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Western Ports Face Competition

Unhappy recent history arising from congestion and labor problems shocked the supply chain so profoundly that the Gulf and East Coast ports perennial threat to divert freight away from West Coast ports appears to be finally bearing fruit.

That is one of the conclusions of the May Industrial Real Estate report published by Yardi Matrix, a research firm that provides market intelligence about various segments of commercial real estate.

Past issues that plagued West Coast ports during the Covid 19 crisis seem to have cleared up by now but threaten to return. "After a prolonged period of bottlenecks and backlogs, the supply chain has normalized and the new normal for major U.S. ports appears to be emerging," YM observed.

"Eastern seaports have benefited from capital improvements, while Western ports have struggled with backlogs, a lack of industrial space and labor issues that spooked shipping companies."

Longshoremen's union labor talks covering 22,000 workers have remained stalled, although the actual impact on West Coast industrial markets has been minimal so far. Vacancy rates remain razor-thin and rent growth is robust, YM pointed out.

In the Inland Empire, in-place rents have grown 18.2% over the last 12 months, with a vacancy rate of 1.9%, while Los Angeles has seen 12.3% growth and a 2.0% vacancy rate.

Volume at nearly all major ports declined year-over-year in the first quarter, reflecting issues including the slowdown of consumer trade. But the impact has been more pronounced at ports in the western U.S., according to YM.

Through April 2023, container volumes were down year-over-year in eight of the top nine U.S. ports, with Houston (up 3.4%) the lone exception, based on reports from local port authorities.

Year-over-year volume was down at other major ports between 9.0% (Virginia) and 31.5% (Los Angeles). West Coast ports were down compared to pre-pandemic levels, while the major ports in other parts of the country remain up from 2019 levels.

Overall import volume fell 11.8% year-over-year in March, according to the U.S. Census Bureau. Consumer demand for goods has fallen steadily over recent quarters as pandemic restrictions have eased, allowing people to spend money on services again, while inflation has eaten away at their discretionary income, YM explains.

Further depressing import volumes is the process of destocking, it says. In response to supply-chain backlogs, many companies beefed up inventories. Inventory-to-sales ratios have remained elevated so far this year, and imports are unlikely to rebound until some existing inventories are cleared.

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Overall, the industrial market seems to be holding its own in the face of economic turmoil. National in-place rents for industrial space averaged $7.18 per square foot in April, an increase of three cents from March and up 7.3% year-over-year.

Large coastal markets continue to see the biggest gains in the average rate of in-place rents, which is reported to have grown by 18.2% in the Inland Empire, 12.3% in Los Angeles, 9.7% in New Jersey and 9.2% in Boston.

The national vacancy rate in April increased 20 basis points from the previous month to 4.1%. Industrial occupancy remains solid despite record-level new supply being delivered in recent years and an under-construction pipeline that represents 3.4% of stock, YM pointed out.

The lowest vacancy rates in the country are in Columbus (1.7%), the Inland Empire (1.9%), Los Angeles (2.0%) and Charlotte, NC (2.4%).

The average rate of new leases signed in the last 12 months rose to $9.58 per square foot through April, which is $2.40 more than the average for all leases.

Seeing a Downturn Coming

According to YM, occupier demand and absorption are cooling as consumer spending takes a hit from rising inflation and as companies tighten their belts as consensus economic forecasts call for a recession to start in the second half of 2023.

"To be sure, demand remains well to the positive side, but it is braking somewhat, particularly among consumer-related businesses, the company explained. "Firms that operate in the ecommerce and brick-and-mortar retail segments are trying to conserve cash and have become more conservative in projecting space needs."

Cited as a prime example is Amazon, which has contracted occupied space slightly in recent months by canceling some announced expansion plans, subleasing space and closing some facilities. Amazon remains the biggest industrial user and continues to expand, YM said its slowed growth, reflects the more cautious environment.

Nationally, 616.4 million square feet of new industrial space are under construction. An additional 721.9 million square feet are currently in the planning stages of development.

The first four months of the year saw 162.4 million square feet of industrial space delivered. Dallas–Fort Worth has had the highest amount of deliveries this year, with 17.6 million square feet of new space coming online.

"This is more than twice the amount of the second highest market, Indianapolis, which has delivered 8.3 million square feet so far in 2023," YM noted.

After decreasing for nine consecutive months, the warehousing and storage subsector added 4,000 jobs in April.
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"Warehousing and storage employment was already growing quickly in the second half of the last decade, but the pandemic-driven ecommerce boom led the subsector to add workers at a frenzied pace," YM reported.

However, warehousing and storage employment is now only slightly ahead of its pre-pandemic trendline. But in spite of this subsector cooling in recent months, there are twice as many warehousing and storage workers in April as there were at the end of 2016, YM said.

What does the future hold? Although the amount of space under construction is high, YM said that new starts are slowing, with 86.8 million square feet of new stock slated to begin construction this year. YM said this slowdown partially reflects concerns about slowing demand.

However, the biggest reason for reduced starts is tightened bank underwriting standards in the wake of the threatened and real failures at SVB Bank, Signature Bank, Republic and others.

"Construction debt remains somewhat unavailable, as banks are financing relationship customers; private equity is taking up some slack, but terms and cost are far less favorable for borrowers. the company said. "That means some projects won't pencil out or will need more equity to proceed."

YM also made the point that while industrial property values have cooled, they are still better than most other property classes.

In first quarter 2023 industrial market had its first negative quarterly return in in the MSCI/PREA U.S. AFOE Quarterly Property Fund Index. Industrial's appreciation return was -1.6% in the quarter. compared to -3.9% for the entire index.

Wash State Gets New Quota Law

Following other states' example, Washington has adopted a new law restricting production quotas that employers impose on warehouse workers.

California and New York recently adopted their own work quota laws, which are largely aimed at providing support for union organizing efforts targeting workers in Amazon's nationwide network of distribution centers. Other states like Connecticut also are considering similar measures to limit work quotas in DCs.

The Washington law will go into effect on July 1, 2024 and is said to strongly resemble New York's law, becomes effective on July 19 of this year.

The Washington law covers employers with at least 100 nonexempt employees at a single warehouse distribution center in Washington or at least 1,000 nonexempt employees at one or more warehouse distribution centers that are located in the state.

The industries covered by the new law are warehousing and storage; merchant wholesalers of durable and nondurable goods; and electronic shopping and mail-order houses.

The act defines quota as a work performance standard where an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period.

A first-time violation of the new law or any related rules can result in a civil penalty of $1,000. The state will create a schedule of enhanced penalties for repeat violations, up to $10,000 per violation

Quotas must include time for rest breaks, and reasonable travel time to rest and meal break locations, which must account for the architecture and geography of the facility, time to do work subject to the quota, and time to use the bathroom.

HR Pros Seek Best Use of AI

Human resources professionals are looking for the best and most responsible use of Artificial Intelligence and people analytics systems, according to recent research conducted by the Society of Human Resource Management.

People analytics is the practice of collecting and analyzing employee (or applicant) data to understand, improve and optimize business outcomes. AI-driven people analytics refers to applying computer algorithms to this data to generate workforce-related recommendations, predictions or decisions.

"HR leaders are increasingly looking to people analytics as a tool to answer key business questions, as 71% of HR executives whose organizations uses people analytics say that people analytics is essential to their organization's HR strategy," said Alex Alonso, SHRM's Chief Knowledge Officer.

"If HR professionals and leaders use people analytics and AI appropriately, they can make more effective decisions, improve the employee experience and impact the bottom line," he adds.

Among HR executives who use people analytics, both with and without AI, only 3% believe their organizations are very well prepared to deal with the potential lack of transparency around how AI makes decisions, called the "black box problem."

Of the 9% of organizations that do use AI-driven people analytics, only 19% of those polled are very confident that their AI-driven people analytics tools eliminate bias, while 70% are somewhat confident, and 11% are not confident their tools are unbiased.

Among those polled who say their organization uses people analytics, 82% say their organization uses it to assess employee retention and turnover and 71% use it to assess recruitment, interviewing and hiring.

The full SHRM research report, including seven best practices for organizations to consider, is available at: https://shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Pages/The-Use-of-People-Analytics-in-HR.aspx

Overtime Case Proves Costly

In May a federal jury returned a more than $22 million verdict – the largest recorded award under the Fair Labor Standards Act – against East Penn Manufacturing Co., Inc., one of the world's largest battery manufacturers.

"This case serves as yet another cautionary tale to employers to ensure compliance with federal (as well as state and local) overtime laws," say attorneys Benjamin Hinks and Danielle Jurema Lederman of the Bowditch & Dewey law firm.

Specifically, employers must track all hours that employees work and pay an overtime premium at the rate of time and one half for all hours worked over 40 in a given workweek, they warn.

The U.S. Department of Labor sued on behalf of more than 7,500 East Penn employees who were seeking unpaid overtime wages.

The DOL filed the lawsuit in 2018 based on claims that East Penn did not pay its employees for time spent changing in and out of protective gear and showering, protective measures needed to mitigate exposure to workplace hazards, such as lead.

The DOL argued that time spent performing these tasks must be counted as hours worked because the time was "necessary and indispensable" to the employees' work.

East Penn's failure to appropriately account for this additional work time, the DOL asserted, resulted in employees working more than 40 hours per week without being compensated for the overtime.

The court granted summary judgment in 2021 in favor of DOL but reserved the issue of damages for a jury to determine at trial.

The jury concluded that East Penn was required to pay the affected workers for this donning and doffing time as well as showering time, resulting in the landmark damages award. In addition to the more than $22 million awarded by the jury, the DOL is seeking liquidated (double) damages – an additional penalty available under the FLSA.

Brake Checks See Progress

The Commercial Vehicle Safety Alliance's 2023 Brake Inspections Day for trucks and busses put 773, vehicles out of service for improperly maintained equipment – 11.3% of the total inspected and an improvement from the 14.1% put out of service last year and 12.6% in 2021.

The CVSA brake day event involves unannounced roadside inspections conducted by state and provincial law enforcement personnel in the United States, Canada and Mexico.

This year, CVSA focused on capturing data on brake lining/pad violations. Brake lining/pad conditions can result in violations and affect a motor carrier's safety rating, CVSA stressed.

Of the 6,829 commercial motor vehicles inspected, 108 power unit and 87 towed unit lining/pad violations were identified, resulting in a total of 195 combined lining/pad violations.

CVSA said it places such strong emphasis on braking systems because they are the top vehicle-related out-of-service violation and endanger safety,

"The goal of this program is to reduce the number of highway crashes caused by faulty braking systems on commercial motor vehicles by conducting roadside inspections and educating drivers, mechanics, owner-operators and others on the importance of proper brake inspection, maintenance and operation," CVSA said.

The alliance also holds an annual Brake Safety Week each year, also involving roadside inspections of commercial vehicles, with this year's event scheduled for Aug. 20-26.

Both events are part of Operation Airbrake, a partnership with the U.S. Federal Motor Carrier Safety Administration, Canadian Council of Motor Transport Administrators, and Mexico Ministry of Infrastructure, Communications and Transportation.

New Laws Drive Up Drug Use

The liberalization of drug use laws across the country – particularly when it comes to marijuana – appears to be driving a notable increase in workforce positive drug test results, according to the annual research released by Quest Diagnostics, the country's largest drug testing services provider.

The percentage of employees in the general U.S. workforce testing positive for marijuana following an on-the-job accident increased to its highest level in 25 years in 2022, Quest reported in its latest annual research report on the extent of drug abuse.

In 2022, post-accident marijuana positivity of urine drug tests in the general U.S. workforce was 7.3%, an increase of 9% compared to the 6.7% reported in 2021, the company said, caused largely by the growth in cannabis use.

"This historic rise seems to correspond with sharp increases in positivity for marijuana in both pre-employment and post-accident drug tests, suggesting that changing societal attitudes about marijuana may be impacting workplace behaviors and putting colleagues at risk," explained Keith Ward, Quest's general manager and vice president for employer solutions.

The increases in post-accident marijuana positivity in recent years correspond with legalization of marijuana in more states. In 2012, Colorado and Washington became the first states to legalize marijuana for recreational use.

Since then, 19 additional states and the District of Columbia have legalized the recreational use of marijuana and 38 states (plus D.C.) have legalized medical use, although either kind of use remains illegal under federal law.

"State legalization of the drug creates new challenges for employers," observes Katie Mueller, a senior program manager at the National Safety Council, whose work responsibility focuses on cannabis safety.

"Intoxicating cannabis products, including marijuana, can have a major impact on safety at work and have been proven to slow reaction time, impact memory and impair skills essential to driving," she adds.

The Quest data provide compelling evidence that this increased use of cannabis products by employees can contribute to greater risk for injuries in the workplace, Mueller emphasized. "It is imperative employers take the proper steps to create and maintain a policy that addresses cannabis use, build a safety-focused culture and educate the workforce to keep all workers safe on and off the job."

Amphetamines positivity also contributed to the increase in drug use, Quest stresses. Positivity for marijuana in the general U.S. workforce rose by 10.3% (from 4.3% positivity in 2022 versus 3.9% positivity in 2021). In addition, amphetamines positivity increased 15.4% (from 1.5% positivity in 2022 versus 1.3% positivity in 2021).

The new peak follows a steady rise in post-accident marijuana positivity every year from 2012 to 2022. In that 10-year time frame, post-accident marijuana positivity increased 204.2%.

Quest said the increase in amphetamines positivity also is notable, given the addictive potential and health risks associated with this class of drugs.

The rising overall drug positivity rate for general workforce from urine testing was observed widely across U.S. industries. Over the past five years, the workforce positivity rate climbed in most industry sectors, the research found.

The Quest Diagnostics Drug Testing Index report is based on more than 10.6 million identified urine, hair and oral-fluid drug test results reported between January and December 2022 for employees in the private sector, including those in safety sensitive jobs like pilots and truck drivers.