

LITTLER MENDELSON
EXECUTIVE EMPLOYER SURVEY REPORT
JULY 2013

Littler
Employment & Labor Law Solutions Worldwide™

This report summarizes and analyzes the results of Littler Mendelson's second annual Executive Employer Survey. The survey results provide insight into how current economic conditions and workplace policy changes during President Barack Obama's second term are impacting the perceptions, actions and priorities of in-house counsel, human resources professionals 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

On the heels of highly optimistic hiring plans expressed in our inaugural survey one year ago, employers remain bullish in their intentions to bring on new full-time employees, albeit to a somewhat lesser degree. As the job market continues to recover and unemployment rates start to decline across the country, employers echo their expectations from a year ago that the Obama administration will continue to assign a high priority to job creation.

An eagerness for expanding their workforce does not come without recognition of the challenges posed by the current job market. While respondents feel key barriers facing workers in today's job market have started to decline, the majority still report that current economic conditions are affecting their workforce. In addition, while nearly half of respondents have not experienced difficulty filling open positions, some respondents reported difficulties such as the inability to provide the compensation requested by job applicants and a lack of U.S. citizens with highly specialized skills.

Specifically:

- The majority of respondents (**60 percent**) plan to **hire more workers**, either cautiously or aggressively, in the next 12 months.
- A slight rise in the number of respondents whose companies were not planning any change to their current workforce (from **13 percent** in 2012 to **22 percent** in 2013) suggests that the **job market is starting to move in the direction of employers filling their hiring needs** and becoming content with their current workforce.

- Similar to the 2012 survey results, **70 percent** of respondents expected the **Obama administration** to assign a **high priority to job creation**.
- Respondents indicated that the **degree to which the workforce is being impacted by current economic conditions is starting to decline** in key areas, including underemployment (from **67 percent** in 2012 to **44 percent** in 2013), remaining in a job due to an inability to find employment elsewhere (from **85 percent** in 2012 to **79 percent** in 2013) and demands for employees to do more with less (from **91 percent** to **85 percent**).

Employers continue to feel the impact of various government regulations on the workplace. With the implementation of the Affordable Care Act (ACA) top of mind for employers and many experts predicting that 2013 could be the year for immigration reform, healthcare and immigration are anticipated to be the top areas of focus for the president.

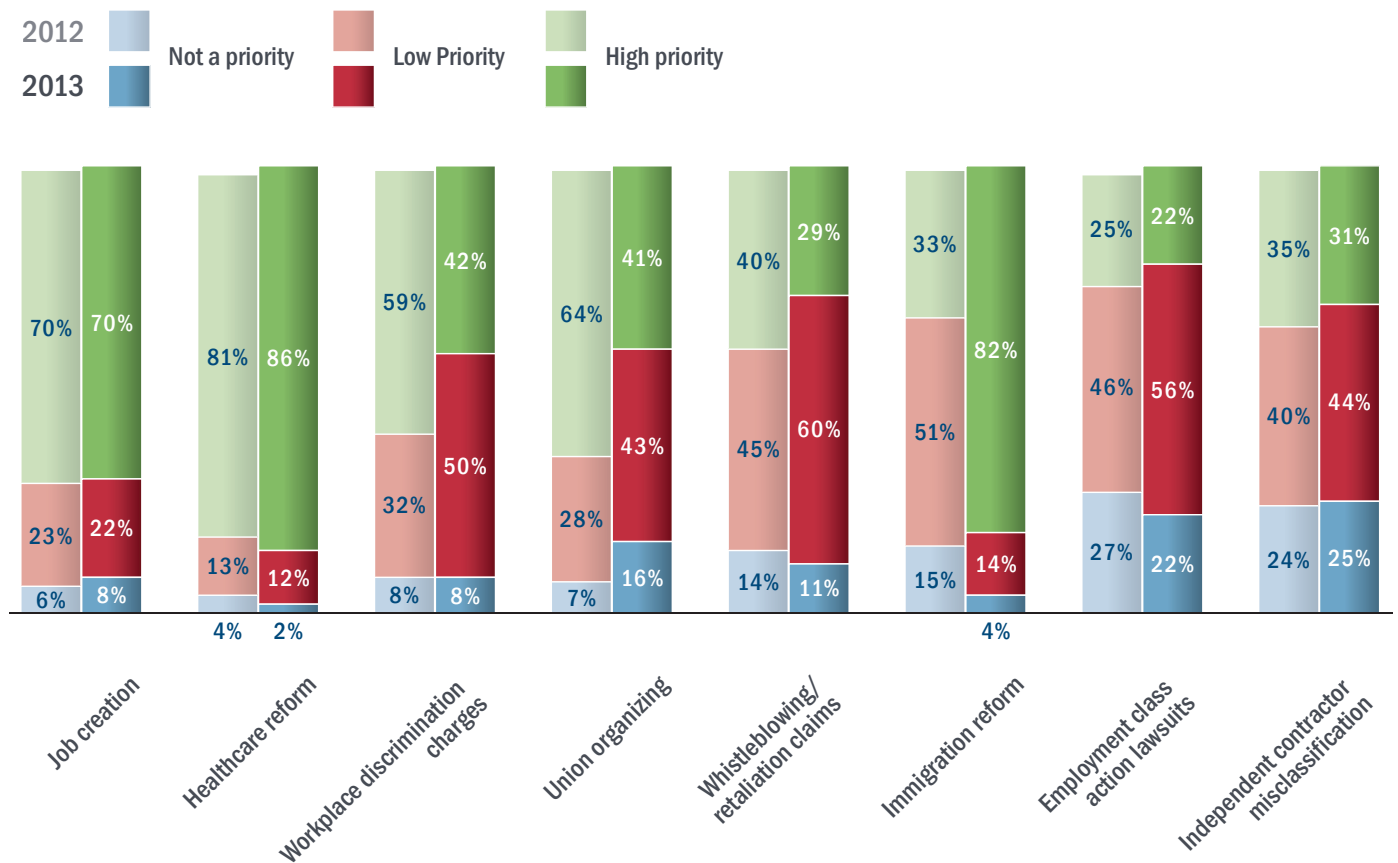
Specifically:

- The vast majority of respondents cited **President Obama's highest priorities** as **healthcare reform (86 percent)** and **immigration reform (82 percent)**, while still prioritizing other key regulatory issues impacting the workplace. The majority of respondents indicated **National Labor Relations Board (NLRB) and union organizing matters, workplace discrimination matters and whistleblowing and retaliation** claims as having some level of priority in the Obama administration, with very few indicating these matters as "not a priority."
- **Improving employment verification systems and increasing visas allotted to highly skilled foreign workers** were the immigration reform measures expected to have the most potential to positively impact employers. Respondents also noted a range of potential actions in response to ACA, including implementing **wellness programs (54 percent)**, offering **healthcare benefits through private exchanges (31 percent)**, and limiting **employee hours to less than 30 hours per week (27 percent)**.

REGULATION

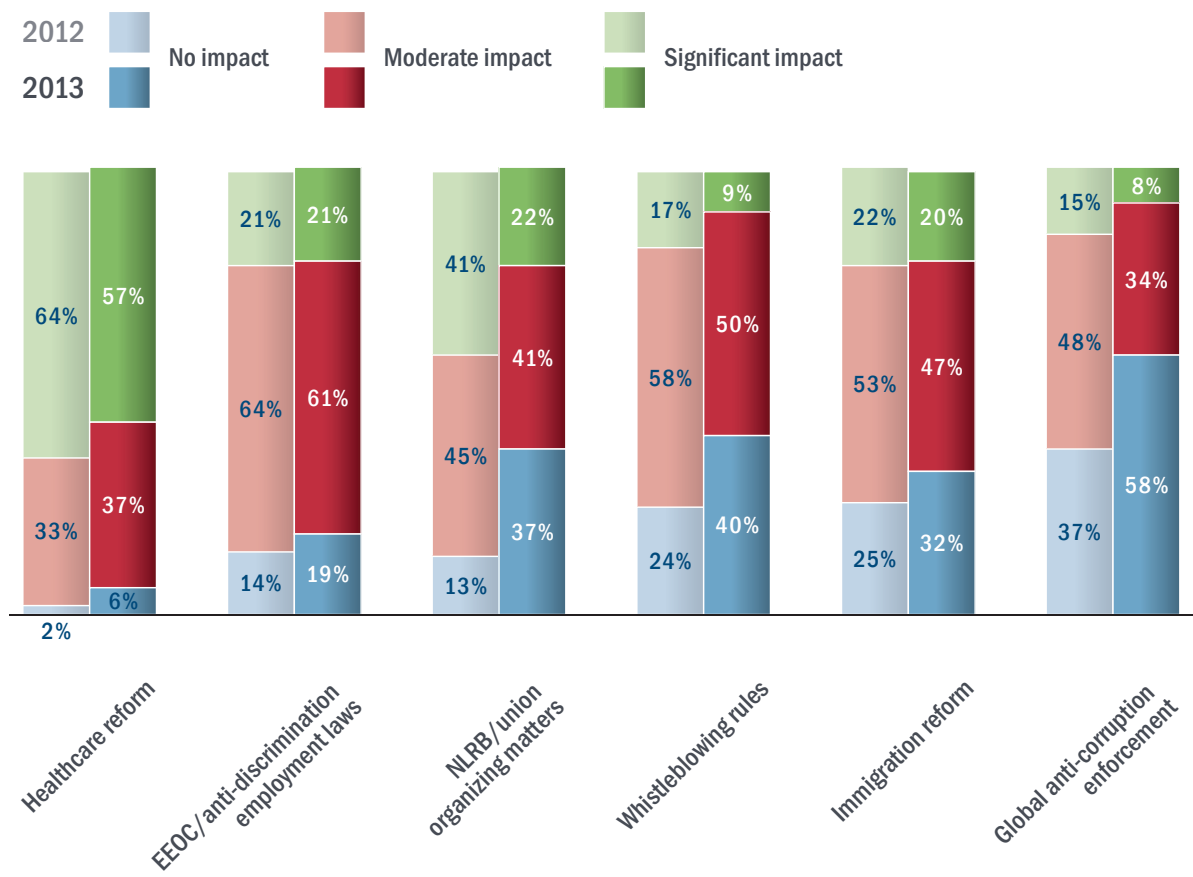
QUESTION:

How much of a priority will the following issues be for the Obama Administration?



QUESTION:

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



Following the myriad of legislative and regulatory issues that respondents identified as impacting the workplace in the 2012 survey as the presidential election was approaching, employers have continued to feel the influence of various government regulations during Obama's second term.

With implementation of the ACA underway, respondents naturally chose healthcare reform as the top area of focus for the president with **86 percent** indicating it as a high priority for the Obama administration. Respondents also again chose healthcare reform as the regulatory issue expected to have the most impact on the workplace over the next 12 months, with **57 percent** indicating that it will have a significant impact and **37 percent** indicating a moderate impact.

Perhaps signaling that employers believe the government is serious about advancing comprehensive reform to the United States immigration system, **82 percent** cited immigration reform as a high priority of the Obama administration, a significant increase from the **33 percent** who chose immigration as a high priority in the 2012 survey. While the 2013 results did not show an increase in the impact employers expect from immigration reform over the next 12 months, this is not surprising given that the reforms would not take effect within this timeframe. An increase would be more likely seen in the 2014 survey if the immigration reform bill is enacted this year.

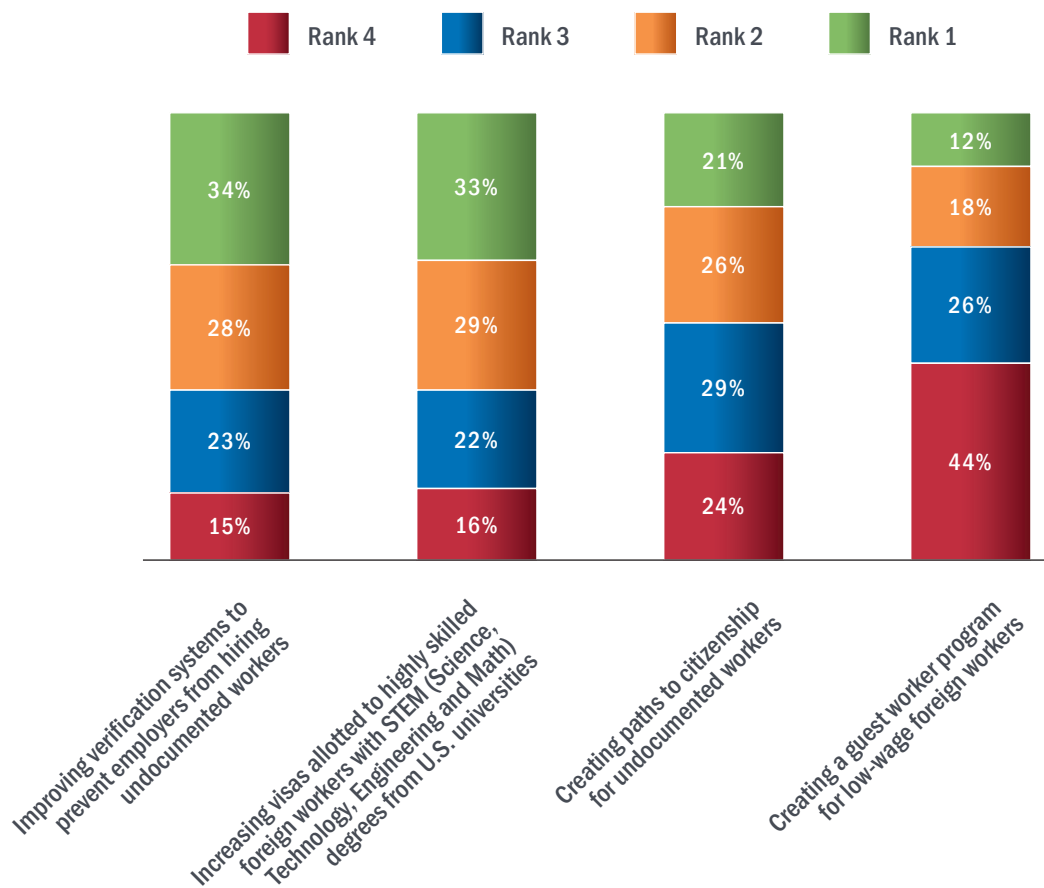
The increased attention to immigration reform and regulatory guidance being issued by government agencies to implement the ACA may account for the decrease from the 2012 to 2013 survey in the degree to which the NLRB and union organizing matters were expected to have a significant impact on the workplace (**41 percent** to **22 percent**) and to be a high priority of the Obama administration (**64 percent** to **41 percent**), as well as slight decreases in the priority anticipated to be placed on workplace discrimination matters and whistleblowing and retaliation claims. The low percentage of respondents who indicated these three issues would have no impact or would not be a priority for the president demonstrates that these claims continue to influence the workplace, as evidenced by the Equal Employment Opportunity Commission's increasingly aggressive enforcement of anti-discrimination statutes, various government agencies encouraging employees to report wrongdoing under their whistleblower laws and NLRB decisions impacting the employment policies of both union and non-union workplaces.

Similar to the 2012 survey results, **70 percent** of respondents again expected the Obama administration to assign a high priority to job creation. While unemployment rates have started to decline across the country, respondents expect that the president will continue to promote job growth policies and programs as the job market continues to recover.

IMMIGRATION

QUESTION:

With immigration law reform expected to be a focus in 2013, rank the following areas by their potential to positively impact employers and their hiring practices, with 1 being the greatest and 4 being the least?



Among the immigration reform proposals currently being discussed, respondents chose improving employment verification systems and increasing visas allotted to highly skilled foreign workers as having the most potential to positively impact their organizations.

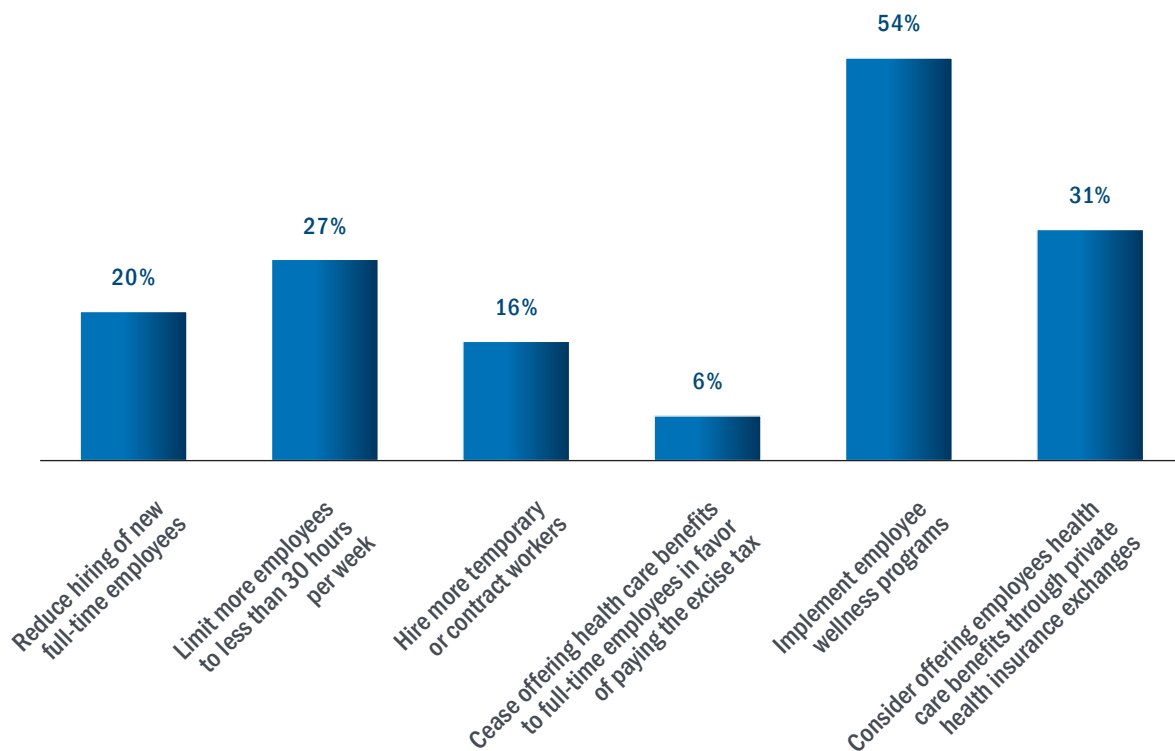
Multi-state employers currently operating under a patchwork of state E-Verify requirements may see the prospect of a nationwide online screening system as a positive development for simplifying the process of verifying work eligibility. However, this new requirement would also carry heightened compliance obligations and increased government enforcement against companies. The degree to which employers are impacted will also depend on whether the legislation mandates use of E-Verify for new employees only or whether it will also apply to existing employees. The latter requirement could have a significant impact on companies in industries that are more likely to employ undocumented workers.

On the heels of the H-1B visa cap for 2014 being reached in less than a week, triggering a lottery that left some American employers without the ability to fill needed positions, the survey results also reflect the potential for immigration reform to increase access to highly skilled workers. The findings echo concerns expressed by the technology industry and others regarding problems with the current H-1B visa system and caps that do not meet employers' demands.

HEALTHCARE REFORM

QUESTION:

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



In response to the ACA's implementation, only **6 percent** of respondents reported that they anticipate discontinuing healthcare benefits for full-time employees in favor of paying the excise tax. However, they identified a range of other actions that their company has taken or anticipates taking.

The implementation of employee wellness programs was the top action identified by more than half of respondents (**54 percent**). While these programs offer significant value to employers in fostering a healthier workforce, the Internal Revenue Service (IRS) announced proposed rules in early May 2013 – after the survey was fielded – that indicated most employee wellness programs cannot apply toward the minimum value of benefits large companies must reach to avoid ACA penalties.

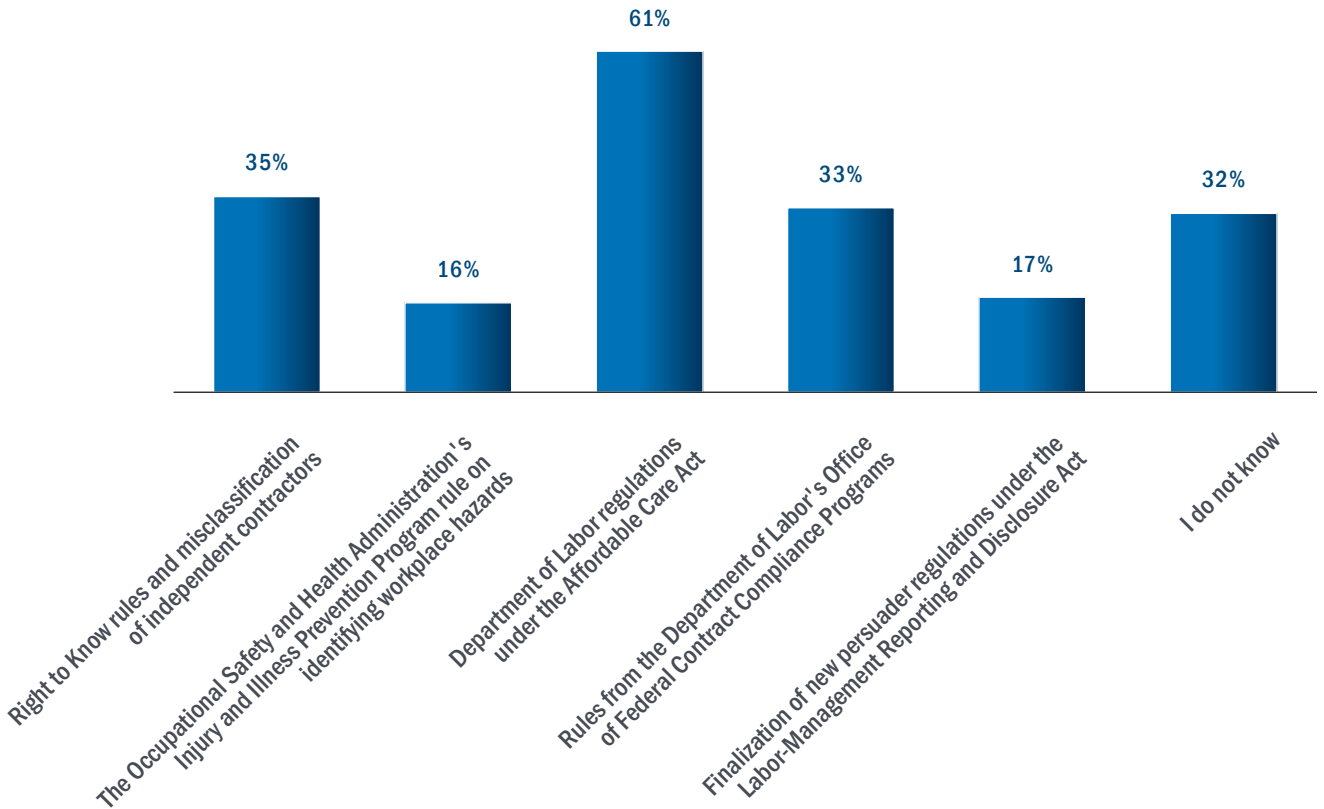
A notable percentage of respondents also indicated potentially offering employees healthcare benefits through private health insurance exchanges (**31 percent**), limiting more employees to less than 30 hours per week (**27 percent**) and reducing hiring of new full-time employees (20 percent). As companies determine how to most effectively respond to the new ACA employer healthcare obligations taking full effect in 2014, the findings suggest that they are exploring various potential avenues to adjust to the new regulatory environment.

The findings add additional perspective on the impact of the ACA on employers following a recent Gallup survey of more than 600 small businesses, released at Littler's 2013 Executive Employer Conference, in which **55 percent** of respondents indicated the ACA will increase costs and **41 percent** said they have held off on hiring new employees as a result of the legislation.

LABOR

QUESTION:

What do you expect to be the near-term priorities of the likely new secretary of labor, Thomas Perez? (Check all that apply)



In keeping with the high priority and impact anticipated as implementation of the ACA continues, respondents chose the U.S. Department of Labor (DOL) regulations under the ACA as the most pressing priority of the current nominee for secretary of labor, Thomas Perez (**61 percent**). This guidance will be critical for employers as they evaluate their options regarding employee health insurance policies and undertake intensive and potentially costly compliance efforts.

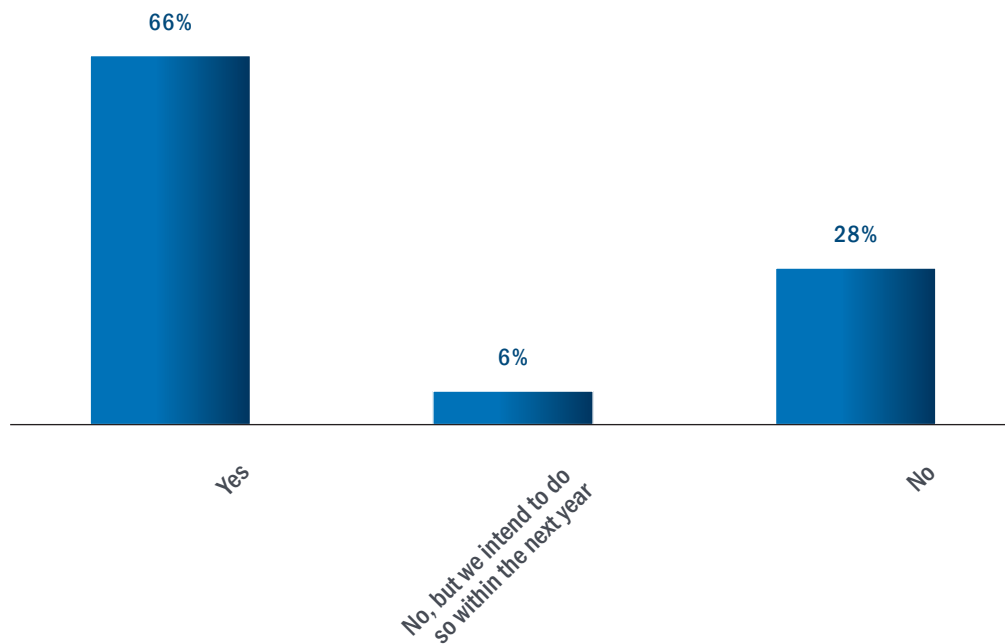
Respondents also identified several other areas where Perez would likely focus, including the controversial “Right to Know” rules (**35 percent**), which would amend the recordkeeping regulations under the Fair Labor Standards Act by requiring that employers disclose worker status (e.g., independent contractor or employee) and the manner in which employee compensation is calculated. Given Perez’s background on worker classification issues and other pro-labor initiatives, many employers expect that, if the nomination is confirmed, he would advance this and other long-pending regulatory measures, such as the “persuader” regulations under the Labor-Management Reporting and Disclosure Act (**17 percent**).

Additionally, one-third of respondents expect the rules from the DOL’s Office of Federal Contract Compliance Programs would be high on Perez’s agenda, particularly as they relate to amending current affirmative action requirements for various employers, as well as the collection of company compensation data.

WHISTLEBLOWING & RETALIATION

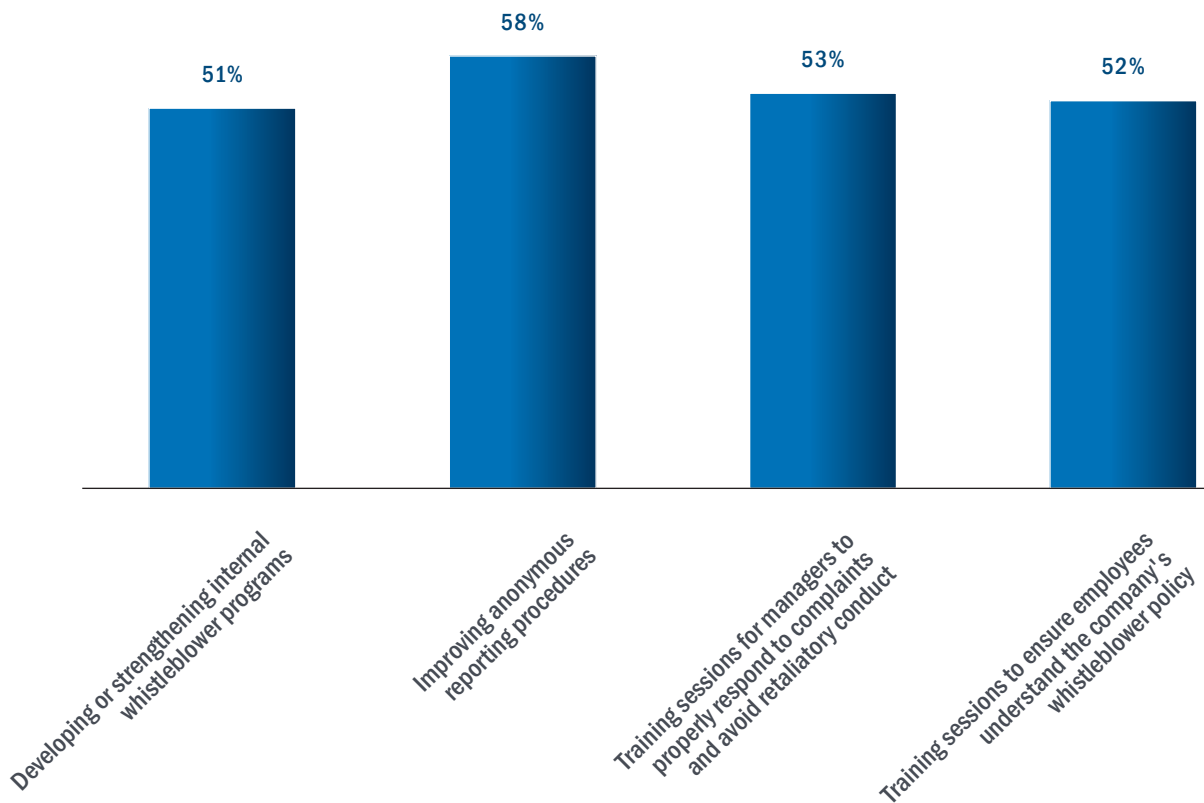
QUESTION:

Over the past year, has your organization encouraged employees to report potential misconduct or fraud internally before they report to regulators as a whistleblower?



QUESTION:

If so, how has your company encouraged employees to report potential misconduct or fraud within the organization before they report to regulators as a whistleblower? (Check all that apply)



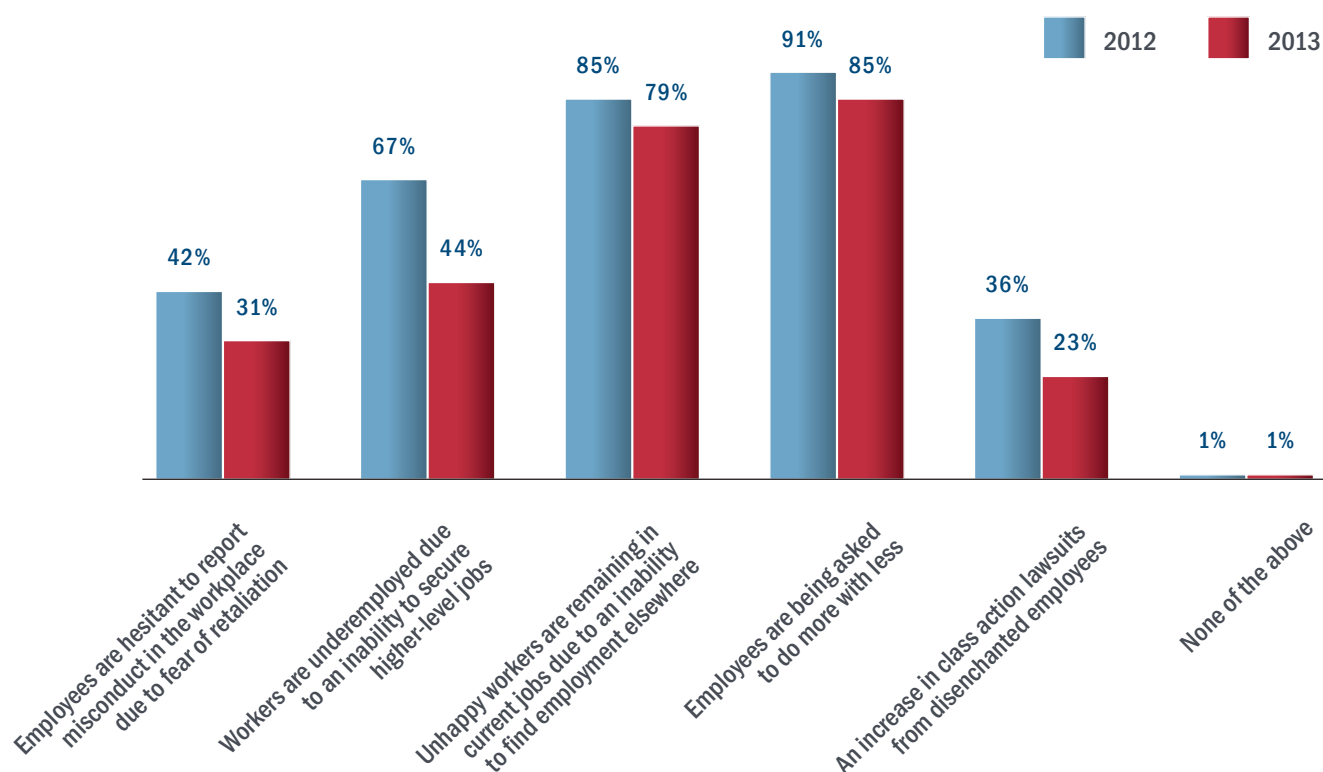
A significant percentage of respondents (**66 percent**) reported taking proactive steps over the past year to encourage employees to report potential misconduct or fraud internally before they report to regulators as a whistleblower. With several government agencies now employing whistleblower programs and recent court decisions expanding protections for whistleblowers, the best remedy for employers is to prevent whistleblower suits from arising in the first place through training programs and strong compliance systems.

Recognizing the importance of maintaining sound policies and procedures surrounding employee complaints, companies appear to be taking a range of actions to ensure employees feel comfortable reporting concerns internally without fear of retaliation. More than half of respondents indicated improving anonymous reporting procedures (**58 percent**), training managers to properly respond to complaints and avoid retaliatory conduct (**53 percent**), educating employees on the company's whistleblower policy (**52 percent**) and improving internal whistleblower programs (**51 percent**).

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)

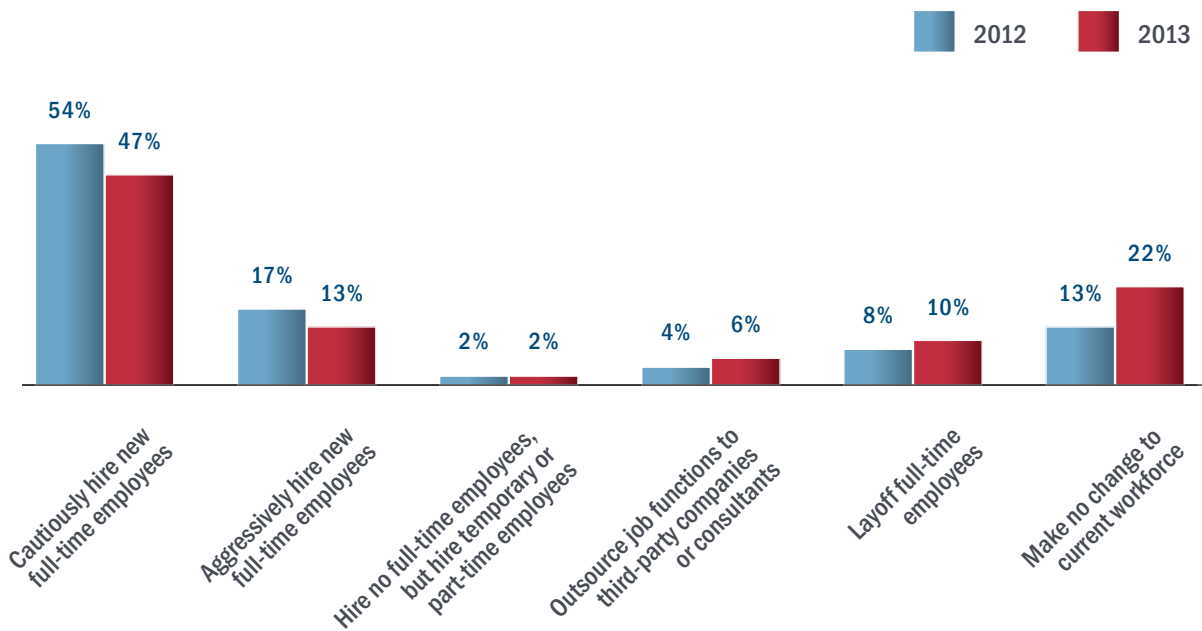


While the barriers facing workers that respondents highlighted in the 2012 survey findings remain, they appear to be subsiding as the job market improves.

Respondents indicated that the degree to which the workforce is being impacted by current economic conditions is starting to decline in key areas, including underemployment (from **67 percent** in 2012 to **44 percent** in 2013), remaining in a job due to an inability to find employment elsewhere (from **85 percent** in 2012 to **79 percent** in 2013) and demands for employees to do more with less (from **91 percent** to **85 percent**).

QUESTION:

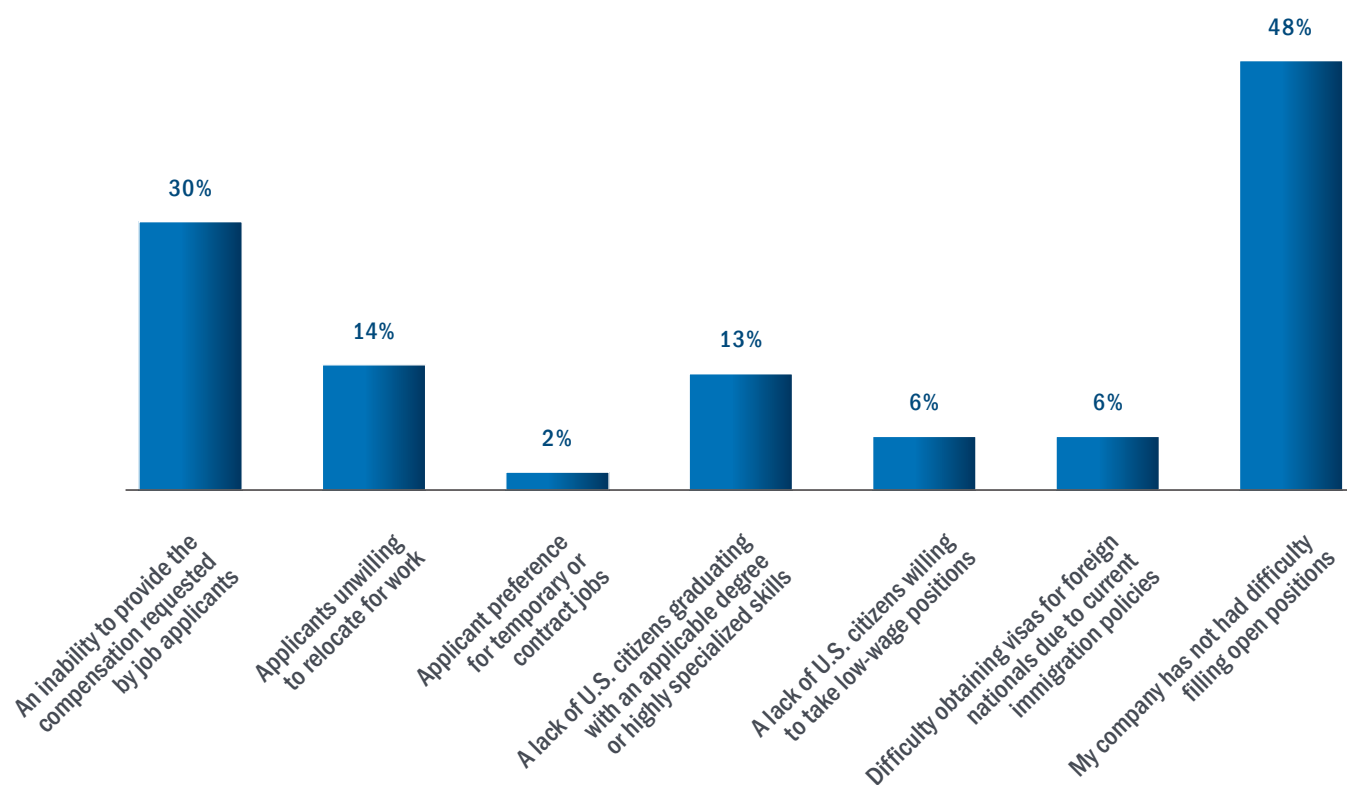
In the next 12 months, does your company plan to:



The 2012 survey saw the majority of respondents (**71 percent**) planning to hire more workers, either cautiously or aggressively, in the coming year. This optimism in hiring plans remained in the 2013 survey, albeit to a somewhat lesser degree (**60 percent**), with a slight rise in the number of respondents whose companies were not planning any change to their current workforce (from **13 percent** in 2012 to **22 percent** in 2013). This suggests that the job market is starting to move more in the direction of employers filling their hiring needs and becoming content with their current workforce since the 2012 survey.

QUESTION:

What, if any, are the key reasons your company has experienced difficulty finding people with the right skills to fill open positions? (Check all that apply)



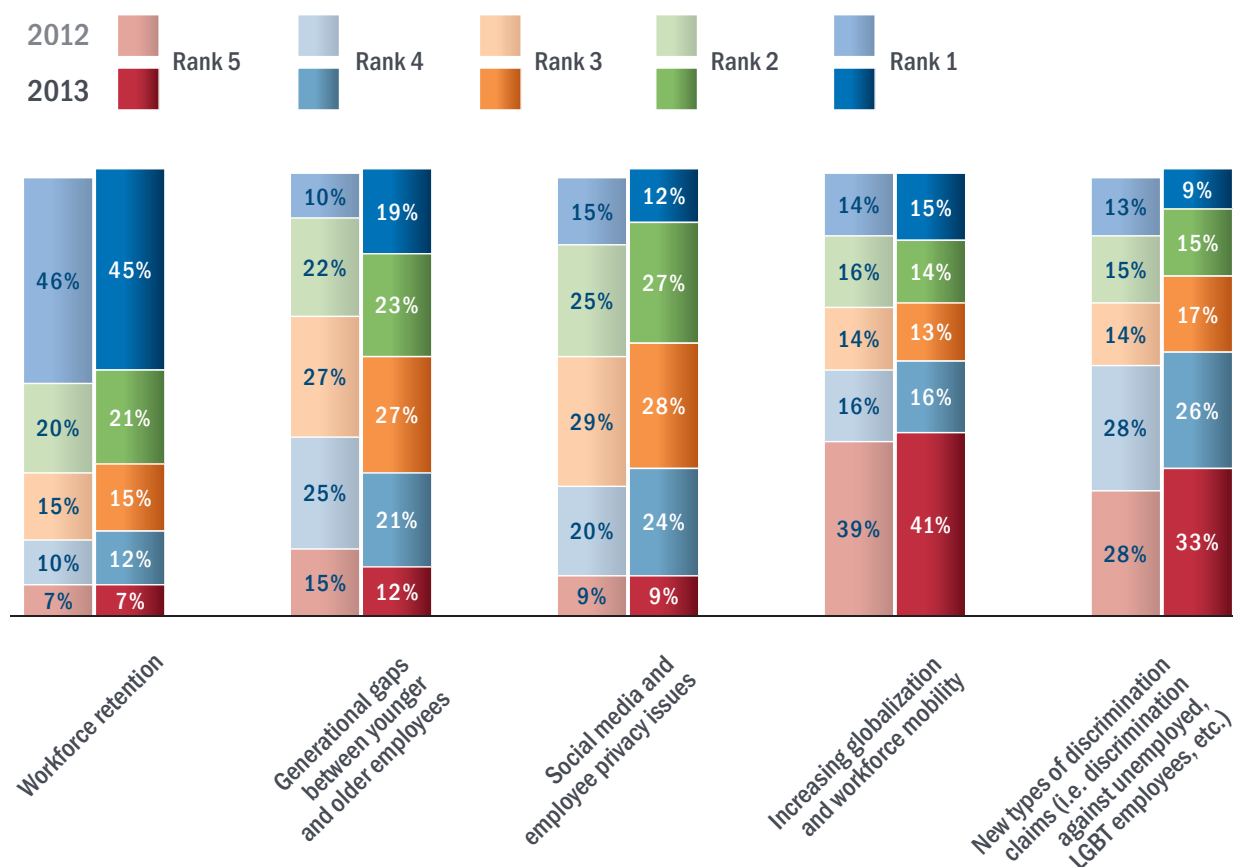
When asked if their companies have had difficulty finding applicants with the right skills to fill open positions, the majority of respondents (48 percent) indicated no difficulty filling open positions.

The most commonly cited reason among those who have experienced difficulty was an inability to provide the compensation requested by job applicants (30 percent). In addition, a relatively significant percentage of respondents (13 percent) cited a lack of U.S. citizens graduating with an applicable degree or highly specialized skills as a challenge in finding the right applicant for a position.

WORKFORCE MANAGEMENT

QUESTION:

Which of the following issues do you feel present the greatest challenges for employers in managing their workforces? Rank in order of 1 being the greatest to 5 being the least.



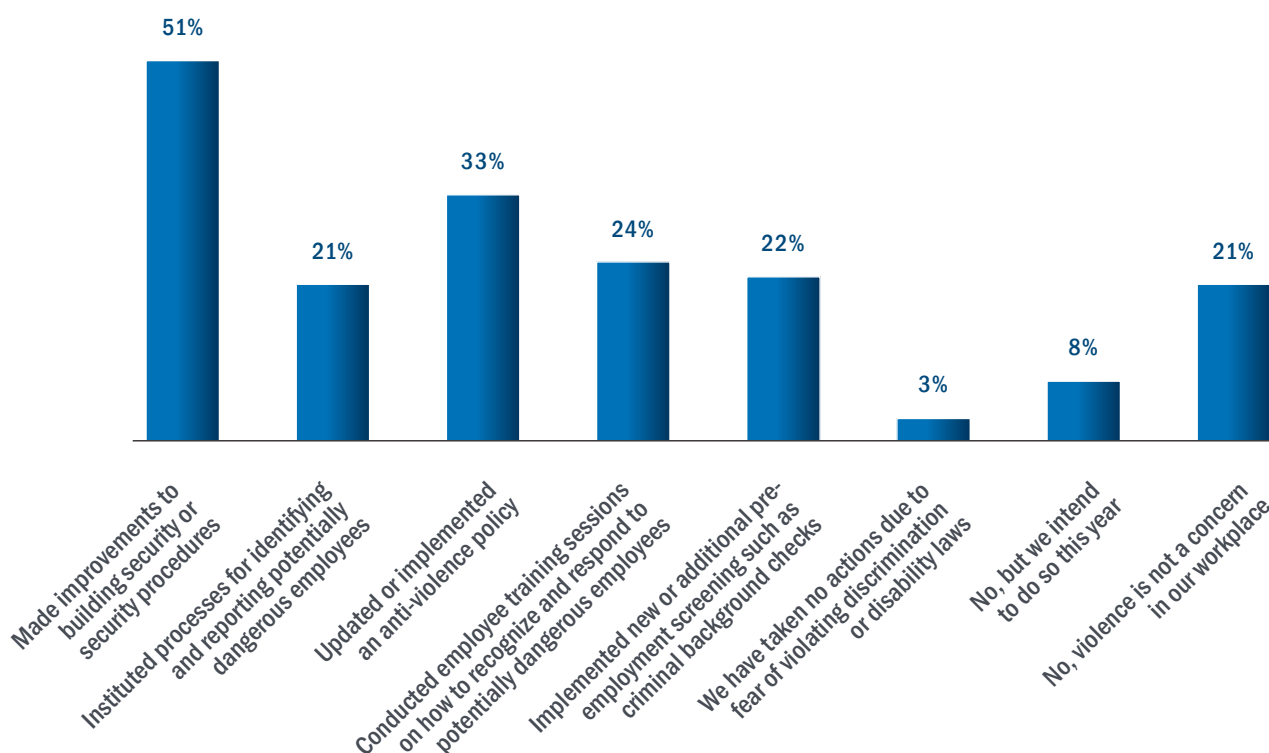
Respondents again identified workforce retention as the issue presenting the most difficulty in managing their company’s workforce. As a high percentage of employees remain in jobs due to an inability to find employment elsewhere and continue to be asked to do more with less, companies may be concerned that their high-performing employees will leave the organization as the economy improves.

The 2013 survey also saw a slight increase in respondents noting generational gaps between younger and older employees as their top challenge (from 10 percent in 2012 to 19 percent in 2013).

WORKPLACE VIOLENCE

QUESTION:

Has your company taken the following actions during the past year to prevent violence in the workplace? (Check all that apply)



Following high-profile incidents of gun violence and disputes in the workplace, employers appear to be taking action to ensure the safety of their workplaces.

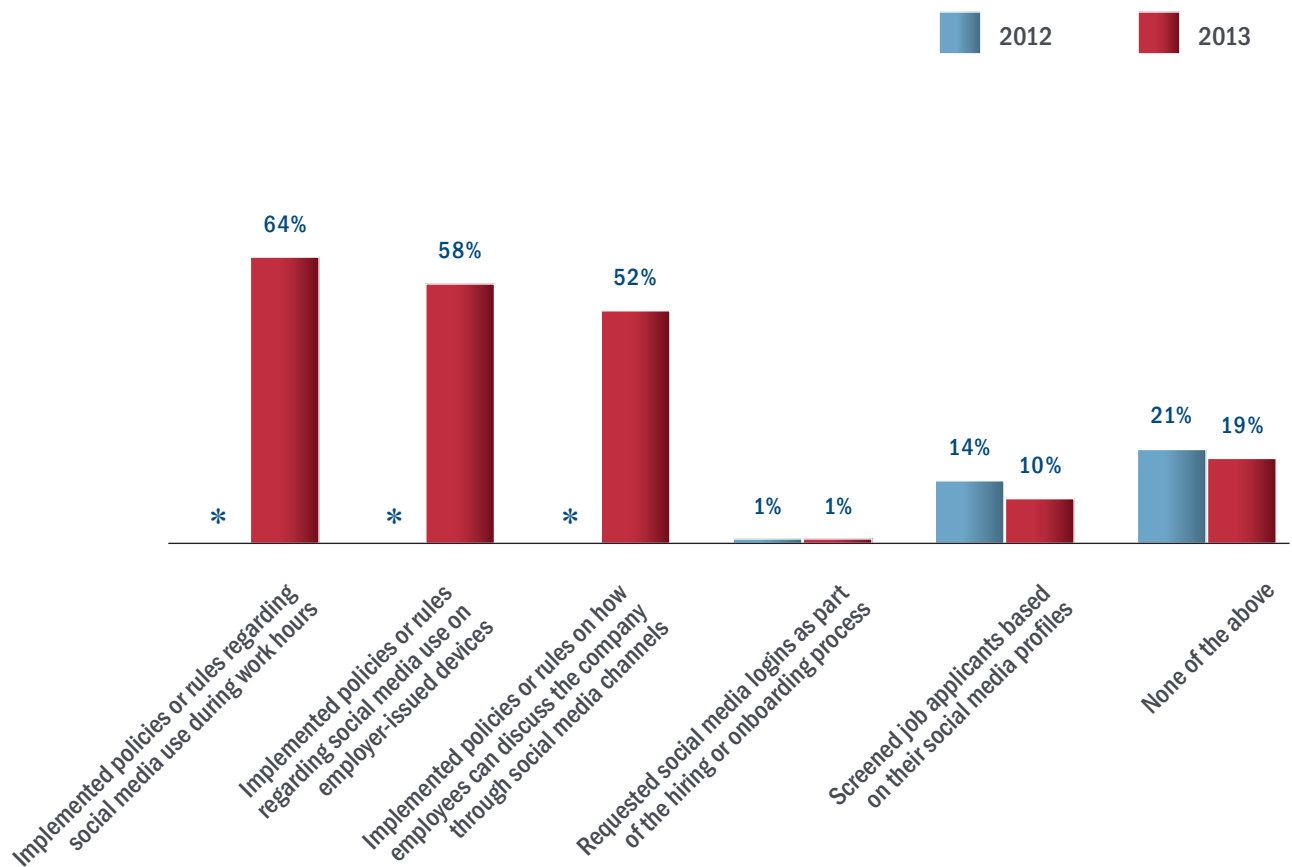
More than half of respondents (**51 percent**) indicated that their companies have made improvements to building security or security procedures during the past year.

A considerable number of respondents also noted that their companies have updated or implemented “anti-violence” policies (**33 percent**), conducted training on identifying potentially dangerous employees (**24 percent**) and enhanced pre-employment screening checks (**22 percent**).

SOCIAL MEDIA

QUESTION:

Has your organization done the following regarding employee social media use or use of social media to screen job applicants? (Check all that apply)



* These answer choices were not provided in the 2012 survey

As social media increasingly becomes a part of daily life, both personally and professionally, the 2013 survey results demonstrated that proactive social media policies are popular among today's corporations. The majority of respondents indicated that their companies implemented policies or rules regarding employee social media use during work hours (**64 percent**) and on employer-issued devices (**58 percent**). In addition, with companies facing reputational and financial consequences from employees discussing the company through their own social media channels, more than half (**52 percent**) implemented policies on this type of activity.

Similar to the 2012 survey, only **1 percent** of respondents indicated requesting social media logins as part of the hiring or onboarding process. This survey result brings into question the need for recently enacted laws – more than ten states have passed such laws since April 2012 – that prohibit private employers from requesting or requiring that applicants or employees provide log-in credentials for their personal social media accounts.

Additionally, the percentage of respondents who indicated screening job applicants based on their social media profiles actually decreased from 2012 to 2013 (**14 percent** to **10 percent**), despite other industry reports indicating the practice is more widespread. For instance, a survey by social media monitoring service Reppler of over 300 hiring professionals found that more than **90 percent** have visited a potential candidate's profile on a social network as part of the screening process.

METHODOLOGY AND DEMOGRAPHICS

In April and May of 2013, Littler distributed the Executive Employer Survey via email to in-house counsel, human resources professionals and C-suite executives primarily throughout the U.S. and from a wide variety of industries. The survey was completed by 417 respondents and results were tabulated, analyzed and released in June of 2013.

Respondents included:

- C-suite executives (8%)
- In-House Attorneys/Corporate Counsel (43%)
- Human resources professionals (42%)
- Other professionals (7%)

Companies represented were of a variety of sizes:

- LargeCap: Greater than \$4 billion in market capitalization (22%)
- MidCap: \$1 to \$4 billion in market capitalization (19%)
- SmallCap: Less than \$1 billion in market capitalization or Other (59%)