**Archbright™**

**Insights Newsletter**

**September 2021**

**The 2021 Regional Benefit Survey Results Are In**

First off, we’d like to thank the 381 organizations that contributed to this year’s Regional Benefits Survey. This is record-breaking participation, with nearly a 25% increase over last year!

This is the third year Archbright™ and Cascade Employers Association have partnered to administer this survey, with the goal of providing employers with a tool to assist in benefits and policy decisions. It covers health benefits, holidays, DEI practices, COVID-19 response, and more.

We published the results on August 30. If you participated, we emailed you instructions on how to download your reports from info@archbright.com.

If you did not receive the email or have any questions, please reach out to Member Support at 206.329.1120, 509.381.1635, or info@archbright.com.

If you would like to purchase the survey results, visit our website. There are two versions available: the Full Report and the Non-Profit Report!

We hope this information will provide you with a valuable and comprehensive look into benefits practices at organizations across the PNW. If you have any suggestions and comments to make this survey more useful in the future, please send them to info@archbright.com.

**The Great Resignation Has Arrived**

Between shutdowns, outbreaks, and ongoing safety concerns, the pandemic has been unpredictable and relentless for organizations to navigate. And now a new challenge has emerged...hiring to maintain adequate staffing levels.

So many Archbright members are feeling the pain of The Great Resignation!

The U.S. Bureau of Labor Statistics Reports that 4 million people decided to leave their jobs in April this year alone, resulting in 10.1 million open jobs (an all-time high).

Finding candidates in this tight labor market can be time-consuming and frustrating as people reassess their professions and priorities as a result of the pandemic.

In fact, Microsoft’s Work Trend Index report found 41% of the global workforce is considering leaving their employer this year!

If your organization needs recruiting support during this time, we can help.

For 60 days and a flat fee, Archbright’s consultants follow our proven methodology to source the best candidate pool possible for your open position. We work closely with your hiring manager to create a comprehensive plan that supports your company’s culture and management style. Our process includes job postings, phone screenings, candidate summaries, and follow-up with non-selected candidates to save you valuable time.

Just reach out to your Account Executive or

info@archbright.com for more information.

And for additional pandemic-related support, eligible members can call the HR Hotline or chat with an HR Advisor in mozzo. Stay safe everyone!

**Register for NHRMA 2021**

The NHRMA 2021 Conference & Tradeshow is coming up soon, on September 27-29, 2021 in Portland! Learn and network at this exciting and informative event that brings together HR professionals from all over Washington, Oregon, and Alaska.

There is a wide variety of conference tracks—Compensation and Benefits Strategies, DEI, HR, Legal Compliance, Strategic Leadership, and more!

Archbright is once again a proud sponsor. Make sure to stop by our booth and say hi!

**Last Chance to Register for Management Academy!**

We have just one session remaining of Management Academy for 2021! Once it fills up, you will not be able to attend until 2022. This is a virtual course, so you can participate from anywhere.

9/13/2021 to 10/18/2021 | 8:30 AM to 12:30 PM PDT

Management Academy is a cohort learning program designed to develop effective workplace leaders. Powered by DDI (Development Dimensions International), participants engage in enriching discussions with classmates who come from a diverse range of industries and professional roles, to help you fine-tune your leadership skills and help create a lasting impact at your organization.

Go to archbright.com to register!

**HR Leadership 2021 Conference**

Join us at the HR Leadership 2021 Conference—Making Work Human on September 17 from 9:00 AM to 1:00 PM PDT! This is a virtual event, so you can attend from anywhere.

As employers venture into the “Great Resignation,” learn from the experts on how to improve company culture, incorporate forward thinking leadership, and build high-performing teams. We’re excited to welcome this year’s speakers, Derek Irvine, Senior Vice President of Workhuman and co-author of “Making Work Human,” Seth Mattison—Founder & CEO of FutureSight Labs, and Alison Levine—Leadership Expert & Polar Explorer & Mountaineer.

Also, this conference is approved for three Business Recertification Credits towards any of HRCI’s eight credentials, including SPHR® and PHR®!

Sign up today at:

https://joshuavconference.com/HRLeadership2021/.

**Available Now: Affordable Archbright University Training Options**

As we round the bend on the third quarter of 2021, it’s amazing this year has gone by so quickly. With Q4 right around the corner, this may be a wake-up call for many organizations to meet goals set at the beginning of the year. If employee training is still on the list, Archbright has a quick and affordable solution that every member can use today, the Video Training Library in mozzo.

While in-person training is often preferred, sometimes the logistics and budget don’t match up. For this reason, Archbright has created targeted online training tracks providing practical and relevant training when employees need it most. Based on the same curriculum as in-person Archbright University classes, the Video Training Library offers quality training at a fraction of the price.

Every Archbright member receives a set of learner seats to the mozzo Video Training Library free with membership. Additional learner seats are available for purchase. Activating a learner seat is quick, simply attach it to an employee’s email address and start assigning training. Additionally, all assigned training can be tracked with the click of a button. Your organization’s designated Administrators can track all assigned training with the click of a button. This is especially important with compliance training, where proper training records must be kept.

And, if compliance training is at the top of the list in 2021, members now have access to the full Workplace Harassment Awareness course on mozzo. Two versions of this course are available: one for employees, and one for managers and supervisors, to ensure leaders are aware of their unique responsibilities. Both classes are also offered with Spanish subtitles.

For more information on how to access Workplace Harassment Training or how to purchase additional learner seats, please contact your Archbright Account Executive or email membersupport@archbright.com.

**Vaccine Mandate Considerations**

As the highly contagious Delta variant surges across the country and threatens to overwhelm hospital systems, an increasing number of employers are beginning to consider whether to mandate the COVID-19 vaccine. Several large U.S. corporations, including Google, Facebook, and Walmart, have paved the way by enacting vaccine mandates that apply to all or most of their workers. Smaller employers frequently observe these national trends and model their policies accordingly. However, each workplace is unique. Employers should consider numerous factors specific to their organization and industry before adopting a vaccine mandate, including state and local laws, the nature of the work performed, and where employees complete their work. In addition to these factors, all employers should consider this initial framework before implementing a vaccine mandate.

Vaccine Mandates Are Permissible Under EEOC Guidance and State Law

Although the FDA has approved the COVID-19 vaccines under the Emergency Use Authorization (EUA), recent EEOC guidance clarifies that employers can mandate the vaccine for employees who are required to be physically present at work. Some states limit or prohibit vaccine mandates; however, Washington, Oregon, and Idaho do not. Lawsuits challenging vaccine mandates have thus far been unsuccessful.

Employers Must Consider Disability and Religious Accommodations

Employers are permitted to mandate the vaccine, but they must also provide disability and religious accommodations to comply with the ADA, Title VII, and state laws. For example, suppose an employee cannot get vaccinated due to a disability. In that case, the employer must first determine if the unvaccinated employee poses a direct threat to the health or safety of the employee or others in the workplace. In making this assessment, the employer should consider risk factors, including the frequency and duration of direct interaction with other employees, whether other employees are wearing masks or undergoing routine screening testing, among other factors. If the employer determines that the employee would not pose a direct threat by remaining unvaccinated, the employer must consider reasonable accommodations, such as requiring a mask, staggering work shifts, or permitting telework.

Employers must also explore reasonable accommodations once an employee notifies their employer of a sincerely held religious belief, practice, or observance. In most cases, employers should assume an employee’s request for a religious accommodation is “sincerely held.” However, an employer may request supporting documentation if they have an objective basis for questioning the sincerity of the belief or the religious nature.

State and Local Vaccine Mandates are Rapidly Changing

Employers should keep informed of rapidly changing industry-specific mandates. Most state and federal mandates currently apply to workers in health care settings, such as hospitals and long-term care facilities. In late July, the Department of Veterans Affairs (VA) announced a vaccine mandate for employees who work at VA facilities or provide direct care to veterans. In early August, Washington Governor Jay Inslee issued an emergency proclamation mandating vaccination by October 18 for most Washington State employees, on-site contractors, and volunteers, as well as those employed by public and private health care and long-term care agencies. Employers should note that the Proclamation identifies specific requirements for disability and religious accommodation requests. Gov. Inslee later extended the requirement to employees and contractors in private and public schools, higher education, childcare, and early learning programs.

Special Considerations for Employers with Union-Represented Employees

Employers with union-represented employees should know that requiring vaccines is likely a mandatory subject of bargaining. The language of the collective bargaining agreement (CBA) should indicate the extent to which employers may change the terms and conditions of employment. Even if the CBA language suggests it’s within management’s right to mandate the vaccine, employers are required to bargain the effects of a vaccine mandate requirement.

The circumstances to consider before implementing a vaccine mandate are frequently changing. Eligible members are encouraged to contact Archbright’s HR Hotline to help navigate these complex changes. In addition, members may reference the mozzo Resource Library for sample vaccine policies.

**What is Wrong with Non-Compete Agreements?**

The legality of non-compete agreements may be top of mind for many employers now due to President Biden’s Executive Order on July 9, 2021, called “Promoting Competition in the American Economy.” The Order directs the Federal Trade Commission (FTC) to consider rulemaking to stop the use of non-compete agreements that limit worker mobility and their ability to compete for better wages by having the freedom to change jobs. The Order does not require employers to change their existing non-compete agreements, nor does it create any additional duties in using these types of agreements. However, the amount of media attention the Order received warrants employers’ heightened scrutiny of their non-compete agreements.

Post-employment restrictions, such as non-compete agreements, can serve as a key legal tool to help protect an employer’s assets by preventing former employees from working for competitors. Non-compete agreements are commonly criticized and misunderstood by employers and employees alike. Employees often sign the agreement without reading or understanding the scope and impact of the restriction; some misbelieve that they are not enforceable anyway. Employers often use overbroad and punitive templates for all employees only to find the agreements are impossible or expensive to enforce. Enforcement typically starts with the employer sending a standard “cease and desist” letter that the former employee usually ignores.

Currently, states regulate non-compete agreements. About 47 states permit employers to use non-compete agreements in some form. California, North Dakota, and Oklahoma are three states that ban non-compete agreements. Those states that permit non-compete agreements have legislated limits to the restricted duration and apply only to high earners. For example, Washington’s law, RCW 49.62, allows non-compete agreements for employees who earn over $101,390 per year (adjusted annually for inflation) and only up to 18 months in duration. Oregon’s law, ORS 653.295, allows the use of non-compete agreements only for exempt employees earning over $100,533 per year and limiting duration to 12 months. Nevada recently passed a ban on non-competes for hourly workers, which will go into effect October 1, 2021.

While the Executive Order issued by President Biden does not immediately require employers to modify their existing agreements, it is prudent for employers to ensure their non-compete agreements are compliant by considering these reminders and suggestions:

Follow state law. For example, Washington agreements signed before January 1, 2020 won’t be enforceable against employees earning less than the minimum salary level of $101,390.

Use other restrictive covenants such as non-solicitation, non-disclosure, or confidentiality agreements to protect former employees from misappropriating assets, talent, and proprietary information. To date, Washington and Oregon statutes do not limit these agreements.

Use non-compete agreements in a tailored and narrowly focused manner, avoiding a one size fits all approach. As the saying goes, don’t kill a fly with a sledgehammer!

Consider a creative alternative to non-compete agreements. In May 2021, a group of Boston Yoga teachers posted an open letter on Facebook protesting the non-compete contract required by their former employer. In response to their letter, the studio owner eliminated the agreements and set up a new system where yoga teachers choose their level of commitment to the studio. Those who choose to teach exclusively for the studio receive more pay than those who may compete. (Noncompete Agreements are Everywhere, Even Neighborhood Yoga Studios, August 13, 2021, npr.org)

Employers with employees working in different states should review enforceability based on the employee’s resident state. An agreement signed in Washington likely won’t be enforceable if the employee works and lives in another state like California.

If you have questions about your non-compete agreement, contact the HR Hotline or reference the mozzo Resource Library for our Non-Compete Agreements Keynote.

**HR FAQ**

Question: An employee provided a copy of their long-term care insurance plan, so they can opt-out of the new required Washington Cares Fund state tax. Is this documentation sufficient for us to exempt them from the deduction?

Answer: No. Once an employee secures a qualifying long-term care insurance plan, they must submit an exemption application to the Employment Security Department (ESD) between October 1, 2021 and December 31, 2022. If approved, ESD will issue an exemption approval letter to the employee, who must then provide a copy of the letter to their current employer and any future employers to ensure the employer does not deduct the tax.

If an employee brings in a copy of their policy as proof, employers should direct them to the Washington Cares Fund website

(http://www.wacaresfund.wa.gov/) for information about filing the exemption application. The responsibility lies with the employee to get approval from ESD. The employer is not involved in that process.

If an employer deducts premiums before receiving a copy of the approval letter, the employer does not need to refund the deducted premiums to the employee. Conversely, the employer must reimburse the employee if they deduct premiums after receiving a copy of the approval letter.

For more information on the Washington Cares Fund, reference our Washington Cares Fund Keynote in the mozzo Resource Library.

**Let Archbright Help You Get HRCI Certified—and Stay Certified!**

An HRCI certification sets you apart from other industry professionals. Archbright can not only help you prepare for the certification exam and save money on the exam fee, you’ll also receive recertification credits simply by being an Archbright member!

Prepare for your Certification Exam

Did you know that Archbright University has programs to help you prepare for your HR certification exam? There are only a couple remaining opportunities available this year, so once these sessions are full, you won’t see them again on the Archbright University calendar till 2022.

If you’re ready to level up in your HR career, take the first step today!

aPHR Certification Exam Prep Program

9/23/2021 to 10/28/2021, 9:00 AM–12:00 PM

If you are just beginning your HR journey, the Associate Professional in Human Resources (aPHR) is the perfect certification to help

fast-track your career growth. This 6-week aPHR certification exam prep course covers the six functional areas of the exam:

* HR Operations
* Employee Relations
* Recruitment and Selection
* Compensation and Benefits
* HR Development and Retention
* Health, Safety, and Security
* PHR/SPHR Certification Exam Prep Program

9/17/2021 to 12/10/2021, 8:30 AM–11:30 AM

This course is for experienced HR professionals who are looking to advance in their HR career. This 12-week HRCI certification exam preparatory course covers the six functional areas of the PHR® and SPHR® exam:

* Business Management & Strategy
* Workforce Planning & Employment
* Human Resource Development
* Compensation & Benefits
* Employee & Labor Relations
* Risk Management

Register today at Archbright.com! If you have any questions, contact us at info@archbright.com.

Save On Your HRCI Exam Fee

Because you are a valued Archbright member, you receive $50 off the aPHR®, PHR®, PHRca®, SPHR® or GPHR® exam fee! Simply use the promo code ARCH50 when you sign up for the exam with HRCI. This discount is available to you whether or not you enroll in our exam prep program.

Earn Recertification Credits with Membership

As an employee of an Archbright member organization, you receive:

3 credits per full year of membership (to a maximum of 9 credit hours) under the “Professional Achievement” category.

Plus, an additional 1 Business credit (to a maximum of 3 credit hours for SPHR) under the “Professional Development: Self-Directed” education category. Note: if your HRCI credential does not require Business credit, the credit type will default to HR (General) credit.

Instructions on how to claim your credits are on Archbright.com. If you have questions about how this process, please contact our HRCI concierge, Nella Brown at nella.brown@HRCI.org or 571.551.6725.

**Meet the Instructors**

Katherine Kummerow, SPHR | Katherine has been a senior HR director for over 30 years with experience in worker’s compensation, strategic planning, and recruitment. Katherine teaches the Talent Planning and Acquisition, and Employee/Labor Relations/Employee Engagement sections.

Mark Nelson, JD | Mark is an Archbright HR Advisor and DDI-certified instructor with more than 20 years of experience facilitating courses on HR-related topics. Mark teaches the Business Management and Leadership Strategy section.

Rita Carson, SPHR, CPTD | Rita, a Senior Consultant with Archbright University, has designed and facilitated talent development and learning programs for leaders, managers, and individual contributors in a wide variety of diverse industries for over 20 years. Rita teaches the Learning and Development section.

Andie Reed, SPHR | Andie, an Archbright HR Generalist, is experienced in benefits, recruiting, leave management, and employee engagement and retention. Andie teaches the Total Rewards section.

Sarah Johnson, SPHR | Sarah is an Archbright HR Advisor with over 15 years of experience providing HR Leadership across a variety of industries including tech, health care, and e-commerce. Sarah teaches the Employee/Labor Relations/Employee Engagement section.

Ben Eckhart, JD | Ben, an Archbright Attorney, has over 5 years of experience advising employers in all areas of employment law. His background includes litigation defense and employer investigations. Ben also teaches the Employee/Labor Relations/Employee Engagement section.

Tiffany Knudsen | Tiffany is a Content Manager at Archbright, responsible for creating and reviewing all safety-related content. She joined Archbright in 2006 and has experience in financial analysis, workers’ compensation advice, and safety-related assistance. She also teaches the Employee/Labor Relations/Employee Engagement section.

Jackie Bindon, SHRM-SCP | Jackie is a Senior Compensation Consultant with Archbright. Her HR career started more than 30 years ago, and she has consulted with companies in a variety of industries to create compensation and pay equity programs. She also teaches the Total Rewards section.

**Is Your Workplace at Risk for A COVID-19 Inspection?**

When conducting inspections, Safety and Health Officers try to identify workplace hazards that could injure employees or make them sick. These violations typically correspond to existing safety regulations. Federal and state regulations are typically conceived from industry incident trends, meant to reduce worker injury rates, but often take time to develop. Once the Occupational Safety and Health Administration (OSHA) or state-run agencies propose new rules, there is a multi-step adoption process where advisory committees help write the proposed rule, small businesses are consulted for impact, public input is considered, and revisions are made if needed. This entire creation and adoption process can span months, if not years, and employers usually have plenty of time to prepare before implementation. These days, emergency COVID-19 directives and guidance seem to materialize weekly and, in some cases, daily from federal and local agencies. What do these ever-changing requirements and recommendations mean for employers? Could workplaces be investigated for COVID-19 violations that were recently created or amended regulations, even if the employer isn’t aware of the requirement’s existence?

Yes, employers can be investigated for COVID violations, even if they are unaware of requirements. Although many states currently have COVID directives and OSHA has guidance for all employers, OSHA and state-run programs also have a principal safety standard called the General Duty Clause. This clause states that employers are responsible for keeping their workers safe from hazards in the workplace that are causing or are likely to cause harm. Emergency rules are often not tied to an existing safety rule, so OSHA and state agencies may cite an employer using the General Duty Clause if they find that workplaces are not doing enough to protect workers from COVID-19. Even a recommendation under OSHA Guidance can turn into a citation if the Inspector determines that the employer isn’t taking necessary steps to prevent an outbreak. There are several reasons that OSHA or a state-run agency will inspect the work site for COVID-19 violations:

* COVID-19 outbreak
* Employee complaint
* COVID-19 hospitalization or fatality
* Referral from another agency
* A regularly programmed safety inspection
* Industry-wide inspections
* Area-wide inspections
* Follow-up from the previous inspections

As of August 15, there have been over 69,500 workplace complaints across the country. For the workplaces that received citations, the average total fine is approximately $13,000, although many are much higher. Federally covered employer inspection data is now available online

at https://www.osha.gov/enforcement/covid-19-data.

The news about inspections may seem grim, but employers can use this information to prepare their workplace to avoid COVID-19 outbreaks, employee complaints, and prepare for unannounced safety inspections. Archbright continues to track guidance and regulations and update members through Compliance Alerts, mozzo posts, and Archbright Insights. There are several COVID-19-related resources available in the mozzo Resource Library, including a sample plan, plan checklist, policies, posters, training materials, and much more. Eligible members also have access to the Safety and HR hotlines to ask questions and get assistance with their COVID-19 prevention programs.

COVID-19 Raw Employer Data in Washington

8,443 COVID-19 Workers’ Compensation Claims

56% Healthcare Workers

11% First Responders

32% All Other Industries

15,406 Education/Outreach Contacts

2,041 Inspections

841 COVID-19 Related Consultations

1,006 Inspections with Violations

Outreach counts are from 6/1/2020-8/15/2021; all other counts are from 3/1/2020-8/15/2021.

Source: L&I Coronavirus Response Data