**Archbright™**

**Insights Newsletter**

**February 2020**

# Prevent Common Work-Related Injuries

Every seven seconds, a worker is injured on the job with a preventable injury. This month, we are highlighting a couple of ways Archbright can help.

Ergonomics: Ergonomics is about designing the workplace to reduce risks of strains, sprains, and other musculoskeletal injuries. This leads to increased safety and productivity.

Our Safety Consultants can conduct an Ergonomic Assessment that includes an observation period in common work areas to review ergonomics across a variety of work environments, such as offices or the warehouse floor.

Noise Testing: Noise-induced hearing loss is one of the most common work-related injuries in the US. The intensity and duration of exposure are critical factors in evaluating the potential for employee hearing loss. Noises above 85 decibels are considered hazardous.

If you are concerned about the noise levels in your workplace, we provide:

* Spot Noise Level Testing. We come onsite, take measurements at various locations in your facility, and report on noise exposure levels.
* Noise Level Survey. We collect representative samples over a workday or shift, audit your personal protective equipment requirements, and complete a workstation review.

To conclude each service, we provide you with a findings and recommendations report that equips your team with the knowledge and next steps needed to improve employee experience and avoid injury.

To learn more about all of our Safety Consulting services and the ways we can support your Workers’ Compensation Program, contact us at info@archbright.com, 206.329.1120, or 509.381.1635.

# Developing Your Company’s Training Plan

***New on-demand class is free for members!***

You may know that workplace training leads to increased employee retention, higher customer satisfaction, more efficient operations, and higher profitability. In fact, training budgets are no longer a top challenge for talent developers according to LinkedIn’s 2019 Workplace Learning Report! But, how can leaders close critical skills gaps and demonstrate ROI, while aligning training programs to business needs?

The first step is to develop an annual training plan. I am excited to announce we have taken our live, in-person Developing Your Company’s Training Plan class and created a new on-demand version! The class is 90 minutes long and includes a toolkit and training plan template so you can get started right away.

Just like our former live course, the class is free to members, but unlike the live course, it can be accessed anywhere at any time. This ensures members from all across the PNW have the tools they need to create an effective training plan.

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. Or, look for an email from us in the coming days with further instructions.

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

# Virtual CoffeeTalks in 2020

This year, our Virtual CoffeeTalks will be held quarterly and focused on key compliance topics. With nearly 2,000 members across the Pacific Northwest, these virtual events allow us to provide timely, relevant information to hundreds more participants than with our face-to-face CoffeeTalks. Plus, we record each one! So even if you can’t attend, the recording is available to all members within 2 business days of the event. Please see below

for our planned 2020 schedule, and remember Virtual CoffeeTalks and their recordings are complimentary for all members.

Here’s What to Expect

Virtual CoffeeTalks | Focus: COMPLIANCE

March 19: 9am to 10:30am | Registration Full | Recording available by March 20
Topic: Paid Family & Medical Leave: The Employer Role in 2020 and Beyond

June 18: 9am to 10:30am | Registration opens in mid-April
\*Topic: DOLs Overtime Final Rule

August 20: 9am to 10:30am | Registration opens in mid-June
\*Topic: Politics in the Workplace – Legal Implications and Retaliation

October 22: 9am to 10:30am | Registration opens in mid-August
\*Topic: Oregon Employment Law Update

*\*Topics are subject to change based on emerging trends.*

Face-to-face events include our CoffeeTalks and Annual Workplace Performance Symposium, and are complimentary for members. Check out the Upcoming Events page at Archbright.com for information on our face-to-face events.

# Introducing Management Fundamentals

Over the years, thousands of member employees have attended Archbright University’s most popular class, Supervisory Skills, to learn the tools, processes, and behaviors of effective managers.

During class, attendees work through case studies, engage in group discussions, and participate in break- out sessions. It is through this repeated practice that helps participants retain their new skills and apply them immediately on the job.

Supervisory Skills is our most popular class for a reason—it works!

Yet as our membership continues to grow both in size and across industries, we recognize the need to offer this class in a way that allows managers from similar industries and work environments to learn together.

Because of this, we are excited to introduce **Management Fundamentals**.

Management Fundamentals is the same class as Supervisory Skills with just one change. It features case studies and real-world examples for managers working in an office environment typically found in the professional services, technology, finance, and insurance industries.

For members in industries where there can be multiple worksites, shifts, and production environments, Supervisory Skills continues to be the best choice for management training. It includes in-class activities, case studies, and examples relevant to workplaces typically found in manufacturing, transportation, construction, agriculture, and wholesale companies.

By offering these two options, we hope to better serve our members and provide an experience that allows for more relatable and relevant discussions in the classroom.

Both Supervisory Skills and Management Fundamentals are now on our 2020 Archbright University calendar. Our first session of Management Fundamentals is February 18, 19, and 20 from 9am to 4pm at our Seattle office.

Register today at Archbright.com!

# #METOO Continues in 2020

#METOO remains prominent in the headlines - the trial of Harvey Weinstein started last month, and recently-ousted Debra Dugan, CEO of the Grammys, filed a 44-page charge to the Equal Employment Opportunity Commission (EEOC) alleging the music industry organization engaged in sexual harassment and retaliation. Despite a drop in the number of charges in 2019, the monetary benefits of sexual-harassment cases settled by the EEOC was up about $12 million dollars from 2018.

As employers start implementing business strategies for the new year, addressing and prevention of harassment in the workplace must be front and center. Here in the Northwest, consider the following legal developments concerning harassment for 2020:

1. The Washington State Human Rights Commission (HRC) published comprehensive recommended guidance for employers including a model harassment policy with six elements to make a policy effective and legally compliant. Those elements include policy language covering all statuses protected by law (victims of domestic violence were added as a protected status in 2018), conduct that occurs outside of the workplace, coverage of non-employee behavior, and comprehensive-anti retaliation language;
2. Effective October 1, 2020, Oregon employers will be required to include anti-harassment policies in their handbooks.
3. Effective January 1 ,2020, Washington’s Law Against Discrimination was amended to provide worker protections for employees in the hospitality, retail, security, and contracted property services. These protections include mandatory adoption of a sexual harassment policy and anti-harassment and assault training to all employees;

These headlines, facts, and new laws serve as reminders of #MeToo’s continued influence and, at a minimum, employers should:

* Have a written anti-harassment and discrimination policy and ensure it has been refreshed to include the HRC elements; and
* Train all employees - anti harassment training requirements are already mandatory in several states. Although not mandatory for all employees yet in Washington, Oregon, or Idaho – it’s just a matter of time.

Eligible Archbright members are encouraged to access the HR Toolkit on the mobile app or website to download a sample harassment policy incorporating all of the HRC’s guidance, along with our comprehensive KeyNote. Archbright also offers virtual and on-site Harassment Awareness training for managers and employees.

Source: Kellis Borek, VP, Labor and Legal Services

# U.S. Department of Labor Clarifies Joint Employer Relationships

On January 12, 2020, the U.S. Department of Labor issued a long-awaited new rule clarifying its interpretation of what work constitutes joint employment under the Fair Labor Standards Act (FLSA). With the rule, which is effective March 16, 2020, the DOL seeks to “promote certainty for employers and employees, reduce litigation, promote greater uniformity among court decisions, and encourage innovation in the economy.” The DOL is only the first of several federal agencies to issue new joint employer rules, with similar announcements expected this year from the

National Labor Relations Board – which has been working on a new rule since 2018 – and the EEOC – which announced in November 2019 its plan to clarify how it defines joint employment under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and GINA.

With all of this focus on joint employment, it is a good opportunity to revisit the implications for employers if they are found to be a joint employer with another person or entity. For small employers, it can mean they are subject to state and federal laws that only apply to employers with a certain number of employees. For example, FMLA, Washington Law Against Discrimination, and portions of the Washington Equal Pay and Opportunities Act. It can also mean liability under federal, state, and local employment laws for the work and treatment of the joint employees. The new DOL rule illustrates how this can apply.

Under the FLSA, to be liable for paying minimum wage or overtime, an individual or entity must be an “employer,” which means as “any person acting directly or indirectly in the interest of an employer in relation to an employee[.]” The DOL has recognized that an employee can have two or more employers who are “jointly and severally” liable for all of the wages due the employee (i.e., joint employers). In short, this means that if Company A employs a worker for 20 hours a week and Company B employs the same worker for 20 hours a week, and the companies are found to be joint employers, then both companies are liable for the full 40 hours of wages (and overtime, etc.).

**The new DOL rule addresses two joint employer scenarios.**

**Scenario 1:** An employee performs work for one employer and that same work also benefits another individual or entity (i.e., the potential joint employer). To determine whether the potential joint employer directly or indirectly controls the employee, a four-factor test looks at whether the entity:

1. Hires or fires the employee;
2. Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree;
3. Determines the employee’s rate and method of payment; and
4. Maintains the employee’s employment records.

No single factor is dispositive in determining joint employer status and, instead, it depends on how all the facts in a particular case relate to these factors, and the appropriate weight to give each factor will vary depending on the circumstances.

**Scenario 2:** A worker is employed by two employers for separate hours in the same workweek. If the employers are sufficiently associated with each other, they are considered joint employers. Employers are sufficiently associated if:

1. There is an arrangement between the entities to share the employee’s services;
2. One employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or
3. They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

The rule provides several examples applying the Department’s guidance for determining FLSA joint employer status in a variety of different factual situations. Archbright will continue to monitor additional changes and will update members as more information is provided. Eligible members may access Archbright’s many KeyNotes, policies, and sample forms on the Archbright HR Toolkit located on the website and mobile app.

Source: Ami De Celle, Attorney at Archbright

# HR FAQ

**Question:** I got an anonymous call saying that one of my employees is using drugs at work; we have a zero-tolerance policy, can I send the employee for a drug test?

b An anonymous call is not enough evidence to ask for a drug test. Employers who rely on this type of evidence of employee drug use may subject themselves to legal liability. Without direct observation of prohibited drug use, the best practice is use of reasonable suspicion to conduct a drug test. While someone informing you may certainly be a tip off that something may be going on, you have to have more than just a guess or a hunch to require someone to take a drug test. To justify reasonable suspicion testing, employers should train managers on the signs of impairment, which may include odor in breath, clothes or hair, excessive hunger/thirst, red eyes, lapse in short term memory, difficulty judging time/distance, lethargy and drowsiness, or impairment of short-term memory, attention, motor skills, and reaction time. Be mindful, however, that many of the above-referenced symptoms can also be symptoms of certain physical or mental conditions, such as diabetes, low blood sugar, or mental illness. Since individuals with those conditions could be protected under federal and/or state disability laws, employers could violate those laws if they single out those individuals for testing.

In this type of situation, it is best for the Manager or HR to observe the employee to see if they notice any of the above behaviors or smells. If you don’t observe any questionable behavior, consider pulling the employee aside for a conversation. Let them know what has been reported about them, ask them why someone might think they were using, and then remind them of what your company’s drug and alcohol policy is – and be sure to document the conversation. If, after the discussion, you have concerns that there may be an issue, but you don’t currently have reasonable suspicion, provide the employee with a copy of your policy and have them sign the policy to acknowledge that they received it and it was reviewed with them. Keep this documentation in a separate file and in the event something questionable happens in the future, you have started to build a documented history for discipline and/or safety liability.

Eligible members are encouraged to contact an Archbright HR Advisor for assistance or visit the HR Toolkit on the mobile app or website to download our comprehensive KeyNote Drugs and Alcohol in the Workplace, sample Drug and Alcohol policies, and Drug/Alcohol Impairment Assessment Form.

Source: Sarah Johnson, HR Advisor at Archbright

# New I-9 Form Effective January 31, 2020

On January 31, 2020, USCIS published the Form I-9 Federal Register notice announcing a new version of the Form I-9. This new version contains minor changes to the form and its instructions. Although employers should begin using this updated form immediately, employers may continue using the prior version of the form (Rev. 07/17/2017 N) until April 30, 2020. After that date, employers may only use the new form with the 10/21/2019 version date.

# Developing an Internship Program

Internships are not only an invaluable learning opportunity for students and recent grads, but they also bring value to employers. It’s a creative way to recruit and develop talent in an otherwise competitive hiring market and can bring fresh perspectives rife with innovation and energy.

Here are 5 tips to help you develop an internship program at your organization:

1. **Tailor the program to your company size.** Behemoth companies like Amazon and Microsoft have robust internship programs – they recruit students from all over the world, hold elaborate events exclusively for interns, and have highly developed internal processes for things like training, interviewing and mentorship. Small to midsized companies are better served scaling down the program to better meet staff capabilities and budgetary restrictions. Start small and keep it simple.
2. **Get buy-in from the top.** HR professionals can champion internship programs until they’re blue in the face, but ultimately, programs will fail unless leaders at the company are committed. Department heads and first line managers should be responsible for mentoring interns and providing on-the-job training, so it’s critical to convey to them the value in internships at your organization.
3. **Determine key details.** While keeping simplicity in mind, determine critical details for each internship: start and end date, hours per week, pay rate, and manager. Memorialize the details in an internship offer letter.
4. **Provide tangible work assignments.** Keep in mind that this is likely an intern’s first exposure to a workplace — so provide them with enough structure to stay busy. Managers should identify at least two projects that the intern can work on independently during any down-time between training and meetings. The assignments shouldn’t be mindless busy work – rather, defined projects that provide real value to the organization.
5. **Start planning early.** Students typically begin their internship search 3 months in advance of their intended start date – so summer internship recruiting should commence between January and March. In order to be ready with internship program details for your recruiting efforts, begin planning in late fall or early winter.

Source: Lindsey Sosa, PHR, SHRM-CP | HR Consultant at Archbright

Archbright’s HR Consultants can work onsite at your organization to help support your HR projects and initiatives. From managing employee relations to administering leave policies to developing an internship program, our experienced team can provide long-term assistance or short-term relief. Contact your Account Executive for more information.

**Did you know?**

An emerging trend in internships are called Micro-Internships.

Parker-Dewey pioneered this concept and defines them as short-term, paid, professional assignments that are similar to those given to new hires or interns. They usually consist of 5 to 40 hours of work, and can occur any time of year. They are highly-specific, project- based positions where students receive a fixed fee, typically equating to $15 to $25 per hour, and are given between one week and one month to complete the project. Many of these can be completed virtually. These can be an effective alternative for smaller companies or as a complement to a standard internship program.

# Assaults in the Workplace

According to the U.S. Bureau of Labor and Statistics, in 2018 there were 21,243 workplace assaults reported that were intentionally caused by another person; 453 of these cases were fatal. Workplace violence is currently the third-leading cause of workplace fatalities in the U.S. and unfortunately, the number of workplace assault cases has been increasing every year by nearly 13%. What may be even more shocking is that it is estimated that millions of cases of workplace violence go unreported every year.

Workplace violence is defined by the Occupation Safety and Health Administration (OSHA) as any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the worksite. It ranges from threats and verbal abuse to physical assaults, including homicide. It can affect and involve employees, clients, customers, and visitors.

The National Institute for Occupational Safety and Health categorizes workplace violence into four categories:

* **Criminal Intent.** These crimes include robbery, trespassing, shoplifting, and terrorism. The people committing the crime have no relationship with the business or its employees.
* **Customer/Client.** A customer or client becomes violent while interacting with the business.
* **Worker-on-Worker.** This type of workplace violence is perpetrated by an employee or past employee who attacks or threatens another employee.
* **Personal Relationship.** Generally, this perpetrator has a personal relationship with the victim (but not the business). Women are overwhelmingly victims in this category.

Although workplace violence can be found in any industry, the three most common industries are the Service Industry, Education and Health Services, as well as Health Care, and Social Assistance. Research has shown that there are similarities in these work settings that increase the risk of violence.

Such factors include exchanging money with a wide variety of people, some of which could be unstable or even volatile, providing services or care where alcohol is served, or working alone, or isolated. Other conditions that could contribute to the potential for violence are the time of day or the location of work.

At this time, OSHA does not have any specific ruling regarding workplace violence although the General Safety clause states that employers must keep their employees safe from hazards in the workplace. Employers are urged to incorporate a workplace violence prevention program as part of their Safety & Health program or employee handbook.

To reduce these occurrences from happening, employees should be trained on how to recognize the warning signs of violence and know what steps they can take to help protect themselves and others from being victims.

Eligible Archbright members have access to a Workplace Violence Keynote as well as a sample Violence in the Workplace policy in the HR Toolkit at Archbright.com.

For questions, more information, or help with your safety program, please contact the Safety Team at Archbright at 206.329.1120 ext. 4, 509.381.1635 ext.4, or email safety@archbright.com.

Source: Tiffany Knudsen, Content Manager at Archbright

# MONTHLY SAFETY WEBINAR

Early Return to Work/Stay at Work Understanding the benefits and intricacies

Thursday, March 19th, 2020 | 2:15 p.m.

Our goal is to always keep workers safe but what happens after an employee gets injured on the job? When a worker gets hurt, it can have a great impact on the bottom line, but it can also negatively affect the culture of the workplace. Learn how employers can manage a claim to reduce costs, engage injured employees, keep morale high, and even get reimbursements by returning an injured worker to light duty.

Visit the Safety Webinars page at Archbright.com for registration information. Reserve your seat today!

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We welcome your comments and suggestions.

Email: info@archbright.com | Seattle Office: 5601 6th Ave S, Suite 400, Seattle WA 98108 | Phone: 206.329.1120 | Web: www.archbright.com