**Archbright™**

Insights Newsletter

October 2020

**The 2020 Regional Benefits Survey is Now Available**

In partnership with Cascade Employers, an employer association based in Salem, Oregon, we are pleased to announce the 2020 Regional Benefits Survey is now available for purchase on Archbright.com.

Designed to help you determine your benefits and policy practices, this year’s Regional Benefits Survey includes responses from 306 participating organizations from across the Pacific Northwest.

The survey was open for participation this year from May through August. Archbright members who participated in this survey receive both the Full Report and the Non-Profit Report for free. Participating non-members receive reports at 50% off.

If you participated and have not yet received your access information to download the reports, please reach out to regionalsurveys@archbright.com. If you did not participate, but would like to next year, please let us know at info@archbright.com.

Access the reports today and learn how hundreds of Pacific Northwest companies support work life balance, increase employee satisfaction, manage compensation programs, promote health and well-being, and encourage financial wellness.

Survey reports are now available for purchase on Archbright.com. Email regionalsurveys@archbright.com for more information or with any questions about the survey.

**Don’t forget: Developing Your Company’s Training Plan On-demand class is free for members!**

Just before the COVID-19 pandemic began, I announced a new
on-demand class called Developing Your Company’s Training Plan was available to all members, for free!

I wanted to take a moment to remind all of you that this class is still available to you as part of your membership. This is a great time to assess your training needs for 2021 and create a plan to close critical skills gaps.

The course outlines a 7-step model to design an annual training plan across departments. Participants will learn to determine budgetary needs and to calculate return on investment. By targeting specific business line training needs, organizations will invest their training dollars wisely by aligning training programs with business goals.

The on-demand version is a reboot of our former live, in-person class. It is 90 minutes long and includes a toolkit and training plan template so you can get started right away. Access it anywhere, at any time.

We are thrilled to offer a more convenient version of the class and help members set a course for training success!

If you would like to activate your access to the course, reach out to our Member Services Team at info@archbright.com for more details.

**Archbright Webinar Recordings Available to All Members**

If you were unable to attend a recent webinar, or want to view it one more time, all of our 2020 webinars are recorded and made available to members on our website. Please visit our Upcoming Events page to access the recordings for:

* Paid Family & Medical Leave: The Employer Role in 2020 (hosted on March 19)
* Managing a Reduction in Force During Covid-19: What Employers Need to Know (hosted on March 26)
* Employer Obligations Under the Families First Coronavirus Response Act (hosted on April 1)
* Workplace Safety During COVID-19: A Guide to Keeping Operations Running Safely & Efficiently (hosted on April 29)
* Are You Ready to Return Your Employees to Work? (hosted on June 18)“
* “They Said What?” Political Speech and Activity in the Workplace (hosted on August 27)

Our October 22 webinar, PNW Employment Law Update, is sold out, however the recording will be available to all members within 2 business days of the event. We will notify you via email, but you can also visit the Upcoming Events page.

**New Toolkit Resources Added This Month**

Our content team is continually working on updating and adding new resources to the Online Toolkit. We wanted to highlight these two new (or recently refreshed) resources for you:

* Bring Your Own Device “BYOD” KeyNote and Sample Policy

The use of personal devices for work creates a loss of company control over its information and information security. This keynote will address the challenges inherent with BYOD situations and offer best practice and policy suggestions. A BYOD policy addressing the use of personal devices for work is advisable in order to not only identify permissible work uses for personal devices, but also implement controls related to security risks raised by such use.

* Employers Guide to Workplace Injuries KeyNote

This Keynote is intended as a general guide to assist employers in understanding best practices for how to handle workplace injuries, including HR, safety, and legal considerations.

Eligible members can access the above in our Online Toolkit, under Member Home on Archbright.com or through our mobile app, Archbright Mobile, available on the App Store or Google Play.

**Workplace Harassment Awareness Training Goes Mobile**

It’s hard to believe that fall is upon us! The summer of 2020 seems to have whizzed by as we still find ourselves in an upside-down, COVID world. For many organizations, though, the summer sun shed light on the current situation and allowed time to reorganize the way they do business.

Members have shared that their employees are adjusting to the new normal. This means that plans that were on hold are taking root again, projects are starting to flourish, and signs of new life are emerging. With this comes new ideas and new technologies—and training is no exception.

At Archbright, we have been hard at work to offer our members training solutions that fit their new normal. Now, nearly all of Archbright University classes are taught virtually, with a live instructor, allowing participants to interact in a variety of ways to maintain high engagement and learning.

But what happens when employees can’t get together, even virtually? As many organizations are working to make up for lost time, it can be challenging to bring a group of employees together for team training. To support this, Archbright is pleased to offer Workplace Harassment Awareness training for mobile devices.

No computer? No problem! Employees can now take the class when it’s convenient for them, either on a tablet or mobile phone. This allows them to train from anywhere and to work at their own pace. The mobile course offers the same curriculum that is taught in the instructor-led course. It is interactive and engaging, ensuring that employees glean the important objectives taught in this class.

If compliance training is still on the list for 2020, Archbright is positioned to be your partner in learning. For more information about Workplace Harassment Awareness training, either virtually or on demand, please contact an Archbright Account Executive or visit Archbright.com.

Note: On-Demand Workplace Harassment Awareness cannot be purchased through Archbright Mobile and must be purchased on Archbright.com.

*Source: Amy Bachmann, Director, Archbright University*

**Addressing Workplace Complaints and Investigations**

Most employers periodically receive employee complaints of alleged mistreatment. Many employers are seeing increased tensions in the workplace due to a variety of reasons, including, for example, COVID-19 economic, safety, and health issues, discord regarding political and social movements, and decreased team unity due to remote work situations. By responding promptly and effectively to workplace complaints, employers are able to quickly identify and address problems that can interfere with the efficient operations of the business. In addition, a proper investigation of complaints and taking prompt, effective action to stop any mistreatment provide the employer with a potential legal defense. Not all complaint responses and investigations are equal and there are several crucial steps to remember to make sure your workplace is properly addressing workplace concerns. Missing these steps means your business may be failing to timely and thoroughly address issues before they grow and fester. It also means you may be doing more harm than good if you have an investigative and complaint process that is not followed, or is only followed in certain situations.

At Archbright, we routinely guide our members through addressing such workplace complaints and investigations. Here are some common mistakes made by employers when faced with such concerns:

* Failing to investigate if a complainant says they do not want any action to take place. Sometimes employees raise a concern, then say they do not want an investigation to happen and/or that they do not want to harasser or accused to be disciplined. Employees make such statements for a variety of reasons, including fear of retaliation. A complainant’s request that no action be taken does not relieve the employer of their duty to investigate all workplace concerns and to take action to address anything that violates company policy and/or the law.
* Failing to investigate minor issues. Every workplace issue that is raised needs to be addressed, but not all investigations are the same. Some employers are reluctant to address perceived minor issues because they have the mistaken perception that all investigations are alike – involving dozens of witness interviews and major disruption to operations. To the contrary, an investigation can be as simple as having a single conversation to clear up a misunderstanding or issue, followed by simple documentation in a file that the conversation took place and the matter was addressed. If a concern or issue is raised, it needs to be addressed and that investigative effort needs to be documented, even if the issue raised is minor.
* Responding only to “formal” or written complaints. A mistake we continue to see is where a supervisor or HR representative is aware of an employee’s concerns, but no investigation was conducted because the employee did not make a “formal” complaint or put the complaint in writing. If the employer is aware of an employee concern, it needs to be investigated. This is true even if the company has a policy describing how employees should make complaints, but the complainant does not follow that process. Once an employee raises a concern, the company is obligated to investigate it, even if the employee says they are just “venting” and not really making a complaint. As a practical matter, there is no difference when it comes to an employer’s obligation to investigate. For example, if an employee says that their boss yells at them, but then the employee says they are just “venting,” the issue remains that the boss may be misbehaving and the employer is now on notice of that behavior.
* Not investigating something when there is no complainant. If a supervisor or HR representative personally witnesses something that they believe might be violation of policy, or an employee appears upset, then an investigation needs to take place. For example, if a supervisor or HR representative witnesses a heated exchange between employees, or sees an inappropriate comment in an email, then the matter needs to be reviewed, even if no employee comes forward with a complaint.
* Refusing to make credibility determinations in a “he said, she said” situation. Where an investigation involves an incident with only two witnesses, each of whom has a different version of events, it is still possible for the investigator to make a determination as to what they think happened. Such a determination is not possible in all situations, of course, but there may be evidentiary clues that allow the investigator to make a finding as to what they think happened. This includes, for example, body language and expression, one party’s history of similar behavior or propensity to lie, the parties’ motivations to lie or tell the truth, etc. Sometimes an investigator is not able to determine what happened, which is an acceptable finding. However, it should not be a foregone conclusion that it is impossible to render a finding even if there are differing accounts and no other witnesses.
* Being afraid to ask detailed questions or expand the investigation into logical areas. For example, if an employee complains they have been subjected to inappropriate touching, then effort should be made to determine who else was in the area at the time and may have seen the event.
* Not investigating stale or old events. For example, the employee allegedly involved does not work for the company any longer, or someone raises a concern about their past performance evaluation.

Eligible members are encouraged to call the Archbright HR Hotline to get guidance from Archbright or their legal counsel if they are in doubt as to how to proceed with any concern raised about the workplace.

*Source: Ami De Celle, Archbright Attorney*

**Should You Have a “BYOD” Policy?**

In today’s workplace it’s common for employees to bring their own device to work to access work email and text co-workers and/or customers (“Bring Your Own Device” or “BYOD”). Some employees consider personal devices extensions of their lives, and being able to achieve work-life integration through the use of personal devices increases job satisfaction and productivity. Thus, it is becoming almost impossible for employers to prevent their employees from using their personal devices for work, even in circumstances where employers provide work devices. Employers who allow BYOD may also save money on equipment, repair and replacement, even more critical to employers struggling during the pandemic. According to Forbes Magazine, the BYOD market is set to reach $367 billion by 2022, up from $30 billion in 2014. (*Forbes The Future of BYOD: Statistics, Predictions and Best Practices, 1/21/19*).

BYOD might sound like a win-win for employee and employer, but allowing BYOD without a compliant and comprehensive BYOD policy subjects an employer to multiple risks such as:

Employer liability for an employee’s wrongful use of the device.

Data collection, retention, and destruction obligations under a litigation hold or contractual agreement.

Ownership of intellectual property created, stored, or maintained on an employee’s personal device, including statutory recordkeeping requirements.

Potential violation of the employer’s other policies, such as a prohibition against harassment, through an employee’s use of their personal device.

Costs, such as reimbursing employees for work-related use or providing IT support.

Issues with the device and its data when an employee leaves the company or is terminated.

Potential wage and hour liability for non-exempt employees using devices outside of normal working hours.

Productivity issues related to employee use of personal devices during working time.

Additionally, if an employee uses their personal cell phone for work and it contains important evidence needed in an internal investigation an employer may or may not have access to this information. Although the phone is owned by an employee and likely contains important personal and confidential information of the employee, it may also contain information related to legally-protected efforts to unionize or report illegal activity of the company. However, to facilitate a harassment investigation in some instances, evidence of this nature can be the “smoking gun” and provide important corroboration. A BYOD policy can help an employer access and retrieve the information on the employee’s cell phone.

Through a BYOD policy, employers can give employees freedom, while also demanding a higher level of accountability and protecting confidential information and business interests. Such policies need to be adapted after careful consideration of all issues, including the employer’s legitimate business needs, relevant laws, and the culture of the company. For more information, reference our KeyNote and sample policies Bring Your Own Device (BYOD) or contact an Archbright HR Advisor or attorney. Eligible Archbright members are encouraged to contact the HR Hotline with any questions or to seek specific guidance.

*Source: Kellis Borek, VP, Labor and Legal Services*

**HR FAQ**

Question: When a vaccine becomes available for COVID-19, can we mandate that employees be vaccinated?

Answer: According to the World Health Organization, more than 150 vaccines are currently being developed in labs across the world. Some drug manufacturers estimate that a vaccine may be ready and approved for general use by the end of this year or early 2021.

Although the Equal Employment Opportunity Commission (EEOC) suggests employers should encourage flu shots, rather than require them, there are no specific laws that preclude an employer from requiring employees to get a vaccine. In general, an employer can have a mandatory vaccination policy, provided employers consider religious accommodation requests and medical accommodation requests. In past years, many employers, especially health care providers, have mandated vaccinations, and other employers have encouraged them by arranging onsite vaccinations at the workplace and/or paying for employee vaccinations. Given the severity of the COVID-19 pandemic, unless or until the EEOC publishes more specific guidance, it is likely employers will have the right to require employees to be vaccinated for COVID-19, subject to the same religious and medical accommodation requests.

However, the question for most employers and employees alike is whether – or when – a COVID-19 vaccine will be widely accepted by individuals. It is likely employers can expect significant objection to a mandate of a new vaccine, which may be viewed by some as risky or ineffective. Employers should evaluate whether a mandatory vaccination policy is necessary for the business, in consideration with other alternatives, such as remote work, physical distancing, face coverings, and other CDC-recommended guidelines to prevent the spread of COVID-19.

Before mandating vaccinations, employers are encouraged to seek legal counsel. Additionally, if employees are represented by a union, mandating vaccinations needs to be bargained with the union.

*Source: Joy Sturgis, Content Manager*

**HRCI Credentials Lead the Way in Adding Value**

HRCI® certificants know from experience that an HR certification supports their personal careers and improves workplace outcomes. In fact, a 2018 Payscale study validates certification’s pivotal role in the human resources profession.

The study’s findings suggest that HR professionals are turning to certification to support their ability to evolve. Likewise, companies are recognizing the value of having an HRCI-certified practitioner within their ranks.

In 2020, we are experiencing unprecedented changes in the workplace and its workforce. Earning an HRCI certification now becomes more valuable than ever before. Here’s why:

The shift to remote work have altered business practices and the role of HR practitioners. Earning an HRCI certification enhances the HR professional’s ability to be agile and adapt to the new demands of both the workforce and the work environment.

Certification is especially valuable in small to midsize companies, where there is a preference for requiring a professional certification over advanced HR degrees. This speaks to the broad basis of HR knowledge that it takes to pass professional-level HR certification exams.

Certified HR professionals bring the added value of pursuing continuing education built on a broad base of HR knowledge. Maintaining your certification requires continuing education in HR, which gives HRCI certificants another competitive edge over their peers.

Beyond our HRCI certification exam prep courses and Archbright University classes that provide recertification credits, Archbright also provides additional support for your HRCI certification:

Archbright members receive $50 off the aPHR®, PHR®, PHRca®, SPHR® or GPHR® exam fee! Use promo code: ARCH50.

Members also receive three 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.

Questions about these benefits? Visit our HRCI Member Benefits page or reach out to us at info@archbright.com for more information!

**Registration is Now Open for the November Session of the Northwest Diversity Learning Series**

Archbright is a proud sponsor of the 2020 Northwest Diversity Learning Series (NWDLS), produced by The Institute for Sustainable Diversity and Inclusion (www.i4sdi.org).

This annual series offers morning sessions for employees, managers, leaders, and diversity champions to explore current and emerging issues affecting diverse, multicultural work environments.

Register today for the next session:
Session 6: Wednesday, December 2, 2020

How Algorithms ARE Affecting You: Decoding the Bias Within

Learn what Artificial Intelligence (AI) means, how it impacts you as an individual, your work environment, and influences how you and others think, perceive, believe, and act. Gain understanding about how AI is affecting diversity and relationships, and what we can do about it.

One of the developments in A.I. is the use of persuasion architecture using demographic and psychographic information to create angst, fear, and outrage against targeted identity groups. This development is seeping into the workplace through social media—it seems innocent, but it has negative ulterior motives and hidden agendas.

Presenters Lorelei Carobolante and Francesco Carobolante will discuss the importance of building and equipping relationships to be more resilient to the culture clashes involving diverse groups spurred by social media and Artificial Intelligence.

When: Wednesday, December 2, 2020

Time: 8:30am to 12:00pm

Where: Virtual

For registration, cost, and more information about the September session, please visit https://www.i4sdi.org/2020-nwdls-sessions or call ISDI at 206.362.0336.

**It’s Renewal Time!**

As we approach the end of the year, you once again have the opportunity to change your membership level. Please be watching for an email from us in the coming days with more information about next year’s levels. Based on member feedback, we’ve made a few changes!

Once you have reviewed, you will need to let us know of any changes to your membership level on or before December 1, 2020. Note: if you would like to remain at the same level for 2021, then you do not need to do anything. Your membership will automatically renew on January 1, 2021.

*Thank you for your continued membership!*

**L&I Proposes No Increase in Workers’ Comp Rates Next Year**

Washington’s Labor & Industries (L&I) is proposing no increase in the average state fund workers’ compensation insurance rates for 2021. If this proposal is adopted, there will be a 0% rate change for the average premium paid per employee overall; this will be the fourth year in a row with no increase in the average rate if implemented. However, employers may still see changes in the insurance premiums they pay as job classes are adjusted, and new 2021 experience factors are applied.

Workers’ compensation insurance, also known as industrial insurance, provides wage replacement and medical benefits to workers who are injured while on the job. Workers’ compensation is no-fault insurance, meaning that in most cases, your business cannot be sued when a work-related injury or illness occurs. This system is designed to protect both workers and employers from the financial burden of a work-related injury or occupational disease.

There are three main types of workers’ compensation insurance, depending on the state the employer is operating:

* State fund – You must purchase your insurance through the state.
* Competitive state insurance fund - Businesses can choose their workers’ compensation insurance from the state or a private carrier.
* Self-insurance - An insurance plan funded by the employer.

Washington State is one of only a handful of states that does not allow competitive private workers’ compensation coverage. In Washington, you must purchase your coverage through L&I or be a certified self-insured employer. Most employers purchase insurance through the state fund as rates are typically low, and each year the state fund is evaluated for rate increases. Additionally, each job class known as a risk class is also assessed for rate changes. These risk class base rates are determined by how dangerous a particular job is statewide - the less risky a job, the lower the insurance base rate.

Each employer is also evaluated for risk and assigned an insurance modification rate known as an ‘experience factor’ or ‘mod rate.’ This experience factor is based on three historic years of workers’ compensation claims costs, factoring in the number of hours employees worked during those three years, and the risk classes of those working employees. The employer’s experience factor is multiplied against the risk class base rates to determine the individualized insurance rate for the employer. Employers typically receive notification of the upcoming year’s experience factor in December before it goes into effect January 1st. Both insurance rates and experience factors are good for one calendar year.

While financial projections indicate a need for a significant increase in the overall insurance rates in Washington to cover all of the costs for injuries and illnesses that are projected to occur in 2021, L&I is proposing using funds from the workers’ compensation contingency reserve to keep rates from climbing. This move is meant to assist employers who may be struggling financially from the current pandemic. Public hearings are scheduled virtually on October 27th and 29th. For more information on attending a public hearing or submitting a question, please visit L&I’s Rates for Workers’ Compensation.

Eligible members are also encouraged to contact the Archbright Safety Hotline at safety@archbright.com for additional questions or individualized insurance rate information. For more information on our Workers’ Compensation services, contact info@archbright.com

*Source: Tiffany Knudsen, Safety Content Manager*

**Safety & Health Webinars**

Safety awareness tips, compliance information, and tools to take safety programs to the next level!

Archbright’s extensive safety & health webinar library is available to all members. Our Safety, Loss Control, and Workers’ Compensation experts record monthly webinars that employers can use to build, or update, required written safety programs and establish best practices.

Topics include:

* COVID-19 Safety Program Requirements
* 8 Essential Elements of Safety Series
* Required Written Programs
* Safety Train the Trainer Topics
* Employee Safety Engagement
* Claims’ Financial Impact
* Retrospective Rating
* And More!

Most webinars are designed in conjunction with sample templates and tools for employer implementation. Contact safety@archbright.com for more information about this webinar library!