**Archbright™**

**Insights Newsletter**

**April 2018**

**Washington State Adopts “Ban the Box”**

On March 13, 2018, Washington Governor Jay Inslee signed into law the Fair Chance Act, which now extends “ban the box” protections to both public and private employers throughout the state of Washington.

Under the law, employers in Washington may no longer require job applicants to check a box on an employment application form indicating whether they have ever been arrested or convicted of a crime. Nor may employers exclude applicants with convictions in blanket statements in their job postings. The Fair Chance Act is designed to allow otherwise qualified applicants with arrest records from being automatically disqualified for the position. Limited exceptions to the Act include an employer hiring a person who will have unsupervised access to children or vulnerable persons, and employment by a general or limited authority Washington law enforcement agency.

Employers may continue to require background checks and inquiries about job applicants’ conviction records after the initial screening or as part of a conditional offer of employment. The Act does not impact how a background check is done, but rather when a background check is done.

Compliant application forms are available to Gold and Silver members in the HR Toolkit on the Member Home page of the Archbright website.

Please contact an Archbright HR Advisor at 206.329.1120, 509.381.1635, or hrpro@archbright.com with any additional questions.

**Retaining Top Talent through Catalytic Coaching**

The labor market is tightening. I know, it’s been a tight market for some time now. But don’t you feel it? It’s getting worse. The unemployment rate in Washington State is 4.7%. Wow. But let’s look at the Supply/Demand situation. View your county details at https://esd.wa.gov/labormarketinfo/supply- demand-report. What you will find is that to fill your open seats…you will need to attract from a pool of candidates who already have a job!

That’s why attracting and keeping workers with the right skills is one of the top concerns that keep CEOs awake at night. We’ve all heard about how to attract top talent through things like unique benefits or pay. Both of these things are important…very important… but in today’s market, you must do more. How do you retain talented employees and keep them engaged in your organization as they develop professionally?

This month, I’m hosting CEOs at an upcoming event held at The Museum of Flight on this topic!

April 10th, 7:30 am to 9:30 am —

The Revolving Door: Retaining Top Talent through Catalytic Coaching

RSVP to cdanielson@archbright.com to reserve your seat!

**New Virtual Class! Attend Virtual Workplace Harassment Awareness on April 9**

These classes are delivered live by an instructor from the comfort of your home or office.

In today’s business climate, it is essential for employers to take proactive steps toward preventing harassment in the workplace. This includes training employees

and managers to be sensitive to comments, gestures, behaviors, or mannerisms that may be construed as harassment or creating a hostile work environment.

The aim of Workplace Harassment Awareness is to encourage mutual understanding, sensitivity, and respect among employees. After completing this course, participants will be able to:

* Recognize discrimination
* Recognize harassment
* Know what to do if they are a target or witness to harassment
* Act within the boundaries of respectful workplace behaviors

The final 30 minutes of the session is for Managers and Supervisors only. This module offers clear guidance on how to recognize and prevent harassment, and explains a supervisor’s responsibilities in responding promptly and appropriately.

90 minutes for All Employees

120 minutes for Supervisors and Managers Only

Two Available Sessions:

Morning Session: 10am to 12pm | April 9

Afternoon Session: 2pm to 4pm | April 9

Cost: Gold, $49 | Silver, $56 | Bronze, $63

**Presenting … The Archbright Safety Team**

Scott Bradley is the Director of Workers’ Compensation Services at Archbright and has been with the team since 2004. He currently oversees both the Safety/Loss Control and Claims Management teams. He has over 14 years of experience analyzing “Group” as well as “Individual” retrospective rating plans to include performance and plan design. He has direct oversight of the Archbright Group Retrospective Rating programs, as well as individual programs throughout the state of Washington.

Tiffany Knudsen is a Safety/Loss Control Consultant at Archbright and has been with the team since 2006. She currently oversees specifically assigned Archbright Retro participants and provides them with financial analysis and safety- related assistance. She has over 14 years’ experience in the manufacturing industry, emergency medical response and EMT instructor training. She also oversees Archbright’s Medic First Aid training programs.

Shannon Elliott is a Safety/Loss Control Consultant at Archbright and has been with the team since 2012. He currently oversees specifically assigned Archbright Retro participants and provides them with financial analysis and safety-related assistance. He holds more than 10 years’ experience in safety coaching and developing sustainable safety programs.

Tim Lundin is a Safety and Loss Control Consultant at Archbright and has been with the team since 2013. He currently oversees specifically assigned Archbright Retro participants and provides them with financial analysis and safety-related assistance. He spent many years as an account manager with Washington State Labor & Industries and has an extensive knowledge of Retrospective Rating.

Randy Pickett is a Safety/Loss Control Consultant at Archbright and has been with the team since 2016. He currently oversees specifically assigned Archbright Retro participants and provides them with financial analysis and safety related assistance. Randy has over twenty years of experience in both safety and manufacturing.

William Webb is a Safety/Loss Control Consultant at Archbright, joining the team in 2017. He currently oversees specifically assigned Archbright Retro participants and provides them with financial analysis and safety-related assistance. He comes to Archbright with over eight years of experience in the maritime oil and gas industry.

**Washington Considers Ban on NDAs in Sexual Harassment Settlements**

Under a potential new Washington State law, employers may now struggle to keep settlements of workplace sexual harassment and assault claims under wraps. The “Time’s Up” and “#MeToo” movements continue to keep workplace sexual harassment and assault in the headlines, often revealing the use of non-disclosure agreements and confidential settlements. The use of non-disclosure agreements (“NDAs”) have been cited as key factors in keeping workplace sexual harassment issues silent for so long.

In an effort to shed more light on the broader issue of sexual harassment in the workplace, Washington’s legislature sent a bill to Governor Jay Inslee in early March that he is expected to sign into law. If signed, this new law would ban non-disclosure agreement clauses in settlements for sexual harassment or sexual assault. This law follows similar laws passed and legislative action taken in more than 10 states to ban NDA clauses in workplace sexual harassment out-of- court settlement agreements.

While these NDAs have seemingly protected harassers, the impact of NDAs and settlements is complicated. Multi- million-dollar settlements and NDAs often go hand in hand. Those out-of-court settlements, which all contained NDAs, exposed the victim to a threat of future lawsuit for breach of the agreement if the victim wanted to speak out about the harassment. In addition to the threat of lengthy, expensive legal proceedings is the threat of having to return the monetary portion of the settlement.

Further, even with a settlement agreement and NDA in place, the National Labor Relations Act protects employees who want to talk openly, including on social media, about workplace conditions and issues with a particular employer’s practices, including those concerning sexual harassment. Finally, employees who sign a NDA cannot legally waive their rights to still file suit with the federal or state agency charged with investigating workplace harassment, the Equal Employment Opportunity Commission, or in Washington, the State Human Rights Commission.

Archbright has resources to assist you with Workplace Sexual Harassment. Archbright University offers specific training courses in Harassment Awareness, Prevention, and Conducting Effective Internal Investigations for

HR professionals. Our Legal Team can assist in reviewing your employee separation agreements and NDAs to ensure compliance.

Source: Elizabeth Fell, Archbright Attorney

**Performance Reviews Described as ‘Disappointing’ and ‘Ineffective’ in Korn Ferry Survey**

A new survey of professionals by Korn Ferry (NYSE: KFY) shows that while significant amounts of time and energy are spent on annual performance reviews, they miss the mark for helping employees become better at their jobs. Of the more than 500 professionals surveyed, 75 percent said they have an annual performance review with their boss. However, nearly half of respondents (42 percent) said their annual performance review had no impact or was ineffective at improving their professional performance, and 43 percent said it had no impact or was unhelpful at helping them understand what to do more of or differently to improve future performance.

The survey found that “disappointing” was the top word to describe the performance review process.

“Organizations realize that managing business performance is a very dynamic process, so having a once-per-year meeting that hopes to both evaluate and improve performance is a tall ask,” said Korn Ferry Senior Client Partner Katie Lemaire. “It is still critical that employees receive regular feedback and companies have the opportunity to re-evaluate their processes.”

The survey found annual performance reviews take a large amount of time, with the largest percentage of respondents saying they spend 7 or more hours on their review.

“It’s critical that managers regularly have conversations about performance throughout the year, which is far more effective in driving performance improvement than trying to have a conversation about what people could or should be doing differently at the same time that you are sharing compensation information with them,” said Lemaire.

About the survey. The survey was conducted in January 2018 and garnered 538 responses.

Source: Korn Ferry / CCH

**New Focus on Sexual Harassment in the Public-Sector Workplace**

On February 28, the DOJ’s Civil Rights Division announced a new initiative to combat sexual harassment, the Sexual Harassment in the Workplace Initiative (SHWI), which focuses on workplace sexual harassment in the public sector. An earlier initiative, the Sexual Harassment in Housing Initiative, was announced in October 2017.

As part of the new initiative, the DOJ said it will continue to bring sex discrimination claims against state and local government employers with a renewed emphasis on sexual harassment charges. The DOJ

will work to develop effective remedial measures that can be used to hold public sector employers accountable where Title VII violations have been found, including identifying changes to existing employer practices and policies that will result in safe work environments.

Outreach. In addition, the DOJ will conduct outreach to state and local government employers that centers around five

critical areas:

Creating trusted and safe avenues for employees to report sexual harassment;

Ensuring management support for antidiscrimination policies and practices;

Implementing accountability measures to ensure the timely and effective resolution of sexual harassment complaints;

Adopting comprehensive anti-sexual harassment policies and procedures that include regular, tailored, and interactive training for employees; and

Providing safeguards against retaliation for persons who report sexual harassment and for the employees who support them.

“All Americans are entitled to work with dignity in a place that is free of sexual harassment,” said Acting Assistant Attorney General John Gore for the Civil Rights Division, in announcing the Initiative. “Through enforcement actions, effective remedial measures, and outreach, the Justice Department—under Attorney General Jeff Sessions’ leadership—will fight to eliminate sexual harassment among public sector employers.”

Source: CCH

**HR FAQ**

**Question:** My employees often want to work through lunch so they can leave 30-minutes early. Since it’s not paid time, do I have to let them voluntarily waive their right to the meal break?

**Answer:** No, an employer does not have to allow employees to waive meal periods just for their convenience. Although federal law does not require employers to provide meal periods to employees, many State laws, such as in Washington and Oregon, mandate that employers not only provide but also ensure that required meal breaks are taken.

In Washington, non-exempt employees who work more than five consecutive hours are entitled to a 30-minute unpaid meal break, not less than two hours nor more than five hours from the beginning of their shifts. No employee shall be required to work more than five consecutive hours without a meal period. Additionally, employees working three or more hours longer than a normal work day must be allowed at least one additional 30-minute meal period prior to or during the overtime period. Washington State allows an employee to voluntarily waive their right to an unpaid meal period. However, because of potential liability under wage and hour laws, if an employer allows employees to waive meal periods, there are certain practices that should be considered.

Create a waiver form. L&I does not require a waiver to be in writing, but in a recent court case, the Washington State Supreme Court affirmed that signed waivers are an affirmative defense to a wage and hour claim.

The waiver should clearly outline the employee’s meal break rights and include an acknowledgement by the employee that the waiver is voluntary. The waiver should also include an acknowledgement that the employee understands they may withdraw the waiver in the future by letting the employer know, in writing.

Ensure the waiver is completely voluntary. Supervisors may not pressure employees to waive or delay meal periods under any circumstances. All waivers must be voluntary and not requested or encouraged by the employer for production or business demands. Additionally, Supervisors should periodically remind employees of their rights to a meal break and ensure those with voluntary waivers want to continue the practice.

Review timecard records. If timecard records indicate a pattern of missed lunches, employers should proactively inform employees of their rights to a meal period – and if requested by the employee, ensure a voluntary waiver is placed in the employee’s file.

If an employee misses a meal period or is interrupted during a meal period, ensure employees are paid for that time and offered another opportunity to take an uninterrupted meal period.

In Oregon, an employee may not legally waive rights to receive required rest and meal periods except under very specific and limited exceptions.

Employees who work at least six hours must be provided an unpaid meal break of at least 30-minutes. If the employee cannot be relieved of all duties, the employer must provide paid time to eat.

A sample waiver for Washington employees is available to Gold and Silver members in the HR Toolkit located on the Member Home page of the Archbright website. Contact an Archbright HR Advisor if you have any questions about meal period requirements.

**Why Employee Engagement Matters**

It’s no surprise that disengaged, dissatisfied, and/or disgruntled employees have a detrimental impact in the workplace and ultimately on the business. Gallup estimates that actively disengaged employees cost the U.S. $483 billion to $605 billion each year in lost productivity.

But how significant is the impact of satisfied and engaged employees on an organization’s success?

A meta-analysis conducted by Gallup in 2016 found compelling evidence that business or work units scoring in the top half of their organization in employee engagement are twice as likely as lower scoring units to have successful outcomes in a variety of business metrics. For example, these units experienced:

* 41% lower absenteeism
* 20% higher sales
* 70% fewer safety incidents
* 40% fewer quality
* incidents (defects)
* 17% higher productivity
* 21% higher profitability

Further, employees who are more engaged in their work are more satisfied with their jobs, less likely to leave their companies, and more likely to attain their performance objectives.

It’s important to remember that employees can be satisfied but not engaged; in other words, the discretionary “above and beyond” effort that’s a hallmark of engagement often is missing, and with it, the resulting increase in productivity.

**Is your workforce engaged? Do you recognize these key behaviors in your organization?**

An engaged workforce:

* Demonstrates a high level of effort.
* Persists at difficult tasks over time.
* Helps others.
* Goes beyond the norms or expectations.
* Voices recommendations for changes and improvements.
* Expands their role or responsibilities in response to a team or organizational need.
* Adapts to or facilitates change to improve work, the workplace, and the organization’s effectiveness.

Gallup reports the majority of the U.S. workforce is not engaged and that while creating a culture of employee engagement remains a key objective for leadership, it also remains elusive.

The first step to driving employee engagement is to measure it. An effective Employee Satisfaction and Engagement Survey (ESES) is a valid and reliable measurement tool designed to surface underlying dissatisfaction and disengagement within an organization.

For more information about how Archbright can help you build employee engagement in your organization, contact your Archbright Account Executive or email us at info@archbright.com.

Source: State of the American Workplace, Gallup, February 2017

**Annual Spokane Workplace Performance Symposium**

Archbright is pleased to announce our annual Spokane Workplace Performance Symposium taking place on May 2nd, 9 am to Noon, at the Mirabeau Park Hotel. The symposium program offers a unique opportunity for participants to learn from Archbright experts as we discuss the latest in human resource trends and practices.

This year’s presentations include:

* Achieve Higher Employee Performance: Stop using the traditional performance appraisal! | Presented by Shannon Kavanaugh, President & CEO
* Curing Your Ailing Culture | Presented by Joseph Marth, Vice President of Business Solutions
* Staying Out of the Doghouse: Animals & Kids in the Workplace | Presented by Erin Jacobson, Staff Attorney
* Tackling the Stubborn Gender Pay Gap | Presented by Krisann Hatch, Regional Director, Eastern Washington & Idaho
* Beyond Anti-Harassment Training | Presented by Joseph Marth, Vice President of Business Solutions and Erin Jacobson, Staff Attorney
* Top HR Tech Trends for 2018 | Presented by Shannon Kavanaugh, President & CEO
* Gen Z & The Emoji Age | Presented by Krisann Hatch, Regional Director, Eastern Washington & Idaho

When: Wednesday, May 2 | 9 am to Noon | 8:30 am – Check-in Begins Where: Mirabeau Park Hotel | 1100 N. Sullivan Road | Spokane Valley, WA Cost: FREE | a continental breakfast will be served

Mingle with other HR professionals! Meet the Archbright team. Register today at Archbright.com!

**Stay at Work: It’s a Win-Win**

Archbright’s Stay at Work participants have received over $4 million in reimbursements since the program began in 2012! The program is a financial incentive program that reimburses employers for some of their costs when they provide temporary, light-duty jobs for injured workers.

If you would like more information about the program or would like to see if you qualify for one of Archbright’s Workers’ Compensation programs, please give us a call at 206.329.1120 or email us at safety@archbright.com.

**Safety Orientation for New Hires**

According to the Bureau of Labor Statistics’ Lost-Work Time Injuries and Illnesses Reports, employees with fewer than 6 months of employment account for about 37% of all illnesses and injuries sustained over a year.

While every employee is exposed to hazards in the workplace, no employee is more at risk than the new hire. According to the Occupational Safety and Health Administration (OSHA), “Many researchers conclude that those who are new on the job have a higher rate of accidents and injuries than more experienced workers. If ignorance of specific job hazards and of proper work practices is even partly to blame for this higher injury rate, then training will help to provide a solution.”

New employee orientation should include training your new workers on how to perform their jobs safely. It is also the perfect time to begin skills training for the specific job and to introduce employees to the rest of the company, its process, culture, policies, and even to the competition. Adding this to your new employee orientation checklist can greatly improve worker satisfaction and employee retention. After all, a safe employee is a happy employee.

While each company’s goals are different, the goal of your company’s safety policy should be to ensure an accident-free workplace while maintaining a high level of productivity. Your new employee orientation checklist should include teaching new hires during employee orientation training to:

* Participate in all safety training sessions as required.
* Report any hazards and unsafe conditions they see.
* Report any incidents and near misses that occur.
* Always keep a safety attitude and encourage others to do the same.
* Ask for help or guidance whenever they are not sure how to proceed safely.

For questions or more information regarding New Hire Safety Orientation, please contact your Safety & Loss Control Consultant at 206.329.1120, email safety@archbright.com or visit Archbright.com.

**Monthly Safety Webinar**

Lock Out/Tag Out

Thursday, April 19, 2018

2:15 p.m.

Lockout/Tagout is a safety procedure critical for the service, maintenance, and operation of machinery or electrical systems in cases where employees could be hurt by the unexpected start up, or energization of the equipment. It applies to all energy sources including mechanical, hydraulic, pneumatic, chemical, thermal, and even gravity. This webinar will provide you with the tools necessary to ensure that your company has all the proper procedures in place to be in compliance.

Topics include:

* What is required
* Purpose of Lockout/Tagout
* Types of hazardous energy
* Equipment inventory
* Authorized employees
* Affected employees
* Required periodic reviews

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.

A good safety record does not come by accident.

**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.

Insights is published monthly for its member companies by Archbright™, founded in 1936. Items in Insights are for information only and not intended to render legal advice. Material contained herein may not be reprinted without the permission of Archbright.

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