSmartRecruit, 87% of respondents reported "few or no qualified candidates" for open positions.
- Corporate Responsibility Magazine recently reported that 75% of surveyed job applicants said they would not take a position with an organization with a bad reputation – even if they were unemployed.
- Recruitment.com reported that 80% of surveyed HR professionals said that corporate branding impacts their ability to successfully recruit, but only 8% had any budget devoted to corporate branding.

The U.S. added on average 225,000 jobs per month in 2023, and while this is a more modest number than in 2022, it represents stronger hiring than was anticipated. As a result, the unemployment rate remains quite low at 3.7%, well below 4.2% which is what economists define as full employment.

What employers need to do

- Recognize the importance of your organization's branding and reputation in the market(s) where you do business.
- If you recruit for entry-level positions, anticipate continued high demand for candidates.
- Identify the best resources to help you stay informed about labor market activity in the market(s) where you operate and consult those resources regularly.
- Develop and implement recruitment activities designed to attract passive candidates who may not be actively seeking to change positions but may be open to new opportunities.
- Be respectful of your applicants and their investment in the application and interview process.

Wage Growth

Twenty-five states will increase their minimum wage in 2024. Most of those changes occurred on January 1. The federal minimum wage remains $7.25 for 2024 and twenty states currently have a minimum wage of $7.25, none of which have scheduled increases for 2024 although, according to the Bureau of Labor Statistics, only 1.9% of hourly non-self-employed workers earned at or below $7.25.

There are lots of other scheduled activities as well:

- 42 municipalities (1 in AZ, 29 in CA, 3 in CO, 2 in ME, 2 in MN, 1 in NM, and 4 in WA) have changes scheduled for 2024
- 19 states and the District of Columbia index minimum wage to local/regional cost of living and inflation
- Some states use other metrics to determine minimum wage amounts. Several states vary the amount of mandated minimum wage by organization size and NV allows organizations to pay less than the mandated minimum if health insurance is offered to employees.

The USDOL reported in December that wage growth during the 12-month period from November 2022 – November 2023 was 4.0%. This increase was slightly lower than originally projected but still outpaces inflation, currently at 3.1%, resulting in real wage gains anticipated for workers in 2024.

What employers need to do

- Identify the best resources to help you stay informed about minimum wage changes in the market(s) where you do business. The Economic Policy Institute's Minimum Wage Tracker contains a comprehensive list of current and projected minimum wage rates. Check it out at https://www.epi.org/minimum-wage-tracker/.
- Understand that even though a location may have a specified minimum wage, prevailing wages for specific jobs in specific markets may be well above these minimum levels.
- Develop and implement a long-term salary planning and budgeting process that addresses current and anticipated labor market issues.

Legislative and Regulatory Outlook

Non-Compete Clauses - In January of 2023, the Federal Trade Commission (FTC) issued a ruling to ban the use of non-compete clauses. A final ruling on the FTC proposal is expected in 2024. Meanwhile, several states, including California, Colorado, DC, Illinois, Minnesota, Nevada, North Dakota, Oklahoma, Oregon, and Washington have already passed legislation to prohibit or limit the use of non-compete clauses while other states including New Jersey and New York are not far behind. Expect more movement to reduce or eliminate the use of non-compete clauses in most situations.

EEOC-DOL Enforcement - In September, the Equal Employment Opportunity Commission (EEOC) publicly shared its priorities for fiscal years 2024 – 2028. These priorities relate to the agency's enforcement authority and include partnering with the Department of Labor to investigate complaints and possible violations. It's too early to know exactly what this partnership may involve, but it is

What employers need to do

- Consider subscribing to The Workplace Advisors' HR Support Plan which tracks federal and state legislative updates that affect workplace policies and practices (www.theworkplaceadvisors.com/hrsupportplan/).
- Review current policies and procedures to ensure compliance with changes (proposed or approved) to noncompete agreements.
- Legislation often happens more quickly at the state and municipal levels than at the federal level. Identify the resources necessary to stay informed of changes and new requirements and consult them regularly.

expected that targeting business use of AI in employment decisions and actions to protect a wider group of vulnerable workers from discrimination will be early areas of focus. Additionally, the EEOC released proposed changes to the rules on how the agency handles workplace harassment investigations. The changes, once finalized, will not impact employers directly but will offer employers valuable information for taking action to prevent and reduce harassment in their workplace and will help their affirmative defense if charged.

New DOL Definitions – For the last two years, the DOL indicated that it would be reviewing key issues to ensure employee rights are protected. In that spirit, the DOL released their proposed updated rules redefining independent contractors and increasing the white-collar exemption minimum salary requirement in 2023. On January 9, 2024, the DOL published their final independent contractor rules focusing on the "economic realities of the working relationship" and including a test of the "totality of the circumstances" covering six factors. It will go into effect March 9, 2024. The final white-collar exemption rules are expected in early 2024.

Paid time off - Fifteen states and DC will have paid sick leave as of January 1, 2024. Some states which have had sick laws are expanding them to include more covered uses or, like California, increasing the maximum hours to accrue. Some cities and counties have passed similar paid sick time laws. Three states (Illinois, Maine, and Nevada) have paid time off laws that allow employees to use the time for any reason.

Paid Family Leave - Eleven states and the District of Columbia currently offer some type of paid family leave for employees. In 2024, Maryland employers begin paying their contributions with employees being able to apply for benefits in 2026, and Vermont will implement its voluntary paid family leave program as of July 1, 2024. Two states (Delaware and Maine) have passed paid leave laws which will go into effect in 2025 with benefits being paid out in 2026; details are expected to be finalized and released throughout 2024. The USDOL reports that only 27% of all US workers have access to paid leave.

Labor Trend: Pro-Worker Sentiment and More Employee Protections

Labor unions continue to gain approval. A recent Gallup poll reported that 67% of Americans approve of labor unions, and 34% of Americans believe unions will become stronger in the future, up from 19% just five years ago. Contributing to this trend is the fact that Americans are paying much more attention to the working conditions at large employers such as Amazon, Starbucks, Apple, Trader Joe's, Lowe's Chipotle, all of which have faced union organizing drives. And, of course, there were the SAG-AFTRA, United Auto Worker, and Kaiser Permanente strikes and a narrowly averted UPS/Teamsters work stoppage. Many of these labor actions were about wages but many included other topics such as the use of AI in the workplace, funding of retirement plans and investments in safety equipment.

Expect this pro-worker sentiment to factor in the upcoming election cycle. It is too soon to tell whether this new-found popularity will result in more successful organizing, currently only 14.3% of the workforce is unionized, or lead to a review of state and federal labor law.

From a regulatory side, the National Labor Relations Board (NLRB) continued to take more action to protect the rights of all employees in the workplace. Some of their initiatives and rulings include redefining "joint-employer" to expand responsibility to more co-employers; setting tougher standards for handbook and policy language which could appear to infringe on an employee's rights; and issuing multiple Memoranda of Understanding (MOU) with other federal agencies to better exchange information discovered during investigations. Continued employee-friendly decisions and rules are expected from the NLRB in 2024.

What employers need to do

- Ensure all workers (employees and independent contractors) are properly classified.
- Coordinate with other companies who share your employees to ensure compliance given expanded exposure and responsibility.
- Update your handbook and ensure your policies and procedures (especially those regulating employee behavior) meet the new stricter standard. Train managers so they know what they can and cannot say and do.