**Archbright™**

**Insights Newsletter**

**October 2017**

**Join Us for Our Annual Workplace Performance Symposium: The Changing Landscape of HR & Employment Law**

Archbright™ is pleased to announce our Annual Workplace Performance Symposium. The HR and Employment Law landscape is constantly changing and it is important for HR professionals and business owners to stay well-informed. We hope you can join us as Archbright experts cover the best practices, hot topics, and emerging trends that impact HR professionals every day.

Mark your calendars for Wednesday, November 8th from 9 am to Noon! This year’s topics include:

* Pets & Kids in the Workplace
* Recruiting & Retaining Top Talent
* Curing Your Ailing Culture
* An Agile Workforce – How Flexible Are You?
* Impact of the Current Administration on Employers
* Tackling the Stubborn Gender Pay Gap
* Generation Z

Also, new this year, we will be holding an Activity-based Workspace panel discussion which will center around the link between workspace and workplace performance as well as what changes are happening in the marketplace. Archbright’s CEO, Shannon Kavanaugh, and representatives from OpenSquare and Moss Adams will present.

Spend your morning with us. Mingle with other HR professionals! Meet the Archbright team. All are welcome!

When: Wednesday, November 8 | 9 am to Noon Where: Museum of Flight, South View Lounge Cost: FREE | a continental breakfast will be served

Registration for the Workplace Performance Symposium is now open at archbright.com.

**CEO Corner, by Shannon Kavanaugh**

**Diversity and Inclusion—What’s your statement?**

If you are a company committed to a diverse and inclusive culture, you need to not just think it, you may state it. Make your statement. Define it. Publish it to your internal and external stakeholders. A Diversity and Inclusion statement defines your stance and helps your employees know your commitment to it.

Archbright’s Statement:

At Archbright, we see diversity as everything that makes an employee who they are and we want all employees to be comfortable bringing their entire selves to work every day. We believe our individual backgrounds, perspectives, and passions help us grow and solve problems that move us all forward. We encourage and support both positive and learning interactions through workforce diversity that will help all employees feel comfortable encountering individuals with different life experiences.

We define diversity as the characteristics and attributes that make each one of us unique. Diversity has many dimensions, that may include, but are not limited to, ethnicity, national origin, nationality, religion, veteran status, sexual orientation, gender identification, and age. Even more broadly, diversity includes geographic location, work experience, family status, socio-economic class, and diversity of political thought. Our goal is to leverage the varied experiences and ideas that each individual brings for the good of the organization overall.

We also recognize that diversity is a cultural ethos – a way of thinking or acting that fosters inclusion and enhances our work lives and the quality of life in our communities. By embracing a culture of diversity, our programs and initiatives will consider whether it reflects our community and provides opportunities for those who are underrepresented in our profession.

But don’t just state it. Live it! We do…and we hope you do to.

**Moving from Diversity to Inclusion**

Do you know what you need to create an action plan for shifting from diversity management to inclusion?

As a start, a common definition of “diversity” and “inclusion” is needed. Diversity means all the ways we differ. Some of these differences we are born with and cannot change. Anything that makes us unique is part of this definition of diversity. Inclusion involves bringing together and harnessing these diverse forces and resources, in a way that is beneficial. Inclusion puts the concept and practice of diversity into action by creating an environment of involvement, respect, and connection—where the richness of ideas, backgrounds, and perspectives are harnessed to create business value. Organizations need both diversity and inclusion to be successful.

Many companies struggle and do not realize the full potential of a diverse and inclusive workforce. These organizations might still be focused on numbers and lack a complete understanding of the business imperative.

While diversity in organizations is increasingly respected as a fundamental characteristic, neither acceptance nor appreciation have equated to inclusive workplaces where unique vantage points of diverse people are valued.

Inclusion enhances an organization’s ability to achieve better business results by engaging people from diverse backgrounds and perspectives through participatory decision-making.

An organization’s journey to become inclusive begins with a critical but simple inquiry: what actions is my organization taking to foster an inclusive work culture where uniqueness of beliefs, backgrounds, talents, capabilities, and ways of living are welcomed and leveraged for learning and informing better business decisions?

Source: T. Hudson Jordan, Director, Global Diversity & Talent Strategies, Pitney Bowes, Inc.

**Help employees do the right thing!**

In a recent Forbes article, author Peter Georgescu wrote, “I got a recent report from JUST Capital that confirmed what I’ve believed all my life: that doing the right thing, in every aspect of business, leads not only to success, but fosters excellence and creates industry leaders. Over the past decade, the most ethical and just American companies have also proven themselves to be the most profitable. They lead their industries over the long term.”\*

Training at Archbright provides both the tools and motivation your workforce needs to do the right thing. Register for these classes at our Seattle or Spokane offices, or bring any of them to your location.

**FOR ALL EMPLOYEES**

Diversity and Inclusion in the Workplace: Learn to talk more comfortably about differences, and create an inclusive, collaborate work environment. Seattle, Oct. 23.

Tackling Ethical Issues: Increase accountability by giving employees a decision-making process to use in murky situations. Seattle, Oct. 30.

Workplace Harassment Awareness: Encourage sensitivity and respect among employees while limiting the potential for legal damages. Onsite and online, visit www.archbright.com or call 206.329.1120 for details.

**FOR SUPERVISORS AND MANAGERS**

Understanding Legal Issues for Supervisors and Managers: Assist leaders in identifying and handling situations where employees have legal protections. Seattle, Oct. 18. Spokane, Nov. 8.

**FOR HUMAN RESOURCE STAFF**

Active Shooter Preparedness and Response: Learn to recognize indicators of potential violence and develop an emergency action plan. Seattle, Oct. 17

HR Fundamentals: Give new HR staff the foundation they need to carry out their duties with legal compliance. Seattle, Oct. 9-10.

Conducting Effective Internal Investigations: Learn to complete and document investigations of misconduct legally and fairly. Seattle, Oct. 31

Understanding Wage and Hour Law: Protect your organization from inadvertent violations in this confusing area. Seattle, Nov. 1

*\*”Doing the Right Thing Is Just Profitable,” Forbes.com, July 26, 2017*

**Post-Accident Drug Testing: What is Reasonable Possibility?**

Testing for drugs following an on-the-job accident or injury has been a common employer policy for many years. However, OSHA’s updated rule that became effective in 2016 requires employers to carefully consider whether their drug testing policies comply with the new guidance.

OSHA’s final rules require employers to implement a “reasonable procedure” for drug and alcohol testing that does not deter reporting of incidents. OSHA stipulates that drug testing policies should limit post-accident testing to situations where there is a reasonable possibility that employee drug use contributed to the accident, and for which the drug test can determine whether impairment by the employee led to the accident or injury. Drug testing cannot be used by the employer as a form of discipline against employees who report an injury or illness, but only as a tool to evaluate the root cause(s) of the workplace accident. Additionally, OSHA prohibits employers from requiring employees to report accidents or injuries “immediately” but rather, “within a reasonable time.”

So, what is “reasonable possibility”?

Most employers are familiar with “reasonable suspicion” testing, which requires an employer to be able to articulate specific observable indicators of the employee’s impairment prior to initiating a drug test. The standard for reasonable possibility is not the same as reasonable suspicion – it is lower. For example, if an employer does not know the cause of an accident, but there is a reasonable possibility that the results of a drug test could provide the employer insight into the root cause(s) of the incident, it would be reasonable to require a drug test. However, employers must be careful to test all employees whose conduct could have contributed to the incident, not just the employee that was injured. Conversely, drug testing an employee whose injury could not possibly have been caused by drug use would violate the OSHA rule.

For those employers who are required to test under Department of Transportation regulations, continued testing is allowed under the new OSHA rules because conducting testing in those circumstances is not considered retaliatory.

Employers who do not comply with these new rules face serious penalties for each violation. Employers are encouraged to review and update company policies and procedures regarding post-accident drug testing. Contact Archbright Advice & Counsel for assistance.

Source: Joy Sturgis, HR Advisor at Archbright

**Employers Look to Reduce Work-From-Home Options, But Job Candidates Not on Board**

While there is a trend among some larger companies of bringing remote workers back into corporate offices, candidates still expect work from home options, according to new data from the MRINetwork 2017 Recruiter Sentiment Study. Increased collaboration, creativity, mentoring and innovation are employers’ intent, but they may be alienating top talent in the executive, managerial and professional labor market—a sector that is candidate-driven and challenged by talent shortages across many industries.

The refocus on in-office work environments comes at a time when many candidates demand work from home options during the interview process. According to the Study, which polled 265 MRINetwork executive recruiters worldwide, along with 100 employers and 263 candidates across the U.S., 68 percent of recruiters and 53 percent of employers state candidates expect to work remotely somewhat often to very often. Over half of surveyed candidates say that having a work from home option is somewhat to extremely important as they consider a new job.

“The U.S. unemployment rate is 2.8 percent within the executive, managerial and professional sector, so companies that fail to provide work from home options are definitely missing out on key talent,” observes an MRINetwork recruiter that participated in the survey. “In-demand candidates have choices. The more specific or rare their skill set is, their options increase, especially if they work in a field where competition for candidates is fierce. If they don’t want to relocate or work five-day weeks in an office environment, they may turn down a solid offer if they can’t work remotely.”

Companies must formulate a well thought out plan to successfully implement a work from home program. “This necessitates drawing up formal guidelines and finding

the right technological tools, as well as hiring people that can thrive in a remote working environment,” says Nancy Halverson, General Manager for MRINetwork. “Once in place, the program requires oversight and tweaking to make it sustainable and successful. Ultimately, to gain the full benefits you have to make sure remote workers are fully engaged and feel just as much a part of the team as your in- office staff.”

“The ability to work from home is here to stay,” concludes Halverson. “Collaboration and innovation are vitally important, but technology is continually advancing, empowering remote workers to be indispensable contributors to their in-office teams. Ultimately smart employers will find their workforce is stronger and more effective when it creates an environment generating productivity from both work from home and in office workers.”

Source: MRINetwork

**Crunching the ‘Hours Worked’ Number Lets Employer Avoid FMLA Interference Claim**

No matter which way an employee tried to count her hours worked, she came up short of the requisite 1,250 hours worked during the 12 months preceding her requested taking of leave, she was not an eligible employee under the FMLA, a federal district court in Iowa ruled. Her firing for accumulating too many absences when she did not report to work the day she requested leave to care for her adult son, who had been shot and was hospitalized in intensive care, was not FMLA interference.

Actual hours worked. Her claim that she should not have been fired because she was entitled to FMLA leave, turned on only a single element: whether she was an eligible employee, since her employer contended she had not worked at least 1,250 hours during the previous 12-month period.

The employee claimed that she actually worked 1,250.4 hours in the 12-month period prior to her request, and the employer recorded a total amount of 1,320.7 hours—but those hours included paid holidays (56) and vacations (40), as well as other hours (floating holidays—16) that would not count for FMLA eligibility purposes. In the employer’s view, she worked only 1,209.6 “regular hours.”

Clock-in time. Some of the discrepancy resulted from the employee pointing to her clock-in times; however, under the union contract, although employees could clock in up to 15 minutes before a shift, they were not allowed to begin work until their shift officially began. The employee had not identified anything in the record establishing that she had worked and was paid for the periods between her clock-in/clock-out times and the beginning and end of each scheduled shift during the preceding 12 months. Thus, those added hours calculated from the clock-in/clock-out times did not count toward the requisite 1,250 hours because they were not hours actually worked.

Half-hour meal breaks. Half-hour meal breaks were automatically deducted from hours the employee worked, and she pointed to meal breaks she worked through during eight days when she was training to obtain her forklift license. Even though the company contended the employee did not follow the correct procedure for notifying it that these were hours worked, the court accepted this allegation as true, bringing her total number of hours worked up to 1,213.6.

Employer-directed medical attention. The employee also tried to include the hours she had spent at (or traveling for) medical appointments during the 12 months before she was fired, which her employer said did not count as hours worked. But under the FLSA, “time spent by employees in waiting for and receiving medical attention on the premises or at the direction of the employer during the employees’ normal working hours on days when [they are] working constitutes hours worked”. This could have helped the employee—except that the 115.7 hours for which she had been paid under the employer’s workers’ comp policy when she left work to attend medical appointments related to her work injury were already included in the total 1,209.6 “regular hours.”

As for the 56.87 additional hours she claimed she had spent either at or traveling for workday appointments, the appointments were prior to her scheduled workday and not during “normal working hours” on days when she was working, so none of those hours counted. Finally, the 32.32 hours spent at or traveling for medical appointments while she was on workers’ comp leave, although “at the direction of her employer,” also did not count because, again, they did not occur on days she was working. Even if they had, noted the court, she would still come up short by more than four hours. Because the employee was not eligible due to not having worked the 1,250-hour minimum during the 12 months preceding her request for leave, the court found her FMLA interference claim failed as a matter of law.

Source: CCH

**HR FAQ**

Question: We have a sales rep who spends the bulk of her time in the office making phone and Internet sales and four times a year she attends trade shows out of state to meet face to face with a lot of our customers. Her territory is growing and she is beginning to work more than 40 hours a week and is asking for overtime pay. We do not believe she is entitled to overtime because she receives sales commissions, but she is insistent. What can we tell her?

Answer: She is right. She is entitled to overtime pay for all hours worked over 40 each week. There are only five white collar exemptions from overtime pay and only one covers sales representatives. Since she works in a sales capacity, the only way for her position to be exempt from overtime pay under state and federal law requirements is if she works as a “outside” sales representative. “Outside” sales reps make sales at the customer’s place of business or, if selling door-to-door, at the customer’s home and spend the majority of their working time away from the employer’s office. Outside sales does not include sales made by mail, phone, or Internet unless such contact is used merely to assist with personal outside sales calls.

The issue of how she is paid is irrelevant to the situation. There are many employees who are paid by commission and remain non-exempt; this means they must track their time and are entitled 1.5 times their regular pay for all hours worked beyond 40 in a workweek. Since her pay is irregular due to her commission status, the overtime rate must be calculated weekly by dividing her total weekly commissions by the number of hours she worked that week. The overtime rate will be 1.5 times that calculated rate. Since her work status is hourly, her regular rate of pay can never be below the Washington state minimum wage ($11.00) or the applicable Seattle minimum wage if she works in Seattle. The bottom line is “Inside” Sales Reps will not qualify for exempt status under the administrative, executive or professional – white collar exemptions. Inside Sales Reps are all eligible for overtime pay.

**What’s All the Buzz About Coaching? Building a Coaching Culture to Foster Employee Engagement**

Why is it that we do not question professional athletes and performers having coaches, but seldom realize that getting to peak performance on the job also benefits from an outside perspective? Studies show that organizations that have built coaching cultures have higher employee engagement (60% engagement compared to 40%) and higher revenue growth (63% above their industry peer group compared to 45% in all other organizations). \*

What is a coaching culture? It’s an organization where leadership and employees not only value coaching, they also have access to coaching and spend time on a weekly basis in coaching activities.

What is coaching and who are coaches? Chances are you worked with a coach sometime in your life—sports, performance arts, school or at work. That person, who saw your potential, who had your best interest in mind who guided, prompted, encouraged, and suggested ways for you to improve.

Coaching is a relationship with either a professional coach practitioner or a manager/leader using coaching skills to create awareness and support behavior change. A key tenet of coaching is the principle that the person being coached is resourceful

and capable. By holding that belief, the coach partners with the individual to help them recognize strengths and limitations and to strategize ways to solve workplace problems, such as a difficult working relationship, an unproductive work group, or an area in the organization in urgent need of change.

Typically, an external coach is called upon to work with executives, senior leaders, and high performers who either need a boost of confidence, need to prepare for succession, lead change efforts or could use some behavioral course corrections.

At Archbright, our coaches typically start the coaching process with a series of self-assessments and 360-reviews to increase self-awareness and determine focus areas.

Confidential coaching conversations take place over time allowing for the individual to integrate their learnings. A typical engagement takes place over three to four months.

Developing managers to coach employees is a powerful strategy to boost engagement. Coaching for Success is a 3.5 hour workshop and is included in our Supervisory Skills course. It is a fantastic way to help your managers create a coaching culture.

How has coaching made a difference? Here are some comments from our coaching members:

*“I sensed inefficiency in how I was using my time … I realized the importance of making adjustments and initiated several immediate changes…”*

*“It has made a meaningful and wonderful difference in my life and effectiveness.”*

*“Through my coach, she provided stimulating questions as well an organizing framework to help me think more clearly about, and use the knowledge and expertise that I already have about my own career and workplace and, at the same time, guided me in thinking with new creativity about my professional and personal challenges and development. It’s hard work but the resulting clarity and energy is well worth it.”*

*“Thank you for being the conductor who has helped keep me on the tracks when I might easily made the decision to be derailed.”*

For more information about our Leadership Assessment and Coaching Services, please contact your Account Executive at 206.329.1120 or 509.381.1635.

Source: Rose Singer, Sr. Consultant, Leadership & Organization Development at Archbright

*ICF\_HCI 2015 Coaching for Increased Engagement study.*

**Save the Date for the 2017 Corporate Counsel Institute on November 30**

Archbright’s Vice President of Labor & Legal Services, Kellis Borek, was selected to be a panelist on the Employment Law and Immigration Law Update panel at the Washington State Bar Association’s 2017 Corporate Counsel Institute. This will be a day of unsurpassed learning, discussion, development, and networking at the Washington State Convention Center.

The 60-minute panel starts at 3 pm on November 30th. Joining Kellis will be Cody Nunn of Fisher & Phillips and Robert M. Howie of Fox Rothschild LLP. The panel will be presenting to in-person and webcast audiences.

Visit their website for more information.

**Safety Committees**

Did you know that if you have 11 or more employees on the same shift at the same time you must have a safety committee? If you have 10 or fewer employees, you can choose to have safety meetings instead of a safety committee. All companies can benefit from an organized, engaged safety committee. The success of the committee will depend on the mission, personnel involved, responsibilities assigned and support from management.

The benefits of having an effective safety committee could be an increased awareness of safety issues, quick response to potentially unsafe conditions, cooperation between employees and management in solving safety issues, and a potential reduction in workers’ compensation insurance premiums and an increase in Retrospective rebates.

The primary job of every safety committee should be to encourage and maintain a safe work environment. A safety committee should help create a sense of ownership for your employees by giving them an opportunity to directly improve safety and reduce injuries within your company, while enhancing communication between management and employees. To achieve this, a commitment to safety must become a shared responsibility between management and employees.

Safety committee members are responsible for developing and reviewing safety procedures and policies, investigating and reviewing accidents and communicating safety issues or policies to company employees.

Join Archbright October 19 at 2:15, as we discuss the role of safety committees, how to form a committee and further explore opportunities to get committees engaged in injury prevention. For more information or if you have questions, please contact Archbright at 206.329.1120, 509.381.1635, or email safety@archbright.com.

**Improve Employee Engagement**

Understanding and improving employee engagement is an important part of any high performing business. Employee engagement can be defined as “a heighted emotional connection that an employee feels for his or her organization, that influences him or her to exert greater discretionary effort to his or her work (Soldati, 2007).” In other words, employees are energized about their organization, want to be part of the overall success of the organization, and are willing to go above and beyond to make it happen. Also, according to Gallup (State of the Workplace 2017), 68% of employees in the U.S. are disengaged.

This is unfortunate because engaged companies consistently outperform their unengaged peers.

Did you know that employee engagement can also have a profound effect on safety outcomes? According to Gallup, organizations with employee engagement scores in the top quartile had 70% fewer safety incidents compared to organizations in the bottom quartile. Improving employee engagement in safety activities can have a profound effect on safety outcomes.

How can we increase employee safety engagement in the workplace? Improving safety engagement can start by including employees in the safety conversation. Simply asking them to give input and participate in improving their own and their coworker’s safety can be very engaging. Your safety committee can also be a powerful tool for increasing engagement. By giving your committee the voice, the tools, and the support necessary to effect positive change, engagement will improve along with your safety outcomes. Another important way to improve engagement is to give frequent positive reinforcement and recognition for a job well done. To inspire engagement, you want employees to take ownership of their safety program and outcomes, rather than have the directives come from management. Employees who own their safety program will ultimately be engaged employees.

**Monthly Webinar**

Safety Committees

Thursday, October 19, 2017

2:15 p.m.

An effective safety committee unites workers and management in their commitment to workplace safety. It is based on the principle that management and the workforce share in the responsibility for creating and maintaining a safe and healthy workplace. This webinar will cover the basics for employers who are forming new committees or looking at ways to improve on existing committees.

Topics include:

* Requirements
* Creating an effective committee
* Roles & purpose
* Meeting organization
* Getting the most out of your committee
* Documentation

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.

Safety is a State of Mind. Accidents are an Absence of Mind.

Did You Know?

Signs of a Disengaged Workforce

* Employees don’t report minor injuries or hazards
* Low participation in safety committees and other safety-related meetings
* Lack of respect for the safety program; feeling that management is not serious about it
* Employees regularly break the safety rules if they think they won’t get caught
* Safety professionals are viewed as “cops”
* Safety performance doesn’t improve despite adequate L&I compliance, leadership commitment, training, etc.

**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.

Email: info@archbright.com | Georgetown Office: 5601 6th Ave S, Suite 400, Seattle WA 98108 | Phone: 206.329.1120 | Web: www.archbright.com