**Archbright™**

**Insights Newsletter**

**June 2016**

**Archbright Membership Earns HRCI Credits**

Employees of Archbright™ member companies may earn up to 12 HRCI credits simply because of their current membership status. This includes:

* For each full year of Archbright membership, earn 3 credits under the MEMBERSHIP category−up to a maximum of 9 credits!
* Earn 3 additional BUSINESS credits - 1 per year for SPHR – under the continuing education category. (If your HRCI credential does not require Business credit - such as GPHR, aPHR, PHR, or CA - the credit type will default to the HR General credit.)
* For employees who haven’t yet earned a GPHR, aPHR, PHR, or SPHR certification but are planning on taking the exam, you can receive $50 off the exam fee!

*Questions? Contact Anna Muller, Member Services Representative, at 206.329.1120 or info@archbright.com.*

For those considering certification, HRCI has several webinars available to learn more about the process. You can access these resources on the GPHR ∙ aPHR ∙ PHR ∙ SPHR page at Archbright.com:

* **HRCI Exams: What to Expect.** This webinar is perfect for prospective HRCI exam candidates to help them learn more about the HRCI exam experience.
* **PHR to SPHR: Is Your Role Changing?** This webinar encourages PHRs to consider taking their career to the next level with the SPHR.
* **Recertification: Easier than Ever in 2016**. A great resource for any HRCI certified professional to learn about the new changes to the recertification program.
* **Recertification: It’s Easier than You Think.** This provides an overview of the entire recertification process.

**Transgender Discrimination as Sex Discrimination: Denying Equal Employee Access to Common Restrooms Violates Title VII of the Civil Rights Act**

A recent publication from the Equal Employment Opportunity Commission (EEOC) reminds employers that denying a transgender employee equal access to common restrooms violates federal law. In 2012, the EEOC held that discrimination based on transgender status is sex discrimination, which is prohibited by Title VII of the Civil Rights Act of 1964. The EEOC further clarified in 2015 that limiting an employee’s access to restrooms that correspond to the employee’s gender identity is, in fact, discrimination based on sex. Employers may not circumvent the law by restricting a transgender employee to a single-occupancy restroom, nor may they condition an employee’s right to access on providing proof of surgery. It is also important to note that employer desire to protect people of a particular gender or to accommodate certain employees’ discomfort will not justify restricting transgender employees’ rights. Such restriction is considered discriminatory and violates Title VII.

Title VII is not the only source of law regulating transgender employees’ bathroom rights. Many states and municipalities have also weighed in on this issue. However, where state law contradicts Title VII, or attempts to provide fewer protections for transgender employees, employers must be sure to comply with Title VII. Where state and federal law conflict, employees are always entitled to the law that is the most favorable. Thus, employers may not cite contrary state law as a defense to transgender sex discrimination claims arising under Title VII.

Washington, unlike Idaho or Oregon, is among the group of states that have specifically addressed bathroom use for transgender employees. The Washington State Human Rights Commission requires employers to maintain gender-specific restrooms in order to allow transgender employees to use the restroom that is consistent with their gender identity.

For more information, see our KeyNote on **Transgender Employees** in the HR Toolkit on our Members Only website.

*Source: Archbright Legal Team*

**Final Overtime Rules Released May 18**

The U.S. Department of Labor released the highly anticipated final rules on overtime regulations. Keep in mind in order for employees to be paid on a salary basis, and not be eligible for overtime pay, two tests must be met 1) Salary Test - they must receive a minimum salary (currently $455 per week or $23,660 per year) and 2) Duties Test - their work must be primarily executive, administrative, or professional in nature and exercise decision-making authority.

Here are the significant highlights of the final rules:

1. The minimum salary level of the Salary Test was raised to $913 per week or $47,476 per year. This means any employee who is paid under $47,476 per year is eligible for overtime pay after 40 hours worked in one workweek.
2. The minimum salary level will be automatically updated every three years to match the 40th percentile of salaries in the nation’s lowest-income region, which is currently the south. The first update begins January 1, 2020.
3. The Duties Test for exempt employees is unchanged.
4. The rules go into effect on December 1, 2016.

We recommend auditing all your jobs to insure that they are classified correctly. Look at the salaries of your exempt personnel. For employees who do not meet the new salary test, decide as an organization if you are going to increase their salaries or re-classify them to non-exempt status and pay overtime. For more clarification and direction, see our **Overtime Exemption Final Rules Issued 2016** KeyNote in the HR Toolkit on our Members Only website.

*Source: Archbright Legal Team*

**Seventy-Eight Percent of Employers Would Keep Some ACA-Mandated Provisions If Law Were Repealed, Report Finds**

Health care and the future of the Patient Protection and Affordable Care Act (ACA) have been defining issues for presidential candidates this election season. A new report from the International Foundation of Employee Benefit Plans finds that if the ACA is repealed, 78 percent of employers would keep in place at least some of the provisions they have already implemented in their health plans.

Employers also report a wide-range of provisions they would like to see reinstated in new legislation if ACA is repealed, with the top being elimination of preexisting condition exclusions (38%), coverage of adult children to age 26 (31%) and increased wellness incentives (31%). A majority of employers predict a new health care reform bill being passed within the next four years if ACA is repealed.

The report, 2016 Employer-Sponsored Health Care: ACA's Impact, found that employers have made a number of changes to curb rising costs due to ACA, including increasing out-of-pocket limits (37%), in-network deductibles (34%) or employees' share of premium costs (31%). Employers have also increased copayments or coinsurance for primary care (28%), increased employees' share of prescription drug costs (25%) and increased the employee's share of dependent coverage cost (24%). One in ten employers has adopted a full-replacement high-deductible health plan (HDHP) because of ACA.

Looking ahead, 28% of employers are currently working on changes to avoid the Cadillac tax and an additional 38% plan to do so before the tax takes effect in 2020. Just 2% of employers report they plan to pay the tax. The most common actions taken or planned include moving to an HDHP (43%), shifting costs to employees (42%), dropping higher cost plans (31%) or reducing benefits (30%). Of respondents taking these actions, 68% report they are somewhat or very unlikely to undo these plan changes if the Cadillac tax is repealed.

Employers report their biggest ACA challenge and second biggest cost-driver for 2016 is reporting and disclosure. General ACA administrative costs are noted as the biggest cost-driver for 2016 and respondents expect that to continue in the future.

The report finds that employers remain committed to offering employer-sponsored health care coverage. Looking forward five years, only 3 percent of employers say it is unlikely they will be offering health care. Employers report they continue offering coverage to attract and retain employees and to increase employee satisfaction.

*Source: www.ifebp.org / CCH*

**HR FAQ**

**Question:** Our receptionist is expecting her first child. She has asked how much time she can take off. Our owner only wants to give her two months of leave because it is too hard to cover her duties when she is gone. We have a little over 50 employees. How much time do we have to give her?

**Answer:** Administering FMLA to pregnant workers is uniquely different in Washington State because of our state Family Leave Act (FLA) and Pregnancy Disability laws. Under FLA, pregnant workers are granted leave for their pregnancy disability first. Once the disability portion of the leave has ended, the 12-week bonding leave (granted under FLA) begins. These two leaves do not run concurrently. Since you also have more than 50 employees, your employee may also enjoy the benefits provided by the Family and Medical Leave Act (FMLA).

Assuming your employee meets the requirements for FMLA, the easiest way to calculate the amount of time she is allowed is to remember “length of disability plus 12 weeks.” In most cases this means the amount of time she will receive is about 18 weeks (6 weeks is the customary amount of disability leave given after childbirth). During the first 12 weeks of the leave, you must maintain the employee’s benefits under FMLA.

Remember it is the employee’s physician that determines the length of the pregnancy disability leave – it could be a number of months if your employee has a high risk pregnancy and is placed on disability very early in her pregnancy. Once the disability portion of the leave ends, her last 12 weeks of bonding leave begins.

We suggest you have the employee send you a copy of her physician’s note indicating when she is no longer disabled due pregnancy so you can determine when to start her bonding leave.

We also recommend calling the HR Hotline before tackling the complexity of these intersecting leaves on your own.

**Instructor Spotlight: Katherine Kummerow**

Katherine joined the Archbright staff as a Senior Human Resources Consultant in 2011. She has over 30 years of multi-state human resources experience working with executive teams and employees in healthcare, insurance, and entertainment. In her free time, Katherine enjoys canning, reading, and “educating” her Bernese mountain dog. She and her husband also enjoy traveling to other countries, most recently Greece and Turkey.

**New Class: Bully-Proofing Your Workplace**

Taught by Katherine Kummerow

Bullying in the workplace results in poor performance, attendance problems, and turnover of high performers. Even worse, 72% of employers deny, discount, encourage, rationalize, or defend bullying when reported. In Bully-Proofing Your Workplace, you will learn to protect your organization from costly claims while building an environment where all employees enthusiastically contribute their best to the organization.

June 15 | Seattle | 9am - 12pm  
July 11 | Kent | 9am – 12pm

**Do You Mind?**

Have you noticed feeling a bit distracted lately? Still trying to work that multi-tasking thing while getting pinged all day with text messages? Are you interrupted by colleagues stopping by to chat just as you’re on the verge of completing a thought that’s evaded you because… you keep getting interrupted? Tried opening your email to look for a specific message and gotten high-jacked into reading a dozen more that looked more urgent? Or more interesting… or just more… hmm… where was I going with that? Yes, that’s the feeling.

A recent Forbes article cites University of California, Irvine, professor Gloria Mark’s finding that office workers are interrupted by distractions from digital and human sources every three minutes during the day. Often the interruption is self-induced: Mark reported in the Wall Street Journal that on average, employees visit Facebook 21 times a day and check their email 74 times a day. It’s no wonder we can feel scattered and quite fatigued from trying to get anything done in an environment that seems dedicated to preventing it.

Take heart – there may be an antidote to all this distraction and the damaging stress it can cause: Mindfulness training. Mindfulness, as defined by Dr. Kabat-Zinn, involves “paying attention in a particular way; on purpose, in the present moment and non-judgmentally.” In other words, it’s focusing on being aware of this particular moment in time and noticing what’s going on without getting drawn into it. It’s a form of meditation and we know that cultivating the ability to focus our attention this way can increase our sense of well-being. According to a January 30, 2011 article in Psychiatry Research Neuroimaging, training in mindfulness meditation not only produces positive effects on psychological well-being but ameliorates the symptoms of a number of disorders. The researchers also found physical evidence that the size of certain the parts of the brain involved in learning and memory processes, emotion regulation, and perspective taking increased in subjects who participated in a Mindfulness-Based Stress Reduction (MSBR) program.

Some big names in the business world – companies like Aetna, Keurig Green Mountain, General Mills and Intel – are exploring this ancient practice because of significant business-relevant benefits when employees are trained in mindfulness meditation. The Institute for Mindful Leadership reports that a multi-year study at General Mills resulted in a 48% increase in participants’ ability to focus attention; a 40% increase in personal productivity; a 34% increase in the ability to prioritize; a 31% increase in employee satisfaction; and a 34% increase in performance under pressure.

**Good reasons to give it a try.** Curious about how to do it? Try this simple exercise: Find a quiet place with minimal distractions. Sit quietly and focus on your breathing for two minutes. Each time your mind wanders, and it will, gently bring it back to the breath. Practice this twice a day, gradually increasing the time. With consistent practice, before long you may notice a greater sense of equanimity in the face of routine distractions. You may even find that when you’re mindful, you don’t mind so much.

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

**Upcoming Events**

Archbright is a proud sponsor of the June chapter meeting of the Inland Northwest Society of Human Resource Management (INSHRM).

**When:** Tuesday, June 14 | 11am to 1pm  
**Where:** Centerplace Regional Event Center |2426 North Discovery Place | Spokane Valley

We are also proud to sponsor the June chapter meeting of Skagit Island Human Resource Management Association (SIHRMA) where Archbright Attorney Kara Craig will present “What You Need to Know about FLSA Regulations.”

**When:** Thursday, June 16 | 7:15am to 9am  
**Where:** Farmhouse Restaurant | 13724 La Conner Whitney Road | Mount Vernon

**New Electronic OSHA Log Rule**

OSHA has released its final rule regarding modernizing data collection to better inform workers, employers, the public and OSHA about workplace hazards. The final rule, which makes changes to 29 C.F.R. parts 1904 and 1902, requires establishments with 250 or more employees in industries that are covered by recordkeeping requirements, to electronically submit OSHA forms 300, 300A, and 301. Establishments with 20-249 employees in certain industries must electronically submit information from the OSHA 300A form only.

The new rule is effective August 10, 2016 with phased in data submissions beginning in 2017. OSHA said that using data collected under the new rule will create the largest publicly available information on work related injuries and illnesses, allowing researchers to better study injury causation, identify new workplace safety hazards before they become widespread, and evaluate the effectiveness of injury and illness prevention activities. The agency stressed that it will remove all personally identifiable information associated with data before making it publicly accessible.

Archbright will continue to provide member’s with information on the new ruling as it is made available. If you are interested in learning more about the requirements for keeping OSHA logs or would like to participate in OSHA Log training, please call 206.329.1120 or email info@archbright.com

**Protecting Workers from Zika Virus**

OSHA, together with the CDC has published a fact sheet for employers on protecting workers from workplace exposure from the Zika Virus. On April 22nd, the agencies published:

* Interim guidelines for outdoor workers, healthcare and laboratory workers, mosquito control workers, and business travelers to protect against occupational exposure to the Zika virus.
* Interim guidance and recommendations for employees to use to protect their workers.
* Interim guidance and recommendations for workers to consider to protect themselves from mosquito bites and exposure to an infected person’s blood or other body fluids.

To read the Interim Zika Guidelines, please see:

<https://www.osha.gov/Publications/OSHA3855.pdf>

**Monthly Safety Webinar**

**June 2016**

**Archbright’s 8 Elements of an Effective Safety Program Series**

**Element #4 - Data Collection**

Thursday, June 16th 2:15 p.m.

Topics we will cover in Element #4 – Data Collection:

* Setting Goals
* Identifying Sources of Data
* Analyzing Data
* Communicating Results

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](mailto:safety@archbright.com).

For those not enrolled in our Workers’ compensation or Retrospective Rating Programs, there is a $49.95 fee. Please contact [info@archbright.com](mailto:info@archbright.com) for registration information.

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

**Did You Know?**

**Zika at a Glance in the US (May 18, 2016):**

* Travel-associated cases reported: 544
* Locally acquired vector-borne cases reported: 0
  + Sexually transmitted: 10
  + Guillain-Barre syndrome: 1

US Territories

* Travel associated cases reported: 4
* Locally acquired cases reported: 832
* Total: 836
  + Guillain-Barre syndrome: 5

Pregnant Women

* US States: 157
* US territories: 122

**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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