

LITTLER MENDELSON  
EXECUTIVE EMPLOYER SURVEY REPORT  
JULY 2014

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The workplace is changing at a pace and scope not seen since the industrial revolution. Littler's third annual Executive Employer survey provides insight into the forces that are reinventing the workplace and the key regulatory and economic developments impacting employers.

This report summarizes and analyzes the perceptions, actions, and priorities of in-house counsel, human resources professionals and C-suite executives adapting to the new world of work. It offers a unique look into the top-of-mind issues for companies in all industries—from concerns stemming from the current divided government to changing legislation and regulations to the impact of changing economic conditions on employers.

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

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## EXECUTIVE SUMMARY

Employers continue to feel the impact of a multitude of changing legislation and regulations. However, the past three survey reports have seen a steady decline in the level at which respondents anticipate these issues, particularly healthcare reform, will influence their workplace in the coming year. Employers seem to be shifting their concerns to a general uncertainty surrounding the potential fallout of the deadlocked Congress and divided government.

Specifically:

- The most troubling outcome of the divided government for employers has been more aggressive enforcement and reforms from the federal agencies. More than half of respondents (**56 percent**) are concerned with rulemaking and enhanced enforcement arising from President Obama's focus on utilizing federal agencies, such as the Department of Labor (DOL) and Equal Employment Opportunity Commission (EEOC), to bring about changes to workplace policy.
- Healthcare reform remains top of mind as employers again chose it as the regulatory issue expected to have the most impact on the workplace during the next 12 months. However, due to the Affordable Care Act (ACA) implementation delays and continued wrangling over the legislation, the expectation that healthcare reform would have a significant impact dropped from **57 percent** in the 2013 survey to **41 percent** in 2014.

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- Financial awards from the Securities and Exchange Commission (SEC) whistleblower program and other government programs that encourage employees to report misconduct have had a clear impact on the landscape for corporate whistleblowing. The majority of respondents indicated that whistleblowers are more inclined to report misconduct to regulators instead of within the organization (**53 percent**) and that they are taking proactive steps to address these issues through stronger internal compliance programs (**56 percent**).

Employers adapting to the new world of work are starting to see a decline in some of the barriers impacting the workforce, but challenges remain as the economy continues to recover and respondents are still seeing their workplaces affected by current economic conditions in key areas. In addition, the past three survey reports have shown that, while employers remain relatively bullish on hiring plans, they are becoming increasingly comfortable with their current workforce.

Specifically:

- This year saw a considerable increase in the degree to which respondents felt current economic conditions are leading disenchanted employees to bring more lawsuits or claims against their employers, rising 25 percentage points from **23 percent** in 2013 to **48 percent** in 2014. These lawsuits are often centered on discrimination or harassment claims, which—in conjunction with the EEOC’s increasingly aggressive enforcement of anti-discrimination statutes—may explain why respondents identified discrimination or harassment claims as the area where their organization has seen the most employee lawsuits or class actions over the past year.
- The degree to which respondents feel the workforce is being impacted by current economic conditions has steadily declined in two key areas during the past three years. Unhappy workers appear to be less wary about remaining in their current positions due to an inability to find employment elsewhere (this figure fell from **85 percent** in 2012 to **79 percent** in 2013 to **66 percent** in 2014) and far fewer respondents cited underemployment as a barrier impacting the workforce (from **67 percent** in 2012 to **44 percent** in 2013 and 2014).
- While the majority of respondents (**53 percent**) are planning to hire more workers, either cautiously or aggressively, in the coming year, the 2014 survey saw employers continuing to become more content with their current workforce. The number of respondents who said their companies were not planning any workforce changes has increased steadily over the past three years (from **13 percent** in 2012 to **22 percent** in 2013 to **26 percent** in 2014).

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As a variety of factors continue to bring about dramatic changes to the workplace, in-house counsel, human resources professionals, and business executives confront unprecedented challenges in managing their workforces.

Specifically:

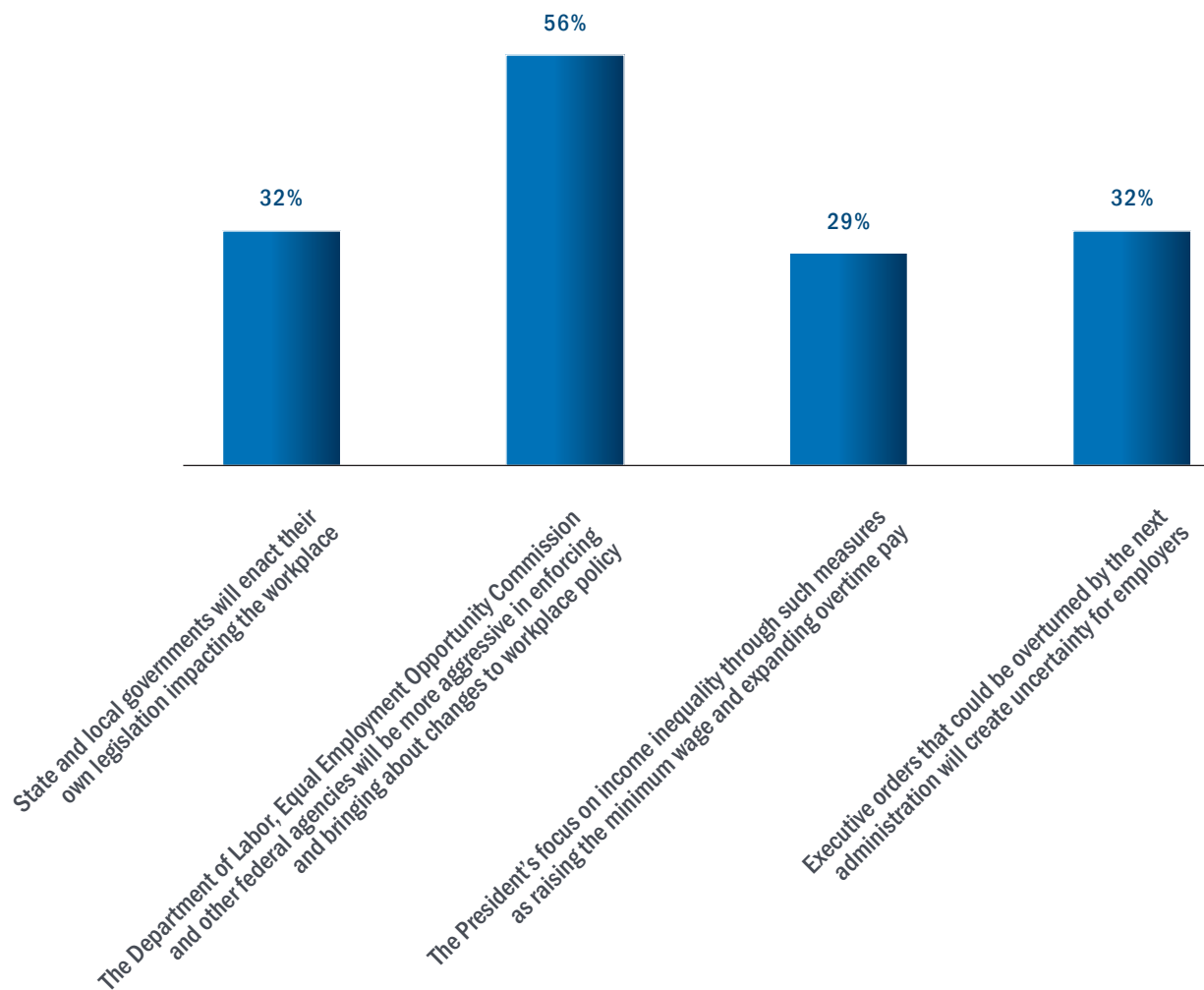
- Employees being asked to do more with less is an area in which respondents continue to witness their workforces being impacted by the economy (**84 percent** in the 2014 survey). This may represent the “new normal” in the current world of work.
- As employers work to retain high-performing employees, workforce retention emerged as the issue respondents felt presented the most difficulty in managing their workforce with **88 percent** having some level of concern. Additional areas of concern that employers identified in relation to managing their workforce included social media and employee privacy (**86 percent**), preventing abuse of leaves under the Family and Medical Leave Act (FMLA) and similar laws (**69 percent**), and generational differences between younger and older employees (**68 percent**).
- In the workplace privacy arena, respondents ranked avoiding workplace and data security breaches as their top concern. Employers also expressed a great deal of concern with safeguarding customer and corporate data without unlawfully accessing employees’ personal information as “bring your own device” (BYOD) programs become increasingly common, as well as laws and legislation prohibiting employers from requesting criminal history information or restricting the use of credit information for employment purposes.
- Advanced technologies – robotics, artificial intelligence, and automation – are changing the way companies do business and how workers perform their jobs, and survey respondents are taking notice. **Thirty-nine percent** have either already integrated advanced technologies into their workplaces or are considering doing so within the next year, particularly those in the healthcare/ pharmaceuticals, manufacturing, and transportation industries.

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## REGULATION

### QUESTION:

With Congress effectively deadlocked and President Obama utilizing executive orders to advance many of his policies, which of the following potential outcomes of a divided government are of most concern to the future of your business? (Check all that apply)



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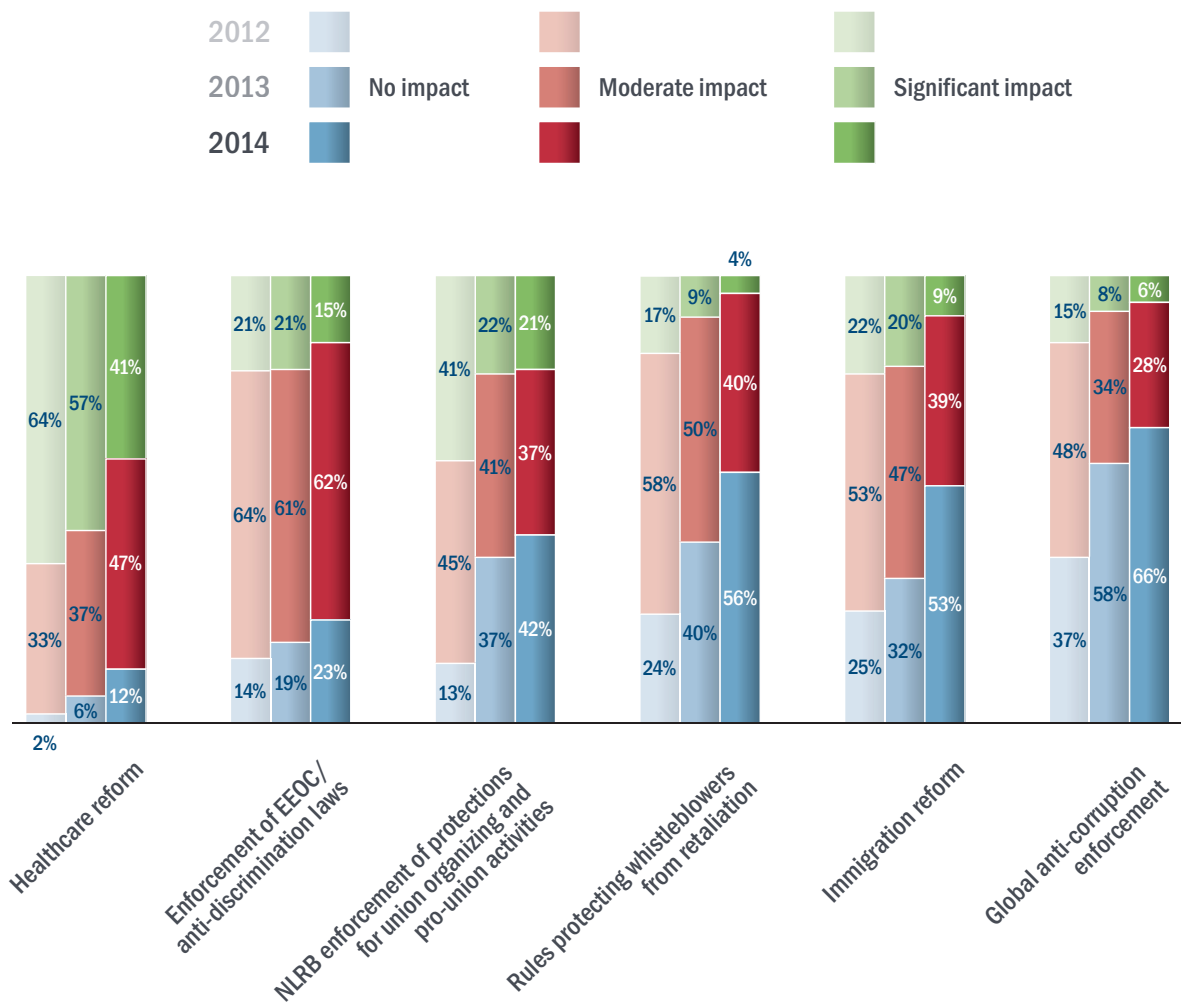
Respondents expressed concern over a variety of potential implications of a divided government, however, more aggressive enforcement and reforms from federal agencies were their top concerns. As President Obama has turned to the federal agencies to bring about changes to workplace policy, more than half of respondents (**56 percent**) cited concern with rulemaking and enhanced enforcement from the federal agencies, including the Department of Labor (DOL), Equal Employment Opportunity Commission (EEOC), National Labor Relations Board (NLRB), and Department of Health and Human Services (DHHS).

Among the numerous regulatory efforts of the DOL that are impacting employers, respondents identified the agency's pursuit of the Obama administration's "income inequality" agenda as an area of concern. **Twenty-nine percent** indicated concern with the President's focus on leveling the playing field for American workers through such measures as raising the minimum wage and expanding overtime pay.

Roughly one-third of employers also cited an impact on their businesses stemming from state and local governments looking past Washington, D.C. to enact changes to workplace policy and the uncertainty that comes from executive orders that the next administration could overturn.

**QUESTION:**

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



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While employers continue to feel the impact of various legislative and regulatory issues, the past three years have seen a steady decline in the level at which respondents expect all issues analyzed to influence their workplace in the coming year.

Healthcare reform remains top of mind for employers as respondents again chose it as the regulatory issue expected to have the most impact on the workplace during the next 12 months. However, following numerous delays in the implementation of the Affordable Care Act (ACA) and continued wrangling over the legislation, respondents' expectations that healthcare reform would have a significant impact dropped from **57 percent** in the 2013 survey to **41 percent** in 2014. In addition, as passage of a comprehensive immigration bill remains unlikely, the expectation that immigration reform would have a significant impact fell from **20 percent** in the 2013 survey to **9 percent** in 2014.

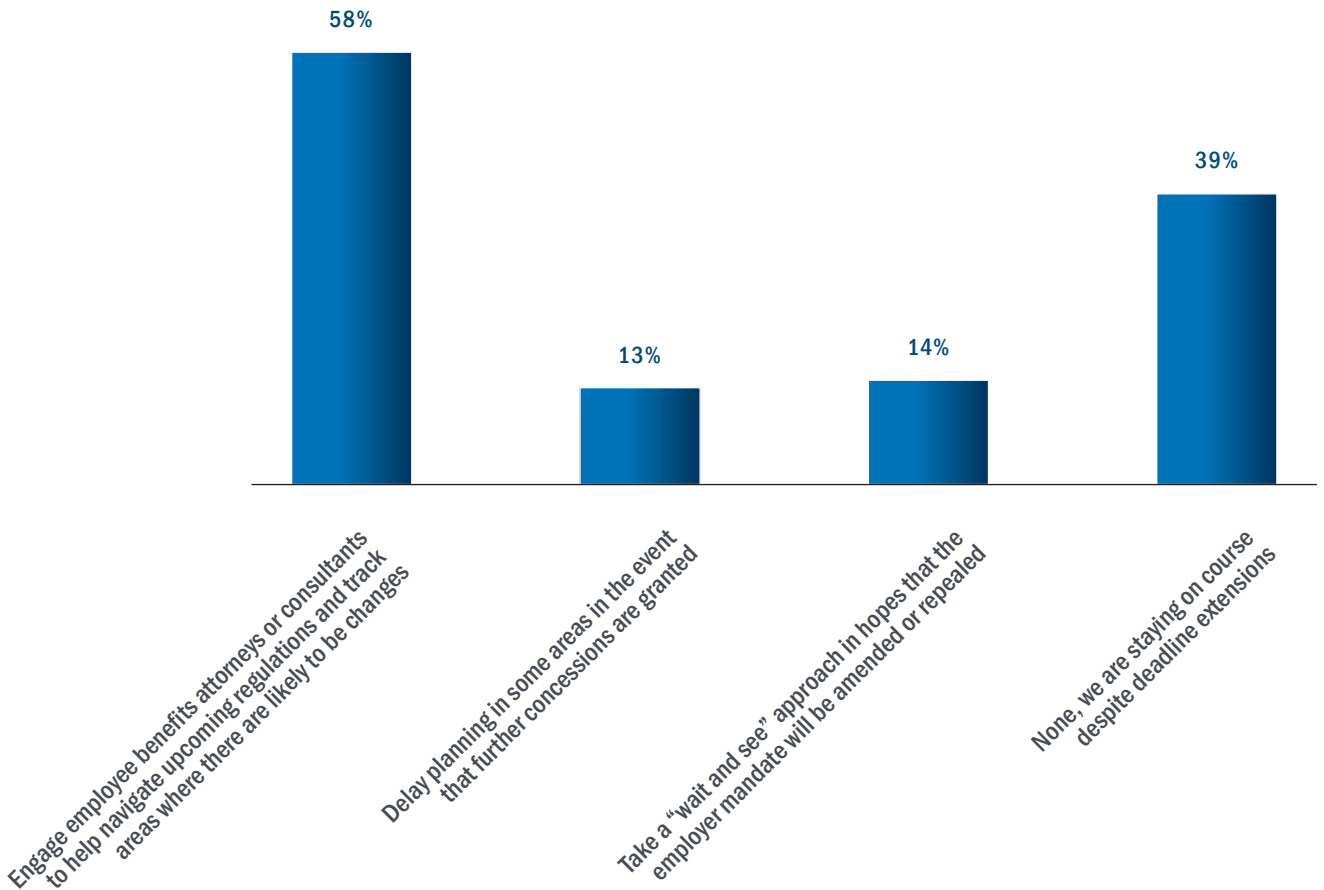


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## HEALTHCARE REFORM

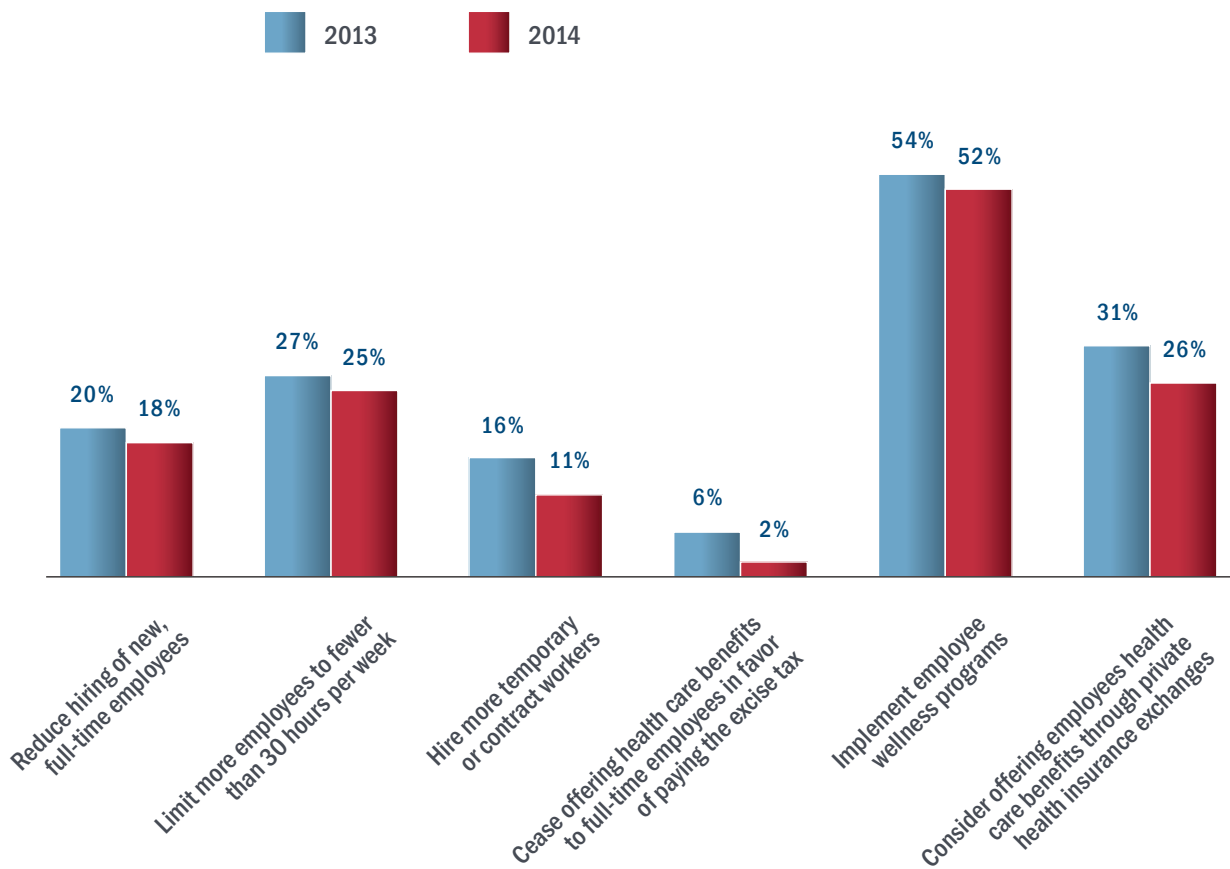
### QUESTION:

In response to the numerous Affordable Care Act rule amendments and delayed regulations, which of the following actions has your organization taken or do you plan to take? (Check all that apply)



**QUESTION:**

Has implementing the Affordable Care Act caused your company to take or anticipate taking the following actions? (Check all that apply)



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Healthcare reform continues to be one of the most pressing issues on the minds of employers in 2014. As uncertainty about the implementation of the ACA persists, employers face critical decisions about their benefits and business strategies. Between the employer “play or pay” mandate—also known as the excise tax, slated to become effective in 2015 for employers with 100 or more full-time employees—and a multitude of other requirements and fees, the ACA’s reach is vast, affecting employers in myriad ways.

As employers continue to navigate ACA compliance amidst rule amendments and delayed regulations, more than half (**58 percent**) indicated engaging employee benefits attorneys or consultants to aid the process of tracking changing and upcoming deadlines. While some respondents have delayed planning or moved to a “wait and see” approach, a significant percentage (**39 percent**) are staying on course despite the deadline extensions.

Similar to the 2013 survey results, respondents identified a range of actions that they have taken or anticipate taking in response to the ACA’s implementation, albeit to a slightly lesser degree. The implementation of employee wellness programs remained the top action taken by roughly half of employers (**52 percent**). About a quarter of respondents said they would consider offering employees healthcare benefits through private health insurance exchanges (**26 percent**) or limit more employees to 30 hours per week (**25 percent**).

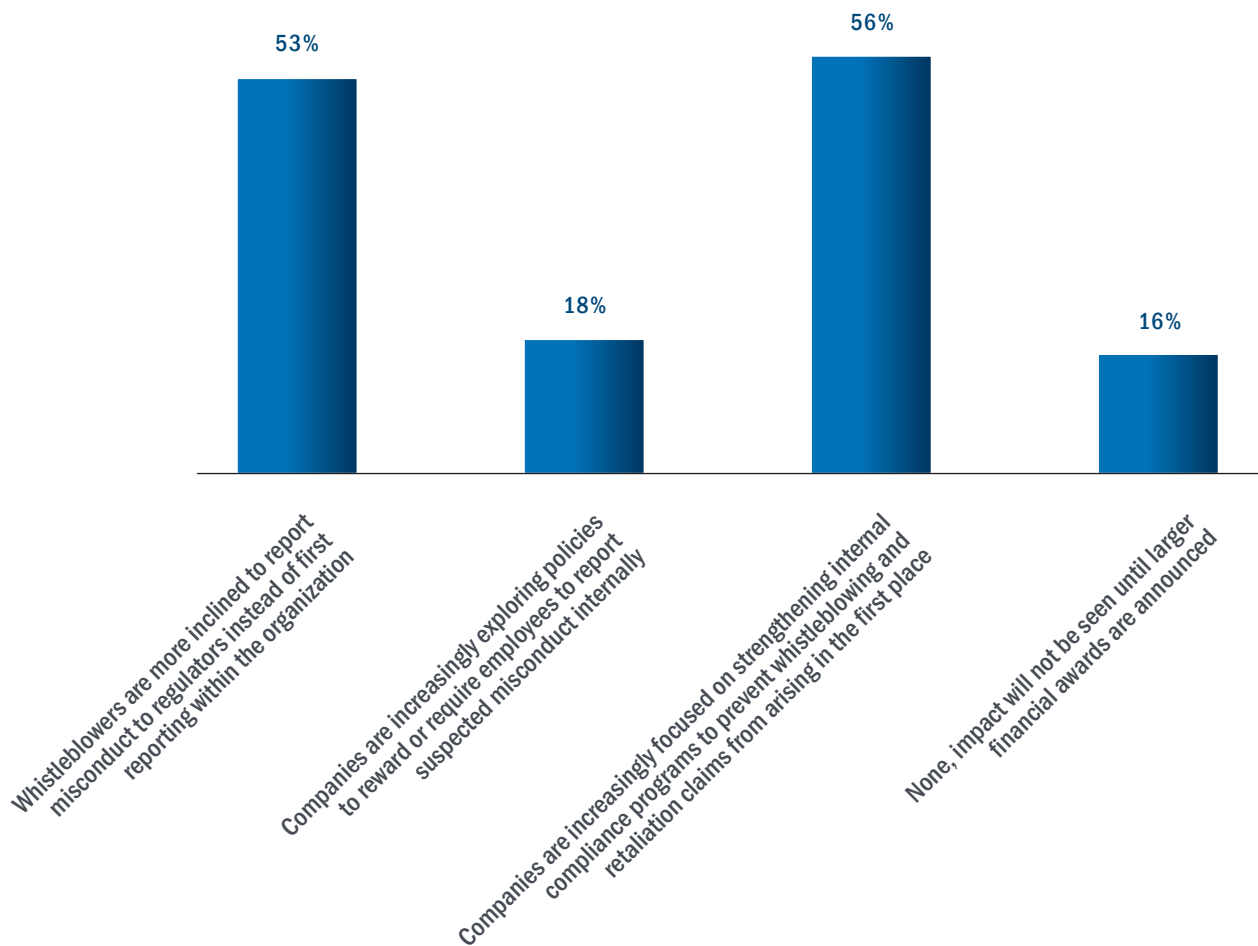
The largest drops in companies’ actions or anticipated actions from 2013 to 2014 were hiring more temporary or contract workers (**16 percent** in 2013 to **11 percent** in 2014) and ceasing to offer healthcare benefits to full-time employees in favor of paying the government instituted excise tax (**6 percent** in 2013 to only **2 percent** this year).

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## WHISTLEBLOWING AND RETALIATION

### QUESTION:

How do you think bounties awarded through the Securities and Exchange Commission whistleblower program and other government reforms to encourage employees to report misconduct have impacted the landscape for corporate whistleblowing?  
(Check all that apply)



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More than half of respondents felt that bounties awarded through the Securities and Exchange Commission (SEC) whistleblower program or other government programs have impacted the behavior of companies and of whistleblowers themselves. **Fifty-three percent** of respondents indicated that whistleblowers are more inclined to report misconduct to regulators instead of first reporting within the organization. In the meantime, companies are taking proactive steps to address these issues and are increasingly focused on strengthening internal compliance programs to prevent whistleblowing and retaliation claims from arising in the first place, according to **56 percent** of respondents. For large-cap companies and employers in highly regulated industries (e.g., healthcare, energy, and financial services), this percentage is even larger with **67 percent** and **68 percent** of respondents in each respective category indicating taking such actions.

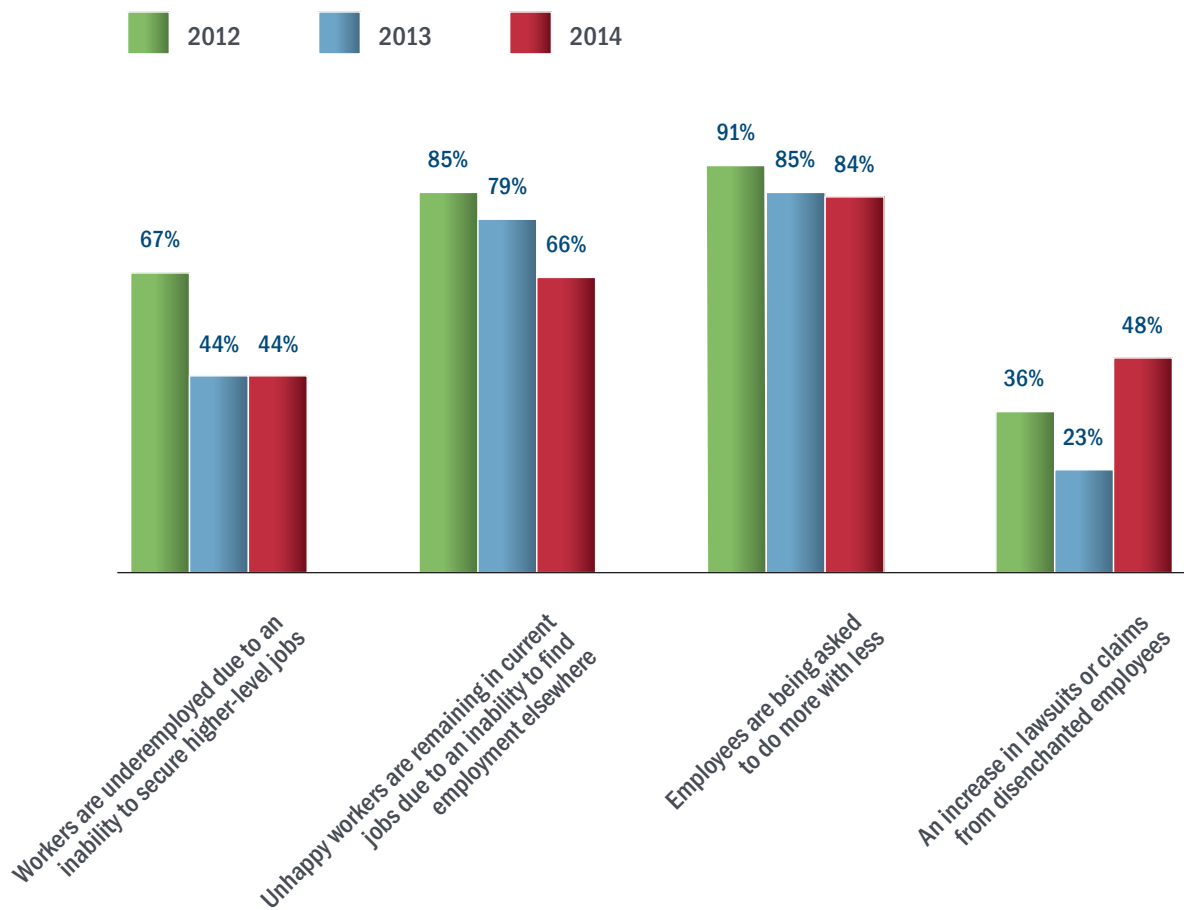
In the whistleblowing arena, the best offense is a strong defense. The survey results show that employers recognize the importance of creating strong policies and procedures to handle employee complaints and encourage employees to report misconduct internally without fear of retaliation.

The significant financial rewards granted by government agencies to whistleblowers have already raised public awareness of corporate whistleblowing and employers are feeling the impact, as evidenced by only **16 percent** of respondents feeling larger bounties are still necessary for the impact to be truly seen.

## JOBS AND THE ECONOMY

### QUESTION:

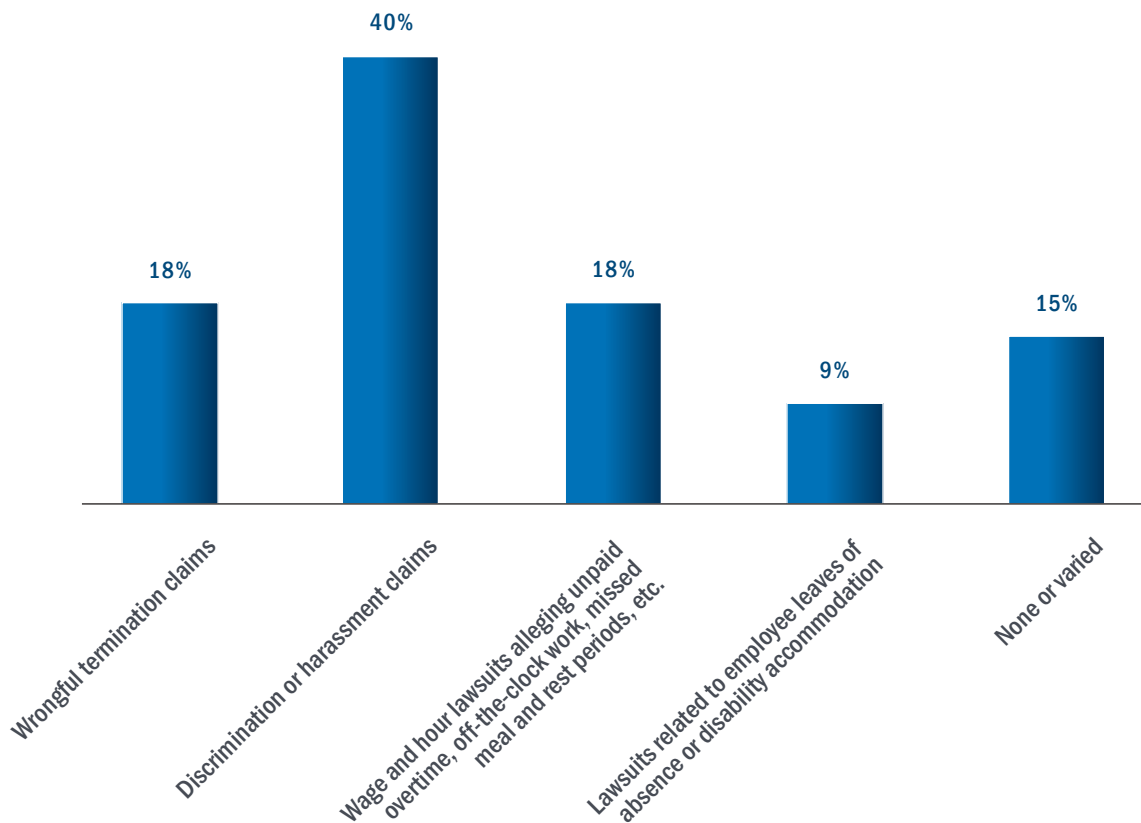
In which of the following areas do you feel current economic conditions are continuing to affect the workforce? (Check all that apply)



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**QUESTION:**

In which of the following areas has your organization seen the most employee lawsuits or class actions over the past year? (Select one)



The 2014 survey saw a considerable rise in the degree to which respondents felt disenchanting employees are bringing lawsuits or claims against their employers, rising 25 percentage points from **23 percent** in 2013 to **48 percent** in 2014. This is a troubling finding for employers as this type of litigation, regardless of whether the claims are frivolous, is often costly and time-consuming to defend.

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At the same time, respondents identified discrimination or harassment claims as the area where their organization has seen the most employee lawsuits or class actions during the past year, with **40 percent** of respondents selecting this option. The EEOC's increasingly aggressive enforcement of anti-discrimination statutes and employers seeing a rise in lawsuits from disenchanted employees, which often center on discrimination or harassment claims, may explain the prevalence of litigation in this area. Particularly concerning for employers are any discrimination claims that fall within the six priority areas the EEOC outlined in its [Strategic Enforcement Plan](#), which include harassment, recruitment and hiring practices, equal pay laws, and policies that impact vulnerable workers, among other areas. In these instances, an employer is at risk of an expanded investigation as the EEOC is looking to convert individual charges into broad systemic investigations.

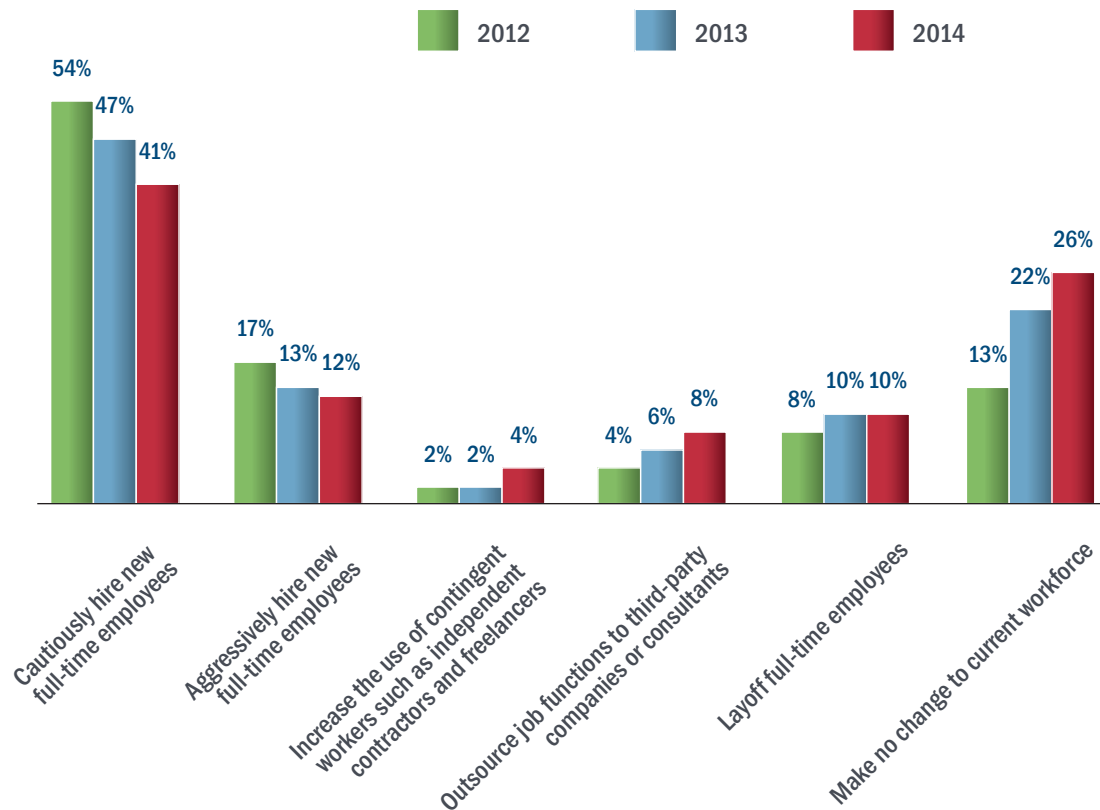
Following closely on the prevalence of discrimination claims in their workplaces, wrongful termination claims or wage and hour lawsuits were identified by more than a third of respondents (**36 percent**) as the areas where their organizations have seen the most employment-related litigation during the past year. Whether employers choose to defend these claims or agree to a settlement, these matters often bring significant costs and disruptions to their business operations. The good news for employers is that there are basic steps they can take to help protect themselves against matters that may arise in the future. This includes building evidence that will help defend against future claims, such as properly documenting any performance problems in the case of wrongful terminations and creating records to support the exempt status of employees or defend against claims of "off the clock" work in the case of wage and hour disputes.

On the positive side, the degree to which the workforce is being impacted by current economic conditions across key measures has steadily declined over the past three years. As the economy continues to improve and the unemployment rate has gradually declined, unhappy workers appear to be more comfortable exploring new jobs and less wary about remaining in their current positions due to an inability to find employment elsewhere (this figure fell from **85 percent** in 2012 to **79 percent** in 2013 to **66 percent** in 2014). Similar to the 2013 survey, far fewer respondents cited underemployment as a barrier impacting the workforce (from **67 percent** in 2012 to **44 percent** in 2013 and 2014). While the degree to which respondents felt employees are being asked to do more with less has declined slightly over the past three years (from **91 percent** in 2012 to **85 percent** in 2013 to **84 percent** in 2014), this remains an area where respondents continue to witness their workforce being impacted by economic conditions and may represent the "new normal" in the current world of work.



**QUESTION:**

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

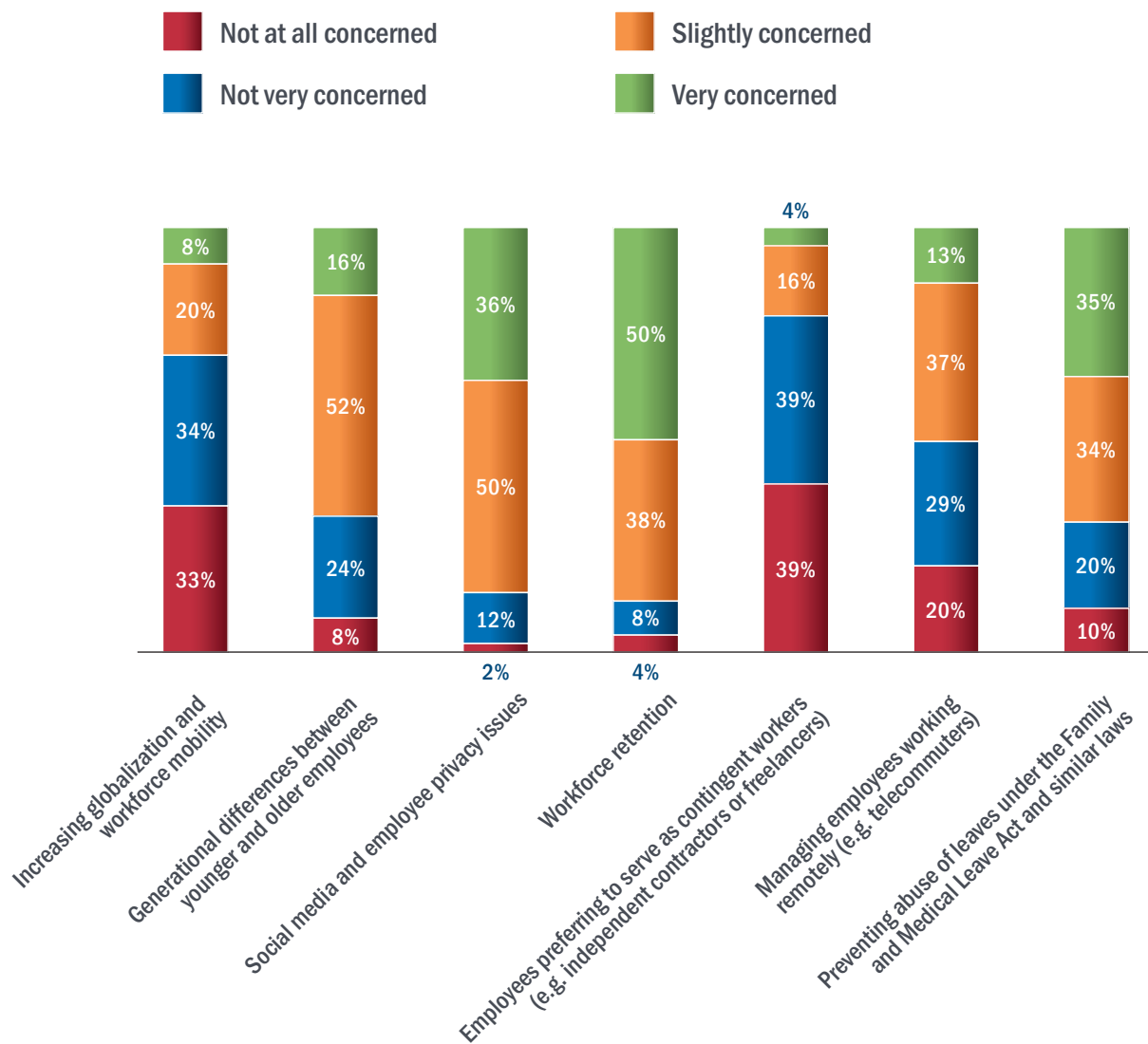


Employers appear to be increasingly content with their current workforce as the degree to which respondents indicated their companies were not planning any changes has increased steadily over the past three years (from **13 percent** in 2012 to **22 percent** in 2013 to **26 percent** in 2014). However, the 2014 survey still saw the majority of respondents (**53 percent**) planning to hire more workers, either cautiously or aggressively, in the coming year.

## WORKFORCE MANAGEMENT

### QUESTION:

Please indicate your organization’s level of concern with the following issues related to managing the future of your workforce.



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As employers become more comfortable with their current workforce and recognize the difficulties facing employees who are asked to do more with less, workforce retention emerged as the issue respondents felt presented the most difficulty in managing their workforce with **50 percent** indicating being very concerned and **38 percent** indicating being slightly concerned.

Workforce retention could become increasingly challenging for employers in the future due to the ACA freeing employees from “job lock,” that is, where employees stay in jobs in which they are unhappy because they need medical benefits. According to the recent report, “[The Budget and Economic Outlook: 2014 to 2024](#),” released by the Congressional Budget Office, the ACA is helping break “job lock,” allowing more employees either to retire early or to leave positions to become free agents.

The rise of social media and accelerating technological changes that blur the line between an employee’s personal and professional life have forced employers to navigate increasingly complex issues, leading **86 percent** of respondents to indicate being slightly or very concerned with social media and employee privacy issues. As social media can now connect every employee, companies are grappling with how best to manage a new generation of workers who are digital natives, and avoid potential privacy violations that come with an increased ability to monitor their activities.

Similarly, more than two-thirds (**68 percent**) of respondents are concerned with generational differences between younger and older employees. Many factors have fed the generational gap, including the fact that baby boomers are delaying retirement and that employees who have recently entered the workforce have different career goals and expectations, such as working beyond the restrictions of a physical workspace and a preference for self-direction over micro-management.

This is intensified by the younger generation’s savvy use of technology, desire to be constantly “plugged in,” and demand for flexibility from the 8-hour workday and 40-hour workweek, which many believe hinders creativity and innovation. Additionally, a significant population of white-collar workers who have long been in the workforce expect generous health and retirement benefits, seniority-based compensation, and opportunities to advance through a traditional corporate hierarchy. Because of the recent economic downturn, many are not prepared or cannot afford to leave the workforce any time soon.

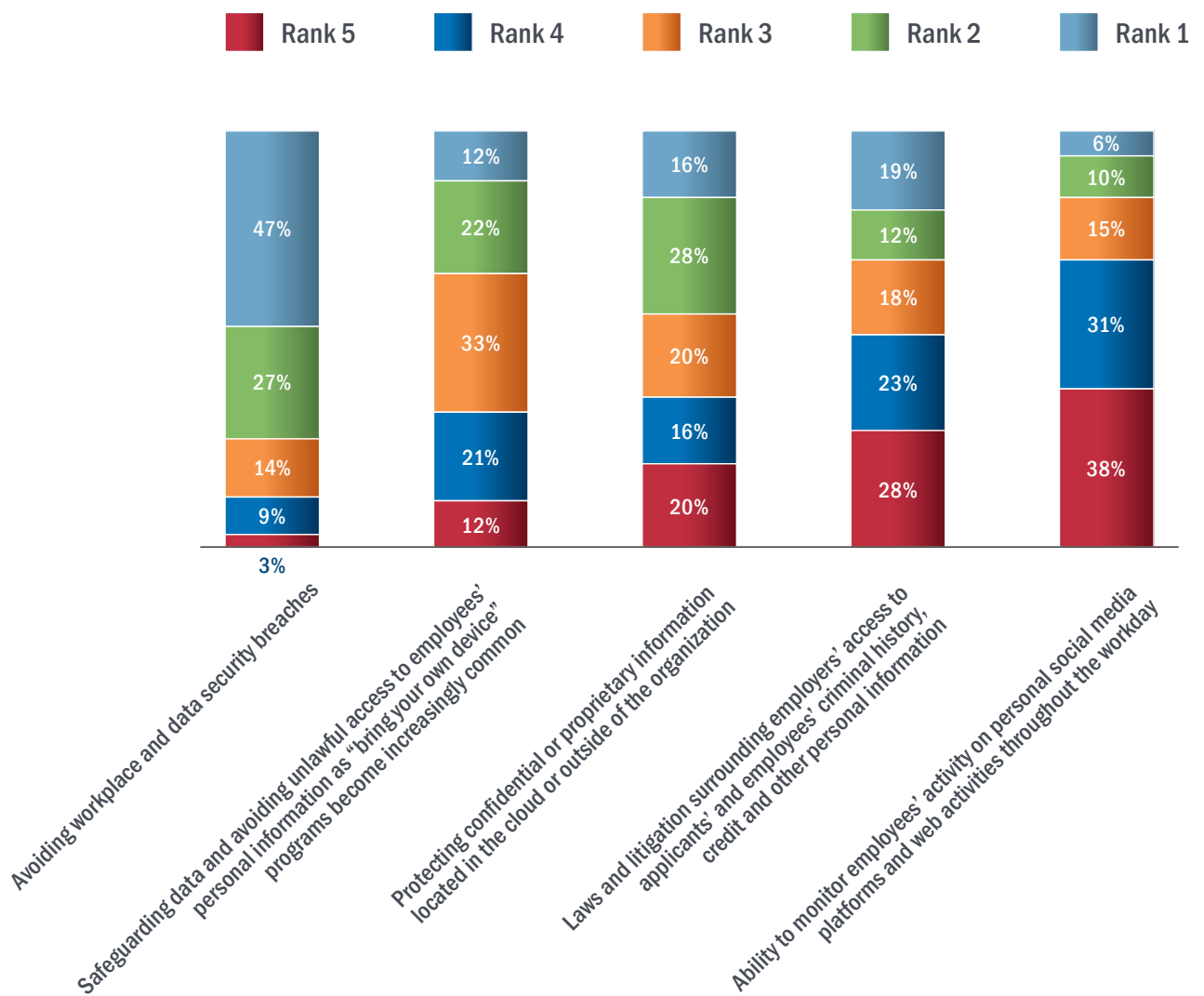
Finally, a significant percentage of respondents (**69 percent**) indicated concern with employees abusing leave granted under the Family and Medical Leave Act (FMLA) and similar laws. And for good reason. While the FMLA serves the laudable goal of providing job-protected leave for qualified medical and

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family reasons, the reality is that employees sometimes abuse this privilege and this presents not only headaches, but very real business challenges for many employers. The [2013 Employer Leave Management Survey](#), jointly sponsored by the Disability Management Employer Coalition and Spring Consulting Group, corroborates the concern expressed by respondents. The survey found that “managing intermittent leave” and “controlling employee abuse” ranked first and second, respectively, in a long list of biggest leave-related challenges for employers.

**QUESTION:**

Which of the following workplace privacy issues are of the greatest concern for your organization over the next year? Rank in order of 1 being the greatest to 5 being the least.



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In the workplace privacy arena, respondents expressed the greatest level of concern with avoiding workplace and data security breaches. The recent string of major security breaches involving the theft of consumer data has brought the issue of safeguarding data even further to the forefront and employers are clearly taking notice.

As more employers institute BYOD programs that allow employees to use their personal devices rather than corporate-owned devices, respondents are focused on the challenges inherent in safeguarding customer and corporate data without unlawfully accessing employees' personal information. This balance has become even more challenging for employers to maintain as employees increasingly store sensitive information on their mobile devices.

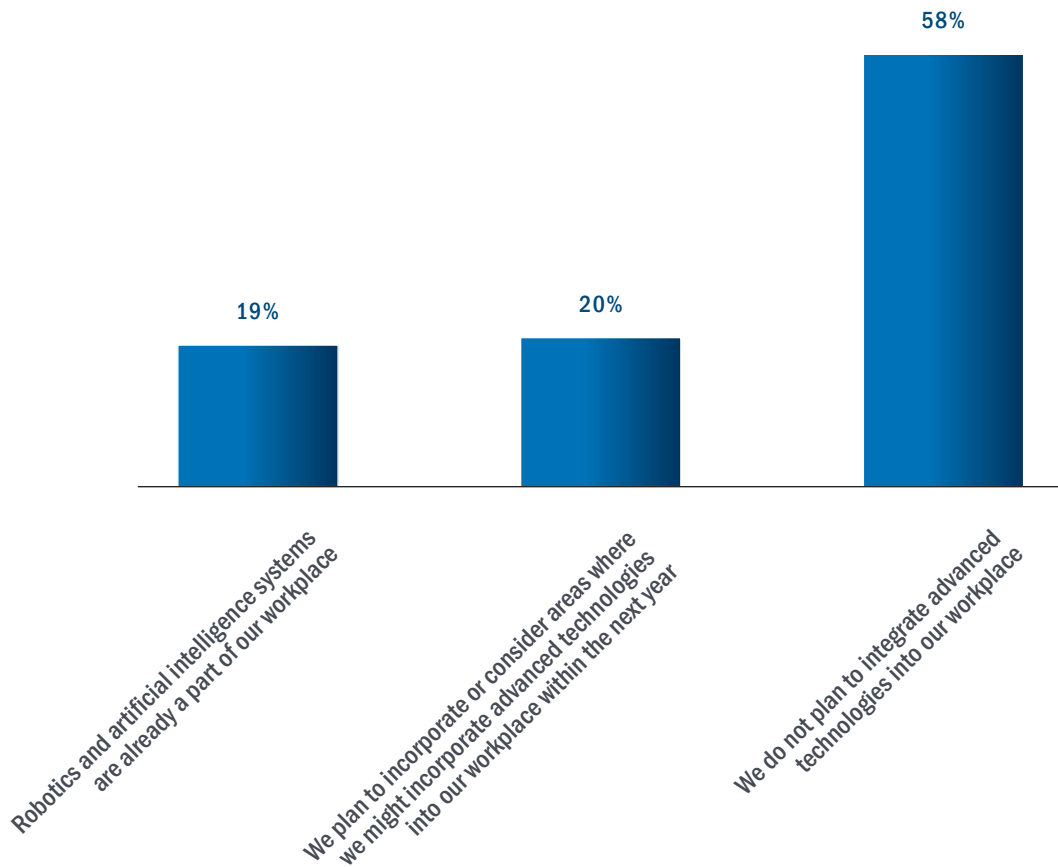
The wave of jurisdictions that have enacted legislation prohibiting employers from requesting criminal history information or restricting the use of credit information for employment purposes shows no signs of letting up. This trend has narrowed the scope of information that employers can consider when making decisions about employees or applicants and respondents expressed a high level of concern with the implications for their businesses.

In a somewhat ironic twist, respondents expressed the lowest level of concern over their ability to monitor employees' personal social media activity during the workday. One of the hottest areas of workplace privacy legislation during the past two years has been "password protection" laws that restrict employers from requesting access to employees' personal social media channels. Fifteen states have enacted such legislation even though employers do not appear to be particularly concerned about accessing employees' personal social media activity.

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**QUESTION:**

To what extent is your organization considering integrating advanced technologies whereby robotics, cognitive computing (artificial intelligence), or automation technology can perform the jobs of humans in the workplace?



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The advent of advanced technologies – including robotics, artificial intelligence, and automation – has changed the way companies do business and how workers perform their jobs and interact with each other. In fact, some recent studies suggest that, within the next two decades, almost half of all jobs in America could be performed by software, robots, and technology solutions not even invented yet.

And survey respondents indicate they are moving in that direction. **Thirty-nine percent** said they either have already integrated advanced technologies into their workplaces or are considering doing so within the next year. The fact that nearly half of respondents are exploring the use of advanced technologies is a strong sign that they are becoming more prevalent in the workplace. Many of the **58 percent** that indicated no plans to integrate such technologies could be in industries that do not lend themselves well to advanced technologies, however, it is far more likely that those who responded are not closely involved in such planning.

Of the respondents that are looking to advanced technologies, the majority were in the healthcare/ pharmaceuticals (**18 percent**), manufacturing (**15 percent**), or transportation (**9 percent**) industries. In verbatim responses, respondents in the manufacturing industry noted incorporating robotics and advanced manufacturing equipment into their processes to improve efficiency and quality. Healthcare industry respondents highlighted innovative uses for advanced technologies in surgical suites, delivery of medical devices, and the automated filling of medications.

Across industries, respondents also noted the use of automation and other advanced technologies to analyze data, perform routine tasks, and automate HR processes including payroll and benefits.



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## **METHODOLOGY AND DEMOGRAPHICS**

In April and May of 2014, Littler distributed the Executive Employer Survey via email to in-house counsel, human resources, and C-suite executives primarily throughout the U.S. and from a wide variety of industries. The survey was completed by more than 500 respondents. The results were tabulated and analyzed in June of 2014 and released in July of 2014.

Respondents included:

- C-suite executives (8 percent)
- In-house attorneys/corporate counsel (38 percent)
- Human resources professionals (47 percent)
- Other professionals (7 percent)

Companies represented were of a variety of sizes:

- LargeCap; Greater than \$4 billion in market capitalization (24 percent)
- MidCap; \$1 billion to \$4 billion in market capitalization (21 percent)
- SmallCap; Less than \$1 billion in market capitalization or other (55 percent)