**Archbright™**

**Insights Newsletter**

**January 2017**

**Employee Learning and Professional Development at Archbright University**

At Archbright, we help organizations achieve their learning goals through the corporate university format—a proven way to increase your company’s commitment to employee learning and professional development.

Our 2017 Course Catalog is available on our website and registration is now open.

Some of our most popular courses include:

* **Supervisory Skills** dramatically boosts your supervisors’ effectiveness through the use of consistent models for everyday supervision activities. The secret to its success? Structured activities where participants actively practice their new skills. *(21 hours over 3 days)*
* **Hiring Winners** covers the essential skills to use before, during, and after the interview. Participants will leave class with a solid interview preparation plan, specific questions to ask, and a candidate scoring method. *(7 hours)*
* **Time Management** teaches a four-step time management process to clarify priorities and create a schedule that results in greater productivity and increased personal satisfaction. *(3.5 hours)*

Archbright University training can be accessed through:

* **Public Enrollment**, instructor-led classes held at our Kent, Seattle, and Spokane locations.
* **Virtual and Web-based**, these online classes are delivered live by an instructor or available on-demand.
* **Onsite Classes**, available exclusively for Archbright members and delivered at your location—maximizing the benefits of group learning in the workplace.

Our classes empower managers, cultivate leadership, and make a lasting impact in your organization. For more information, visit Archbright.com or call your Account Executive at 206.329.1120 or 509.381.1635.

**Keeping an Eye on Off-Duty Conduct**

Employees’ off-the-clock behavior has practical implications for the workplace. However, in many cases, employers seeking to regulate off-duty behavior find they are constrained by state and federal law. For example, California is among a group of states that have laws to protect employees from adverse employment actions arising from lawful off-duty conduct.

Washington and Idaho do not have any such law. Accordingly, employers in Washington and Idaho are more free to implement policies aimed at off-duty behavior. There are a few areas that employers can and should consider regulating:

**Email “check and reply”.** Non-exempt employees can be tempted to check their emails remotely when not at work; likewise, supervisors sometimes call non-exempt employees off hours looking for immediate responses. Under federal wage and hour law, this time is considered time worked and must be compensated. To limit these unintended pay obligations, employers must train managers not to text or email non-exempt employees after hours. Alternatively, employers should train non-exempt employees to update their time sheets to account for any “check and reply” work or strictly prohibit the practice.

**Marijuana Use.** Employers need not tolerate impairment at the workplace. Washington and Idaho employers wishing to implement zero tolerance drug policies are within their rights to do so. This is even true in Washington where private recreational marijuana is accepted. It is prudent to notify employees that failing a drug test on a Monday after lawfully indulging in medicinal or recreational marijuana over the weekend may cost them their jobs.

**Harassment.** Harassment between employees doesn’t necessarily always happen on the business premises. Employees must be made aware that their off-the-clock behavior, like sexual harassment during a business trip or on their social media platform, violates company policy and employees are held accountable for such behavior 24/7.

For questions about off-duty conduct, please contact the HR Hotline.

**Source:** Archbright Legal Staff

**Contentious DOL “Persuader Rule” Permanently Blocked**

The federal district court in Texas that deemed the DOL’s controversial persuader rule “defective to its core” back in June has converted its preliminary injunction into a permanent one, thus blocking implementation of the rule on a nationwide basis. The controversial final rule would have expanded reporting requirements when employers hire third-party consultants (including attorneys) to help craft and deliver messages to workers about unionization.

**Source:** CCH

**Idaho Supreme Court Declines to Expand Employee Rights to Sue for Workplace Injuries**

In two recent rulings, the Idaho Supreme Court refused to alter the current state of the law that bars employees injured at the workplace from pursuing civil claims against their employers. Idaho state law provides that the benefits provided to employees by the Workers’ Compensation Act are the sole remedy available to injured employees. However, it also provides for one exception: where an employee’s injury or death was caused by the willful or unprovoked physical aggression of the employer, its officers, agents, or employees.

In November 2016, this exception was the subject of two lawsuits against one employer in Northern Idaho. The judge declined to broaden the scope of the law, clarifying that to succeed the employee must prove that the employer either (1) intended specific harm to the employee and undertook actions to that end, or (2) affirmatively knew or consciously disregarded knowledge that the employee would be injured. Thus, the Court reaffirmed that only in the most egregious of circumstances will an employer face civil liability for unsafe work conditions in Idaho.

Washington employers may note that the law is substantially similar in Washington state. The Washington Workers’ Compensation statute also allows employees to recover where an employer intentionally acts to deliberately injure its employees. However, like in Idaho, this law is narrowly construed to capture only the very worst cases of employer misconduct.

**Source:** Archbright Legal Staff

**New Resources Delineate ADA Protections for Applicants/ Employees with Mental Health Conditions**

A new resource document issued by the EEOC underscores that under the ADA, job applicants and employees with mental health conditions are protected from employment discrimination and harassment based on their conditions and also may have a right to reasonable accommodation at work. Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights answers questions about how to get an accommodation, some types of accommodations, restrictions on employer access to medical information, confidentiality, and the role of the EEOC in enforcing the rights of people with disabilities. The commission has also provided a companion document, The Mental Health Provider’s Role in a Client’s Request for a Reasonable Accommodation at Work.

Announcing the resource documents, the EEOC noted that charges of discrimination based on mental health conditions are on the rise. During fiscal year 2016, preliminary data show that the EEOC resolved almost 5,000 charges of discrimination based on mental health conditions, obtaining about $20 million for individuals with mental health conditions who were unlawfully denied employment and reasonable accommodations.

**Privacy.** The question of privacy is addressed in the resource document for applicants and employees. In most situations, employees and applicants are able to keep their conditions private. Employers are only permitted to ask medical questions (including questions about mental health) in four situations:

* + When an applicant or employee asks for a reasonable accommodation.
  + After an employer has made a job offer, but before employment begins, as long as everyone entering the same job category is asked the same questions.
  + When an employer is engaging in affirmative action for people with disabilities (such as an employer tracking the disability status of its applicant pool in order to assess its recruitment and hiring efforts, or a public sector employer considering whether special hiring rules may apply), in which case applicants and employees may choose whether to respond.
  + On the job, when there is objective evidence that an employee may be unable to do his or her job or that he or she may pose a safety risk because of his or her condition.

Applicants and employees also may need to discuss their conditions to establish eligibility for benefits under other laws, such as the FMLA. When applicants and employees do talk about their conditions, employers are prohibited from discriminating against the applicant or employee and must keep the information confidential, even from coworkers.

**Reasonable accommodations.** The companion document for mental health providers gives several examples of common reasonable accommodations (which it describes as “a change in the way things are normally done at work that enables an individual to do a job, apply for a job, or enjoy equal access to a job’s benefits and privileges”):

* + altered break and work schedules (e.g., scheduling work around medical appointments);
  + time off for treatment;
  + changes in supervisory methods (e.g., providing written instructions, or breaking tasks into smaller parts);
  + eliminating a non-essential (or marginal) job function that someone cannot perform because of a disability; and
  + telework.

The EEOC notes that “where an employee has been working successfully in a job but can no longer do so because of a disability, the ADA also may require reassignment to a vacant position that the employee can perform.”

**Source:** CCH

**HR FAQ**

**Question:** We want to start giving out signing bonuses to lure talented candidates to our organization in this highly competitive marketplace. However, we are worried that some may leave before a year is up and we will be shortchanged. Can we have them sign an agreement that they will repay the bonus if they leave anytime during their first year?

**Answer:** You can have them sign an agreement, but recouping the money will be extremely difficult. Typically, signing bonuses are only given to exempt personnel and you cannot deduct such reimbursements from the wages of exempt employees. Your only recourse may be taking them to small claims court. Deducting the bonus from an accrued vacation payout is permissible, but it is unlikely the individual will have accrued enough vacation to cover the reimbursement upon separation of employment. Here are some other thoughts:

1. If your budget requires you to mitigate any possible loss of funds in the first year, do not call this hiring incentive a “signing bonus”. The term implies the individuals are eligible for the money for simply quitting their current job and accepting your offer. To require them to give up the money should they have a compelling reason to leave employment, contradicts the intent. After all, they did “sign up” to join your company and thereby qualified for the bonus,
2. If you do want to provide some hiring incentive, call it a “stay” bonus instead and distribute the bonus in installments (e.g. quarterly or half yearly) or in a lump sum payment after one year has elapsed, OR
3. Provide signing bonuses in smaller amounts to prevent any early departures hurting the business as much. A $2,000 loss may be easier to swallow than a $10,000 loss.

Featured Class: HR Fundamentals

Are you new to Human Resources? Have you been assigned HR duties in addition to your primary field (such as accounting)? Or are you an HR professional who wants to review and solidify the basics? Attend HR Fundamentals and learn how to:

* + Resolve common employee relations issues
  + Manage ethical dilemmas
  + Comply with Wage and Hour requirements
  + Prevent workplace harassment and discrimination
  + Manage leaves of absence fairly and legally
  + Conduct an audit of your record retention processes

Upcoming Classes: Seattle, Jan 18 and 19 | Kent, March 6 and 7 | Spokane, May 17 and 18

**All the Lives within Us**

In their book, *Designing Your Life: How to Build a Well-Lived, Joyful Life*, the authors offer the provocative idea that throughout our lifespan, each of us lives many lives – and potentially could live many more and feel just as fulfilled by one as the other. What can make us feel stuck is our belief that there is the one “best/true/only” life out there that we must discover and pursue if we are to reach our full potential. We tend to focus on what “it” looks like and what we need to do to get “there.” If instead we paid attention to what energizes us, to what we have passion for, we could trust our inner wisdom to lead us to any of the many fulfilling lives we could have. We don’t need to know ahead of time precisely what our well-lived life looks like.

The other night I attended a meeting of a professional group where, starting with those who had been in the organization development field the longest and advancing decade by decade, people shared their stories of how they came to do this work. From those who started in the 1960’s to the most recent entrants, people described vastly different circumstances, spanning the globe and across a broad array of industries, public and private organizations, and educational contexts. One of the most frequent— and telling— comments was a variation on “I was doing it, but didn’t know I was doing it.” In other words, these were people who were drawn to work that called them, that interested them so deeply that they felt compelled to do it, even before it had a common name.

The authors of the Design book sum it up this way: “We all contain enough energy and talents and interests to live many different types of lives, all of which could be authentic and interesting and productive. Asking which life is best is asking a silly question: it’s like asking whether it’s better to have hands or feet.”

So, as we look to the start of a fresh new year, what’s calling to you?

**Source:** Susan Brandt, MA, SPHR, Director, HR Solutions at Archbright

**Featured Service: Archbright Recruiting**

**40 percent of employers say they struggled to find talented candidates to fill jobs in 2016, according to ManpowerGroup’s recent Talent Shortage Survey.**

Can’t find quality candidates? No time for recruiting? We can help.

In today’s job market, companies are struggling to find not only candidates, but the time to focus on recruiting.

For 60 days, Archbright’s recruiting consultants follow our proven methodology to source the best candidate pool possible for your open position. We work closely with your hiring manager to create a plan that supports your company’s culture and management style.

And what’s more, you receive all of this for a one-time flat fee. From job posting to phone-screening applicants, we have you covered.

For help finding your next hire, visit Archbright.com, call us at 206.329.1120, 509.381.1635, or email info@archbright.com.

**OSHA 300 Log Rule Changes**

Most employers are aware that if you have 10 or more employees, your company is most likely required to keep a record of serious work-related injuries and illnesses (certain low-risk industries are exempt). The information that is recorded is kept on the OSHA 300 log. Minor injuries requiring first aid only do not need to be recorded. If an injury or illness is determined to be recordable, the employer has 7 days to record the case from the time they receive the information about the case. Employers are required to have a running log for each establishment each year, required to post a summary of their previous year’s log in the workplace from February to April, and maintain 5 years of previous logs.

Starting in 2017, many employers will now be required to electronically submit the OSHA 300 summary form of injuries and illnesses, as well as continuing with posting requirements.

* Establishments with 250 or more employees in industries covered by the recordkeeping regulation must submit information from their 2016 Form 300A by July 1, 2017. These same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.
* Establishments with 20-249 employees, in certain high-risk industries, must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

***OSHA will be releasing the website to submit the summaries in early 2017.***

In addition, the final rule includes provisions that went into effect in December 2016 that encourage workers to report work-related injuries and illnesses to their employers and prohibit employers from retaliating against workers. This rule can be satisfied by posting the already-required Washington State workplace poster. It also clarifies the existing, implicit requirement that an employer’s procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting. This means that many employer’s policies on how quickly an employee reports an injury to the employer, incentive programs, and post-accident drug testing policies could be out of compliance.

The log information and rule changes help employers, workers, and State and Federal agencies evaluate the safety of a workplace, understand industry hazards, and implement worker protections to reduce and eliminate hazards preventing future workplace injuries and illnesses.

For more information please contact us at 206.329.1120, 509.381.1635, or email safety@archbright.com.

**Top 10 OSHA Citations in 2016**

OSHA has released its list of the top 10 most cited violations in 2016. This list changes little from year to year and pulls statistics from dozens of agencies. The take-away from this list is for employers to ask themselves, “Would I find these at my workplace?”

* Fall Protection – General Requirements
* Hazard Communication
* Scaffolding
* Respiratory Protection
* Lockout/Tagout
* Powered Industrial Trucks
* Ladders
* Machine Guarding
* Electrical – Wiring Methods
* Electrical – General Requirements

**Monthly Webinar**

**OSHA 300 Recordkeeping**

**Thursday, January 19th 2:15 p.m.**

Topics include:

* Required Recordkeeping Forms
* Annual Requirements
* Retention and Updating
* Recordable and Non-Recordable Criteria
* Changes in reporting coming in 2017
* Frequently Asked Questions

This monthly webinar is complimentary for all members of our Workers’ Compensation and Retrospective Rating Programs. Attendees will receive an email approximately one week before the webinar with participation and login information.

For questions or more information on our webinar training, please contact safety@archbright.com.

The webinar is also available to members not enrolled in our Workers’ Compensation or Retrospective Rating Programs for a registration fee. Please visit Archbright.com or contact info@archbright.com for more information.

“Successful change comes from focusing on building the new, not fighting the old.”

**Please Notify Us of Staff Changes.** Please take a moment to contact us to correct any staffing changes for your organization, including email addresses. Email us at info@archbright.com.

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We welcome your comments and suggestions.

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