**Archbright™**

**Insights Newsletter**

**July 2016**

**Introducing Archbright University!**

Archbright University helps 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.

As your corporate university, our learning and development programs are designed to close critical skills gaps, develop leaders, and build employee engagement by covering:

* Supervision and Management
* Human Resources
* Professional Development
* Safety

We have partnered with Development Dimensions International (DDI) to bring you all-new classroom, web-based, and virtual training options that cover every aspect of management. These classes include Adaptive Leadership, Driving Change, Communicating with Impact, Engaging and Retaining Talent, to name a few.

You’ll also find the Archbright classes that you have come to rely upon such as Supervisory Skills, Leadworker Effectiveness, Time Management, Hiring Winners, and more in the Archbright University course catalog.

Lastly, we are excited to announce **The Management Academy**, a 3-month cohort learning program powered by DDI’s Exceptional Leaders curriculum. Designed to develop effective workplace leaders, program participants complete six key leadership classes over a 3-month period. Seats are now available for the program’s launch on September 13.

**Archbright University ensures your company’s investment in employee training empowers managers, cultivates leadership, and makes a lasting impact in your organization. Registration is now open, please visit Archbright.com for more information.**

**Victory for Employers Who Wish to Remain Union Free: Final “Persuader Rules” Blocked on June 27, 2016**

On June 27th, the United States District Court for the Northern District of Texas ruled the federal government’s controversial persuader rules as “defective to its core,” and blocked the rule in its entirety. The US Department of Labor (USDOL) stated purpose for the rules passed last March, was to boost union organizing.

Specifically, the rules targeted certain indirect “persuader activities” and would have impacted all members who hire Archbright HR Professionals and Attorneys to conduct union awareness training or advice and counsel designed to influence an employee’s choice to unionize by mandating reporting of financial arrangements and communications. Examples of reportable activity included: union awareness training, providing written materials for dissemination to employees about union avoidance, and developing policies or practices in a handbook that discourage unionization.

The Texas Federal Court issued a nationwide injunction blocking the new persuader rules from going into effect on July 1st. (*National Federation of Independent Business v. Perez*, *U.S. District Court for the Northern District of Texas*). However it is highly likely the USDOL will appeal the ruling. For now Archbright members may continue to rely on our labor attorneys and consultants’ advice regarding a union free workforce without reporting obligations. Archbright will monitor the rule’s status, including if the rule is ever revived through appellate proceedings.

Please contact an Archbright attorney if you have questions about the development of individualized union awareness training and overall response to union activity in the workplace.

*Source: Archbright Legal Team*

**HR FAQ**

**Question:** We have an employee who is going out on FMLA leave. It is very likely that he will need more time off than the 12 weeks allowed under FMLA and I know we should look at additional leave under the ADA as an accommodation. However, he holds a key position on third shift and senior management is not going to want to grant him any additional time. How do we prove it is an “undue hardship” on the organization to extend his leave beyond 12 weeks?

**Answer:** When FMLA ends, ADA begins! If an employee cannot return to work after FMLA, the employer must engage in the interactive process to determine whether additional leave will allow the employee to successfully perform the job. If leave is requested as an accommodation an employer will generally have to grant the leave unless the leave causes undue hardship.

Developing an “undue hardship” analysis is an arduous task. The employer bears the burden to prove more leave causes hardship, based on facts. The undue hardship analysis is based on a case by case basis – there are no “cookie cutter” tests proving hardship. According to the Equal Employment Opportunity Commission (EEOC) the following factors must be considered when an employee requests initial or extended leave:

* the amount and/or length of leave required
* the frequency of the leave
* whether there is any flexibility with respect to the days on which leave is taken
* whether the need for intermittent leave on specific dates is predictable or unpredictable
* the impact of the employee’s absence on coworkers and on whether specific job duties are being performed in an appropriate and timely manner
* the impact on the employer’s operations and its ability to serve customers/clients appropriately and in a timely manner

It is recommended that employers document, with management, evidence supporting any and all of the above factors at the commencement of any leave including FMLA. Hard statistics and figures are essential to build your “undue hardship” analysis.

About two weeks before FMLA ends, or if on intermittent leave when there is only 40 hours of FMLA leave left, initiate the interactive ADA process with the employee and his physician. Call the Archbright HR Pros to obtain the requisite paperwork necessary to determine a “reasonable accommodation.” If the amount of leave proposed by the physician seems unworkable, this is the time to present your prepared undue hardship analysis to an Archbright attorney for further guidance.

**Tips to Prepare for an Active Shooter Event in the Workplace**

Active shooter events are devastating and unpredictable, said Melissa Gonzalez Boyce, a legal editor for XpertHR. Unfortunately, the frequency of these incidents has increased, often occurring in a place of business. “While it may be an uncomfortable topic, organizations should implement measures to increase employee awareness of and improve the chances of preventing and responding to an active shooter event,” Boyce explained. “HR executives should bring the need for active shooter policies to the table.”

Boyce has authored the following six-step process for organizations to prepare for what she refers to as the “unthinkable.”

1. **Step 1: Implement a “Zero Tolerance” Workplace Violence Policy.** Adopting a “zero tolerance” policy demonstrates an employer’s commitment to violence prevention, said Boyce. The best policies define workplace violence and provide illustrative examples of prohibited behaviors and a list of objects considered prohibited weapons. To better enforce zero tolerance, companies also need to develop a process to report suspicious or threatening behaviors, she said.
2. **Step 2: Create an Emergency Action Plan (EAP).** The effectiveness of any active shooter preparedness program is enhanced with the creation of an emergency action plan, Boyce said. The goal of any effective EAP is to better prepare employees to respond to an emergency, such as an active shooter situation, and help minimize loss of life.
3. **Step 3: Offer Training to Employees.** The best way to prepare employees on how to react quickly and effectively in an active shooter situation, as well as give them more peace of mind, Boyce said, is to offer active shooter training.
4. **Step 4: Conduct Active Shooter Drills.** Most workplaces have evacuation drills for fires while few have exercises for active shooter events, Boyce said. “Active shooter drills are the best way to prepare employees on how to react quickly and will allow employees to practice getting to escape routes.”
5. **Step 5: Perform a Safety and Security Audit.** An employer should perform a comprehensive audit to identify and correct any gaps in security or other safety issues. Boyce recommended that employers seek the input of local law enforcement during such an audit.
6. **Step 6: Develop a Plan to Manage the Aftermath of an Active Shooter Incident.** Companies should develop a plan to manage the consequences of an active shooter incident, Boyce said, noting that a key element would call for HR and/or management to conduct post-event assessments and activities in coordination with local law enforcement.

HR executives can be champions for such policies and measures, even though the odds of such an event happening are rare.

*Source: XpertHR/CCH*

**FLSA “Computer Exemption” Upheld in Federal Court Case**

Under the Fair Labor Standards Act (FLSA), there are the well- known “executive, administrative and professional” exemptions also known as the “white collar” exemptions, but there is also a lesser known “computer” exemption.

To meet the Computer Exemption, an employee must be:

1. Compensated on an hourly basis at a rate of not less than $27.63 an hour; and
2. Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field; and
3. Primarily performing one of the following duties:

* Applying systems analysis techniques and procedures to determine hardware, software, or system functional specifications for any user of such services;
* Following user or system design specifications to design, develop, document, analyze, create, test or modify any computer system, application or program, including prototypes;
* Designing, documenting, testing, creating, or modifying computer systems, applications, or programs for machine operation systems;
* Any combination of the above primary duties whose performance requires the same skill level.

If the employee is paid a salary of at least $455 per week (soon to be $913 per week), meets the above primary duty tests, and meets the educational requirements of a Professional, then the employee is exempt as a Professional employee.

**Case:** A federal district court in Florida held that a network administrator fell squarely within the computer employee exemption of the FLSA, despite his contention that his tasks could have been satisfied by “half the twentysomethings in America today.” According to the employee, most of his job duties revolved around basic network administration, including installing software, running commercial anti-virus software, taking questions from employees about printer installations and Microsoft Office, and looking up information in a database, which are all non-exempt duties. He said he also performed menial tasks, like making copies of hard drives, handling the email server, and assigning logins for people to use their computers. However, despite his attorney’s “creative descriptions” of his duties, the court found that his job consisted of analyzing, troubleshooting, and testing the company’s systems networks; developing a back-up test database; and performing other technical computer tasks, therefore, he qualified for the computer employee exemption. The case is Ortega v. Bel Fuse, Inc.

**Caution:** Employers who classify all computer employees as exempt could be running afoul of the FLSA if the employees do not meet the duties and salary tests described above. Call the *Archbright HR Hotline* if you have any concerns on how your computer employees are classified.

*Source: CCH*

**New Virtual Class: Communicating with Impact**

Many organizations focus on technical skills as all-important to success in the workplace. Yet strong interpersonal skills are equally essential in transforming individual contributors into exceptional performers who have a greater impact in their roles.

Attend Archbright’s first virtual class and get a powerful set of interaction skills that enables you to communicate more effectively with colleagues and customers to build trust, strengthen partnerships, and achieve desired results!

To register, contact Member Services Rep Anna Muller at 206.664.7222 or [amuller@archbright.com](mailto:amuller@archbright.com) today!

Tuesday, July 26 | 8am to 12pm  
Thursday, August 25 | 8am to 12pm

**Prioritizing Wellness in the Workplace**

Recently I was teaching an onsite class for Archbright member Technical Glass Products. When I arrived Janice Evans, Director of Human Resources, told me that it was important that I break for lunch promptly at noon because several attendees in my class were participating in a lunch hour boot camp class in the parking lot. I’m a certified wellness coach and spend my weekends running ultra-marathons and doing Spartan races, so I was instantly intrigued. When lunch rolled around I went out for a walk and noticed not only the boot camp going on, but several other employees heading out for a run or walk. Generally when I do onsite training I see people going out for smoke breaks or drinking sodas in class, but rarely do I see this kind of commitment to wellness as the culture of a company.

**Why is wellness important?**

The benefits for both employers and employees are numerous: savings on otherwise ever increasing healthcare costs, lower absenteeism, higher performance, and lower stress to name a few. As a nation we are facing a national wellness crisis. According to C.J. Hunt, author of The Perfect Human Diet, between 350,000-400,000 people die each year of type 2 diabetes and obesity. Because we spend so much time at work, our workplace likely has the greatest influence on our well-being.

**What can you do?**

I believe that the high level of participation at Technical Glass is due to the culture that Janice has created through several initiatives. Three days a week she brings a trainer to lead exercise classes and annually she hosts a wellness week with different topics each day of the event—anything from nutrition to spinal evaluations. She provides prizes for participation in events like “Bike to Work” month. Technical Glass also offers shower facilities so employees can easily go from sweaty to ready for work!

The key is to create a culture that supports wellness as a normal part of work life that is encouraged by leaders and managers – a culture where it is not just socially acceptable to exercise in the middle of the day, but modeled and encouraged.

Whether you take on the project of creating wellness initiatives yourself or outsource to a cutting edge provider like Archbright member Vera Whole Health (verawholehealth.com), investing in the wellness of your employees is one of the best things you can do to increase engagement and lower overall healthcare costs.

*Source: Tom Norwood, Sr. Learning & Development Consultant at Archbright*

**PHR/SPHR Web-Based Certification Course – Registration Now Open!**

In partnership with David Siler, SPHR, GPHR, Managing Partner of Distinctive Human Resources, Inc., and our sister association, Capital Associated Industries in North Carolina, Archbright is pleased to provide access to one of the most successful PHR®/ SPHR® Certification Study Courses available. This comprehensive preparatory program is now delivered over the Web. There are several program times available:

* Fridays via Webinar, September 2, 2016 through November 11, 2016 (10 am - 1 pm Pacific Time)
* Tuesdays via Webinar, September 6, 2016 through November 15, 2016 (3 pm - 6 pm Pacific Time)
* Sundays via Webinar, September 11, 2016 through November 20, 2016 (3 pm - 6 pm Pacific Time)

For more information or to register, please visit the GPHR • aPHR • PHR • SPHR page at Archbright.com.

**OSHA’s Final Silica Rule**

Silica, often referred to as quartz, is a very common mineral. It is found in many materials common to construction and manufacturing sites, including soil, sand, concrete, masonry, rock, granite, and landscaping materials. Silica dust created by cutting, grinding, drilling or otherwise disturbing these materials is very hazardous and can cause lung disease, cancer or kidney disease if not controlled.

OSHA has released a new permissible exposure limit for respirable crystalline silica – 50 micrograms per cubic meter of air averaged during an 8-hour shift, which equals what NIOSH recommended in 1974. The updated PEL is half the previous limit for general industry and 5 times lower than the previous limit for construction.

The rule covers engineering controls, protective clothing, medical surveillance, and other issues. OSHA presents the rule as two standards - one for general industry and maritime and the other for constructions. Highlights include:

* Mandating that employers use engineering controls and work practices to restrict worker exposure, bar access to high-exposure sites, supply respiratory protection when controls cannot curb exposure to the PEL, train employees, and offer medical exams to highly exposed workers
* Offering a table of specified controls that construction employers can follow for “greater certainty and ease of compliance” without monitoring exposure
* Spacing out compliance dates in an effort to give employers enough time to meet requirements

Both standards contained in the final rule take effect on June 23, 2016 after which industries have one to five years to comply with most requirements, based on the following schedule:

**Construction** – June 23, 2017

**General Industry & Maritime** – June 23, 2018

**Hydraulic Fracturing** – June 23, 2018 & June 23, 2021

For more information regarding the Silica final rule or for general safety questions, please call 206.329.1120, 509.381.1635, or email info@archbright.com.

Did You Know?

Silica Exposure

Millions of workers are exposed to dust containing silica. Approximately 2,500 to 5,000 new cases of silicosis occur in the U.S. each year. More than 250 Americans dies each year from silicosis, although many feel that most cases are undiagnosed.

OSHA estimates the rule will save more than 600 lives, prevent more than 900 cases of the lung disease silicosis, and reap $7.7 billion in benefits based on reduced mortality and morbidity rates. This will cost employers about $1 billion each year.

Many employers and manufacturers have filed court challenges to the new standards on the claims of inaccurate projections and compliance issues.

**Monthly Safety Webinar**

**July 2016**

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

**Element #5 – Return to Work**

Thursday, July 21st 2:15 p.m.

Topics we will cover in Element #5 – Return to Work:

* Benefits of effective Return to Work
* Creating a written Return to Work policy
* Identifying light duty tasks
* The importance of early claims notification

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.”*

**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 | Seattle Office: P.O. Box 12068; Seattle, WA 98102

Phone: 206.329.1120 | Web: www.archbright.com