

The American Workforce Transformation – Challenges and Opportunities



From Labor Shortages, Skill Gaps, and Job Losses to New Technologies, New Skills, and Recommended Policy Proposals to Ensure Future Job Growth



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Introduction

As headlines in *The New York Times* and other major news media tout increases in the number of employed non-farm workers, a deeper dive reflects that the labor force participation rate in June was 62.6% for the fourth consecutive month, and the employment-population ratio was 60.3%, unchanged from May.¹ These measures remain below their pre-pandemic February 2020 levels based on data from the U.S. Department of Labor Bureau of Labor Statistics.²

As the U.S. Chamber of Commerce reports, U.S. businesses are “facing unprecedented challenges trying to find enough workers to fill open jobs.”³ As of the end of May 2023, there were 9.8 million job openings in the United States, with .6 unemployed individuals per job opening, according to the U.S. Department of Labor’s Job Openings and Labor Turnover Survey.⁴

What is contributing to this shortage, which areas are most impacted, and what does this bode for the future of work?

Understanding the Labor Shortage

There are several factors contributing to the labor shortage, including the declining birthrate over the last few decades and the aging population.⁵

Between 2000 and 2022, the median age in the United States increased by 3.4 years, according to the U.S. Census Bureau.⁶ According to the World Bank, over the next decade, the number of people of working age, between ages 15 and 65, will decline in the United States by over 3% as baby boomers, born during the surge in the birthrate following the end of World War II, retire.⁷ At the same time, the Congressional Budget Office projects that “[b]y 2030, the fertility rate is projected to be 1.75 births per woman, where it remains through 2053. That rate is below the replacement rate of 2.1 births per woman—the fertility rate required for a generation to exactly replace itself in the absence of immigration.”⁸

While the Covid-19 pandemic took its toll on the workforce in 2020-2022, another factor that is currently impacting the labor force has been the effect of long Covid. “We don’t know the long-term impact that long Covid may have in the workplace,” says Diana Elliot, Vice President of U.S. Programs, Population Reference Bureau, citing a report by the Brookings Institute that long Covid is keeping two to four million people out of work.⁹ Another concerning trend that has contributed to the labor shortage is the rising mortality rates among working-age Americans. Since 2010, death rates have risen for both young and older adults, driven by drug overdoses, alcohol, suicide, diabetes, and obesity-related health conditions.¹⁰

In light of all of these trends, economists are predicting the labor shortage will persist.¹¹

1 U.S. Bureau of Labor Statistics, Economic News Release, [Employment Situation Summary](#) (July 7, 2023).

2 U.S. Bureau of Labor Statistics, Economic News Release, [Employment Situation Summary](#) (Mar. 6, 2020)

3 Stephanie Ferguson, [Understanding America’s Labor Shortage](#), U.S. Chamber of Commerce (June 9, 2023).

4 U.S. Bureau of Labor Statistics, Job Openings and Labor Turnover Survey, [Number of unemployed persons per job opening, seasonally adjusted](#) (July 6, 2023)

5 Kenan Institute of Private Enterprise, Kenan Insight, [Labor Supply: Inside the Tight Labor Market](#) (Feb. 28, 2023).

6 Jewel Jordan, [Nation Continues to Age as it Becomes More Diverse](#), United States Census Bureau (June 30, 2022).

7 Roy Maurer, [Labor Shortages Forecast to Persist for Years](#), SHRM (Jan. 23, 2023).

8 Congressional Budget Office, Report, [The Demographic Outlook: 2023 to 2053](#) (Jan. 24, 2023).

9 Katie Bach, [New data shows long Covid is keeping as many as 4 million people out of work](#), Brookings (Aug. 24, 2022).

10 Diana Elliott, [Want Another Perspective on the U.S. Labor Shortage? Talk to a Demographer](#), Population Reference Bureau (Jan. 20, 2023).

11 Maurer, *supra* note 7.

The Skills Gap

The declining birthrate and the aging population are not the only factors contributing to the labor shortage. Another factor is what has been described by employers as “the skills gap.” As the Society for Human Resource Management stated, “[t]he United States is facing a growing skills gap that threatens the nation’s long-term economic prosperity. The workforce simply does not have enough workers and skilled candidates to fill an ever-increasing number of high-skill jobs.”¹² In a survey of 600 HR professionals by Wiley University Services, an on-line provider of higher education, 69% said their organization has a skills gap, which has led to staffing challenges.¹³ Most alarming, the National Assessment of Educational Progress (NAEP) for this school year found U.S. 13-year-olds recorded their worst scores in decades for math and reading. The math performance was the lowest since 1990, while reading was last this low in 2004.¹⁴

The problem is exacerbated by what the National Association of State Chambers (NASC) calls “skill mismatches.” Whereas pre-Covid 66% of high school graduates were enrolled in college following high school graduation, current projections are that approximately a quarter of jobs are likely to require a four-year college degree, while 40% to 50% will be “middle-skill” jobs requiring some post-high school education or training.¹⁵

In “Workforce: A Throttle on American Growth,” the Littler Workplace Policy Institute joined NASC to conduct a comprehensive analysis on how employers, state and local governments, chambers of commerce, and other stakeholders across the country are working together to address skill mismatches and meet the demand of the labor market. As one state chamber noted, workplace policy and strategic planning needs to address not just the next four years but the “next four generations.” This 50-state scan showed how these stakeholders are coordinating efforts on workforce development to meet current demand, while also developing a talent pipeline to prepare for the future.

Investments paying off in Mississippi

Mississippi leaders continue to prove they are not willing to accept excuses for failing to improve education and workforce training. More importantly, they are making financial investments to see this through.

In six years, thanks to the *Literacy-Based Promotion Act*, commonly called the 3rd-grade reading gate, Mississippi’s reading scores for 4th graders have improved from 49th to 29th nationally. The state has consistently led the nation in the overall improvement rate. Some across the state said this plan would not work and many students would be left behind. However, a commitment to fund reading coaches, teacher dedication, and student determination have yielded amazing results.

The state is now seeing the same enthusiasm for building a stronger workforce. Since its creation in 2020, the State Office of Workforce Development has been tackling the issue at full speed. The programs administered by the office, branded as Accelerate Mississippi, focus on ensuring a return on investment. One major example is career coaching. The Mississippi Economic Council (MEC) – the State Chamber of Commerce – has long advocated for a statewide career coach program. Established in 2022 and administered by Accelerate, \$8 million was made available to place career coaches in 140 high schools. In 2023, \$4 million was added to expand the program.

Coaches help students access interests and abilities and match them with future job opportunities in the state. MEC will continue to work with Accelerate Mississippi to develop metrics to measure success and advocate for increased funding so all high schools in the state can participate in the program.

Each state has a unique set of circumstances affecting its workforce – labor force participation rates, unemployment or underemployment, population changes – demonstrating that there is no “silver bullet” to address workforce transformation. But when considering states like Mississippi, there are recommended practices that can be replicated elsewhere and federal policy changes that can assist states navigate this transformation. Littler WPI and NASC have a continued partnership and will work with other key stakeholders and organizations to take these practices and policy recommendations to a national level.

12 SHRM, How-To Guides, [How to Address the Skills Gap](#) (Oct. 10, 2022).

13 Anthony Amiano, [Skills Gap Rapidly Widening, According to Wiley Survey](#), Business Wire (Jan. 24, 2023).

14 The Nation’s Report Card, Highlights, [NAEP Long-Term Trend Assessment Results: Reading and Mathematics](#) (June 21, 2023).

15 National Association of State Chambers, NASC Report, [Workforce: A Throttle on American Growth](#) (Aug. 30, 2023).



Immigration Decline as a Factor

As the Federal Reserve Bank of San Francisco stated, “[i]mmigration has traditionally provided an important contribution to the U.S. labor force.”¹⁶ However, even before the Covid-19 pandemic, immigration to the United States began to decline in 2017 due to various government policies. Immigration declined further in 2020-21 due to border closures because of the pandemic.¹⁷ In early 2022, the Migration Policy Institute reported:

The immigration court backlog now tops 1.6 million cases, up from 1.1 million before the pandemic and more than double the caseload that existed in fiscal year (FY) 2018. At USCIS, the backlog has surged from 5.7 million applications at the end of FY 2019 to about 9.5 million as of February. And at the State Department, waits for in-person consular interviews for immigrant visas rose to a high of 532,000 last July, up from an average 60,900 in 2019 before the pandemic.

Two prominent national business organizations, the Conference Board and the U.S. Chamber of Commerce, have expressed support for immigration reform to increase the availability of workers in the United States. Given the current and projected labor shortage in the United States, comprehensive immigration reform to support the U.S. labor force is critical to economic growth, the business Conference Board concluded in a recent report.¹⁸ Key recommendations in the report include:

- Securing the border to reduce illegal immigration by increasing asylum officers and judges, and investing in systems to boost processing capacity;
- For undocumented immigrants already residing in the United States, developing a bipartisan plan for lawful pathways to permanent residence and work authorization, predicated on extensive screening;
- Opening additional pathways to work authorization and permanent residence as needed across the economy by eliminating or raising caps on green cards and visas and adjusting caps based on the prior year’s demand;
- Increasing capacity and speed of the immigration application and approval process to compete with other countries in recruiting workers;
- Shifting to quarterly or monthly allocation for H-1B visas to spread out processing more evenly and better align with work start dates;
- Establishing a public-private Workforce and Immigration Policy Advisory Board to make recommendations on workforce shortages and target skills.

¹⁶ Evgeniya A. Duzhak, [The Role of Immigration in U.S. Labor Market Tightness](#), Federal Reserve Bank of San Francisco (Feb. 27, 2023).

¹⁷ *Id.*

¹⁸ The Conference Board, Report, [Immigration Reform is Critical Amid Labor Shortages](#) (Mar. 21, 2023).

The U.S. Chamber of Commerce has also called for reform of the U.S. immigration system:

The vast shortcomings of our legal immigration system are a key contributing factor as to why companies are struggling to hire and retain the talent they need to succeed in an increasingly competitive global marketplace. As demand for workers has increased in recent years, the outdated and arbitrarily low visa quotas, onerous compliance burdens, decades-long backlogs, and obsolete eligibility requirements that pervade employment-based visa programs leave many companies out in the cold when it comes to adequately meeting their workforce needs.¹⁹

The recommendations of the U.S. Chamber of Commerce include the following:

- Increasing the human, physical, and technological resources along the border and at our ports of entry, and modernizing federal employment verification requirements to provide more effective and efficient means for businesses to prevent unlawful employment;
- Substantially increasing the annual allotment of employment-based green cards, as well as raising the yearly caps on the issuance of temporary worker visas like the H-1B specialty occupation visa and the H-2B temporary non-agricultural visa;
- Expanding the H-2A agricultural visa program to allow non-seasonal agricultural production companies like dairies and livestock ranches to have access to sorely needed workers;
- Creating new visa options that will help highly educated international students in the United States stay after they graduate from American colleges, and that will provide workers for industries like construction, trucking, and retail, among others, that oftentimes cannot avail themselves of foreign national workers because their unfilled jobs are not seasonal in nature;
- Passing legislation that will provide legal certainty to DACA recipients and long-term beneficiaries of the Temporary Protected Status program, many of whom have lived in the United States for decades make critical contributions to our nation's workforce.

So far, despite these proposals, immigration reform has remained elusive.

Job Churn

In addition to, or perhaps because of the labor shortage, employers are also impacted by continued high employee resignation rates. According to a job seeker survey by Bankrate, a consumer financial services company, 56% of the workforce is likely to look for a new job in the next 12 months, up from 51% of the workforce in 2022.²⁰ Joblist, an on-line job search site, found that 67% of employed job seekers are planning to quit their current job in 2023.²¹ In addition to higher pay, more flexibility in terms of working hours, and remote work, workers who leave their jobs are also seeking "more challenging and impactful work, opportunities for career growth within the company, and opportunities to learn and develop new skills," according to the 2023 Workplace Learning Report by LinkedIn, the business and employment-focused social media platform.²²

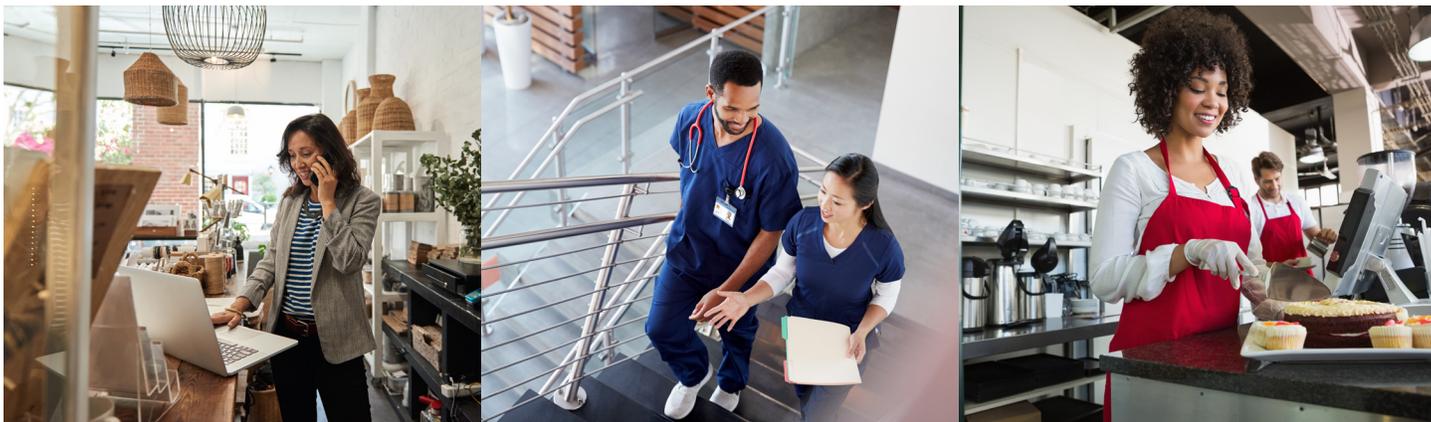


19 Jon Baselice, [Calling on Congress: Fix America's Broken Immigration System](#), U.S. Chambers of Commerce (Jan. 20, 2023).

20 Lane Gillespie, Survey, [56% of Workers Plan to Look for a Job in the Next 12 Months](#), Bankrate (Apr. 3, 2023).

21 Joblist, Report, [U.S. Job Market Report: 2023](#) Trends (Jan. 11, 2023).

22 LinkedIn Learning, Report, [2023 Workplace Learning Report: Building the Agile Future](#) (2023).



The Industries Most Impacted by the Labor Shortage and Job Churn

Healthcare, food services, manufacturing, and retail, and are among the areas most impacted by labor shortages.

The shortage of healthcare providers has been described by the USC Keck School of Medicine as a public health crisis leading to poor patient outcomes.²³ Even before the Covid-19 pandemic, hospitals were facing a shortage of nurses. According to a Statement of the American Hospital Association, in 2017, the majority of the nursing workforce was close to retirement, with more than half age 50 and older, and almost 30% age 60 and older.²⁴ In addition to the aging population, another cause of this shortage is burnout among doctors as well as nurses. A study in the *Journal of the American Medical Association* found that 40% of doctors and over 49% of nurses reported feeling burnout in 2022.²⁵ According to the survey, 34% of nurses said they would leave their jobs by the end of 2022, with 44% saying that stress and burnout contributed to their decision.²⁶

Three years after Covid-19 hit the United States, the food service industry still cannot recruit enough employees. In a recent survey, more than 60% of chain restaurants said they are understaffed.²⁷

Although some retail employers have been cutting back on employees, WorkJam, a provider of retail frontline digital apps, found 63% of retail companies surveyed in January 2023 said they were operating with a frontline employee deficit.²⁸ Fourth, a global software provider to the retail, hospitality, and leisure industries, reported that 87% of retail leaders surveyed were worried about talent shortages in 2023.²⁹

Manufacturing has been equally hard hit. “Even if every unemployed person with experience in the durable goods manufacturing industry were employed, the industry would fill 44% of the vacant jobs,” the U.S. Chamber of Commerce reported.³⁰ And the industry is concerned. A 2021 National Association of Manufacturers newsletter headline sounded the alarm: *2.1 Million Manufacturing Jobs Could Go Unfilled by 2030*.³¹ More recently, in the second quarter 2023 National Association of Manufacturers Outlook Survey, more than 74% of manufacturers cited the inability to attract and retain employees as their primary challenge.³²

In recognition of the demand for workers in these industries, more young people have decided to forego college, opting to go straight into the workforce where demand is highest. The Wall Street Journal has reported that college enrollment has declined by about 15% in the past decade due to the high cost of college, the labor shortage, and demand for blue collar workers.³³ Many are

23 [A Public Health Crisis: Staffing Shortages in Health Care](#), Keck School of Medicine of USC: Your Public Health Blog (Mar. 13, 2023).

24 American Hospital Association, Statement, [Examining Health Care Workforce Shortages: Where Do We Go From Here](#) (Feb. 16, 2023).

25 [A Public Health Crisis: Staffing Shortages in Health Care](#), *supra* note 23.

26 *Id.*

27 Leslie Patton, [Three Years After Covid Hit, Restaurants Are Still Desperate for Workers](#), Bloomberg (Mar. 8, 2023).

28 [New Survey Finds 63% of Retailers Are Short Frontline Staff, but Only 8% Plan to Invest in Improving the Frontline Employee Experience This Year](#), Business Wire (Jan. 16, 2023).

29 Scott Factor, [Fourth Finds 87% of U.S. Retailers Name Talent Shortages as Major 2023 Challenge](#), Fourth (Feb. 15, 2023).

30 Stephanie Ferguson, [Understanding America's Labor Shortage: The Most Impacted Industries](#), U.S. Chamber of Commerce (June 9, 2023).

31 [2.1 Million Manufacturing Jobs Could Go Unfilled by 2030](#), National Association of Manufactures (May 4, 2021).

32 [2023 Second Quarter Manufacturers' Outlook Survey](#), National Association of Manufactures (last visited July 5, 2023).

33 Harriet Torry, [More High-School Grads Forgo College in Hot Labor Market](#), Wall Street Journal (May 29, 2023).

opting for apprenticeships to obtain skills needed in fields with high demand.³⁴ Students are also looking to technical education programs to prepare for a career that requires education beyond high school, but not necessarily a four-year degree. Employers are also looking at these programs to find talent. In Tennessee, employers are partnering with the state’s technical college system to tailor programs to support in-demand jobs.³⁵

Artificial Intelligence (AI) – Benefits and Disruptions in the Workplace

At the same time, a new dynamic has emerged – AI. The Emma Coalition, a nonprofit, nonpartisan organization designed to prepare U.S. businesses for the workplace impact of AI, describes the benefits and disruptions of AI as follows: “The accelerating pace of automation will likely lead to productivity increases on a scale not seen since the Industrial Revolution, while displacing tens of millions of American workers from their current occupations – a phenomenon known as TIDE, technology-induced displacement of employees.”³⁶

Worker Displacement

In PwC’s 2022 Global Workforce Hopes and Fears Survey, 30% of respondents said they were concerned about their role being replaced by technology in the next three years.³⁷ A March 2023 report by economists at Goldman Sachs estimated that globally generative AI could expose 300 million full-time jobs to automation.³⁸ The recent strike by the Writers Guild of America (Hollywood writers) demanding guardrails against the use of AI-generated scripts exemplifies the concern about job replacement with AI. Illustrators have joined the fray with an open letter by the Center for Artistic Inquiry and Reporting seeking to “Restrict AI Illustration from Publishing” out of concern that “illustrators’ careers are set to be decimated by generative-AI art.”³⁹ The fear of AI is exacerbated by the media, with headlines like “AI is Coming for Your Job.”

Benefits of AI

As early as 2018, the consensus of participants at a roundtable hosted by Littler of distinguished leaders from government, industry, and academia, was that while automation is likely to displace workers in many occupations, it will also spur enormous demand for workers in both existing fields and in new occupations that technological change will generate.⁴⁰

“While we have a long history of fear of technological change, we also have a long history of technology boosting productivity and creating positive change in the way we work,” says Diana Elliot. This view is echoed in a July 2022 article in the Monthly Labor Review of the Bureau of Labor Statistics (BLS), by Michael J. Handel, a research analyst at the BLS: “Even though machines may reduce the number of jobs in some occupations, historically the workforce has shifted to other, often new occupations. This principle can be extended to the tasks within occupations, as well.”⁴¹ For example, the author notes, automation of document review by legal assistants may result in more time spent on other, perhaps new, tasks without necessarily a reduction in the number of jobs, and job losses in some occupations have been, and may continue to be, offset by growth in other occupations. For these reasons, he concludes that the rates of job losses due to AI “rarely reach the levels that the automation literature suggests are becoming common or soon will be.”⁴²

34 Elka Torpey, [Apprenticeships: Occupations and outlook, Career Outlook](#): U.S. Bureau of Labor Statistics (Nov. 2017).

35 Mackenzie Hawkins and Reade Pickert, [Wanted: American Workers Who Can Make Stuff, Training Is Free](#), Bloomberg Government (July 6, 2023).

36 [Purpose](#), Emma Coalition (last visited July 5, 2023).

37 [PwC’s Global Workforce Hopes and Fears Survey 2022](#), PWC (May 24, 2022).

38 Jan Hatzius, et al., [Global Economics Analyst: The Potentially Large Effects of Artificial Intelligence on Economic Growth \(BriggsKodhani\)](#), Goldman Sachs Economics Research (Mar. 26, 2023).

39 [Restrict AI Illustration from Publishing: An Open Letter](#), Center for Artistic Inquiry (May 2, 2023).

40 Michael J. Lotito & Matthew U. Scherer, [Thought Leaders Predict AI’s Impact on the Workforce](#), Littler Workplace Policy Institute (last visited July 5, 2023).

41 Michael J. Handel, [Growth trends for selected occupations considered at risk from automation](#), Monthly Labor Review: U.S. Bureau of Labor Statistics (July 2022).

42 *Id.*



Similarly, IBM CEO Arvind Krishna, recently said that while he believes that 30% to 50% of repetitive white-collar jobs would be replaced by AI over the next five years, ultimately AI will create more jobs that it takes away, including new jobs such as prompt engineers to leverage AI tools to deliver more accurate and relevant responses.⁴³

There are other benefits of AI. Most recently, in a study for the National Bureau of Economic Research, scholars from Stanford and found that a generative AI product at one company increased worker productivity, improved customer sentiment, reduced requests for managerial intervention, and improved employee retention.⁴⁴ Their findings, the researchers concluded, “demonstrate that generative AI working alongside humans can have a significant positive impact on the productivity and retention of individual workers by automating mundane, labor-intensive tasks to allow employees to focus on more complex and strategic work.”⁴⁵ This has proved to be true in many businesses and industries impacted by labor shortages.

Healthcare

In the healthcare industry, AI is helping address staffing shortages by creating greater efficiency and helping to reduce burnout among healthcare professionals by:

- Automating time-consuming administrative tasks, such as electronic health record management, appointment scheduling, and billing, allowing nurses to focus on patient care;
- Using AI-driven algorithms to support physicians in diagnosing illnesses and determining appropriate treatments, reducing their workload and stress and improving patient outcomes;
- Monitoring patients remotely, enabling healthcare professionals to provide care to more patients, both in hospitals and at home;
- Using predictive analytics for workforce planning and staffing;
- Relieving physicians from the burden of clinical note-taking with real-time direct transcription of medically relevant information into the patient’s health record.

Retail

Retailers have been trying to ease staff shortages in warehouses as well as stores by using robots and AI technology to:

- Stock shelves and locate items;
- Replace cashiers and self-checkout machines, which frequently require cashier assistance;
- Manage inventory;
- Clean and disinfect stores;
- Scan and identify expired items in grocery stores.

43 Eric J. Savitz, [AI Will Actually Create, Not Destroy Jobs, IBM CEO Says](#), Barron’s (June 6, 2023).

44 Erik Brynjolfsson, et al., [Generative AI at Work](#), National Bureau of Economic Research (April 2023).

45 *Id.*

Manufacturing

In an article on how AI-powered automation can be a solution to the problem of the labor shortage in manufacturing, *Forbes* describes the new generation of robots using AI to enable them to perform a wide variety of assembly line work, “just as humans do.” AI can also be used to count and track items, spot defects, and sort products as they speed by on the assembly line.⁴⁶ Automated guided vehicles can be used to transport parts and finished goods through warehouses and factory floors in place of loading crews and forklift operators. AI can also be used to develop product designs, detect design defects, and monitor manufacturing machines so that they are optimized for the manufacture of different products and the use of specific materials.

Food Services

As fast-food restaurants struggle to attract workers, many are now using AI to chat with customers and take orders at drive-thru windows and on the phone.⁴⁷ AI is also being used by all types of restaurants in other ways as well. “In the restaurant industry, rather than replacing humans, AI can be used for filling voids for operators who are struggling to find staff. Operators can continue to grow their business, even when understaffed, by automating many redundant, time-consuming tasks,” the on-line network Hospitality Technology reported.⁴⁸ For example, AI is being used to create restaurant menus based on user inputs and to generate appetizing descriptions to help sell the items. Other uses of AI by restaurants are: generating promotional copy based on customer’s ordering preferences, creating blog posts, newsletters, and press releases, and reviewing and analyzing reviews on social media and websites to identify problem areas like customer service or food quality.

Challenges of AI

The World Economic Forum (WEF) 2023 Future of Jobs report describes the changes brought about by AI as a structural reconfiguration of labor markets, with the creation of new jobs and a demand for new skills.⁴⁹ The report lists AI and Machine Learning Specialists at the top of the list of fastest-growing jobs and predicts the demand for skills in AI and big data analytics will increase 30–35% in the next five years. And what are the skills most in demand? According to Indeed.com, the job-search website, these are the top 10 skills most in demand now: cloud computing, artificial intelligence, sales leadership, analysis, translation, mobile app development, people management, video production, audio production, user experience (UX) design.⁵⁰

One of the challenges of AI is the need to train workers in the skills necessary to perform the new jobs. “In the absence of broad-scale worker retraining and lifelong education programs, many workers whose jobs focus on tasks vulnerable to automation will find themselves unable to transition smoothly (or at all) into new jobs,” warns the Emma Coalition.⁵¹ A report by the World Economic Forum in collaboration with PwC, *Upskilling for Shared Prosperity*, discusses the need for and benefits of upskilling, including the potential to boost GDP by \$6.5 trillion by 2030.⁵²

Are employers meeting this challenge? According to a study by a learning management system, 35% of U.S. employees say their work responsibilities have changed due to AI, yet only 14% reported having received training on AI tools.⁵³ Similarly, a 2023 Global Human Capital Trends survey by Deloitte, a consulting and financial advisory firm, found that while more than 90% of business leaders believe that using AI technology is important to their organization’s success, only 22% believe their organizations are ready to use the technology.

In response to this glaring need, almost all colleges and universities—from Ivy League Universities such as Harvard, Cornell, and MIT, to local community colleges—are offering on-line training programs in all aspects of AI. There have also been proposals for paid leave policies that allow workers to take time away from their jobs for more in-depth, in-person courses in AI.⁵⁴

46 Glen Gow, [The Labor Shortage Is Killing American Manufacturing. Here’s How AI Can Bring It Back To Life](#), *Forbes* (Aug. 28, 2022).

47 Gary Guthrie, [AI is coming to a fast food restaurant near you](#), *Consumer Affairs* (May 10, 2023).

48 Mark Calvillo, [How Will AI Like ChatGPT Change the Restaurant Industry?](#), *Hospitality Technology Smarter Hotels & Restaurants* (Apr. 5, 2023).

49 Saadia Zahidi, [Future of Jobs Report 2023 Insight Report May 2023](#), *World Economic Forum* (May 2023).

50 Jamie Birt, [20 In-Demand Skills for Today’s Work Environment](#), *indeed* (last updated Jan. 17, 2023).

51 Michael J. Lotito et al., [The Future Is Now: Workforce Opportunities And The Coming TIDE](#), *Littler Report* (June 2018).

52 Robert E. Moritz & Saadia Zahidi, [Upskilling for Shared Prosperity](#), *World Economic Forum* (Jan. 2021).

53 Paola Peralta, [Despite demand, only 14% of employees have received ChatGPT training](#), *Employee Benefit News* (Mar. 21, 2023).

54 Emma Goldberg, [A.I.’s Threat to Jobs Prompts Question of Who Protects Workers](#), *The New York Times* (May 23, 2023).

Beyond technical training, the World Economic Forum report also emphasized,

[u]pskilling could propel the transition to an economy where workers' jobs are increasingly complemented and augmented – rather than replaced – by new technology, thus improving the overall quality of jobs. The number of jobs that require creativity, innovation and empathy will rise, as will the need for information technology skills.⁵⁵

Citing this report, a March 2023 article in the *Journal of Intelligence* discussed the importance of the “4Cs,” creativity, critical thinking, collaboration, and communication, and stressed the need for educators and institutions to provide “more relevant offerings,” focused on the 4Cs and “oriented towards the future of work and helping build a more successful future for all.”

What else can we do to meet the challenges posed by AI?

White House and Congressional Efforts to Confront AI's Impact on the Future of Work

Given the rapid development and spread of AI across multiple industries and sectors of the economy, the Biden administration and congressional leaders are focusing on how best to prepare the U.S. workforce for the jobs of the future, in addition to setting important guardrails to protect against potential misuse and associated risks. Last year, the White House came out with a “Blueprint for an AI Bill of Rights,” which sets out voluntary provisions on the use of artificial intelligence.⁵⁶ More recently, the White House released an updated strategy to coordinate and focus federal investments in AI. The White House has also organized meetings with employers and labor representatives to discuss the use of artificial intelligence. On May 4, 2023, Vice President Kamala Harris, Secretary of Commerce Gina Raimondo, and other senior Biden administration members met with the CEOs of American companies that are working with and developing artificial intelligence technology, urging the companies to operate consistent with the administration’s “Blueprint for an AI Bill of Rights.”⁵⁷ The White House also hosted a July 3, 2023 listening session with union leaders to discuss the impact of AI on workers, job quality, and civil rights.⁵⁸

The federal agencies, including the Commerce Department and Federal Trade Commission, have attempted to respond to AI through potential rule considerations and other existing regulations. The National Telecommunications and Information Administration (NTIA) at the Department of Commerce received over 1,400 responses to its request for comment on its Artificial



55 Mortiz & Zahidi, *supra* note 52.

56 Office of Science and Technology Policy, [Blueprint for an AI Bill of Rights](#), The White House (last visited July 5, 2023).

57 The White House Briefing Room, [Readout of White House Meeting with CEOs on Advancing Responsible Artificial Intelligence Innovation](#) (May 4, 2023).

58 The White House, [Readout of White House Listening Session with Union Leaders on Advancing Responsible Artificial Intelligence Innovation](#) (July 3, 2023).

Intelligence Accountability Policy.⁵⁹ This included a letter submitted by a bipartisan coalition of 23 state attorneys general calling for independent standards for transparency, testing, assessment, and audits, and for state attorneys general to have concurrent enforcement authority on federal regulations governing AI.⁶⁰

More targeted efforts have come from Senate Majority Leader Chuck Schumer (D-NY), who formed a congressional task force to lay the groundwork for bipartisan legislation on regulating AI. Leader Schumer launched the “SAFE Innovation Framework” on AI, which outlines five central policy objectives intended to form legislation.⁶¹ Those objectives include 1) Security – to address national security risks and provide economic security for workers; 2) Accountability – to address misinformation and bias, copyright concerns, intellectual property, and liability; 3) Foundations – to ensure AI systems align with American values, and to prevent China from setting the rules on AI; 4) Explain – to determine what information the government and public needs; and 5) Innovation – to support U.S. innovation and leadership.

Some in the private sector have criticized the framework’s lack of detail. Others fear that Congress is moving too slowly to keep up with AI’s rapid advances and is too uneducated on the technology to make informed policy. Concerns have also been expressed by members of Congress and some of the world’s leading AI companies that the United States, with no established policies to govern this new landscape, is far behind other countries’ ability to harness and leverage the advantages of AI.

For example, the European Parliament on June 14, 2023, advanced the AI Act.⁶² The legislation covers the use of both predictive and generative AI, identifies a category of AI systems that are deemed to be “high risk,” which includes AI systems used in employment. The proposal also includes a range of compliance requirements for both providers and users, as well as potential fines for non-compliance. It is anticipated that there will be a two-year period for implementation, although given the speed at which this technology is being developed, there is pressure for earlier implementation.

Targeted Legislative Proposals to Rebuild the American Workforce

As the workplace rapidly moves toward the future, Littler WPI is advocating for targeted and effective policies to modernize the workforce development system and rebuild the American workforce, as follows:

I. Modernize federal labor market reporting data to leverage AI and advanced technologies to support a skills-based approach to employment.

Rapid technological advancements, combined with the seismic shift in how employers operate their workplaces in the post-pandemic world, are creating a rapidly changing work environment and ever-evolving workplace policies. The pandemic exacerbated job displacement, which is creating the demand for new ways of working, the need for new skillsets in the workplace, and new approaches to improving workplace policies. To fill vacant positions, many employers are reviewing degree requirements in job postings and utilizing a skills-based approach in hiring, in which a candidate’s qualifications are based on the core competencies for the role rather than a specific degree or credential. The U.S. House of Representatives Committee on Education and the Workforce held a June 22, 2023, hearing on the topic in which members discussed how federal policy could better support employers and job seekers in a skills-based economy.

A critical first step toward leveraging AI and advanced technologies to support a skills-based approach to employment is the modernization of federal labor market reporting data that is both accurate and accessible in real-time to job seekers and employers. As such, the need for enhanced, granular data is critical to understanding the complex dynamics of the U.S. labor market to identify economy-wide trends in emerging roles and industries, along with the skills needed for in-demand jobs. Additionally, this information is essential for lawmakers, employers, educators, and others to make informed decisions, guide resource allocation, and achieve better employment outcomes.

Littler WPI has worked over the last two years to develop a comprehensive federal legislative proposal that would achieve this goal by a) establishing a competitive grant program for states to innovate and improve their own labor market information strategies,

59 National Telecommunications and Information Administration, Press Release, [NTIA Receives More Than 1,400 Comments on AI Accountability Policy](#) (June 16, 2023).

60 Stephanie Weiner, [Comment on Artificial Intelligence \(“AI”\) system accountability measures and policies—Docket Number NTIA–2023–0005, 88 FR 22433 \(July 12, 2022\)](#), Regulations.gov (June 12, 2023).

61 Chuck Schumer, [SAFE Innovation Framework](#), Senate Democrats (last visited July 5, 2023).

62 European Parliament, Press Release, [MEPs ready to negotiate first-ever rules for safe and transparent AI](#) (June 14, 2023).

including mapping of emerging jobs and labor trends, that would be available to employers, workforce agencies, and all other stakeholders; b) amend the Workforce Innovation and Opportunity Act (WIOA), as discussed in greater detail below, to establish a new “rapid response initiative” to cultivate alignment among federal agencies regarding workforce data tied to occupations most in demand pursuant to recent massive federal investments into infrastructure (broadband, transportation, etc.) and semiconductors; c) amend WIOA to establish a Congressional Commission on modernizing the nation’s labor market information system to ensure congressional leaders play a role to further improve workforce data; and d) amend the Social Security Act to require states to collect enhanced wage information tied to Federal Unemployment Compensation requirements.

II. Reauthorize the Workforce Innovation and Opportunity Act (WIOA)

Given that WIOA is the nation’s primary workforce development law and its reauthorization ended in 2020, it is imperative that the law be reauthorized and reformed to reflect today’s realities and technological advances in the workplace. A partisan bill, which maintained the status quo and did little to address concerns of federal bureaucracy, passed the House in 2022 but was not considered by the Senate.⁶³ Below are suggested reforms that Congress should consider in a bipartisan reauthorization of WIOA to modernize the workforce development system:

- **Enhance support and funding structures for state and local-led reskilling/upskilling efforts.** Rather than expanding federal control over the workforce system, the role of states and local communities must be elevated. A significant share of WIOA funding flowing to the states should be dedicated to upskilling the workforce, including through individual training accounts and employer-designed customized training programs. States and localities must engage and survey employers across all industries to ascertain the skills needed for the most in-demand jobs, as well as identify the training providers to teach these skills. To leverage WIOA dollars further, localities must also have flexibility to collaborate regionally to pool funding with other jurisdictions in the creation and delivery of skills development. Additionally, states must be empowered with more flexibility to address the current labor shortage and economic constraints that are unique to their situation by increasing the discretionary dollars that governors can reserve for innovative initiatives.
- **Shift WIOA funding away from wasteful federal bureaucracy.** A common complaint by states and those who administer WIOA programs is the existence of bureaucratic hurdles. Given the current labor shortage and widening of the “skills gap,” barriers to training and employment should be decreased. Additional layers of bureaucracy will not close the skills gap, nor will they entice employers to engage with the public workforce system. Funding should be focused on reskilling and upskilling more workers to meet employer demands.

To better understand, at a granular level, the challenges involved with the administration of WIOA programs, WPI’s Executive Director Shannon Meade interviewed Ms. Aleta Spicer, Executive Director of the Southwest Virginia Workforce Development Board, who has over 30 years of experience working with private industry and the unskilled labor force on various workforce development initiatives. Ms. Spicer affirms that “additional federal control will be ineffective in advancing the cause of upskilling and expanding the nation’s workforce.” Ms. Spicer explains that “the bureaucracy of the WIOA system is already tedious and cumbersome and a hindrance to local workforce development areas (LWDAs) that need to be about the day-to-day service of their businesses and workforce.”

Specifically, Ms. Spicer says that WIOA reauthorization should focus on empowering and equipping the LWDAs to meet the needs of their communities with which they are best acquainted, and lays out three areas of WIOA that are particularly troublesome to localities as they implement WIOA. First, the required 75%-25% expenditure split for in-school and out-of-school youth, respectively, is a prime example of “one size can’t fit all.” While out-of-school youth may have the most needs in urban areas, generally the in-school youth have the greatest needs in rural areas. This disparity is a prime example of local areas knowing best about the needs of the youth in their communities. Ms. Spicer’s focus is to catch the at-risk young people in rural communities before they drop out of school. She explains that if, for whatever reason, there must be a division of youth funds, the distribution of the funds most definitely should be left to the discretion of the local boards.

Second, the mandated Business Services portion of WIOA, which requires local workforce boards to also assist both growing and shrinking businesses (in addition to individual job seekers), should be provided with its own dedicated funding stream. Ms. Spicer explains that when an LWDA has an effective Business Services team, that team offers invaluable skills and expertise to its local employers. As a hoped-for result, those employers want (and expect) even more services. In the current situation, however, funding that is desperately needed to recruit, train, and continue to upskill the future workforce must now be

⁶³ Workforce Innovation and Opportunity Act, H.R. 7309, 117th Cong. (2022).

divided to satisfy the expectations of businesses. Ms. Spicer suggests that local areas must not be required to make the unconscionable decision to cut services to individuals in order to meet an unfunded mandate to serve their local employers. She suggests that “the needs go hand-in-hand and both should be funded accordingly” with the Businesses Services funding stream having enhanced flexibility.

Third, there must be a requirement that states require and provide equal emphasis on program and compliance. Ms. Spicer explains that “tragically, the federal bureaucracy has encouraged many states to focus almost entirely on compliance to the detriment of quality of service.” She says that “while auditors are anxious to know if the third box on the second the line of page twelve was checked by the 12th of the month, they are hardly ever interested whether Suzie finished her LPN training and is gainfully employed, whether she encountered any barriers, was she offered supportive services, where the problems identified, etc.”

Ms. Spicer concludes that “WIOA reauthorization must be enabling and empowering rather than becoming even more of a bureaucratic nightmare.” The boots-on-the-ground perspectives shared here and echoed by others enhance our recommendation to shift WIOA funding away from wasteful federal bureaucracy and toward reskilling and upskilling more workers to meet employer demands.

III. Diversify and Expand the National Apprenticeship System

Registered Apprenticeship Programs administered by the U.S. Department of Labor have a long and successful history in the skilled trades. To expand beyond these traditional fields, the Department should partner with other key industries and sectors of the economy to meet employer demand and market needs. Programs should be based upon industry-informed and validated guidelines and should include stackable credentials to promote longer-term industry engagement and greater professional advancements for apprentices. This would also promote portability and help address emergent need.

Also, pre-apprenticeship and youth apprenticeship programs should be further supported to a) ensure accessible entry points for individuals; b) increase opportunities in non-traditional fields; and c) expand job opportunities and sustainable career pathways.

Although registered programs have been effective for some industries and employers, reforms to the system would make it less cumbersome for program sponsors and more appealing for businesses. There should be a decrease in the burdensome reporting requirements to promote greater participation from employers and intermediaries. Consistency is important, because when standards have to be changed across state lines for national employers/operators, the power of apprenticeship and its portability are diminished. Additionally, reforms should address both the systemic and financial barriers to apprenticeship, including support for, transportation, childcare, appropriate equipment, and uniforms. Many times, individuals cannot begin or advance in a program because of these barriers.

IV. Consider short-term federal Pell grants for job-training programs.

Given the continuing labor shortage, bipartisan momentum is growing in Congress to consider short-term federal Pell grants for job-training programs. This includes the bipartisan “JOBS Act of 2023,” S.161, which would amend the Higher Education Act to allow students to use a federal Pell grant at shorter-term workforce programs, making it easier for students to access post-secondary programs outside of traditional degree programs.⁶⁴

House Committee on Education and Workforce Chair Virginia Foxx (R-NC) has made the issue a focus of Committee hearings this year, and Committee Ranking Member Bobby Scott (D-VA) introduced the “Jobs to Compete Act,” H.R. 1655, to allow federal Pell grants to be used at some short-term job training programs.⁶⁵ The Biden administration also has indicated its willingness to consider this idea.

While there is bipartisan support for expanding Pell to include short-term job training and workforce programs, members continue

⁶⁴ JOBS Act, S. 161, 118th Cong. (2023).

⁶⁵ Jobs to Compete Act, H.R. 1655, 118th Cong. (2023).

to debate the specific requirements for such programs and the type of education providers that would be eligible to participate. Historically, negotiations over short-term Pell have broken down over whether to include for-profit and online programs.

It is hoped that lawmakers make progress in their negotiations, as this reform would greatly enhance the nation's ability to provide career pathways to workers and allow employers to recruit qualified talent.

In Conclusion

As we discuss the future of work, it is becoming clear that this is not a distant problem that requires abstract solutions. The future of work has arrived, and the American workforce is at an inflection point. Employers and workers continue to navigate a turbulent economy as the world recovers from the effects of the Covid-19 pandemic. New technologies and artificial intelligence are reshaping the workplace at unprecedented speed. Many jobs and fields are obsolete due to innovations of the last two decades, yet these same advancements have spurred the creation of new occupations and industries.

Employers across nearly every industry and sector are competing to find workers with the skills necessary for success. Students and workers should be prepared with in-demand skills not only for the job market of 2023, but for the workplace of tomorrow. No one can predict the future, but we can study trends and work to improve real-time data to better prepare ourselves for this new economy. Investments in workforce systems and education, including the expansion of apprenticeship and on-the-job training, can equip the American workforce to thrive in a skills-based job market.

In 1962 President John F. Kennedy said, "We choose to go to the Moon in this decade and do the other things, not because they are easy, but because they are hard." Through strong leadership, a clear vision, and collective buy-in to a mission, America went to the moon. It will take this same type of vision to transform the American workforce. We need to prepare workers, businesses, elected leaders, governments, and educators for this reality. This is a challenging task, but the payoff is evident.

About WPI

Littler's [Workplace Policy Institute](#)[®] (WPI[®]) advocates for the interests of employers on a global scale. As the government relations and public policy arm of Littler – the world's largest employment and labor law practice representing management and one of the most influential firms in its space – WPI focuses on defining and shaping workplace policy at the international, national and local levels.

Drawing on deep relationships with government officials and industry associations, WPI works on behalf of employers to influence the laws, regulations and policies that have critical implications on their operations and future growth. We collaborate with business leaders and trade associations to not only navigate real-time changes in labor and employment law, but to address their most pressing business issues and impact the legislation of tomorrow.

WPI serves as a strong voice for employers and their workplaces. By harnessing Littler's global depth of knowledge and expansive resources for tracking emerging issues that affect the workplace, WPI brings employers' interests to the forefront of today's rapidly evolving regulatory landscape, rising above the noise of partisan politics.

