LITTLER MENDELSON
EXECUTIVE EMPLOYER SURVEY REPORT
JULY 2015

Littler
Employment & Labor Law Solutions Worldwide®

This report summarizes and analyzes the results of Littler Mendelson's fourth annual Executive Employer Survey. It examines what impacts the workplace most through the eyes of in-house counsel, human resources professionals and C-suite executives from companies of all industries. The results explore top-of-mind issues, including overtime pay reform, workplace inclusion, healthcare and increased enforcement efforts from government agencies.

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.

EXECUTIVE SUMMARY

The 2015 Executive Employer Survey Report revealed that as employers negotiate changing regulations and economic conditions, they are most concerned with some of the moves regulatory agencies are making that may affect how they can hire, compensate and maintain relations with their workers. These concerns have been amplified as employers worry less about macroeconomic impacts on their businesses, as the economy continues to improve and as we grow further away from 2009's economic low points. There are a number of agency actions and regulatory review processes that respondents feel could impact their businesses.

Specifically:

- More than half of the respondents (**57 percent**) said they expected to see an increase in the number of workplace discrimination claims during the next year that relate to employers' own hiring barriers, including the consideration of criminal or credit history in the hiring process. Of the other Equal Employment Opportunity Commission (EEOC) enforcement initiatives that concerned respondents, claims made over equal pay (**34 percent**) and accommodation for disabled workers (**37 percent**) were next in line.
- Possible changes to the definition of "joint employer" ranked high as a concern for employers. Most respondents (**69 percent**) were concerned about exposure to greater legal liability if the National Labor Relations Board (NLRB) broadens the definition, which would make companies liable for the working conditions and labor violations associated with hired subcontractors. Also, **59 percent** of respondents were concerned about the difficulties of monitoring the employment practices of separate entities.

- On June 30, 2015, President Obama and Secretary of Labor Perez released a Notice of Proposed Rulemaking (NPRM), seeking public comments on proposed changes to the "white collar" overtime exemption regulations. The notable revisions include an increase to the minimum salary required for exemption (raised to an estimated $50,440 annually by the time a final rule is issued in 2016), an increase to the total annual compensation requirement needed to exempt highly compensated employees (HCEs) (raised to $122,148 annually) and a goal to establish a mechanism for automatically updating the salary levels annually. The proposal did not specifically address duties tests, but sought comment on possible changes to the tests.
- The uncertainty of these changes caused concerns over added costs associated with possibly changing government regulations governing exemptions. In response, more than one third (**37 percent**) said they were concerned with the potential elimination of the executive, administrative and professional exemptions for workers who spend more than 50 percent of their work time engaged in non-exempt duties and **29 percent** noted concern with the elimination of the executive exemption for supervisors who perform some non-exempt duties, such as stocking shelves and working the cash register.

Other issues concerning government regulation have ebbed in importance for respondents during the last three years, particularly in the realm of healthcare. Concerns in this area have diminished since 2012, when the Affordable Care Act (ACA) was newer and employers were less sure of how it would affect their benefit plans and other operations.

Specifically:

- Three years ago, a robust **64 percent** of our respondents said they were significantly concerned about regulatory issues surrounding healthcare affecting their business, compared with only **33 percent** in 2015.
- Employers were watching challenges to the ACA, including ***King v. Burwell***, a case that challenged the legality of subsidies on federal insurance exchanges. The case could have unraveled health insurance for millions of people who obtained coverage through federal exchanges. However, the Supreme Court upheld the ACA in a 6-3 decision issued on June 25 2015. Before the opinion's release, **21 percent** of respondents said their major issue in implementing healthcare wellness programs was the uncertainty surrounding ACA.

- Maneuvering within the regulations of the ACA and other healthcare laws continues to be a point of concern for respondents, as **55 percent** hired employee benefits attorneys or consultants to help navigate and track compliance.

After reaching 10 percent in late 2009, the national unemployment rate began a long, steady drop to its current level of 5.3 percent. This same transition can be seen in the survey's responses over the last four years. The effects of an improving job market have clearly influenced respondents' answers to questions concerning hiring, advancement and job placement.

Specifically:

- Positive sentiment for aggressively hiring new employees was shared by **17 percent** of respondents, matching 2012's high, and a marked increase over last year's **12 percent**.
- Fewer employers are feeling they need to approach hiring with caution, a healthy sign for the overall employment ecosystem. This was the third consecutive year of declining numbers in this part of our survey. The numbers: **39 percent** of 2015 respondents said they would cautiously hire new full-time employees, compared with **41 percent** in 2014, **47 percent** in 2013, and **54 percent** in 2012.
- Another sign that the job market may be approaching a healthy equilibrium is that only **31 percent** of respondents had concerns about workers being underemployed due to a dearth of higher-level jobs. That's compared with higher numbers in each of the three previous surveys conducted: **67 percent** in 2012 and **44 percent** in 2013 and 2014.
- Upbeat hiring sentiment also manifested as respondents exhibiting a sharp decrease in concerns over unhappy workers staying at jobs because of the inability to find work elsewhere. Only **43 percent** had these concerns in 2015, compared with **66 percent** in 2014, **79 percent** in 2013 and **85 percent** in 2012.

Social issues continue to affect the workplace, demanding that employers cope with changing laws and evolving values within society. Some of these issues involve new laws, such as those surrounding marriage. Also of note is an increased focus on bullying issues within the workplace.

Specifically:

- Respondents showed that their companies have adapted well to the rights of LGBT employees as protected by law. **Forty-seven** percent said their companies had instituted no new changes to germane

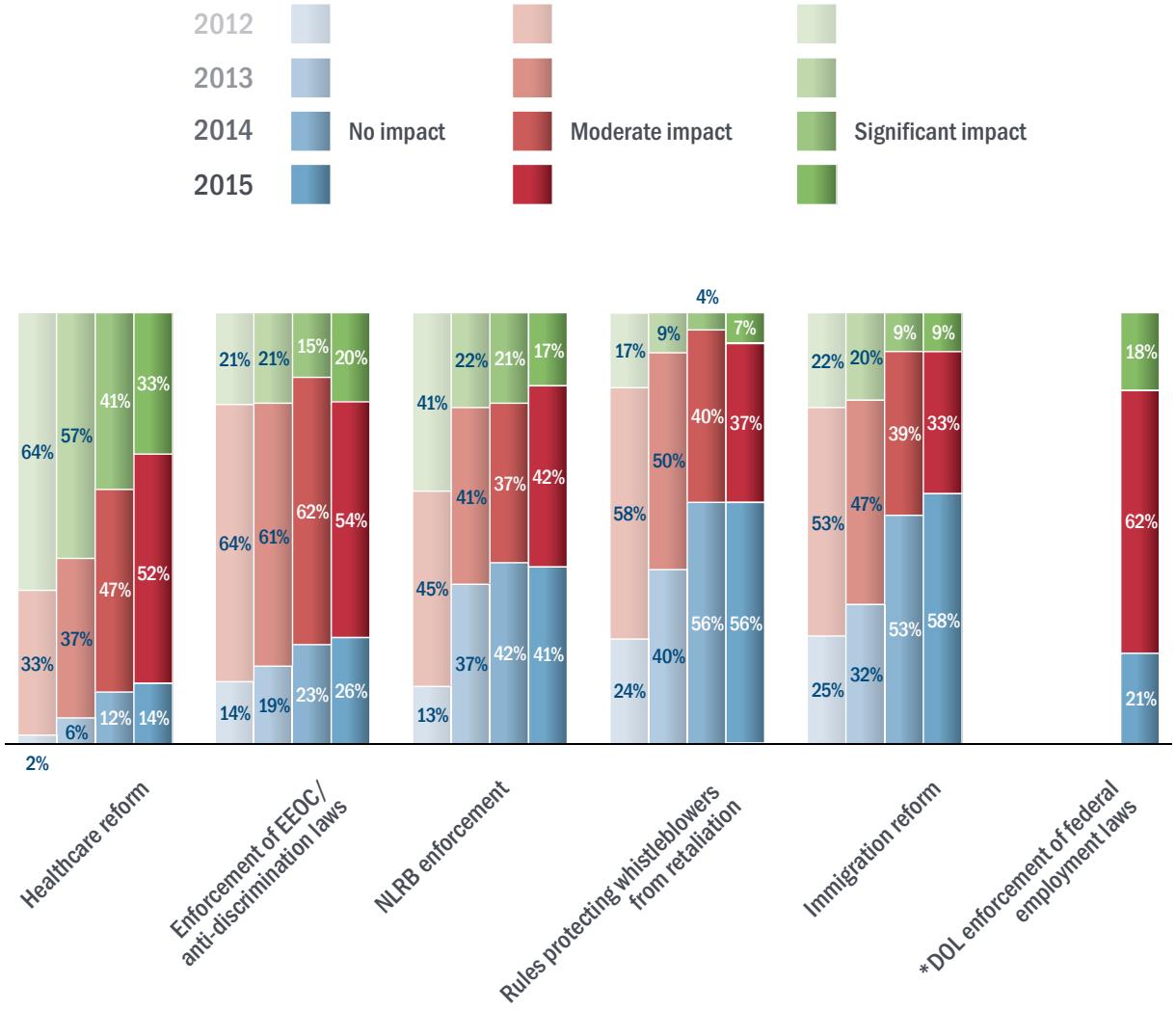
policies in the space during 2015 because they already had policies that expressly addressed issues faced by LGBT employees. Only **6 percent** of respondents said they were waiting on the Supreme Court decision on same-sex marriage before making additional changes. On June 26, 2015, the Supreme Court handed down its 5-4 decision in ***Obergefell v. Hodges***, making same-sex marriage legal throughout the United States.

- Half (**50 percent**) of respondents said their companies had introduced language in a company policy or code that set an expectation of a hospitable workplace free of bullying. And **37 percent** of respondents said they had communicated to employees that bullying is not acceptable.

REGULATION

QUESTION:

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



* This answer choice was not provided prior to the 2015 survey.

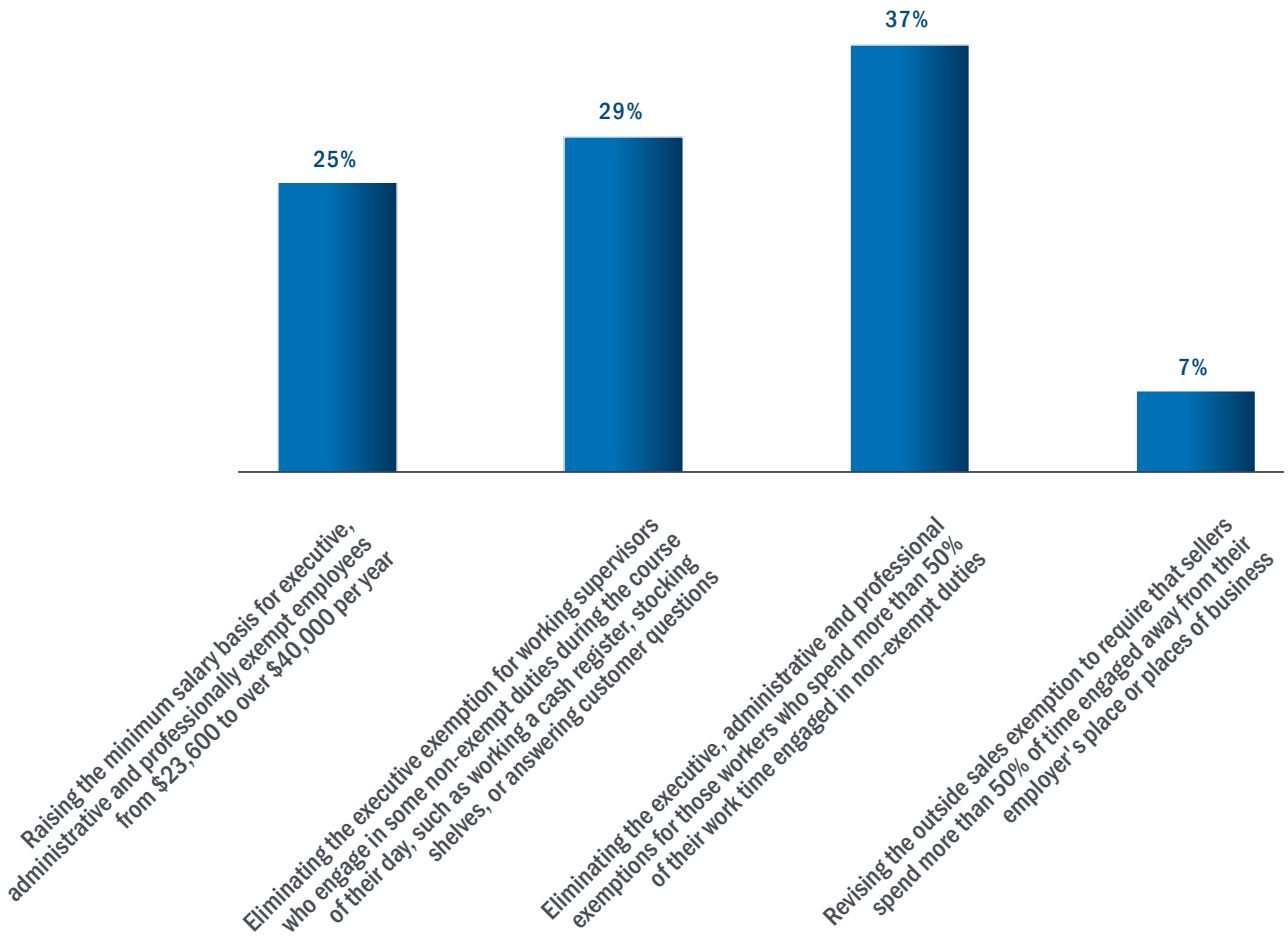
As we put more time between the 2008 economic meltdown and today, employers are gaining confidence on how to best negotiate new whistleblowing rules. This is evidenced by a relative decline in respondents who expect rules protecting whistleblowers to make a significant impact in the next 12 months. In 2012, **17 percent** of respondents expected this, followed by **9 percent** in 2013, **4 percent** in 2014 and a slight bump to **7 percent** in 2015—the last year perhaps affected by some large rewards that the government has recently bestowed on whistleblowers.

Concerns over compliance with EEOC and discrimination laws have remained relatively steady during the four years of the survey, with a low of **15 percent** of respondents expecting them to make a significant impact in 2014. That rose to **20 percent** in 2015, close to the **21 percent** registered in 2012 and 2013.

The combination of a crashing economy and a long, delayed recovery has activated regulators on several fronts during the last several years. Also playing a role was the widely held perception that middle-class jobs were being squeezed out of the economy; politicians holding this viewpoint have helped put upward pressure on minimum wages and, more important for our respondents, have led the Department of Labor (DOL) to more aggressively scrutinize possible transgressors of employment laws. As the economy continues to recover, employers have grown less concerned with enforcement actions from the NLRB in this space. In 2015, only **17 percent** of respondents said NLRB enforcement was a significant concern, compared with **41 percent** in 2012.

QUESTION:

The Department of Labor is likely to modify the regulations interpreting the white-collar exemptions to the Fair Labor Standards Act in the following ways. Please indicate which possible revision would cause your organization the most concern in terms of increasing potential overtime costs. (Select one.)



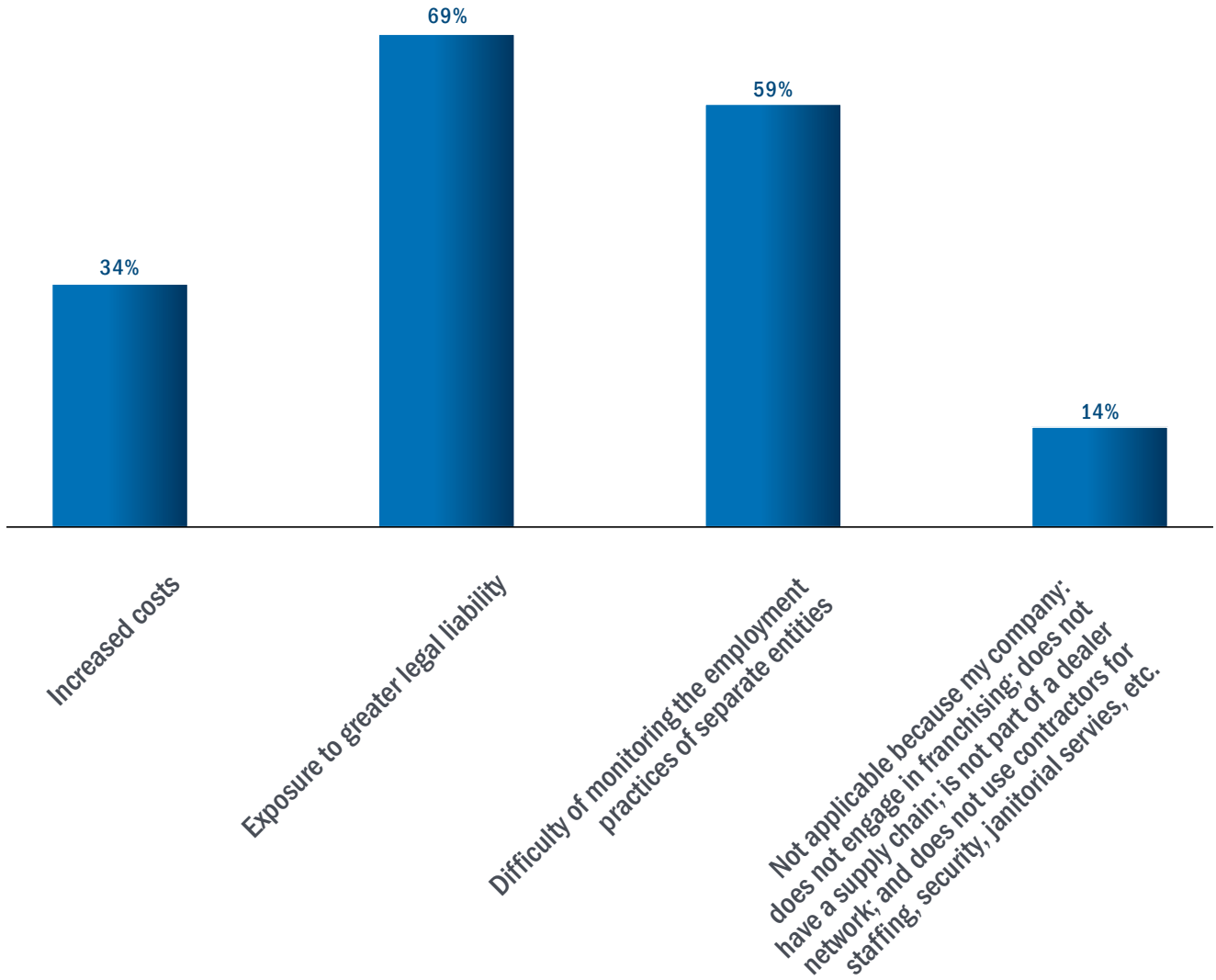
Respondents expressed concern with regard to three potential changes in the DOL's proposal to revise white-collar overtime exemption regulations and make more workers eligible for overtime pay. The DOL addressed the minimum salary required for exemption, the total compensation requirement needed to exempt HCEs and the goal to establish a mechanism for automatically updating the salary levels annually. The Department is not proposing specific changes to the duties tests at this time but did request comments on duties testing and the aforementioned changes.

Of greatest concern to respondents were possible changes to the duties requirements for overtime exemptions. Thirty-seven percent of respondents indicated that the potential elimination of the executive, administrative and professional exemptions for workers who spend more than 50 percent of their work time engaged in non-exempt duties was their primary concern. This was closely followed by the elimination of the executive exemption for supervisors who perform some non-exempt duties (**29 percent**), such as stocking shelves and working the cash register.

The government's primary goal is to increase the number of employees eligible for overtime pay. Through this proposal the DOL is estimating an impact up to 5 million workers. This comes at a cost to employers with the NPRM stating that the proposed increases to the salary levels will result in the transfer of income from employers to employees of between $1.1 and $1.2 billion per year. Interestingly, when surveyed, respondents highlighted this salary hike as a part of their overtime rules worry: **25 percent** of respondents indicate that their primary concern with regard to increased costs stem from a rise in the minimum salary level.

QUESTION:

If the National Labor Relations Board rules to broaden the definition of a "joint employer" (making companies potentially liable for working conditions and labor violations of their subcontractors, staffing agencies or franchisees), which of the following would be a concern of your organization? (Check all that apply.)



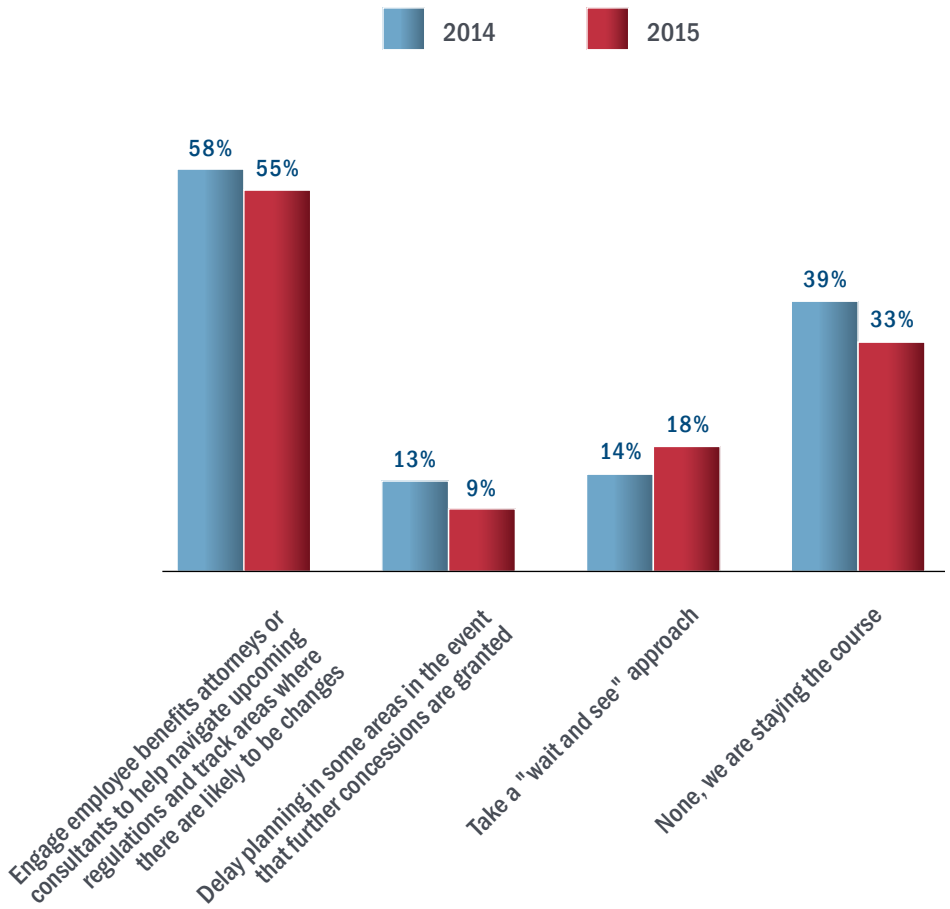
The potential implications of an expanded definition of "joint employer" continues to be top of mind as the NLRB deliberates on its final ruling. Generally, businesses were considered to be joint employers only when they shared direct and immediate control over the essential terms and conditions of employment, including hiring, firing, discipline, supervision and direction. Only those entities involved with an employee's day-to-day working conditions, and, therefore, in a position to alter those conditions, were thought to be responsible for National Labor Relations Act violations.

NLRB General Counsel Richard Griffin is advocating for a significantly looser definition and a more "traditional" concept of a "joint employer," leaving employers concerned with the potential sweeping impact of this decision. **Fifty-nine percent** of respondents expressed unease when assessing the difficulty of monitoring separate entities, and **34 percent** felt increased costs would be a primary concern as well.

Overall, employers noted a high level of concern with this issue. Well over half of the respondents felt exposure to greater legal liability (**69 percent**) would be of concern with a broadened definition.

QUESTION:

In response to the challenges to the Affordable Care Act and uncertainty surrounding its implementation, which of the following actions has your organization taken or do you plan to take? (Check all that apply.)



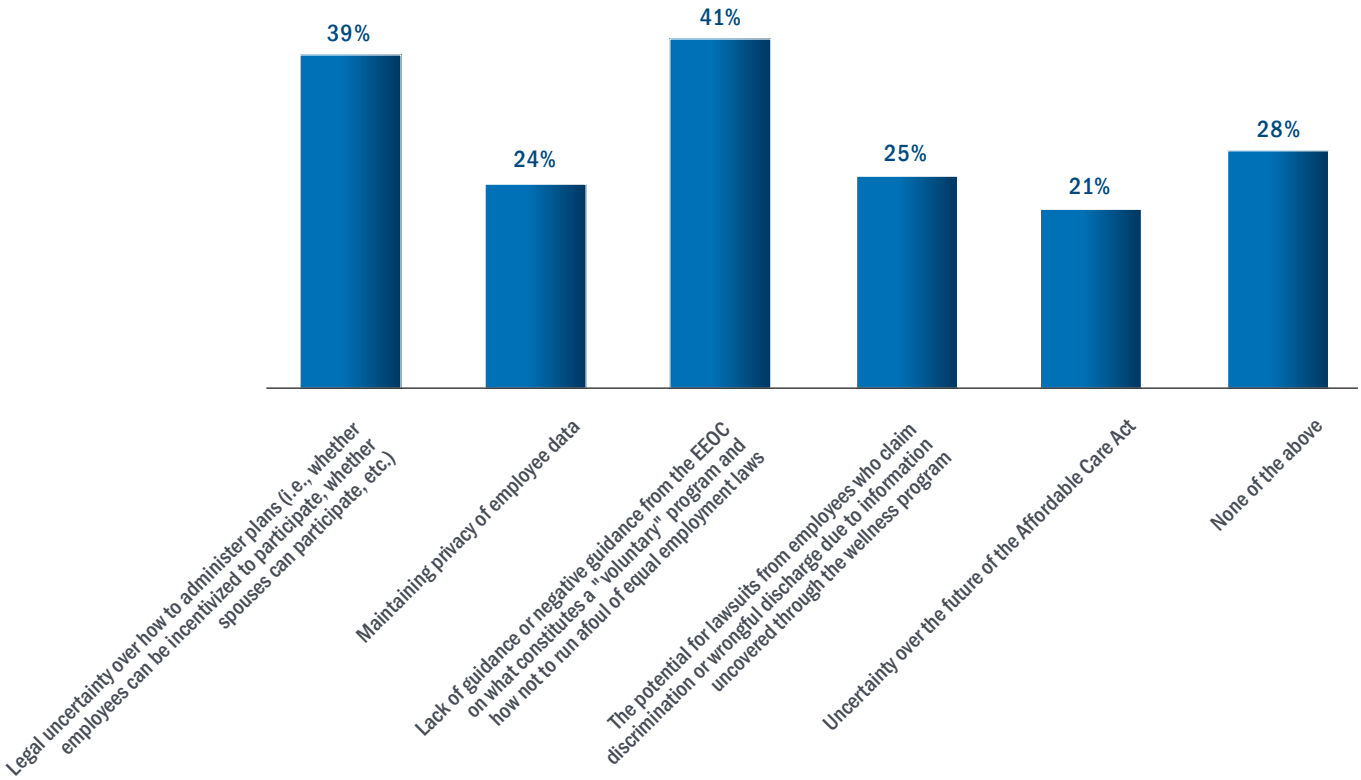
The ACA continues to be a focus for employers. There was little change—**58 percent** in 2014 to **55 percent** in 2015—in the responses regarding companies that have engaged with attorneys or consultants to navigate the new healthcare regulations. A slightly smaller percentage of respondents, **33 percent** versus 2014's **39 percent**, said their companies were staying the course on such matters, while a rising percentage of respondents, from **14 percent** to **18 percent**, said they had adopted a "wait and see" approach.

This outlook is likely influenced by *King v. Burwell*, a case challenging the legality of subsidies on federal insurance exchanges. The Supreme Court preserved the ACA in June 2015. The 6-3 ruling was a victory for President Obama's administration, saving his signature domestic policy from fundamental disruption.

For employers already in compliance, the decision won't have much of an effect. However, employers who were waiting on this outcome to take action must turn their focus back on their policies, as the decision will likely slow momentum for future wholesale changes to the ACA.

QUESTION:

Which of the following issues are of concern to your organization in implementing or administering an employee wellness program? (Check all that apply.)



The unknown outcome of *King v. Burwell* case in part helps explain why **21 percent** of respondents said their major healthcare concern when administering wellness plans was uncertainty over the future of the ACA.

There still exists a great deal of confusion on the law and how it affects the operation of company wellness plans. Illustrating this, **41 percent** of respondents expressed concern about lack of guidance or negative guidance from the EEOC on what constitutes a "voluntary program" and how not to run afoul of equal employment laws.

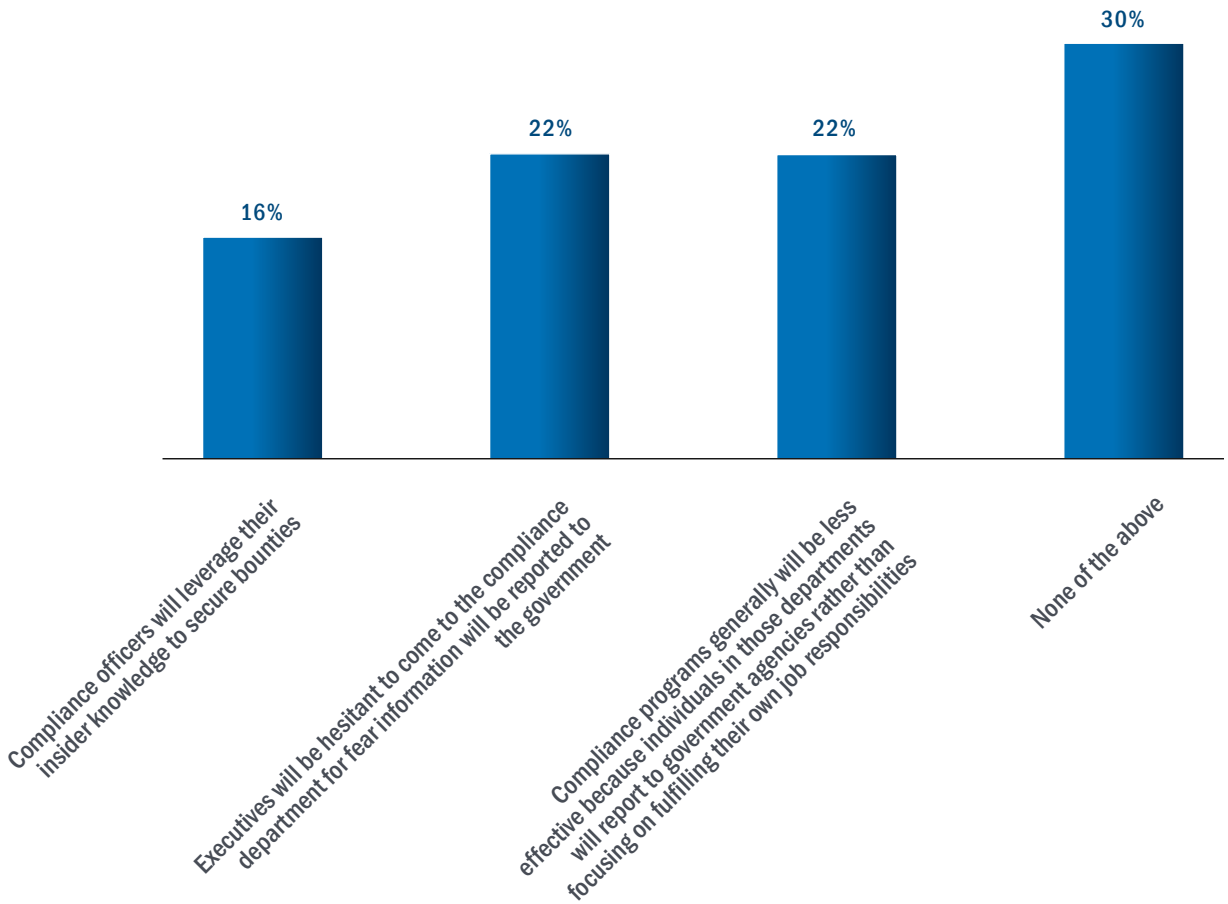
Some wellness programs that offer large incentives to participating employees for hitting particular health benchmarks have come under fire from the EEOC for, in its view, violating the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). A Senate bill was introduced earlier this year to define exactly what would be permissible under law, but it has yet to pass. Amid this uncertainty, **39 percent** of respondents had concerns over how to administer plans and how employees can be legally incentivized to participate.

Wellness programs raise major concerns for many respondents in the realm of data privacy: **24 percent** expressed this as a major concern, and **25 percent** were concerned about potential legal action from employees claiming discrimination or wrongful discharge due to information uncovered through the wellness program.

QUESTION:

Given that the Securities and Exchange Commission (SEC) has issued two whistleblowing awards to compliance officers and has publicly encouraged such individuals to report misconduct to the government, which of the following are of concern to your organization with regard to compliance officers blowing the whistle? (Check all that apply.)

This question was only posed to respondents with mid cap and large cap organizations.



As the SEC continues to pursue a variety of avenues to increase the quality and quantity of tips from whistleblowers, respondents expressed a fair amount of concern with the agency's focus on urging compliance officers to report misconduct to the government. SEC officials have publicly encouraged compliance professionals to report potential wrongdoing. In August 2014, Sean McKessy, chief of the SEC's Office of the Whistleblower, stated that these individuals are "often are privy to the very kinds of specific, timely, and credible information that can prevent an imminent fraud or stop an ongoing one."

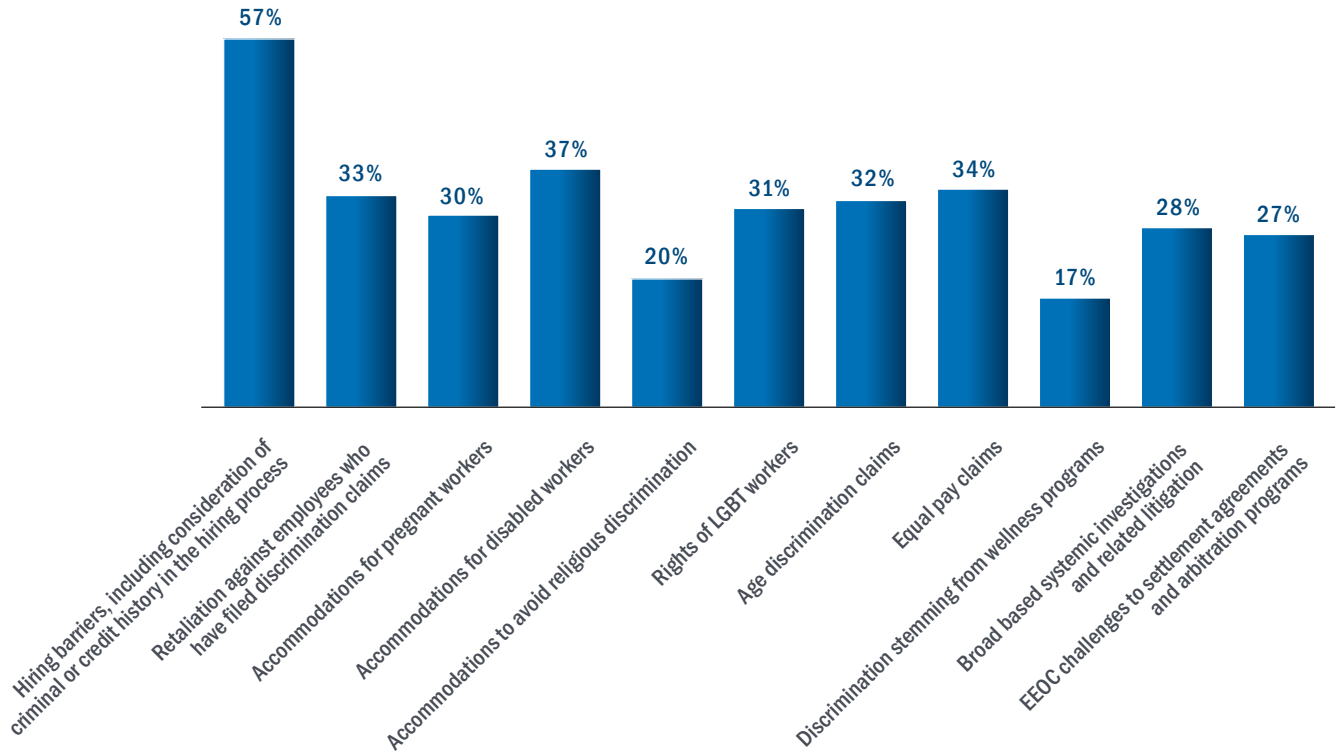
Nearly a quarter of respondents (**22 percent**) indicated that such a focus will likely deter executives from expressing concerns to the compliance department for fear that information could be reported to the government. The same percentage (**22 percent**) expressed concern that it will undermine the effectiveness of the compliance department if individuals are focused on reporting to government agencies to collect bounties rather than fulfilling their job responsibilities.

Compliance officers are expected to be the eyes and ears of their companies, focused on identifying misconduct or fraud while ensuring high ethical standards and compliance with applicable laws and regulations. The nature of their responsibilities is that they often come with close knowledge of the inner workings of a company, and **16 percent** of respondents expressed concern that the SEC's focus on compliance officers as whistleblowers would incentivize these individuals to leverage their access to sensitive information to secure bounties.

The inherent clash between the compliance officer's role (to protect companies from compliance lapses) and the increasing incentives to report misconduct to receive significant monetary awards should cause more alarm and create more urgency among employers to review their existing compliance programs. When finalized, the Occupational Safety and Health Administration's (OSHA) *Best Practices for Protecting Whistleblowers and Preventing and Addressing Retaliation* will provide employers guidance on how to encourage whistleblowers to report within the company first. We expect that this guidance will be forthcoming in fall 2015.

QUESTION:

Of the following areas where the Equal Employment Opportunity Commission is focusing its enforcement efforts, which do you feel are likely to see a rise in workplace discrimination claims over the next year? (Check all that apply.)



Interestingly, the number of completed systemic investigations by the EEOC fell from 300 in 2013 to 260 in 2014. But companies still harbor great concern about discrimination claims and the focus of EEOC enforcement efforts. Survey respondents worried most about claims over the accommodation of disabled workers (**37 percent**) and claims regarding equal-pay issues (**34 percent**).

Last December, David Lopez was reapproved as EEOC general counsel and Charlotte Burrows was approved as commissioner, giving Democrats a 3-2 majority on the Commission. In the future, consistent with the EEOC's Strategic Enforcement Plan issued in December 2012, the EEOC plans to continue to focus on systemic cases—many of which fall into areas of high concern for respondents, such as accommodations for the disabled and the consideration of criminal or credit histories in the hiring process.

In Littler's Annual Report on EEOC Developments (Fiscal Year 2014), the firm highlighted a series of issues plaguing employers when it comes to EEOC enforcement, many of which were expressed as concerns by the respondents, as well as areas where employers can feel a bit of relief. For instance, along with the EEOC's decrease in completed investigations, the Commission recovered only $13 million in monetary relief through settlements in 2014 versus $40 million in 2013. This decrease came despite an overall uptick in the number of settlements: 78, versus 63 in 2013.

Even so, some of the highest settlements we've seen have occurred recently for both employers and unions. In April 2015, Patterson-UTI, a drilling company facing charges of race and national-origin bias, agreed to pay a $14.5 million settlement, and the Sheet Metal Union agreed to pay $12 million in a race-bias lawsuit, demonstrating vulnerability in the construction industry.

Fifty-seven percent of respondents felt that there would be a rise in discrimination claims related to hiring barriers in 2015, including consideration of criminal or credit history in the hiring process, which could largely be tied to the rise in ban-the-box legislation at the state and local level.

Beside the aforementioned concerns, respondents felt increases would come from claims regarding retaliation (**33 percent**), age discrimination (**32 percent**) and the rights of LGBT workers (**31 percent**).

Employers are also watching cases around the U.S. that consider accommodations in the workplace relating to religion. A full **20 percent** of respondents expected an increase in claims related to accommodations to avoid religious discrimination. Further, based on the Supreme Court's decision in ***EEOC v. Abercrombie***, issued on June 1, 2015, employers can expect an increased sensitivity to religious-accommodation issues by applicants and employees.

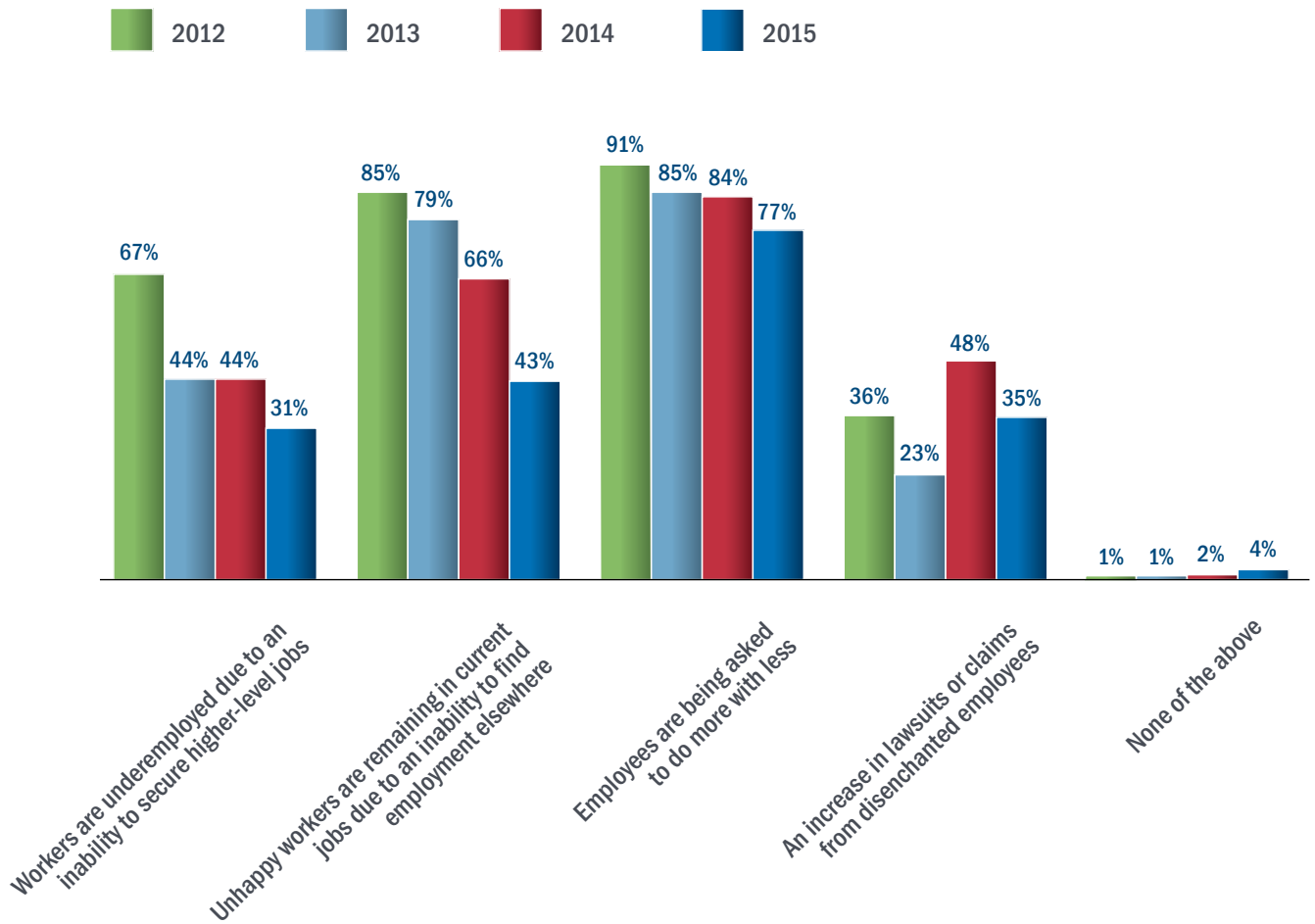
The backdrop for all of these survey findings include the recent Supreme Court ruling in ***Mach Mining v. EEOC***, which addressed the EEOC's approach to conciliation in resolution of discrimination charges following a reasonable cause finding. The EEOC has been given far greater latitude in its approach to conciliation by the courts, which means there is potential for increased settlement demands by the EEOC in the conciliation process. Also, on May 27, 2015, the DOL issued new guidance on how contracting agencies should evaluate labor violations when hiring federal contractors, and potential reasonable cause findings and/or litigation by the EEOC may create significant risks to federal contractors.

Experts expect an increase in reasonable cause determinations in 2015, which goes hand-in-hand with the concern surrounding systemic investigations. Reasonable cause findings typically come with less than 5 percent of charges investigated by the EEOC, but last year alone they were issued in 45 percent of systemic investigations, versus 35 percent in 2013.

JOBS AND THE ECONOMY

QUESTION:

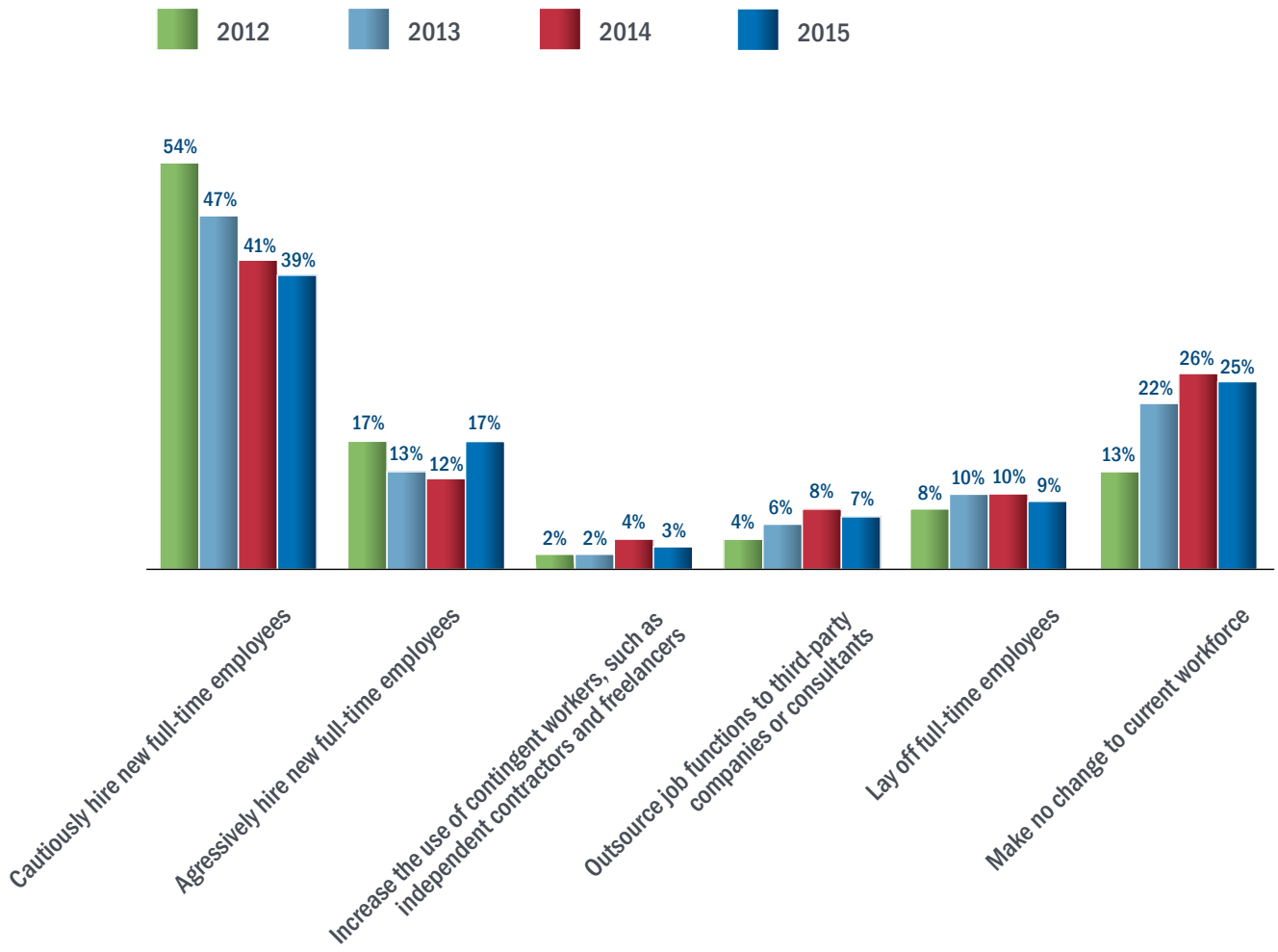
In which of the following areas do you feel current economic conditions are continuing to affect the workforce? (Check all that apply)



Employers saw a significant drop in unhappy workers remaining in current jobs due to the inability to find other work (from **85 percent** in 2012 to **79 percent** in 2013 to **66 percent** in 2014 to **43 percent** in 2015), which not only signals a stronger economy, but is a point for employers to continue to monitor: as employees continue to have more options, employers will likely have to work harder to recruit and retain top talent. Furthermore, there was a decrease in the number of respondents who reported an increase in lawsuits or claims from disenchanted employees (from **48 percent** in 2014 to **35 percent** in 2015). In yet another sign of economic turnaround, employers also saw a decrease in employees being asked to do more with less (from **91 percent** in 2012 to **77 percent** in 2015).

QUESTION:

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

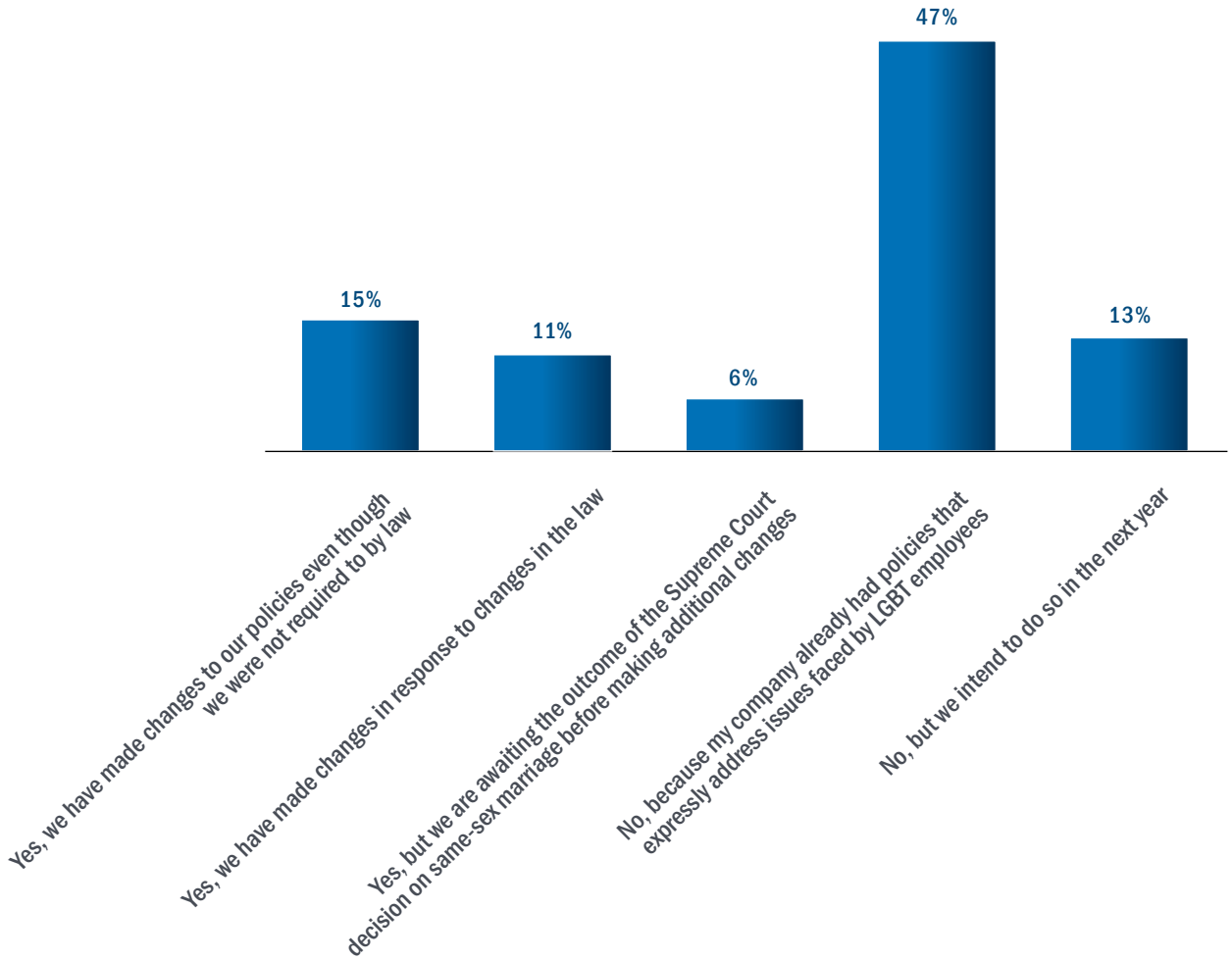


For the first time since 2012, an increased number of respondents indicated that they were planning to aggressively hire new full-time employees (from **13 percent** in 2013 to **12 percent** in 2014 to **17 percent** in 2015), which is likely a sign of a strengthening economy. There was also a minor decline in respondents looking to make no changes to the current workforce (from **26 percent** in 2014 to **25 percent** in 2015). As was the case last year, a majority of respondents are still planning on hiring, either cautiously or aggressively, over the next year (from **53 percent** in 2014 to **56 percent** in 2015).

WORKFORCE MANAGEMENT

QUESTION:

With increased attention on the rights of LGBT employees, has your company instituted changes to make your workplace more inclusive? (Select one.)



LGBT rights have received a great deal of attention in the courts in the past couple years, with high-profile Supreme Court cases including 2013's ***United States v. Windsor***, the decision that overturned part of the Defense of Marriage Act (DOMA), and this year's *Obergefell v. Hodges*, in which the court addressed the constitutionality of same-sex marriage bans in the U.S. Though the Supreme Court ruling made same-sex marriage legal, it seems employers have already taken steps to make their workplaces more inclusive.

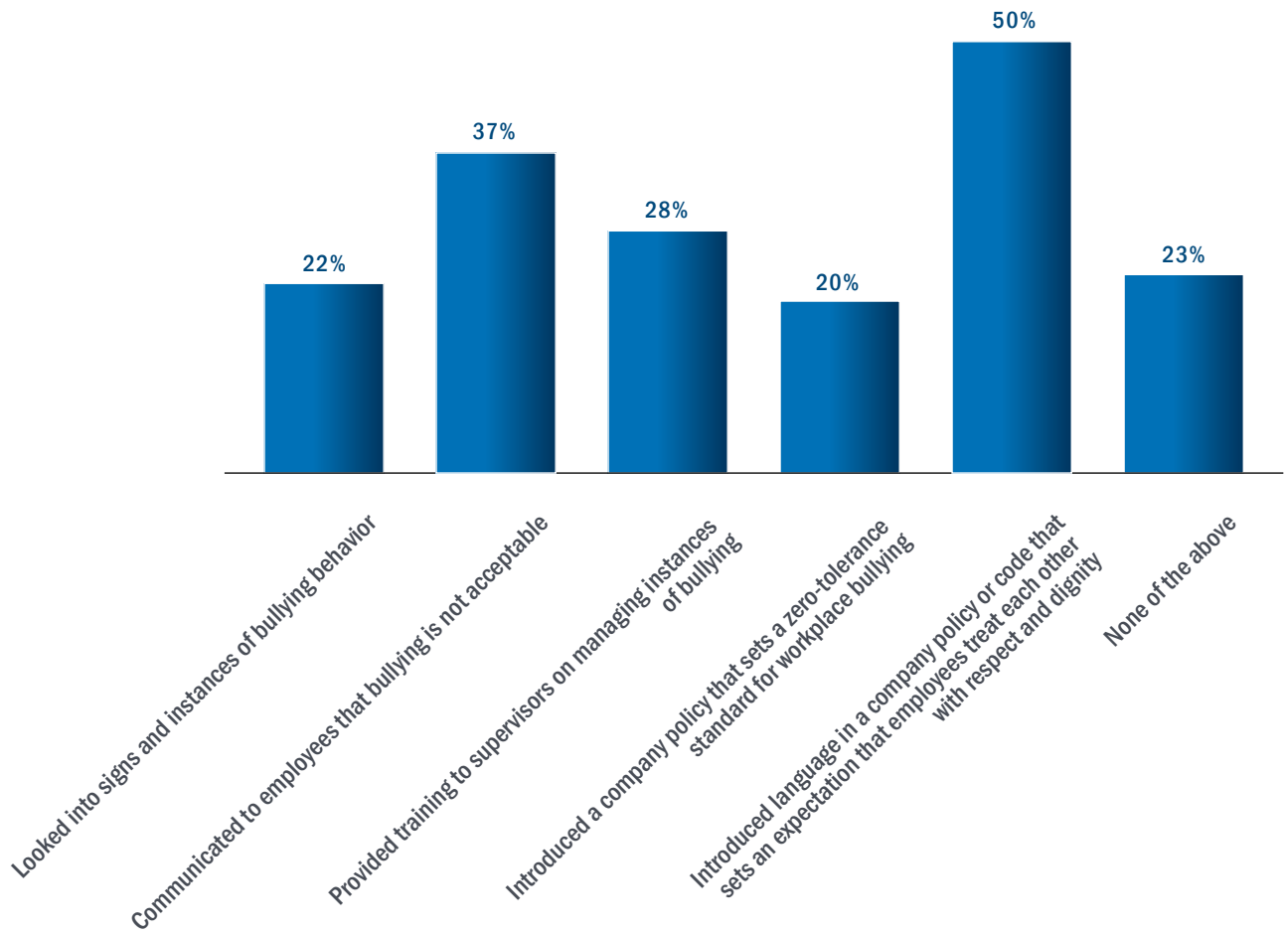
Nearly **50 percent** of the respondents indicated they had not instituted changes to make their workplaces more inclusive because their companies already had inclusive policies in place. This response is consistent with recent surveys showing that 89 percent of Fortune 500 companies prohibit discrimination based on sexual orientation and 66 percent prohibit discrimination based on gender identity or expression.

Fifteen percent of respondents also indicated they had made changes, but not because they were required by law. A majority of respondents had some LGBT-inclusive policies already in place (**47 percent**), had made recent changes (**26 percent**), or were looking to make changes to their policies in the near future (**13 percent**).

With same-sex marriage legalized, employers will want to review their policies and benefits plans to make sure they are treating all married couples equally and are using gender-neutral language. They should pay close attention to leave policies, health benefit plans, retirement plans and other benefits offered to spouses of employees. If they have not already done so, employers may want to consider revising their non-discrimination policies to include sexual orientation and gender identity or expression. Employers may also want to revisit prior practices involving benefits for domestic partnerships. Now that all couples can marry, unless such coverage is required by law, some employers may choose to eliminate domestic partner coverage, with its inherent tax and payroll difficulties.

QUESTION:

Has your organization taken any of the following actions to combat bullying in the workplace? (Check all that apply.)



Workplace bullying remained top of mind for many HR departments. A full **50 percent** of survey respondents reported that their companies had introduced language on the issue within their corporate literature. Almost as many respondents (**37 percent**) said that they actively communicated with employees on the subject, reinforcing that workplace bullying is unacceptable. Of the companies surveyed, **28 percent** provided training to supervisors on how to manage instances of bullying.

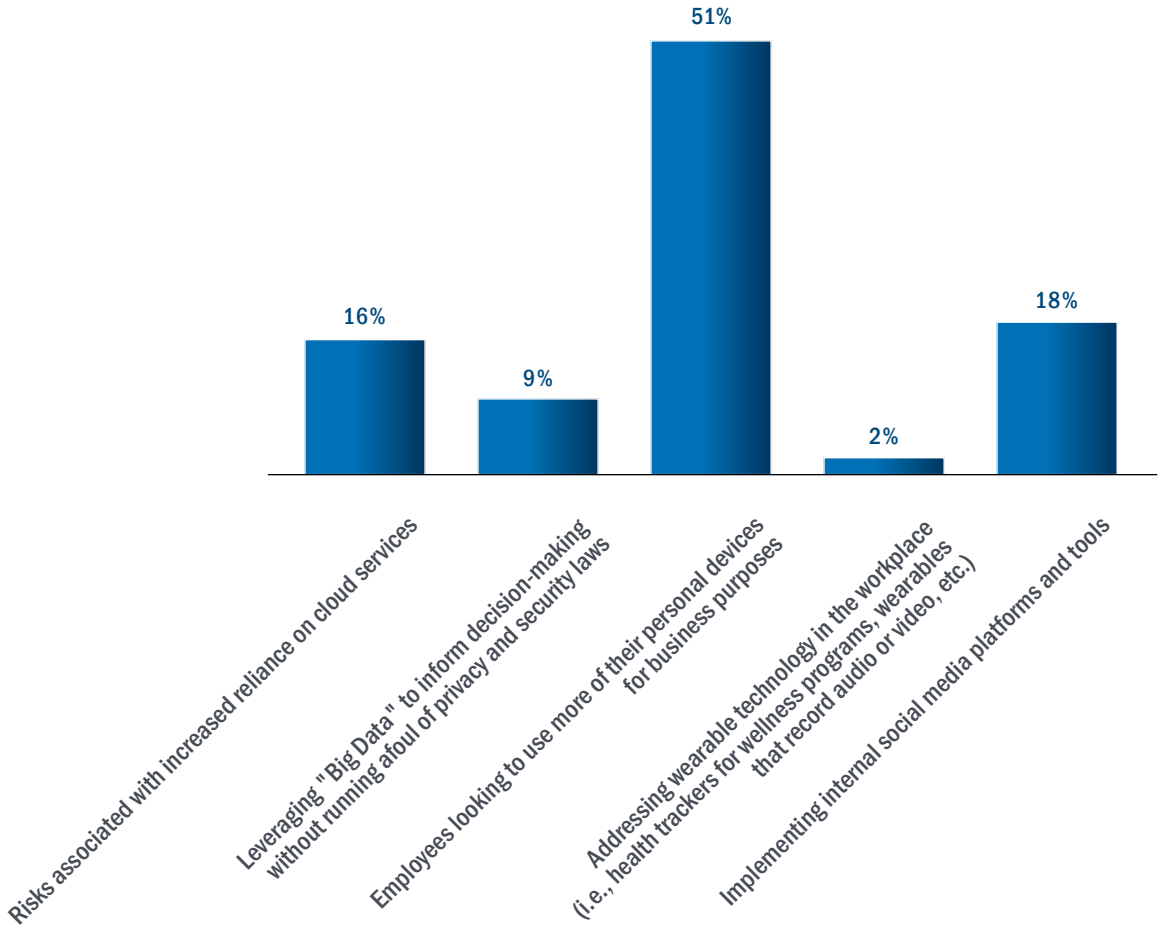
Workplace bullying has been an active issue for not only HR professionals but also lawmakers. California, for instance, passed a law in January 2015 requiring businesses to supply an employee-training curriculum focused on "the prevention of abusive conduct."

Introducing a zero-tolerance policy in the workplace can be more challenging than simply setting expectations and putting an emphasis on respect and dignity in employee relationships. But a fifth (**20 percent**) of the respondents said their companies had introduced zero-tolerance policies. A similar number (**22 percent**) reported having investigated instances of bullying behavior.

Work remains in this area across all sectors of the job economy, however. Anti-bullying campaigns haven't taken off within all companies: **23 percent** of respondents said that none of the aforementioned measures had been taken at their businesses. Many of these companies could be costing themselves, as the downsides of bullying in the workplace—lower employee morale and productivity—are well documented.

QUESTION:

Which of the following technological developments has been the most challenging to manage in your workplace? (Select one.)



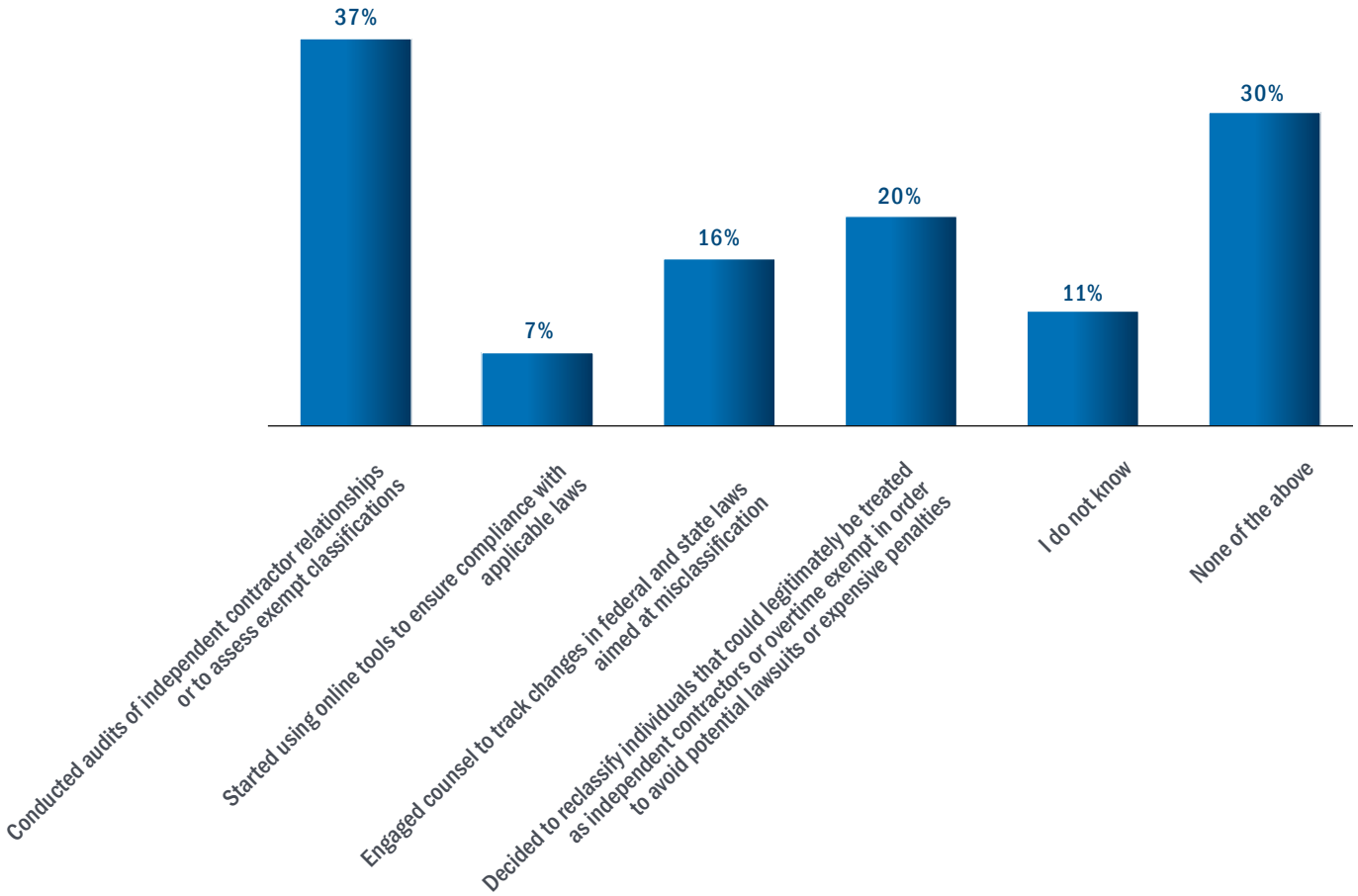
The most significant concern, by nearly a three-to-one margin, related to employees' use of their personal devices for work. In fact, half (**51 percent**) of those surveyed responded that this was their biggest challenge in managing workplace technology. This result is not surprising given the numerous compliance challenges that "bring-your-own-device" (BYOD) programs raise. These include, for example, protecting confidential business information and sensitive personal information, accessing personal devices when conducting internal investigations, extending litigation holds to information stored on personal devices, addressing expense reimbursement issues and avoiding potential liability for off-the-clock work.

On the other end of the spectrum, only **2 percent** of respondents expressed concerns about the use of wearable technology in the workplace. This low response rate likely reflects the fact that while wearables are increasingly popular with consumers, they are just now beginning to enter the workplace. We expect concerns over managing wearable technology to increase as the technology becomes more prevalent in the workplace.

Implementing internal social media communications tools and the risks associated with increased reliance on cloud services were effectively tied for second, concerning **18 percent** and **16 percent** of respondents, respectively. Both types of technologies can raise significant legal compliance challenges—potential violations of the National Labor Relations Act for the former, for instance, and compliance with non-U.S. data-protection laws for the latter. These risks, however, tend to be more focused than those raised by BYOD programs, likely explaining the significant gap in perception of risk between the top finisher and those in the second tier.

QUESTION:

What measures is your company taking to ensure compliance with applicable laws when engaging independent contractors or classifying employees as exempt from overtime pay? (Check all that apply.)



In the last several years, federal and state governments have given extra scrutiny to companies that employ independent contractors. Using independent contractors saves companies thousands in payroll and unemployment taxes—but if the classification is made in error, it can bring fines and penalties for those companies.

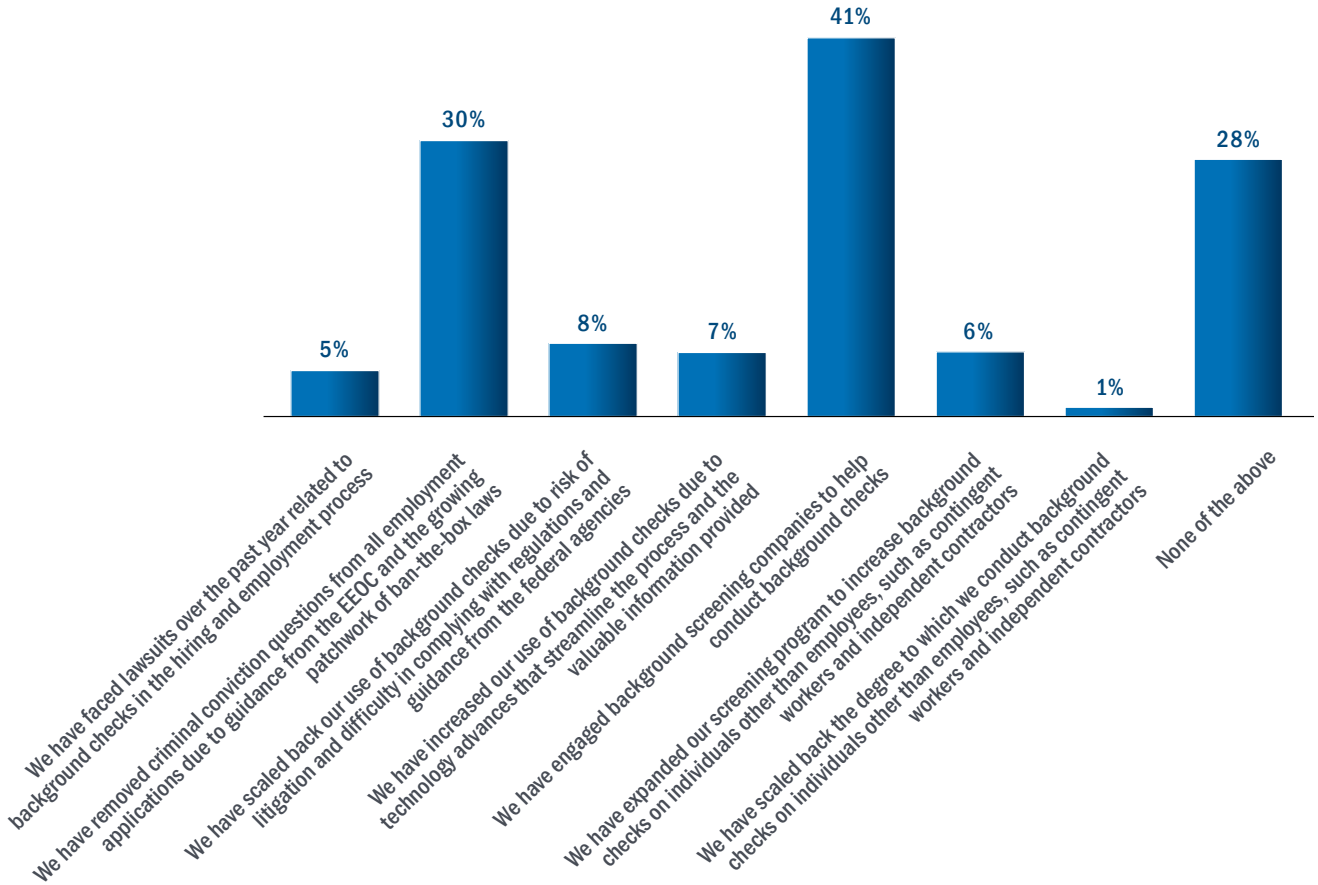
Making compliance even more difficult is the fact that the DOL is looking to limit who can be classified as an overtime exempt employee, raising the current pay floor from $23,360. Some employee advocacy groups called on the DOL to raise the floor to $69,000, a condition that would have entitled 10.4 million additional salaried workers in the United States to overtime pay, however in its recently released proposal, the DOL raised the minimum salary to an estimated $50,440 by 2016, which will impact up to 5 million workers and cost employers billions.

Many respondents (**37 percent**) said their companies had conducted audits of contractor relationships and of employees who were classified as exempt. A fifth (**20 percent**) of respondents said their companies had taken action, and reclassified workers who may have been close to the line. Only **16 percent** of respondents said they had engaged with counsel to stay on top of changes in federal and state regulations, and only **7 percent** had enlisted the help of online tools in the matter.

Despite increased attention from the government regarding compliance around the classification of independent contractors and overtime exempt employees, **30 percent** of survey respondents said their companies had taken none of the available measures mentioned in this survey to mitigate compliance issues in this space.

QUESTION:

In which of the following areas has your company been impacted by the changing landscape for criminal and credit checks of job applicants and/or employees? (Check all that apply.)

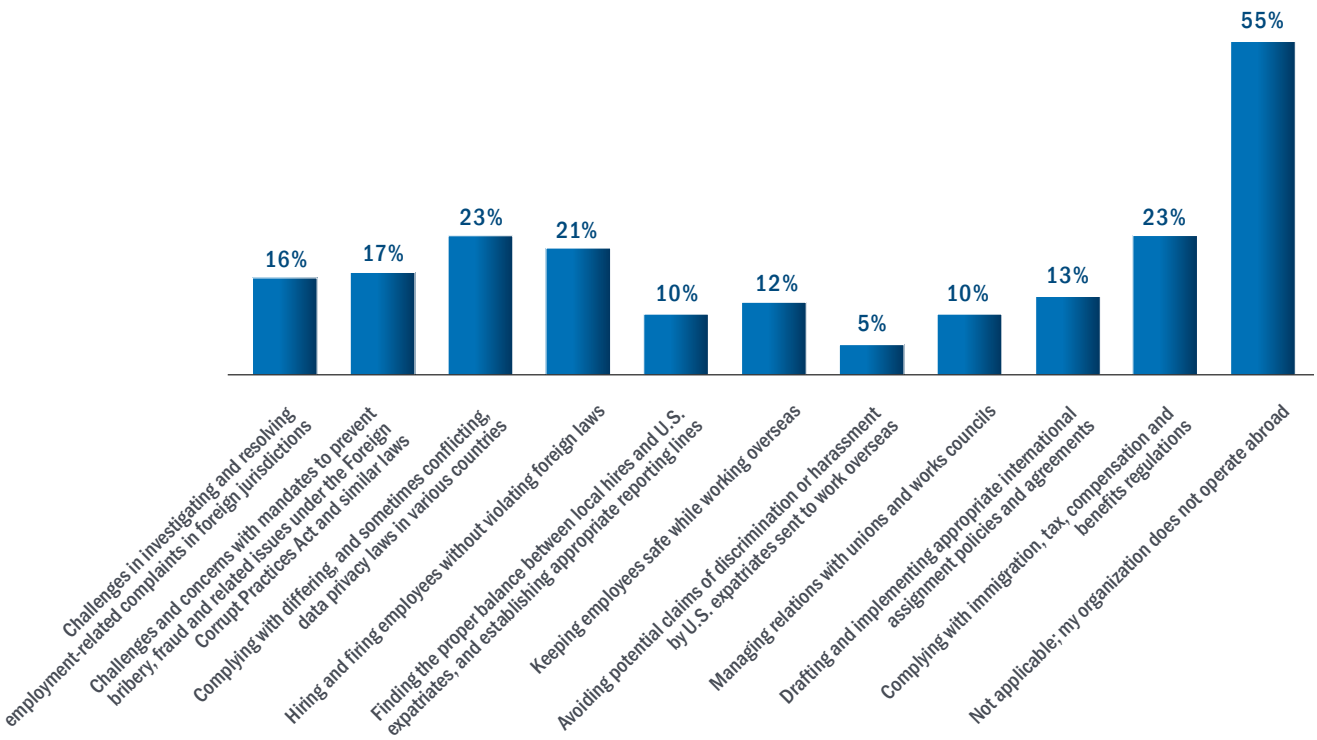


Despite recent pro-employer developments such as the U.S. Court of Appeals decision in *EEOC v. Freeman*, nearly a third (**30 percent**) of respondents have removed criminal conviction questions from all employment applications. This signifies a growing understanding among the employer community that reliance on criminal history records in the hiring or employment process continues to present risk, especially as ban-the-box legislation proliferates across the country and large lawsuits filed by the EEOC continue to be vigorously litigated.

Simultaneously, employers continue to use background-screening companies to assist with background checks: **41 percent** of respondents said they had engaged with a third-party screener as a result of the changing landscape, even though class action litigation cases under the Fair Credit Reporting Act (FCRA) related to gathering criminal history through third parties have surged recently. At least 29 putative class actions claiming statutory damages under FCRA were filed in the first four months of 2015 alone. This trend will not slow down soon, and may be significantly affected by the Supreme Court's decision in ***Spokeo v. Robins***, where the question of whether a person may sue under a statute and possibly bring a class action even if he or she has not suffered any injury will be answered.

QUESTION:

Which of the following areas are of concern to your organization in expanding into new global markets or managing employees working abroad? (Check all that apply.)



As the Web and new trade agreements make it easier to seek out new revenues abroad, more and more companies are looking to supplement their domestic and organic growth with pushes outside the United States. Almost half of respondents, **45 percent**, worked for companies with operations abroad.

Working outside the country means adhering to different laws, regulations and customs concerning immigration, taxes, compensation and benefits. These kinds of subjects remained fair concerns for the respondents with overseas operations (**23 percent**). Data privacy laws, too, are often different overseas, especially in the EU, which has led the global discussion on the matter. Operating within the limits of foreign data-privacy laws was also of concern to **23 percent** of respondents.

Staying within the bounds of foreign laws when laying off workers concerned **21 percent** of respondents, with a similar number, **16 percent**, of them also concerned about the challenges in investigating and resolving employment-related complaints overseas. Just as high on the list for respondents was a subject that often makes the news: challenges and concerns relating to bribery and fraud abroad. **Seventeen percent** of respondents cited concerns with issues related to the Foreign Corrupt Practices Act and similar laws.

METHODOLOGY AND DEMOGRAPHICS

In April and May 2015, Littler distributed the Executive Employer Survey via email to in-house counsel, human resources and C-suite executives primarily throughout the United States and from a wide variety of industries. The results were tabulated, analyzed and released in July 2015.

Number of respondents:

- 503

Respondents included:

- C-suite executives (5 percent)
- In-house attorneys/corporate counsel (41 percent)
- Human resources professionals (48 percent)
- Other professionals (6 percent)

Companies represented were of a variety of sizes:

- Large cap, greater than $4 billion in market capitalization (23 percent)
- Mid cap, $1 billion to $4 billion in market capitalization (21 percent)
- Small cap, less than $1 billion in market capitalization (56 percent)