



An HR Guide and Employment Law Guide to the 2016 Election Cycle

ISCP “Global Expansion of Business”
September 7, 2016

Agenda

- Explore grassroots political and social campaigns that impact legislation
- Assess demographic projections in terms of the 2016 POTUS election and staffing models
- Review underlying factors in hourly wage increases
- Discuss what all of this means for your:
 - Labor Budget
 - Staffing Model
 - Employee Relations
 - Culture

A Door Has Opened In America

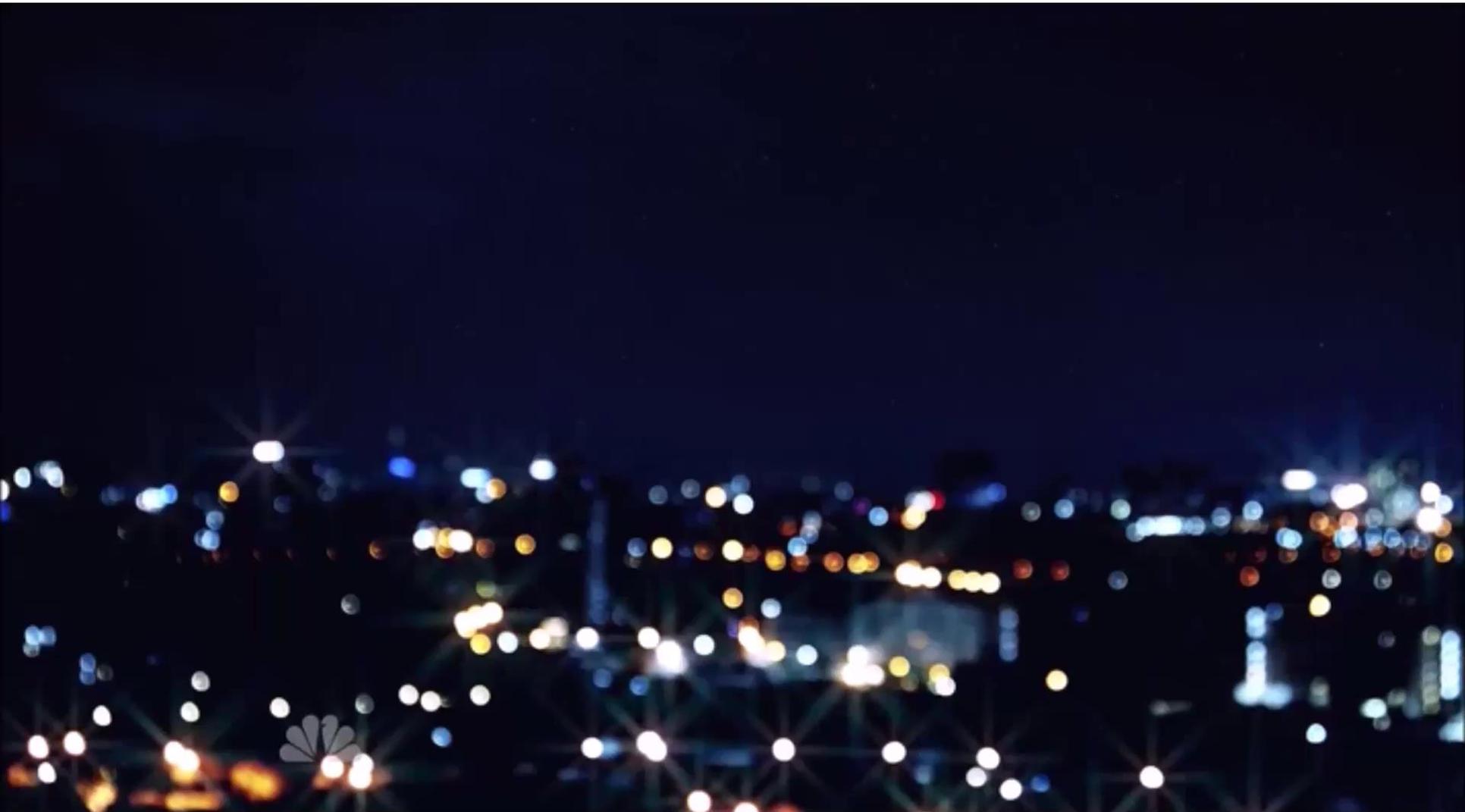


Power to the People

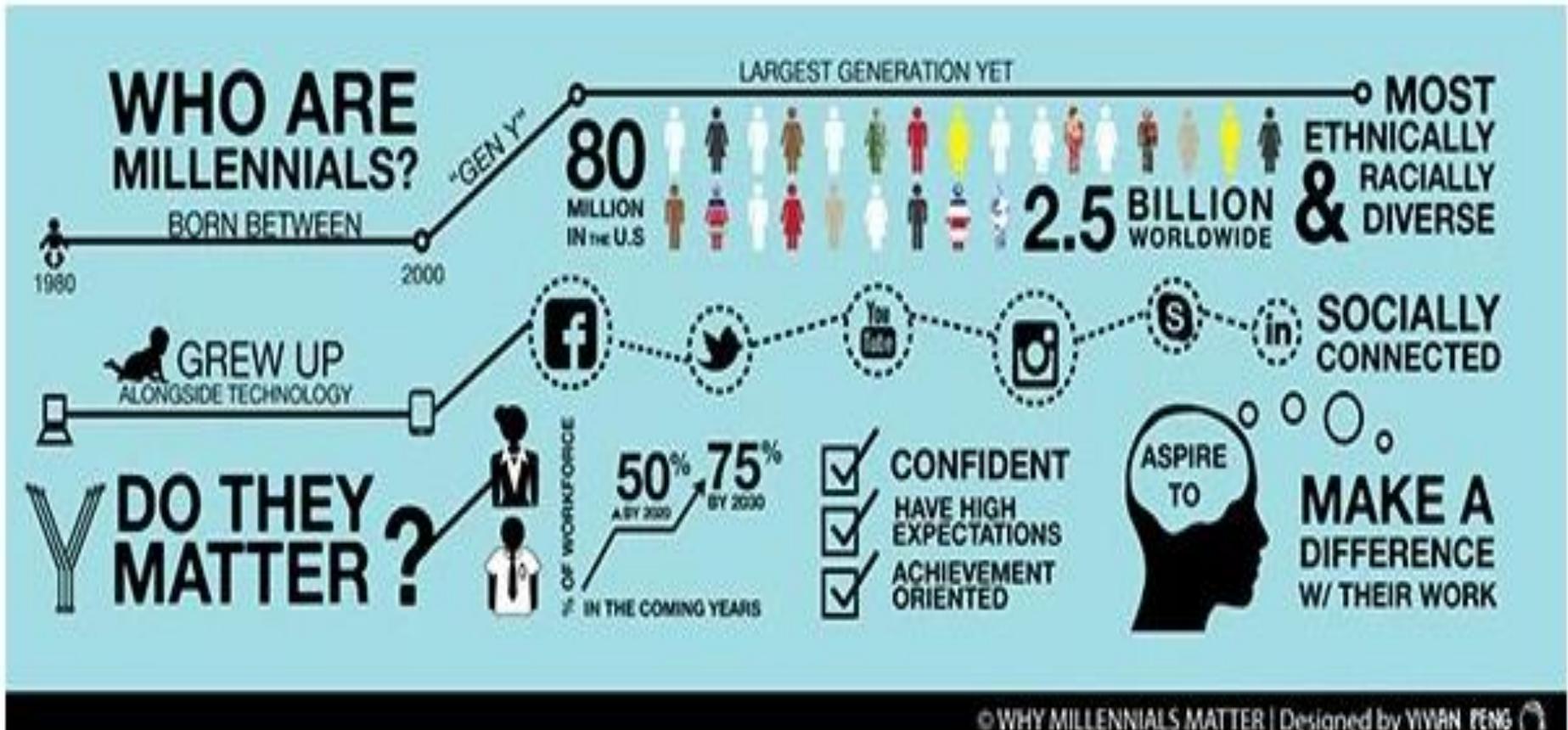
- Grassroots movements are very effective
 - Start at city/state level
 - Occupy Wall Street/Black Lives Matter
- Political gridlock at the federal level isn't changing anytime soon
 - Most legislation is at the city/state level
- Obama's legacy is the changes we've experienced in the workplace
 - DOL
 - ACA
 - FLSA
 - NLRB
 - OFCCP

Who Are These People?

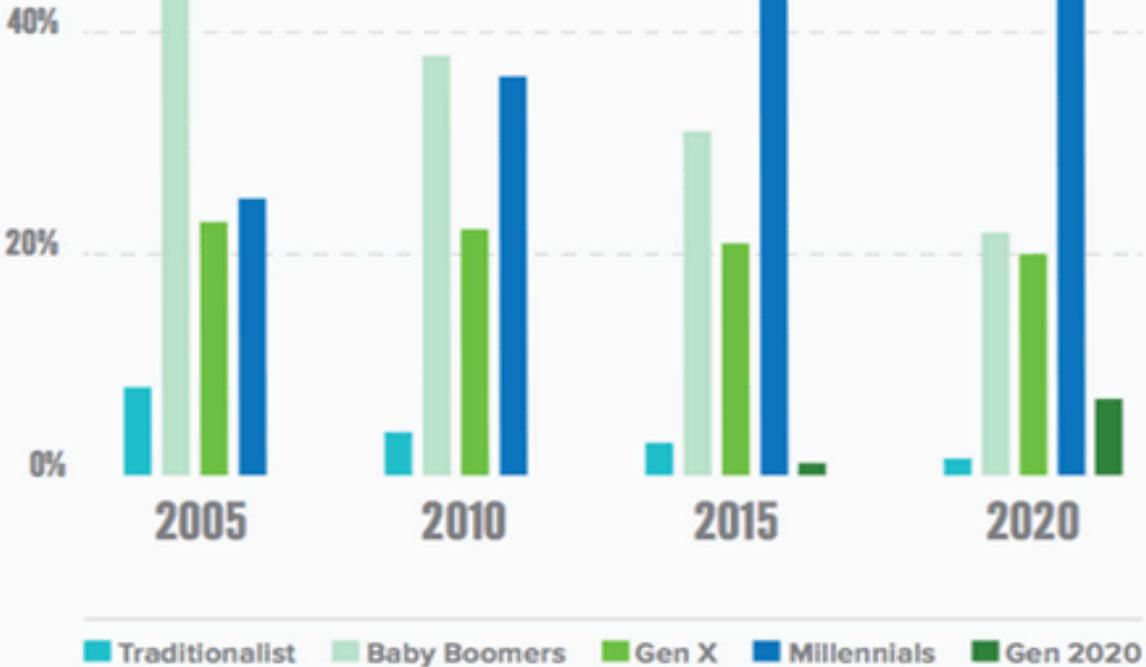




Millennials



Rise of Millennials in the Workforce



Source: Bureau of Labor Statistics Employment Projections, 2012

What Millennials Want in the Workplace

- **64%** say it's a priority for them to make the world a better place
- **72%** would like to be their own boss. But if they do have to work for a boss, **79%** of them would want that boss to serve more as a coach or mentor
- **88%** prefer a collaborative work culture than a competitive one
- **74%** want flexible work schedules
- **88%** want “work-life integration”, which isn't the same as work-life balance, since work and life now blend together inextricably

Per Peter Harrison, CEO of Snagajob:

- **72%** are in favor of raising the minimum wage, even if it means paying an extra \$1 for a cheeseburger
 - *Not as much in favor if they think it means sacrificing a coworker*

Source: <http://www.forbes.com/sites/robashghar/2014/01/13/what-millennials-want-in-the-workplace-and-why-you-should-start-giving-it-to-the>

POLITICAL AND SOCIAL JUSTICE MOVEMENTS

Watch the maps – there IS a quiz!

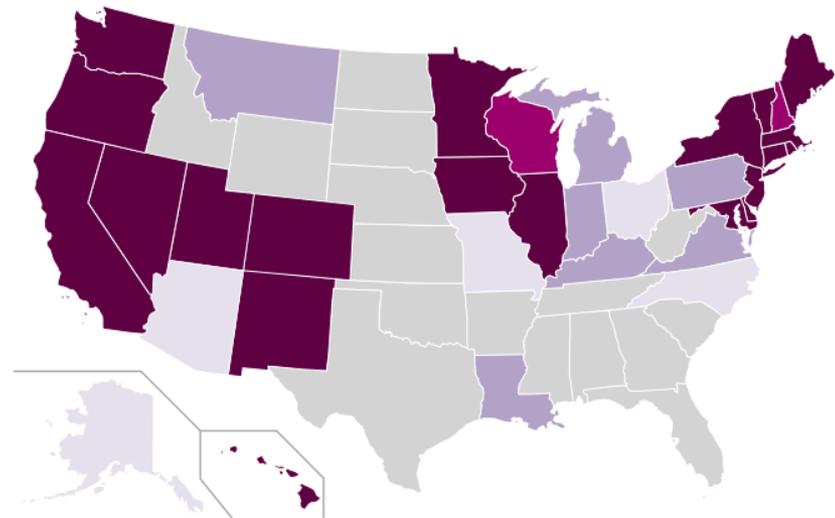
Marriage Equality Raced Ahead of Same Sex EEO Workplace Rights

In June 2015, same sex marriage became legal across the US.

Equal employment opportunity rights at the state level still haven't caught up.



STATEWIDE EMPLOYMENT LAWS & POLICIES



States that prohibit discrimination based on sexual orientation and gender identity (19 states & D.C.): California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Vermont, Washington

States that prohibit discrimination based on sexual orientation only (3 states): New Hampshire, New York, Wisconsin

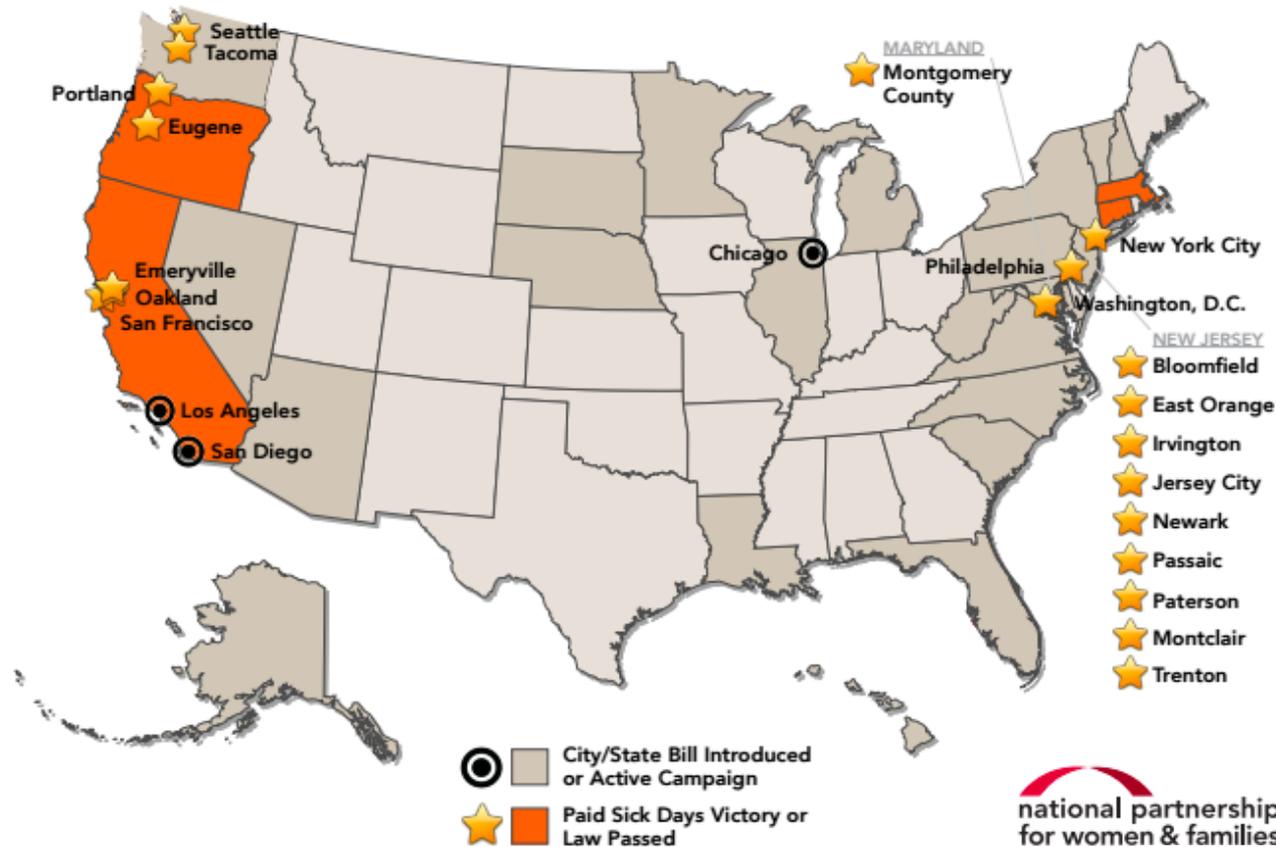
States that prohibit discrimination against public employees based on sexual orientation and gender identity (5 states): Indiana, Kentucky, Michigan, Pennsylvania, Virginia

States that prohibit discrimination against public employees based on sexual orientation only (5 states): Alaska, Arizona, Missouri, Montana, Ohio

*State courts, commissions, agencies, or attorney general have interpreted the existing law to include some protection against discrimination against transgender individuals in Florida and New York.

Paid Sick Leave: July 2015

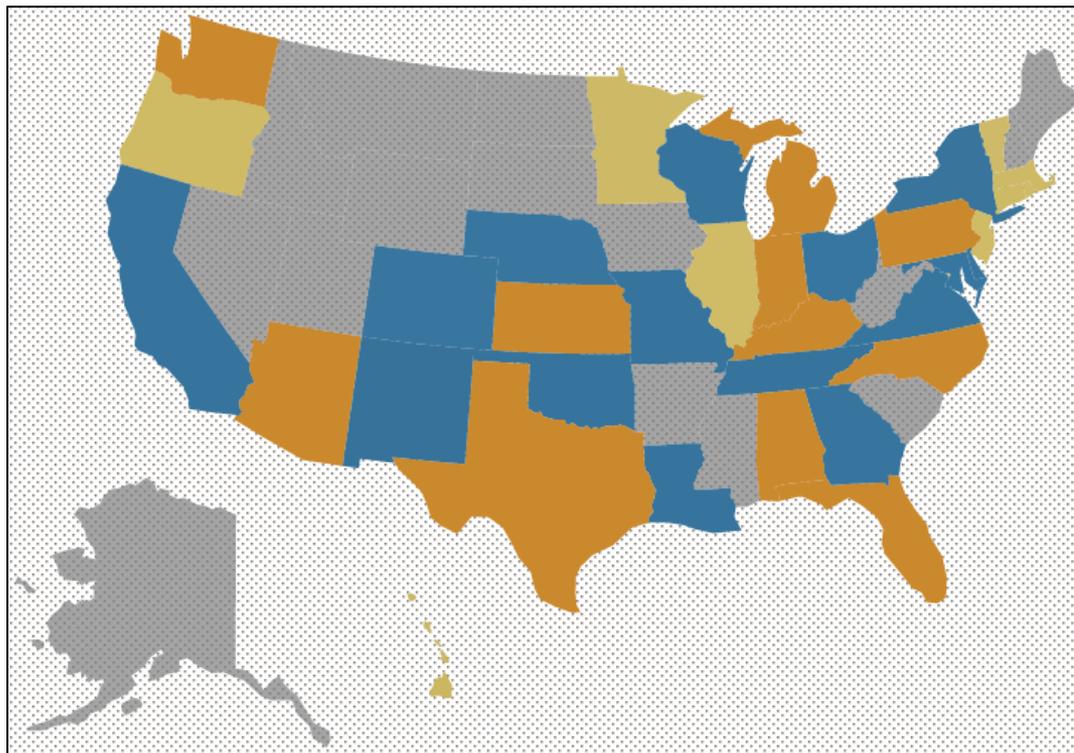
Paid Sick Days Legislation and Campaigns, July 2015



national partnership
for women & families

Ban the Box Initiatives

Over 100 counties and cities, and 24 states, have a ban the box initiative



Marijuana Legalization

- According to a 2012 survey, 56% of Americans support legalizing and regulating marijuana (like cigarettes and alcohol)*

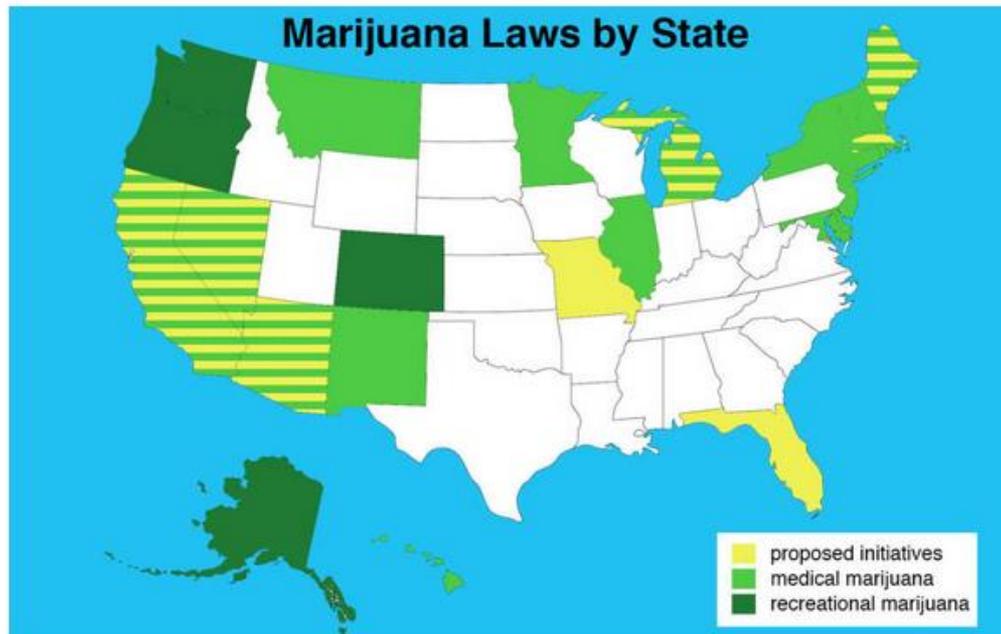


Image Credit: IJReview; Data Credit: Governing.com

Possible fall 2016 ballot initiatives:

1. Arizona
2. Arkansas
3. California
4. Florida
5. Maine
6. Massachusetts
7. Michigan
8. Mississippi
9. Missouri
10. Montana
11. Nevada
12. N Dakota
13. Ohio
14. Oklahoma

63% of Republican Millennials favor legalization

*http://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/may_2012/56_favor_legalizing_regulating_marijuana

QUIZ



ECONOMICS AND THE MINIMUM WAGE

The labor shortage isn't in your head

Remember these guys?



They Haven't Gone Anywhere

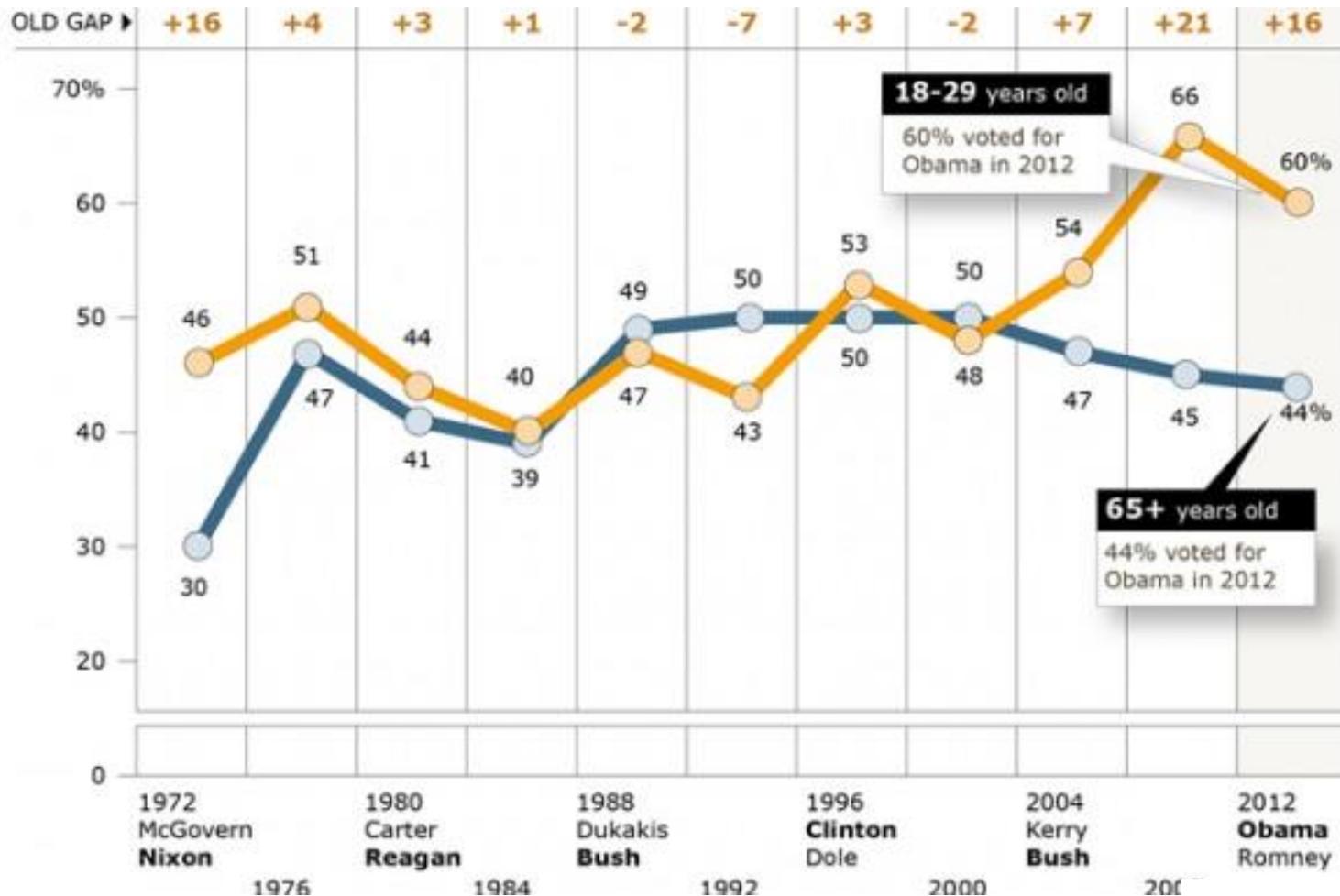


Global Protests 1979 - Present

View World, Regional, and US maps at:

http://johnbeiel.org/protest_mapping/

Voting Trends By Age Gap (From Pew)



Lots of Voter Enthusiasm in the Primaries

After a long decline, primary turnout rebounds

Votes cast in Democratic and Republican primaries as a share of eligible voters in primary states

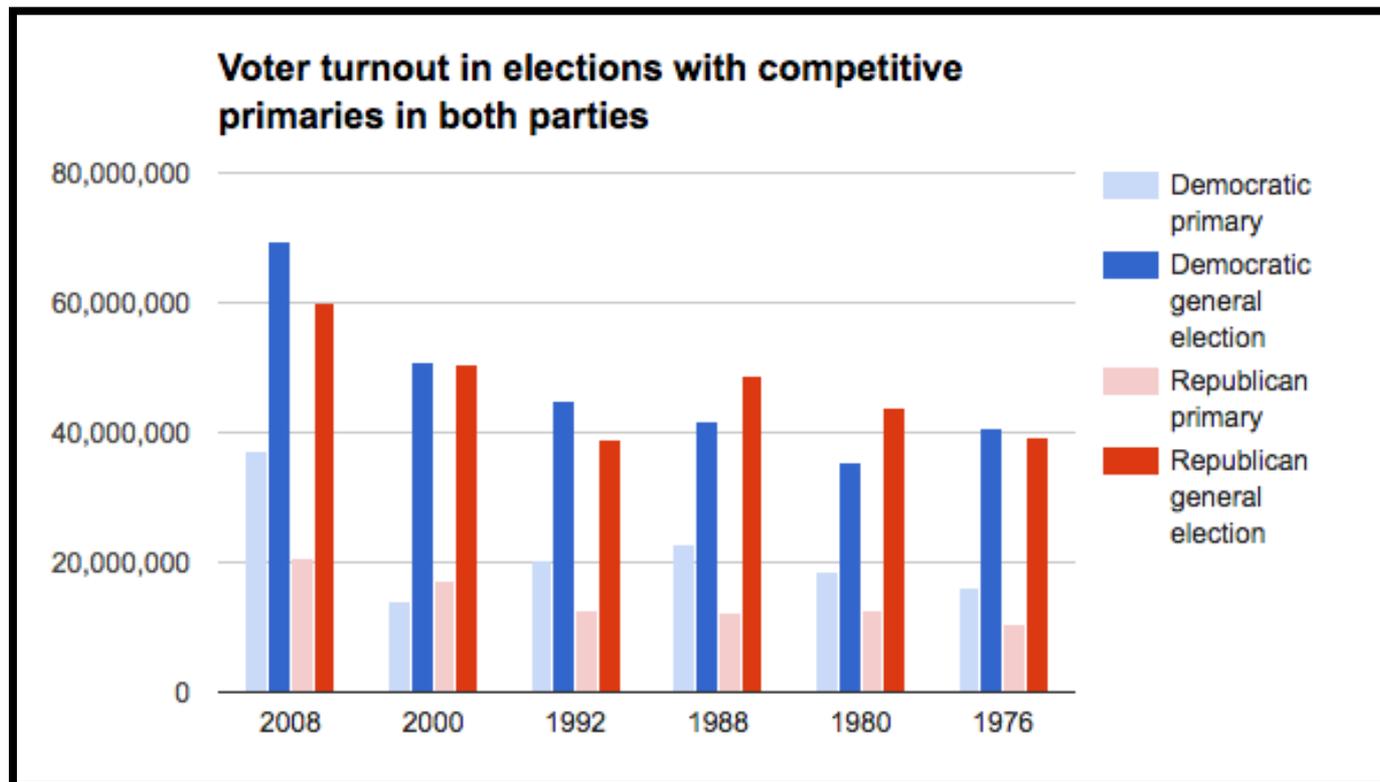


Note: The sum of turnout in Democratic and Republican primaries does not equal total turnout because not every state holding a presidential primary does so for both parties. Does not include primary data from U.S. territories. 2016 figures represent primaries held through March 6. Eligible voters are U.S. citizens ages 18 and older.

Source: Pew Research Center analysis of 1980-2012 November and January 2016 Current Population Survey data for the share of eligible voters. 1980-2004 and 2012 data from "America Votes" (CQ Press); 2008 data from "Vital Statistics on American Politics, 2011-2012" (CQ Press). 2016 turnout data are from state elections offices, when available, or as reported by The New York Times.

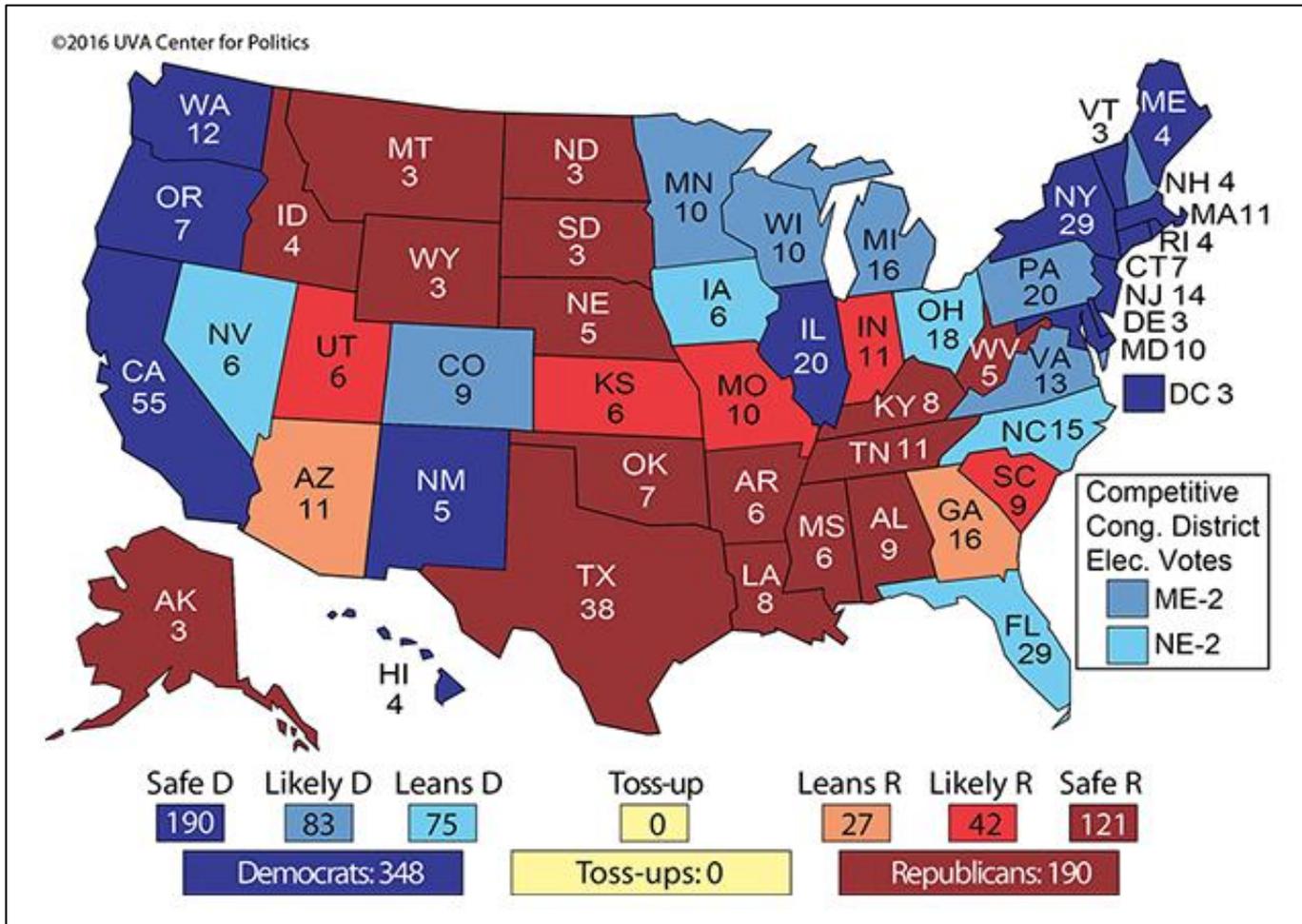
PEW RESEARCH CENTER

But Primary Enthusiasm Doesn't Equate to a Fall Election Win



“There’s no correlation between primary turnout and wins in the fall in the last 11 elections” – David Brooks, NYT columnist

UVA's 2016 Electoral College Ratings



270 EC votes required to win POTUS race

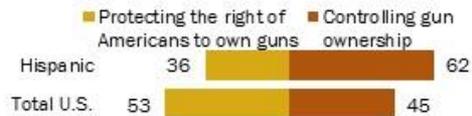
Latino Voter Statistics – Minimum Wage

FIGURE 3

Latino Voters' Views on ...

Gun Control

% saying ... is more important...



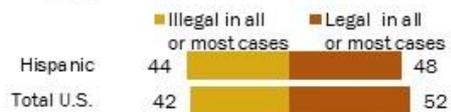
Legalizing Marijuana

% saying the use of marijuana should be made ...



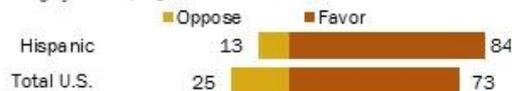
Abortion

% saying abortion should be ...



Increasing the Minimum Wage*

% saying they ... increasing the federal minimum wage from \$7.25 to \$10.10 an hour



Note: *For minimum wage, results are for all Latinos. "Don't know/Refused" responses not shown.

Sources: Pew Research Center Political Polarization and Typology Survey, Jan. 23-Feb. 16, 2014, Phase A (n=169 Latino registered voters) and Phase B (n=182); For minimum wage item, Pew Research Center survey, Jan. 15-19, 2014, n=162 Latino adults

PEW RESEARCH CENTER

Nearly half of all Latino voters are Millennials

Hot issue for 2016 POTUS election

A record 27.3 million Latinos will be eligible to vote in the 2016 POTUS election.

99%

Entire middle class & lower wage segments

1

Paycheck away from disaster

79%

Under 30 believe life's better when represented by a union

61%

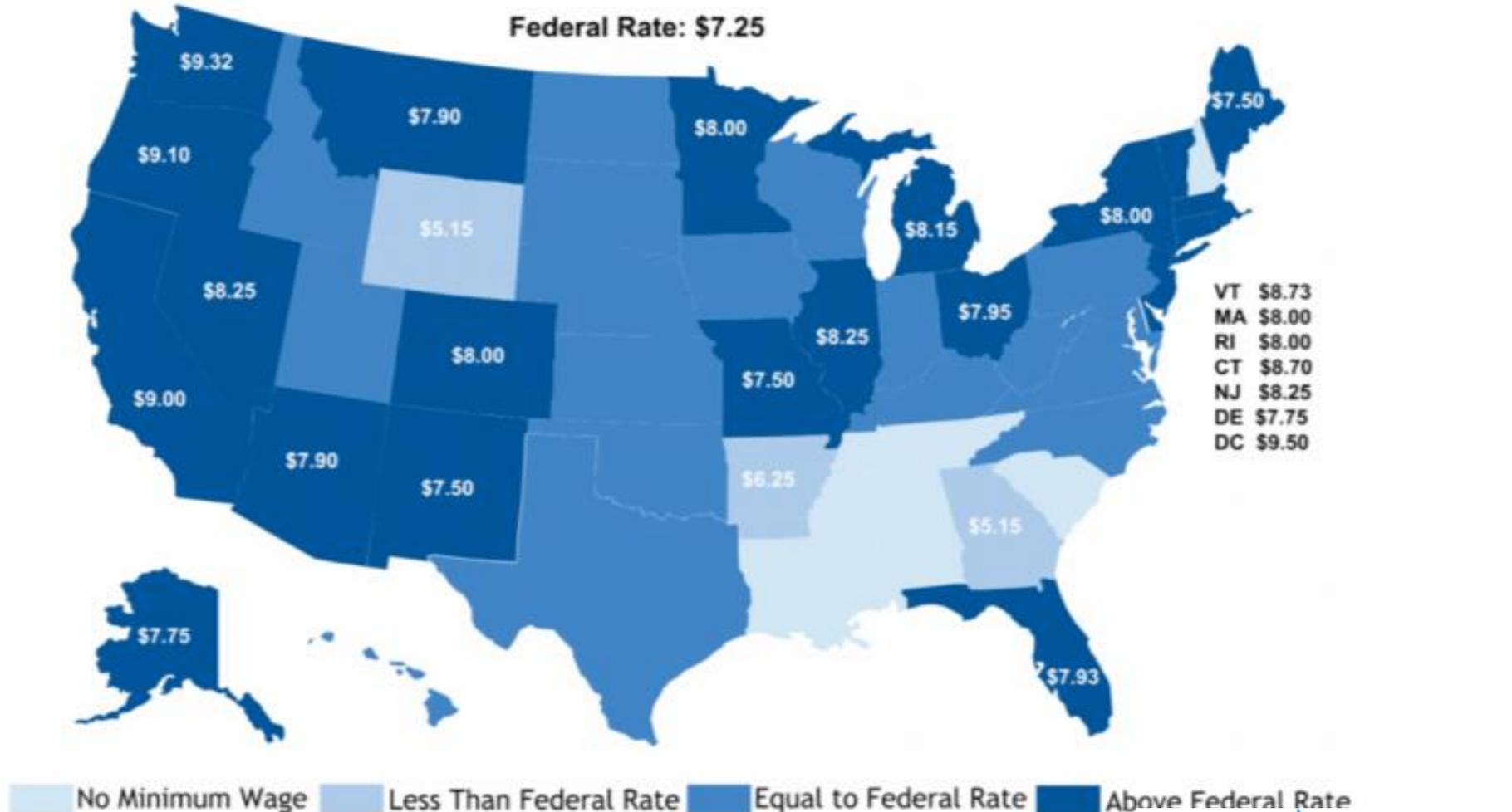
Under 30 support unions but only 4% belong to one



Part-time employment surged during recession

- Companies avoided layoffs
- Flexibility
- Not enough hours for a 99%er

State Minimum Wages



Source: The Washington Post

Municipal Minimum Wages



Source: governing.com

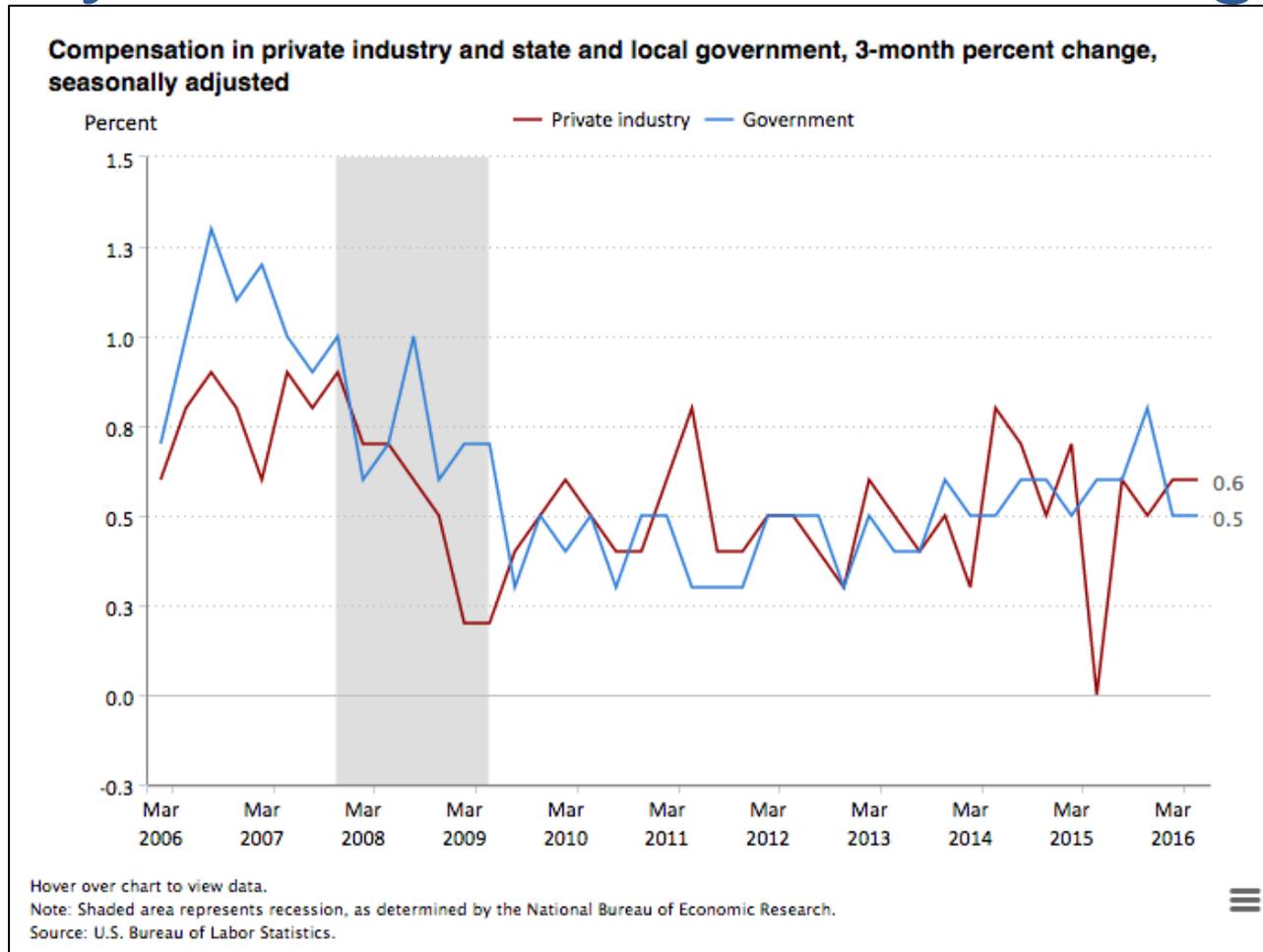
New Federal Contractor Minimum Wage

- On February 12, 2014, President Obama signed Executive Order 13658, which raises the minimum wage to \$10.10 for workers on Federal construction and service contracts.
 - Effective on most federal contracts as of January 1, 2015
- Executive Order 13665 became effective on January 11, 2016:
 - Extends Lily Ledbetter Fair Pay Act of 2009
 - “Pay transparency” includes pay rates in OFCCP audits
 - Provides employers with two defenses in pay discrimination cases:
 - Workplace rule that doesn’t prohibit employees from discussing pay
 - Essential job functions defense

2016 Minimum Wage Ballot Initiatives in OR, MO, MA

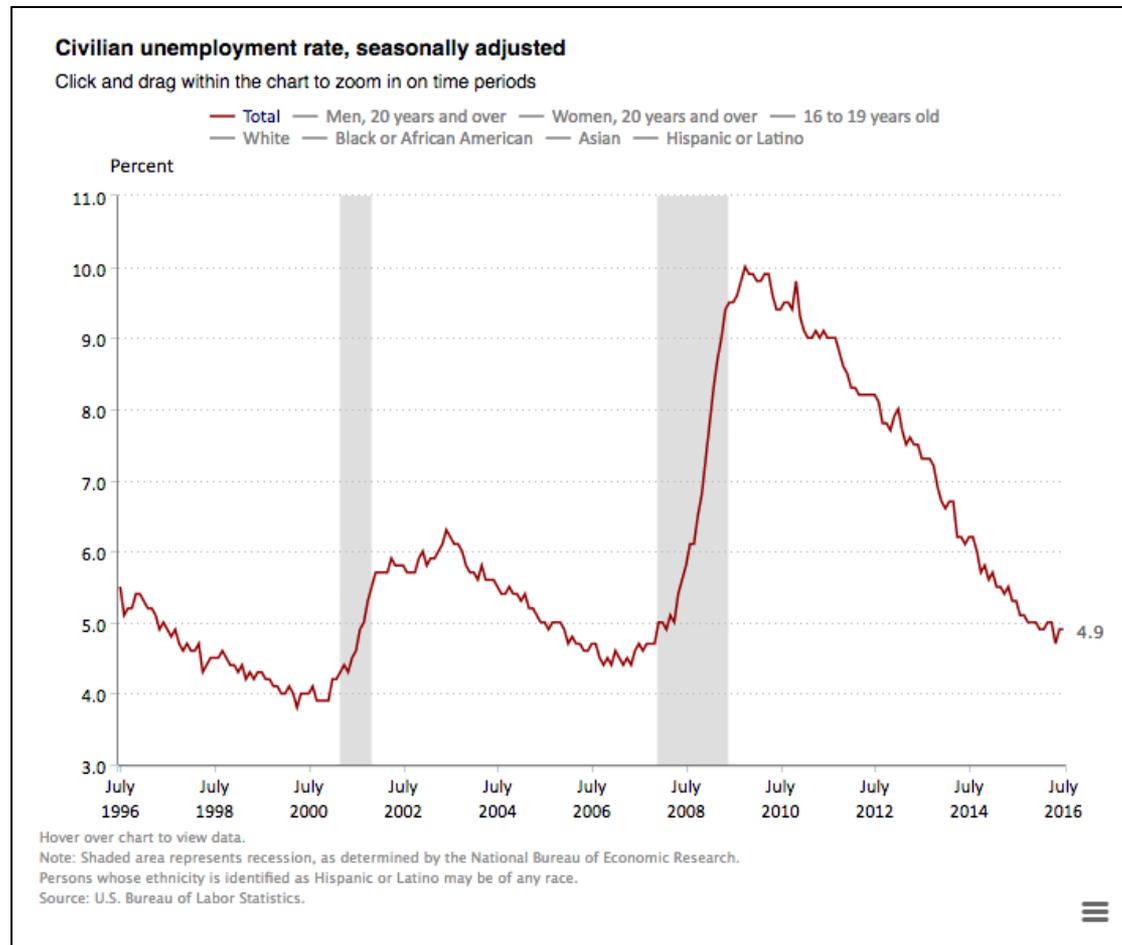


Employment Cost Index is Rising



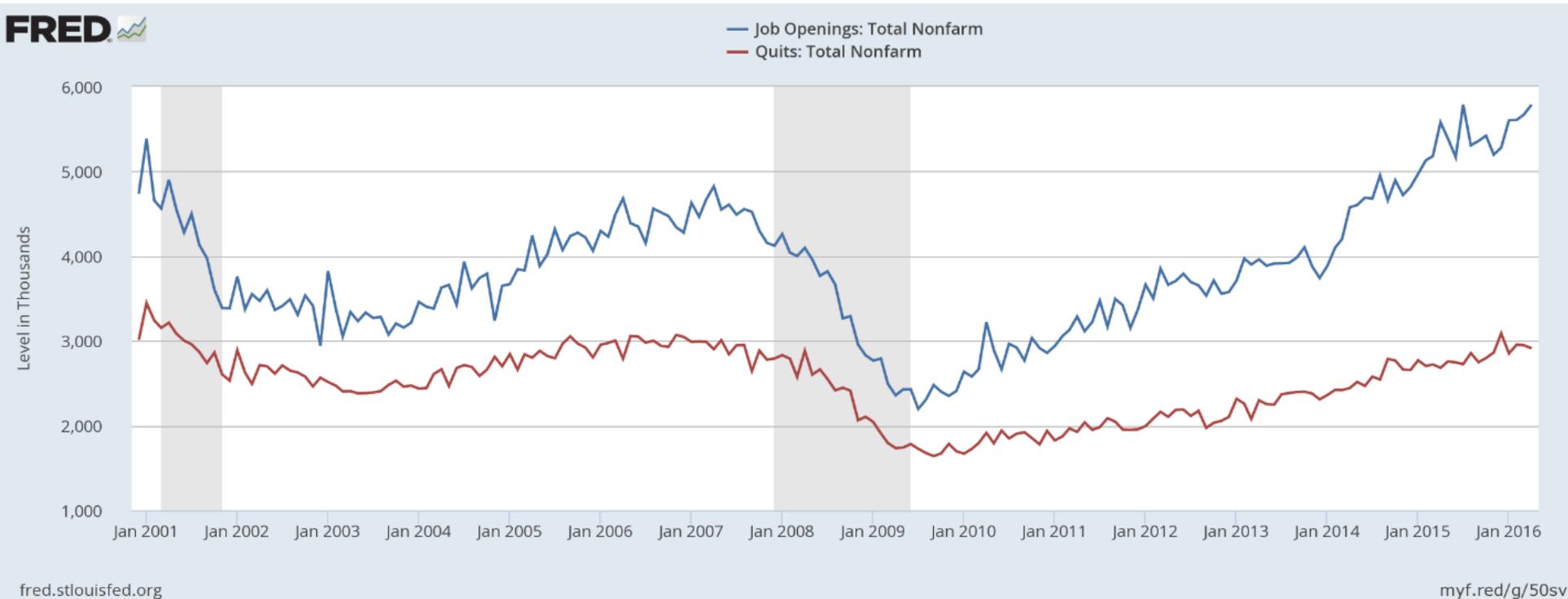
Source: BLS

US Unemployment Rate: 4.9% as of 7/16



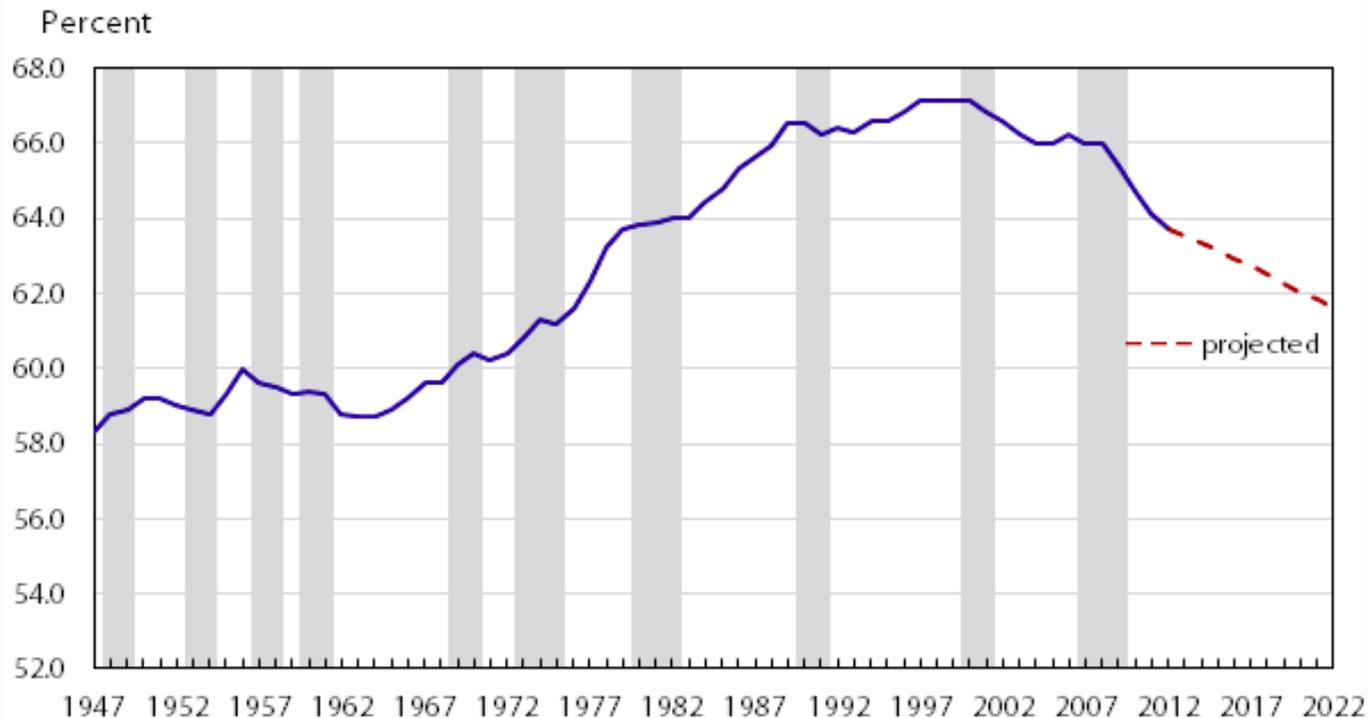
Source: BLS

2001 - 2016 Job Openings and Quits



US Labor Force Participation

Figure 1. Labor force participation rate, 1947–2012 and projected 2022



Note: Shaded regions represent recessions as designated by the National Bureau of Economic Research. Turning points are quarterly.

Source: U.S. Bureau of Labor Statistics.

The Walmart Effect

- In February 2015, Walmart announced it was raising wages for all US hourly workers
- Part-time employees earned up to \$9.00/hour as of April 2015, and would earn \$10/hour by February 2016
- Full-time employees will move from \$12/hour to \$13/hour
- The goal is for employees to earn at least \$1.75 more than the federal minimum wage of \$7.25/hour
- Walmart is also reviewing scheduling policies
- This caused a ripple effect throughout industries that primarily recruit hourly employees (McDonald's, Aetna, Target, TJX, Starbucks, Ikea, Gap)
- Google, Nationwide Insurance, Facebook, and many other companies already raised their minimum wage to \$15

Walmart is Still Fighting Labor

WALMART CLOSES LA STORE OVER \$15 MINIMUM WAGE

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TWEET



by CHRISS W. STREET | 17 Jan 2016 | Newport Beach, CA | 1486

Los Angeles residents of impoverished Chinatown were shocked to learn on January 17 that the Walmart they pleaded for years to get would be shut down at 7 p.m. Sunday evening due to the city's new \$15 minimum wage ordinance, and union harassment.

McDonald's Is Testing Robots



The restaurant giant McDonald's plans to open 25,000 stores in the United States by the year 2016. (AP Photo/Dennis System)

Other Examples of Automation

- Technology on cruise ships
 - <https://www.youtube.com/watch?v=NINFJUIJrl>
- Kiva system at Amazon
 - <https://www.youtube.com/watch?v=UtBa9yVZBJM>

LABOR & EMPLOYMENT LAW IMPLICATIONS

Best Practices

FLSA Exemption Changes

- The Department of Labor has the authority to change its rules without Congressional approval
- DOL is making changes since Washington is gridlocked on minimum wage issue
- Final rule will be published in the Federal Register on 5/23/16:
 - On December 1, 2016, the salary threshold for exempts will rise from \$23,660 to \$47,476 (previous rules had a \$50,440 salary threshold)
 - No changes to the “duties” test
 - Automatic salary threshold increase ever 3 years to maintain level at 40th percentile in lowest-wage census region
 - Highly compensated employee exemption is \$134,004 (previously \$100,000)

FLSA Staffing Model Implications

- Don't postpone an FLSA review.
- If wages continue to rise, can you afford part-time employees?
- Are you giving your employees enough part-time hours to retain them?
- Are you flexible with your part-time employee scheduling?
- Do you have the right mix of full-time and part-time employees?
- Do you promote part-time workers to full-time roles?
- Is there a place for robotics and other technology in your workplace?

Remember: All non-management employees, including those that work part-time, can vote in union elections and participate in protected concerted activity.

The DOL and Independent Contractors

- In July 2015, the DOL announced a new 6-factor “economic realities” test to determine if a worker is truly an independent contractor
- Bottom line is that if you’re the sole employer of an “independent contractor” the DOL will find it very likely that the worker is an employee
- DOL has agreements with 25 states, including Texas, to “work together to protect the employees’ rights and level the playing field for responsible employers by reducing the practice of misclassification.”
- The DOL and IRS have an information sharing agreement

DOL Changes & Staffing Model Implications

- Perform an FLSA audit, and make sure it's overseen by your counsel
- Take a hard look at your independent contractors who are on-site every day:
 - “Contract” recruiters
 - IT/Help Desk
 - Executive consultants
- You may need to directly hire employees instead of using a “contract” trial period
- Make sure you review any outside “contractors” who rely exclusively on your company for revenue
 - Customer care
 - Sales

NLRB Joint Employer Ruling

- Browning-Ferris case ruled that BFI and a temporary agency, Leadpoint, were joint employers because:
 - BFI had influence over terms and conditions of employment
 - Old standard required actual sharing or co-determining terms and conditions of employment
 - New standard only requires the possibility of influencing or controlling terms and conditions of employment for a joint employer relationship to exist
 - Ruling may extend beyond staffing agencies to subcontractors and franchisees

NLRB/BFI Staffing Implications

- Eliminate as much control and oversight as possible over your staffing agency, subcontractors, and franchisees
- Make sure there's a separate system for franchisee hiring and stay out of it
- Make operational suggestions, not rules
- Limit audits to areas that directly relate to the brand
- Scale down training
- Don't get involved in contractor/subcontractor employee relations and employee terminations
- Get help from legal counsel
- We know labor lawyers across the country

Engage Employees and Reduce Turnover

- Understand that millennials enjoy the power of the collective
 - Recognize concerted protected activity
 - NLRB rules: Micro-units, Quickie Elections, Excelsior List, Browning-Ferris (joint employer ruling in August 2015)
- Does your company mission have a higher purpose?
- Flexible schedules and virtual work
- Transparency and authenticity
- Mentoring and clear career paths
- Collaboration
- Coaching v. directives
- Culture is king
- Best practices for employee relations
 - <http://hrvirtuoso.com/10-tips-for-positive-employee-relations>
- Best practices for employee engagement
 - <http://hrvirtuoso.com/a-foolish-guide-to-employee-engagement>



Thank You

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Complex HR project management
**Ranked as one of the Top 10 Mobile Recruiting
Technologies by Recruiter.com**