**Archbright™**

Insights Newsletter

November 2020

**Introducing Archbright Advance**

Move Your D&I Journey Forward in a Purposeful Way

A diverse and inclusive culture makes a positive and lasting impact in the workplace, yet many leaders do not feel prepared or equipped with the right tools to be successful.

We can help.

Delivered in 3 phases, Archbright Advance identifies your organization’s current state, helps develop your Diversity & Inclusion (D&I) Roadmap, and provides impactful employee training:

1. The Spectra Diversity Inclusion Assessment™. Delivered to all leaders and employees, it is designed to help encourage conversation and facilitate education of diversity and inclusion. Two reports are generated: one for the individual and one for the organization.

2. D&I Consulting, Focus Groups, and Planning for Change. We analyze the assessment results, deliver an Executive Briefing, and lead employee focus group sessions. We then facilitate a half-day D&I Roadmap Session with leadership to develop a plan of action, and check-in on a quarterly basis.

3. All Employee D&I Training. This full-day training incorporates the individual Spectra Diversity Inclusion Assessment™ into the learning to help employees identify the belief systems that drive their behavior and commit to skill-building with an individual action plan.

To learn more about Archbright Advance, visit Archbright.com, reach out to your Account Executive, or email us at info@archbright.com.

**CEO Corner
Giving Thanks!**

2020 has been quite a year. That’s an understatement, I know. As we approach Thanksgiving, I wanted to express our gratitude to all of our members for putting your trust in us. It has been an honor to serve each and every one of you as you have faced the many challenges this year has brought you. We know these have been plentiful because:

* We’ve seen a 40% increase to the HR and Safety Hotline this year, logging over 11,000 calls so far! Our HR and Safety Hotlines provides live, real-world guidance at your fingertips. Simply call our HR Advisors and Safety Teams with your concerns and questions and get the answers you need, right when you need them.
* Our employment law attorneys have helped more than 400 members with their legal matters. Silver and Gold Archbright members receive employment law and labor law advice and counsel from the Archbright Legal Team. Silver members receive 15 hours each year, and Gold members receive unlimited advice. There is no better, cost-effective way to make sure you have an employment attorney available…just a phone call away.
* Our Archbright University Team has delivered over 300 classes, most of them virtually! Due to the COVID-19 pandemic, we are currently delivering all available classes virtually. These are always taught by an expert, live onscreen, and provide the same level of interactivity as our in-person classes. Check out our course calendar online!
* Our HR Consultants have provided 12,000+ hours of support to your teams. Our team of experienced HR professionals can help you manage your day-to-day HR functions or strategically guide you to nurture, grow, and compensate your talent pools both operationally and strategically in an ongoing or project basis. And we have delivered much of this support virtually during the pandemic!
* Safety and Claims Management Teams continue to work hard to keep your workplaces safe and get injured workers back to work. We work closely with members to anticipate and alleviate future safety concerns—which this year has included offering COVID-19 Screenings, Digital Safety Inspections, and Safe Start Safety Plan consultations.

Prioritizing the safety of your employees not only keeps your teams high-performing and engaged, it also saves your organization thousands of dollars in workers’ compensation insurance costs. We also administer four industry-specific retrospective rating groups (manufacturing, construction, sewer districts, and wholesale/retail/professional services) for members to help them earn a rebate on their L&I premiums!

And we still have a couple months to go! We are always here to support you with any of your workplace performance needs. Please do reach out to us if we can help you more in any way. In the meantime, we wish you a warm and safe Thanksgiving—Gobble, Gobble!

**Webinar Recording: PNW Employment Law Update**

The recording of our October 22 webinar, PNW Employment Law Update, is now available on Archbright.com.

Erin Jacobson, Director of Legal & HR Advice, and Joy Sturgis, Content Manager, reviewed 2020 employment and labor law updates at the federal level and those relevant to employers in Washington, Oregon, and Idaho.

If you were unable to attend or want to view it again, please visit the Upcoming Events page to access the recording.

**The Power of Habit**

It’s hard to believe that we are in the home stretch of 2020, after many of us have been quarantined or physically distanced for the past 8 months. Our routines have changed, the way we do business has changed, and quite possibly our habits have changed.

According to Healthline, “It can take anywhere from 18 to 254 days for a person to form a new habit and an average of 66 days for a new behavior to become automatic.” As we look forward to a new year, it’s time to reflect on how 2020 has molded our lives and the lives of our employees. Some have adapted very well to remote work. Others are still struggling and are in need of a lifeline. It is imperative that we evaluate our employees’ habits, new and old, as we face an even longer stretch of remote work.

In his best-selling book, The Power of Habit, author Charles Duhigg outlines how habits affect our efficiencies. Mastering our habits, both at work and at home, can not only make us more efficient, but it can also make us more productive performers. Duhigg introduces the idea of using skill instead of will to replace limiting habits with effective ones. This will keep our brains on track and working towards healthier, more productive lives.

Archbright University is excited to announce its partnership with VitalSmarts to bring a new training, The Power of Habit, to our members. The course is designed to help employees adapt when faced with change, while creating new routines to produce desired outcomes. Employees learn techniques for how to stay focused to achieve goals, both personal and professional.

For more information or to register for this powerful new class, please visit Archbright.com.

**Remote Work Considerations**

Since the start of the COVID-19 pandemic, companies have had to constantly adapt to survive. In order to continue to thrive during this time, many companies have allowed larger portions of their workforce to work remotely. In fact, some companies, like Microsoft, have recently announced that they will allow some employees to work from home indefinitely. For companies that did not allow remote work or very rarely allowed remote work prior to the pandemic, the consideration of where the work is actually being performed and the impact of the new “work” location on the business may not have been top of mind.

As the pandemic and remote work continue, employers should take into account certain considerations when determining where they will allow employees to work away from their assigned work location. Keeping tabs on where employees are living and working is important because an employee’s work location triggers several legal requirements for the employer.

Here is a non-exhaustive list of some of those considerations:

* Employers should remind employees that they must notify the company if they change their home address or temporarily relocate to another city/state/country for a period of time. Recommend setting a period of time, such as a month, that is a typical duration that could subject the company to certain tax obligations and withholdings. Additionally, the location of where the work occurs will dictate what state’s employment laws apply (more on this point below).
* Different states have different jurisdictional requirements for when individuals become subject to their laws and employers are subject to that jurisdiction’s withholding requirements for income tax purposes. Additionally, even having one employee in another state outside of where the company has work locations could subject the company to the state’s business tax obligations and withholding requirements. While certain states have put a moratorium on some or all those tax obligations and withholding requirements right now, these are decisions that were made because of the pandemic and will not last forever.
* Employees working in other jurisdictions, outside of their assigned work location, subject them to that jurisdiction’s employment laws. As an example, meal periods and rest breaks are dictated by state law. For example, if a non-exempt employee decides to go visit family in another state and live with them while working remotely for 3 months, then the company must abide by that state’s meal period and rest break rules as well as all other state specific employment laws that would apply to this employee.
* If an employee moves out of the country either temporarily or permanently, the company needs to consider compliance not only with that other country’s laws but also U.S. immigration law requirements.
1. If the company did not previously allow, or infrequently allowed, remote work before the pandemic, it should consider drafting and having employees sign remote work agreements. These agreements should be as detailed as possible in terms of rules and expectations for remote work. Two important considerations for non-exempt workers are: Developing a system for non-exempt employees to document all hours worked and all required rest breaks and meal periods.
2. Reiterating any rules about non-exempt employees not working overtime without pre-approval from managers since employees are much more easily able to engage in work when their work location is their home.

Employers that have remote workers working in new locations should contact their payroll provider or tax accountant to determine how to handle any payroll and tax liabilities.

*Source: Colleen Mayer, Archbright Attorney*

**What is an Undue Hardship?**

The Americans with Disabilities Act (ADA) and state disability law prohibits discrimination by an employer against any qualified individual with a known disability regarding job applications, hiring, advancement, termination, compensation, training or other terms, conditions or privileges of employment. Unlawful discrimination includes failing to make “reasonable accommodations” to the known physical or mental limitations of an otherwise qualified individual with a disability.

However, the employer does not have to provide a reasonable accommodation of a disability that would cause an undue hardship to the employer. This is a very high threshold to meet and the employer bears the burden of proof. In other words, the employer cannot merely speculate, but must be able to objectively show that a reasonable accommodation imposes an undue hardship based on the specific circumstances.

The ADA defines “undue hardship” as an action requiring “significant difficulty or expense.” This could include the following factors:

1. The nature and cost of the accommodation needed;
2. The overall financial resources of the facility, including the number of persons employed, the effect on expenses and resources, or the impact on the operation of the facility; and
3. The type, size, location, and financial resources of the employer.

An employer must assess on a case-by-case basis whether a particular reasonable accommodation, including medical leave, would cause undue hardship. Employers should meticulously document their analysis in order to be in a position to defend a claim by an applicant or employee alleging a failure to accommodate, including detailed. Cases have held that undue hardship may generally be shown by proving that the accommodation will bring one or more of the following consequences:

1. Significant losses in productivity because work is completed by less effective workers, last-minute substitutes, or overtired, overburdened employees working overtime who may be slower and more susceptible to error;
2. Lower quality and less accountability for quality;
3. Lost sales;
4. Less responsive customer service and increased customer dissatisfaction;
5. Deferred projects;
6. Increased burden on management staff required to find replacement workers, or readjust workflow or priorities in light of absent employees;
7. The financial impact of locating, training, and paying for replacement workers; and/or
8. Direct threat to the health or safety of the disabled individual or other individuals in the workplace.

The analysis should include specific facts that address each of the above factors. For example, an undue hardship defense could be successful where an employer obtains an estimate for the cost of replacing lighting throughout the office to accommodate an employee’s light sensitivity and refers to the budget to show such the expenditure is not possible without cutting crucial operational costs. However, undue hardship is not a “cost-benefit analysis.” The cost of a reasonable accommodation depends on the employer’s resources. The benefit should always be the same – a reasonable accommodation is only reasonable if it is effective in enabling the individual to perform the essential functions of the job.

For more information, reference our KeyNote ADA Guide 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: Joy Sturgis, Content Manager*

**HR FAQ**
Question: Since COVID and seasonal flu symptoms are so similar, how should employers handle employees that are sick?

Answer: As we approach cold and flu season, employers are rightly concerned about when to distinguish between run-of-the-mill cold or flu symptoms and when to be concerned a sniffle signals COVID-19. The short answer, as you might suspect with virtually everything this year, is that there aren’t clear line distinctions. Public health professionals have, however, offered some guidance on the issue—and for those of us who aren’t physicians ourselves, that guidance is perhaps the best place to start.

The Centers for Disease Control (CDC) continues to state that symptoms of COVID-19 may be mild to severe and individuals can appear two to fourteen days after infection. Those symptoms can resemble symptoms of influenza (i.e., the flu). Because individuals experiencing these symptoms may have COVID-19, the CDC still recommends quarantine until all three of the following are satisfied: ten days since symptoms first appeared, 24 hours have passed without a fever, and other symptoms of COVID-19 are improving. In other words, when in doubt, assume COVID-19 and remain home for the requisite time.

As an alternative, the Washington State Department of Health (DOH) has offered guidance via a flowchart when an individual experiences any one or more of the symptoms associated with COVID-19, with and without known exposure to someone with COVID-19. Essentially, DOH breaks down symptoms into two classes, Class A and Class B symptoms.

If employees experience any one Class A symptom, multiple Class B symptoms, or any one Class B symptom lasting more than 24 hours, the flowchart recommends employees contact a health care provider. If that provider diagnoses the individual with something other than COVID-19, then the employee need only wait until 24 hours without a fever and without fever-reducing medications— provided symptoms are improving—or follow the health care provider’s instructions, whichever offers the most amount of time in quarantine. In other words, where the CDC does not cut short quarantine for diagnoses other than COVID-19, DOH takes an alternative approach and permits an abbreviated quarantine—but only with a medical professional’s diagnosis that the employee has something other than COVID-19.

Archbright has not taken a position in favor of either agency over the other. Whatever employers elect to do, Archbright would recommend they follow either agency’s guidance consistently and check for updates frequently. And, as always, please feel free to contact the HR Hotline with any COVID-related questions.

*Source: Mark Nelson, Senior HR Advisor*

**Diversity is Not Enough: Why HR Should Champion Inclusion in the Workplace**

Inclusion is frequently rolled in with diversity initiatives, but there’s more to inclusion than measuring demographics and preventing discrimination. In a truly inclusive culture, everyone feels heard and valued.

“So many times we hear the words diversity and inclusion used interchangeably,” says Eileen Scully, founder of The Rising Tides and author of In the Company of Men. Diversity is about the numbers, and inclusion is about the culture, she says. Creating an inclusive culture can make a huge difference for employers.

Here’s why HR should champion inclusion in the workplace.

**Allow People to Bring Their Whole Selves to Work**

Outdated policies and guidelines can prevent companies from creating an inclusive culture. For example, standards for “professional” hair or dress are often exclusionary to employees with certain ethnic or religious backgrounds. Policies banning traditional ways people of color often wear their hair have been shown to harm black employees. Many states have introduced legislation banning discrimination based on natural hair.

“That’s an overt example of not being inclusive,” says Siri Chilazi, research fellow at the Women and Public Policy Program at the Harvard Kennedy School. “But it can also be much more subtle — as humans, we’re naturally very attuned to what other people are doing.”

Even if those behaviors aren’t written into policies, minority employees will pick up on workplace social and cultural norms. Most workplace norms reflect homogeneous workforces and don’t account for diversity. Minority employees often feel like they have to conform to those norms before they can be accepted at work.

**Cultivate Different Perspectives to Drive Innovation**

The right business decisions rely on an abundance of knowledge, and that comes from employee perspectives. We’ve all had different experiences that shaped our perspectives. Tapping into that difference is critical for solving business problems and meeting clients’ and consumers’ needs.

“Minority employees should feel valued when they challenge colleagues in a conversation or raise new viewpoints,” Chilazi says. “Instead of that being shot down because ‘It’s not the way we do things,’ it should be embraced as an opportunity to learn from perspectives we’ve never heard before.” Groupthink dampens creativity and innovation, but a truly inclusive workplace that values a range of voices and experiences creates an environment where new ideas can flourish.

**Connect Authentically with Your Customers**

Diverse employees are better able to meet the needs of an increasingly diverse population. For example, globally the LGBTQ+ community has $3.7 trillion in purchasing power. Without hearing and respecting LGBTQ+ points of view within your organization, you risk missing out on valuable perspectives — and profit.

Companies that rank in the top quartile for racial and ethnic diversity are 35% more likely to enjoy financial returns above the medium for their respective national industry. Other research has shown similar results, with inclusion driving gains in everything from innovation to market share. Shareholders recognize the impact inclusion has on a company’s bottom line and are beginning to fight for inclusion at all levels.

*Source: HRCI*

**Reminder: It’s Renewal Time!**

As we approach the end of the year, you once again have the opportunity to change your membership level. Based on member feedback, we’ve made a couple of changes to next year’s tier levels. If you missed our email, you can read more about 2021 benefits on Archbright.com.

Once you have reviewed, you will need to let us know of any changes to your membership level on or before December 1. 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.

If you have any questions about your membership benefits, please reach out to your Account Executive or email us at info@archbright.com.

Thank you for your continued membership!

**Changes to Washington Fall Protection Rules**

New rules went into effect on October 1st, 2020 regarding Washington Labor and Industries’ (L&I) Fall Protection regulations. Until recently, there have been two different requirement standards, and employers had to follow the standard applied to their industry. Washington Administrative Code (WAC) 296-155 Part C-1 Fall Protection Requirements for Construction is no longer valid, and the General Industry Standard has been replaced by WAC 296-880 Unified Safety Standards for Fall Protection. This new standard combines the previous construction and general industry standards, making it easier for employers to understand what safety rules apply. The new requirements apply to most industries in Washington and have undergone various changes from new toe board specifications to more clearly defined training standards. Let’s compare some of the significant changes from the previous Fall Protection Construction requirement to the new Unified Fall Protection Safety Standard:

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| --- | --- |
| ***Retired* Fall Protection Standards** | ***New* Unified Fall Protection Standards** |
| Toe Boards on walking/work surfaces were 4" with no more than a ¼" clearance above the surface. | Toe Boards are now **3.5"** on walking/working surfaces with no more than ¼" clearance above the surface. |
| Cover holes were rated at 200 lbs. | Cover holes now must be rated to be able to at least support the **weight of the employee and their equipment.** |
| Warning line tensile strength rating was 200 lbs. for all ropes, wire, and chain. | Warning line tensile strength rating is now a minimum of **500 lbs**. for all ropes, wire, and chain. |
| Skylights had to hold the weight of a 200 lb person with a safety factor of 4. | Skylights now must be able to support **twice** **the employee's weight and their equipment at a minimum.** |
| No previous standard. | Employees working on vehicles or rolling stock 4 ft or more off the ground must wear fall protection.  |
| No previous standard. | The employer must plan and provide prompt rescue in the event of a fall. |

Additionally, training requirements in the new Unified Fall Protection standard have been updated from previous standards. New training requirements have been introduced, and clarifying details have been added. These additions specify that a competent person must train those who work at heights, and topics must include:

* The type of fall hazards in the area they are working in.
* When and what type of fall protection is required.
* How to properly maintain and inspect fall protection equipment.
* The limitations of fall protection equipment.

Archbright has updated its fall protection resources for eligible members. For questions or to get access to these resources, please contact Safety@archbright.com.

*Source: Tiffany Knudsen, Safety Content Manager*