AMERICAN CHAIN OF WAREHOUSES
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ACWI ADVANCE

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Our Crazy, Mixed-Up Economy

If there has been another time when the economic signs have been more confusing, it's hard to think of one. Are we already entering a recession, is there one in our future? Will this year see modest or better economic growth? Has inflation been licked, or will it persist while higher interest rates plunge us into the depths of staglation?

Consider these developments from recent news stories:

- UPS is taking drivers out of their cabs and retraining them for inside work at the company's facilities because it doesn't have enough driving work for all of them.

- Ttruckload capacity is figured to be 25% above what is currenttly needed, after years of the United States lacking sufficient capacity in this sector at a most crucial time during the pandemic..

- Amazon's woes are so bad that it is pulling back from its expensive new headquarters project being built in northern Virginia.

- Warehouses receiving freight from U.S. ports are full, and port operators are preparing for a massive onslaught of ships currently being built.

- Because port warehouses are full, ocean lines have been storing containers on truck chassis portside, a parctice that also exacerbates an onging chassis shortage.

Then there is the generic wierdness that seems to be baked into our country's 21st Century economy. This includes a federal government that keeps driving up the country's debt without exhibiting any real concern, and in recent years indulged in trillions of dollars of deficit spending that set a lit match to a rampant, stubbornly high inflation rate.

Among those who keep a sharp eye on economic developments are nation's largest industrial real estate (IRE) companies, who have seen warehousing and distribution needs grow in recent decades with both good and bad economies and in the face of an unprecedented worldide pandemic.

At present these giant IRE companies are preparing for possibly a slight moderation in warehouse rents and a slower pace of construction and development later this year, but demand has remained high and that is seen to continue, particularly near ports and other logistics hubs.

Yardi Market Insight, a service that makes use of anonymized and aggregated data generated by IRE firms, found that among the 63 markets it studies, 44 have hit a lease spread greater than 10%. Of these, 16 markets had spreads wider than 20% in January, Yardi reported.

The CommercialEdge IRE consulting firm figures that with such substantial spreads, properties with leases that expire soon will become more attractive on the transaction market.

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Given the current interest rate environment and economic uncertainty, the company adds that leasing expiration schedules could be the difference between a deal penciling out or not.

“Savvy investors are already seeking out projects with shorter lease expiration schedules and seem to be willing to pay a premium for them. It’s another opportunity to benefit from the historic run-up in rates as vacancy remains tight,” says Peter Kolaczynski,CommercialEdge senior manager.

Logistics continues to be a major driver of industrial real estate development. Nationally, 691 million square feet (msf) of new industrial supply was under construction as of January, accounting for 3.8% of existing inventory.

An additional 706.6 msf were in the planning stages, for a potential stock increase of 7.7%.

While industrial construction is happening in markets across the country, much of it is concentrated in a handful of markets. The 10 largest pipelines make up nearly 40% of all stock under construction and the top two markets (Dallas and Phoenix) account for one-sixth of all square footage currently being built.

Most of this new construction is fueled by the logistics sector, especially in Dallas. The largest project in the market is a 2.5 million-square-foot Walmart fulfillment center in Lancaster, Texas.

“Beyond that property, there are 13 logistics buildings under construction -- including both new properties and expansions at existing sites -- that are larger than one million square feet,” points out CommercialEdge.

As of January, the national vacancy rate was 4%, an increase of 10 basis points over the previous month. After months of decreases, this marks the second month in a row that the national vacancy rate has increased, the company reports.

“The upticks have been minor but are likely driven by record levels of new supply,” suggests CommercialEdge “It will be worth watching if vacancies continue a slow upward push or plateau off in coming months.”

The lowest industrial vacancy rates in the country were found in the Inland Empire (1.6%), Columbus, Ohio (1.7%) and Charlotte, NC (2.2%).

Other IRE developers and renters of commercial storage also see a similar scenario taking shape, including a market driven by logistics service providers. “Retailers looking to optimize their network have turned to logistics and distribution users to outsource operations, increasing demand for the industry,” says Jones Lang LaSalle.

Ecommerce Plummets

The ecommerce boom that began with a locked-down population during the pandemic, eventually led to a massive upsurge in employment in the warehousing and distribution sector, according to the Bureau of Labor Statistics.

Between April of 2020 and June of 2022, the sector grew by 46%, which resulted in the addition of 695,000 workers. Since that June peak, however, the industry has lost 20,000 workers. Figuring a turnover rate estimated to be higher than 100%, this means that a slowdown in hiring inevitably leads to declining employment.

There are many different factors driving the decline in warehousing and storage employment. A tight labor market is allowing workers to find higher-paying jobs, while service jobs that disappeared during the pandemic have since returned. But the main force behind the contraction is the largest employer in the sector – Amazon.

“The ecommerce behemoth has delayed, paused or outright canceled facilities and listed millions of square feet for sublease,” CommercialEdge says. “Amazon’s frenzied hiring during the first two years of the pandemic fueled most of the growth in the sector but now the company has slowed hiring.”

Where do we go from here? Consumer confidence dropped for the second consecutive month in February, standing at 102.9 (1985=100), down from 106.0 in January, The Conference Board reports.

The board’s Expectations Index – based on consumers’ short-term outlook for income, business,and labor market conditions – fell further to 69.7 (1985=100) from a downwardly revised 76.0 in January.

“Notably, the Expectations Index has now fallen well below 80 – the level which often signals a recession within the next year,” The Conference Board explains. It has been below this level for 11 of the last 12 months. “

DOT Changes Safety Standard

Sometimes you put a tremendous amount of work into a project only to see it come to nothing. That's how some of the members of the National Academy of Sciences must feel after a safety standard they spent years developing was thrown out in the trash.

The Federal Motor Carrier Safety Administration has decided that a statistical model that was developed by NAS researchers turned out to be too complicated and decided to keep an older one that was simpler with some improvements.

The Safety Measurement System was developed starting in 2017 and has been adopted by some state truck safety enforcement agencies as well as initially by the motor carrier safety wing of the U.S. Department of Transportation.

The new standard is intended to create a safety focus on violations severe enough to result in an out-of-service order for a truck. FMCSA also intends to focus more on recent violations when choosing carriers for roadside inspections, saying that this would allow the agency to focus its resources on carriers posing a greater safety risk.

FMCSA determined that an advanced statistical model called the Item Response Theory (IRT), which was recommended earlier by NAS, is "overly complex" and has proposed withdrawing it for use in regulating trucking safety.

Robin Hutcheson, the agency's administrator, said that because "safety is FMCSA's core mission, the proposed changes are part of the agency's continued commitment to enhancing the fairness, accuracy and clarity of our prioritization system."

FMCSA said that assigning severity weights to violations in SMS on a scale of 1 to 10 under the old system "has been criticized as overly subjective" while simplifying the severity weights identifies carriers with higher crash rates.

NLRB Prohibits NDAs on Exit

A recent National Labor Relations Board ruling holds that the mere proffer of a draft severance agreement to an employee exiting employment which includes broad confidentiality and non-disparagement provisions violates the National Labor Relations Act.

In the individual case that set the new precedent, the board's Democratic majority overruled two Trump--era decisions and held that the provisions at issue under this fact pattern violate the NLRA.

Regarding the non-disparagement provision in the same agreement, the NLRB held that employee public statements about the workplace are central to the exercise of employee rights under the labor act.

The board added that no severance agreement could prohibit any statement accusing the employer of violating the NLRA. This subject matter covers employee conduct regarding any labor issue, dispute, or term and condition of employment.

In addition, terms of such an agreement cannot interfere with the exiting employee's efforts to assist fellow employees, which would include future cooperation with an NLRB investigation.

Attorneys Arthur Telegen, Cary Reid Burke, and Alex Reganata of the Seyfarth Shaw law firm point out that in the case before the board that sets the precedent, the confidentiality provision was declared unlawful because it prevented employees from "disclosing even the existence of an unlawful provision contained in the agreement," interfering with their ability to file charges with the NLRB or participate in an investigation.

The board also determined that the confidentiality provision would have interfered with employees' ability to speak with co-workers and their union about the contents of their severance agreement.

"Employers should take care to draft such agreements to serve only necessary business interests," the attorneys urged. Such provisions may safely be eliminated when there is a large-scale reduction in force or if an employee did not have access to confidential information.

EEO-1 Data Is Due Mid-July

This year, the EEO-1 employment data form collection period for employers is expected to begin in mid-July instead of April, according to the Equal Employment Opportunity Commission.

Covered employers should expect to have the same amount of time (about one month) to upload or file their 2022 EEO-1 Component 1 data through the commission's website before the window closes, advises Tiffany Hendricks, an attorney with the Akerman law firm.

"Despite postponement of the deadline, employers should do what they can now to prepare for submission," she recommends.

The EEOC and the Labor Department's Office of Federal Contract Compliance Programs (OFCCP) , which supervises federal contractors, require eligible employers to file Standard Form 100 (EEO-1 reports) annually through the EEOC's dedicated website for EEO-1 Component 1 data collection at www.eeocdata.org/eeo1.

The filing of EEO-1 reports is mandatory and not voluntary for "eligible" employers under federal regulations. Those employers covered by the EEO-1 reporting requirement must summarize their workforce's demographics by race/ethnicity, sex, and job categories.

Covered are private-sector employers who are subject to Title VII of the Civil Rights Act of 1964 and have 100 or more employees. Also, employers are subject to Title VII with fewer than 100 employees if the employer is affiliated with another company considered legally as a single enterprise employing a total of 100 or more employees.

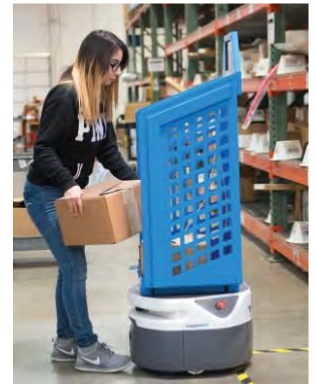
The requirement also applies to certain federal contractors employing 50 or more employees.

An EEO-1 report is the EEOC a snapshot of the employer's workforce during a specific payroll period of the applicable year. Employers are required to gather this information from company records and employment documents completed by employees and enter and upload this information.

Workers Like Robots' Help

Although initially wary of automation, warehouse workers have grown to recognize the value of robots in making their work easier, according to research conducted recently by the robot manufacturer Lucas Systems.

A survey of 500 on-floor warehouse and fulfillment center workers throughout the United States found that three out of four of those polled were willing to say that they consider robots to be their friends – not their foes – when they are doing their jobs.



"They trust robots as a partner to help them do their jobs better," Lucas pointed out. "Workers value robots as colleagues, mainly because of their ability to help reduce physical stress, and achieve better performance in picking and accuracy."

Lucas said this is primarily because of robots' contribution to reducing the workers' physical stress and driving improved performance regarding picking and packing accuracy.

Having tech as part of the job is important to Gen Z workers who ranked that even higher than pay. The survey found that 74% of workers said they are willing to trade pay for better tech to do their jobs.

"These are all signs that tomorrow's warehouses will need to operate differently than they do today," explains the Lucas company's Chief Marketing Officer Ken Ramoutar.

"Gen Z workers expect to use modern technologies like they use at home. Handheld and personalized, tech must be easy to use and must help them save time and mitigate exertion."

Also, 74% are at least somewhat likely to take a pay cut to work at another company with more technology tools to help them do their job, including more than half (52%) who held this was extremely or very likely, according to the survey.

DOT, Congress Target Rail Safety

As we reported in the last issue, Congress and the Biden administration have begun taking a closer look at railroad safety in the United States and how it can be improved. Since then, we have gotten a clearer view of where they are heading.

A full report on the cause of the accident will not be forthcoming from the National Transportation Safety Board for months, as has been the case historically. However, that did not stop NTSB Chairman Jennifer Homendy from making her own 'rush to judgment.'

"I can tell you this much: This was 100% preventable," Chairman Homendy said at a Feb. 23 press conference. "We call things accidents. There is no accident. Every single event that we investigate is preventable. Know that the NTSB has one goal, and that is safety and ensuring that this never happens again."

Earlier reports said NTSB is focusing on overheated ball bearings and a broken axle. Two rail unions blame Norfolk Southern's adherence the radical cost cutting model called Precision Scheduled Railroading for not maintaining remote sensing devices that monitor the bearings for overheating.

On Feb. 28, the Federal Railroad Administration issued an advisory warning railroads to evaluate their policies and procedures related to the use and maintenance of hot bearing wayside detectors, referencing a series of specific hazardous materials derailments going back to 2015.

The FRA also announced on March 2 that it would conduct a nationwide inspection focusing on rail lines that are used by high-hazard flammable trains (HHFTs) and those hauling large amounts of hazardous materials.

After he visited East Palestine, Transportation Secretary Pete Buttigieg said he would ask Congress to increase the maximum fines the DOT can level on railroads for safety violations. Currently, the maximum fine for a railroad found to have violated hazardous materials regulations is $225,455, he observed.

"A six-figure penalty for a fatal incident is pretty much a rounding error for a multibillion-dollar corporation," Buttigieg pointed out. "A pretty good place to begin would be to add a zero."

DOT also said it is pursuing several other safety-related actions, such as:

- Advancing a rule requiring two-person train crews.

- Targeting legacy tank cars – especially those carrying hazmats – for inspections and safety reviews.

- Deploying resources made available by President Biden's Infrastructure Law to upgrade and modernize rail infrastructure and to make safety improvements over the long-term.

- Evaluating new rules that would require electronically controlled pneumatic (ECP) brakes on HHFTs and other trains transporting large quantities of hazardous materials.

Democrat and Republican senators introduced legislation on March 1 that would stiffen safety standards for trains carrying hazardous materials and make rail car inspections more frequent.

In adherence to rail union wishes, the bill also would ensure that trains carrying hazmat shipments have two-person crews. The legislation also intends to boost fines for safety violations.

"Through this legislation, Congress has a real opportunity to ensure that what happened in East Palestine will never happen again," said Sen. J.D. Vance (R-Ohio), one of the bill's leading sponsors.

Another sponsor, Sen. Sherrod Brown (D-Ohio), declared, "It shouldn't take a massive railroad disaster for elected officials to put partisanship aside and work together for the people we serve – not corporations like Norfolk Southern."