**Archbright™**

**Insights Newsletter**

**March 2020**

**As the Coronavirus Outbreak Continues, What Should Employers Do?**

Washington, King County, and Seattle all have declared states of emergency in response to the coronavirus outbreak. As the situation unfolds and changes each day, employers must balance their duty under OSHA to maintain a safe workplace versus employee privacy rights and discrimination laws.

To be prepared for questions and further spreading of the virus locally, it’s time to do the following:

* Ensure that your sick leave or PTO policies are flexible and remind employees about the policies.
* Be prepared to address ill employees who have exhausted their protected sick leave and/or PTO.
* Require employees who show up at work with symptoms of acute respiratory illnesses (fever, cough, shortness of breath) to seek medical care and stay home from the office until the symptoms disappear and/or a doctor confirms they are not contagious.
* Instruct employees to wash their hands often with soap and water, provide alcohol-based hand sanitizer, and if necessary, handwashing stations throughout the workspace.
* Routinely clean workstations, countertops, and doorknobs, and provide disinfectant wipes in shared spaces.

For additional recommendations, as well as an FAQ of the outbreak-related questions we are responding to most on the HR Hotline, please turn to page 9.

**Supporting Members During the Outbreak**

As confirmed Coronavirus cases increase both locally and across the country, I wanted to let you know how Archbright is handling our operations during this time. Our highest priority is to keep members and employees healthy while we deliver much-needed support and services without interruption.

* Our HR and Safety Hotlines remain open and fully staffed. Eligible members, please continue to email and call our advisors with any and all questions you may have about keeping your workplace safe, healthy, and compliant.
* All of our public training facilities remain open. We are limiting the number of participants in our classroom to 10, and we have added virtual options for many of our classes in the coming weeks. We are asking any training participants who are symptomatic to please stay at home, and we will work with those individuals to reschedule to a different session.
* For members with our HR or Safety Consultants working onsite or members with onsite training classes scheduled, please feel free to contact our Director of Consulting Operations, Tracy Sigmon, should your offices need to close or alter working hours at any time in the coming weeks. We will work with you on a contingency plan to ensure your company gets the support it needs.
* Tracy Sigmon, Director of Consulting Operations tsigmon@archbright.com | 206.664.7171

Please know that we are taking every precaution to keep both employees and members safe and healthy. Feel free to reach out to me with any questions or concerns at skavanaugh@archbright.com. If anything changes in our approach in the coming weeks, I will send out an update with those details.

As always, thank you for your continued membership.

**Member Spotlight: HEALTHY PET**

# Congratulations to Healthy Pet®, a longtime leader in the natural pet product industry, on being awarded the

# prestigious START (Safety Through Achieving Recognition Together) graduation final certification from the Washington State Department of Labor & Industries (L&I) earlier this month.

# The START program recognizes occupational safety and health excellence and leads to a safer workplace, lower costs, improved morale, and community recognition.

# Healthy Pet is only the third company to earn graduation status in the state!

# To qualify for the START distinction, a business must be able to demonstrate an injury rate for the preceding year that is below their industry’s average and work with Labor and Industries’ (L&I) consultation team, establishing annual safety initiatives during the four and a half year program.

# We are thrilled to see Healthy Pet recognized for this accomplishment! In fact, the company has worked 953 days without a recordable injury at their facility. This further demonstrates Healthy Pet’s strong commitment to worker safety and a healthy work environment.

# In the coming weeks, we will have more information to share about how your company can participate in the START program and reap the benefits of a safe and healthy workplace.

# All of us at Archbright wish the Healthy Pet team a very hearty congratulations!

**Crucial Conversations® Focused**

Could a conversation (or avoiding one) be keeping you from getting the results you need?

Whatever the issue— from poor productivity or declining quality, to lack of teamwork or strained relationships—it’s likely that you’re experiencing the effects of a poorly held crucial conversation.

A crucial conversation is a discussion between two or more people where stakes are high, opinions vary, and emotions run strong.

Crucial Conversations® teaches you how to achieve spirited dialogue at all levels in your organization and introduces a set of tools to build alignment, agreement, and interpersonal communication.

After completing this course, participants will be able to:

* Resolve disagreements—accurately address concerns by talking respectfully, candidly, and skillfully with someone in a safe way.
* Build acceptance rather than resistance—give and receive feedback in a way that enhances relationships and improves results.
* Speak persuasively, not abrasively— effectively talk about high-stake, emotional, and controversial topics.
* Foster teamwork—get the right people involved in a way that ensures better decision-making and guarantees commitment and conviction.

Registration now open at Archbright.com for the following dates:

Spokane | April 9 | 8:30am to 5pm Seattle | June 23 | 8:30am to 5pm Seattle | October 1 | 8:30am to 5pm Seattle | November 11 | 8:30am to 5pm

If you are interested in training ten or more employees at your location, contact your Account Executive or call us at 206.329.1120 or 509.381.1635 for more information.

**WorldatWork Survey Shows Pay Transparency Increasing in Importance for Majority of Organizations**

Sixty-seven percent of organizations report pay transparency is increasing in importance at their organizations, and 4 percent say pay transparency is of highest importance.

However, only 14 percent of organizations have approached pay transparency beyond a “moderate” level. These are among the key findings captured in the Pay Transparency Study conducted by WorldatWork, with underwriting support from Mercer. Pay and rewards openness, the impact of compliance on approaches and the tactics involved with communicating about pay and rewards are covered in the study.

“As organizations address potential areas of unintended bias with pay systems, it’s reassuring to see that pay transparency is becoming more of a priority,” said Scott Cawood, president and CEO of WorldatWork. “Workplace equity is a complex issue, with pay transparency just one facet. This survey, along with other recent research, illuminates how critical it is for compensation and TR professionals to stay current on the evolving conversation in order to effectively build strategies that foster workplace equity at their organizations.”

According to the survey:

* Only 14 percent of organizations have approached pay transparency beyond a “moderate” level: 4 percent have nonexistent approaches, 35 percent have minimal, 46 percent have moderate, 13 percent have significant, and 1 percent have extreme transparency;
* More than 60 percent of organizations say managers are not trained to effectively deliver pay communications;
* 42 percent of employers do not share information about how jobs are valued and compensated within the organization;
* When pay equity adjustments are made, 53 percent of organizations explicitly communicate to the employees that the increase is the result of a pay equity adjustment; 30 percent bundle it with other pay increases without explicit communication on the adjustment; and
* Compliance runs the gamut: 22 percent of organizations are not subject to pay transparency regulations, 32 percent are subject to minimal laws that affect practices, 38 percent have few laws to comply with but they’re manageable, 9 percent are subject to several laws and are difficult to manage.

“Pay transparency, along with pay equity and pay strategy, plays an important role in delivering an authentic employee experience, which directly impacts employee engagement,” said Tauseef Rahman, Principal at Mercer. “As organizations strive to balance business demands with changing workforce expectations around pay, it poses challenges as well as opportunities for both employers and employees to thrive in today’s economy.”

Source: WorldatWork

**HR FAQ**

**Question:** We have an employee who is seeing a chiropractor for their back condition. Is a chiropractor allowed to certify an employee’s FMLA condition?

**Answer:** When defining “health care provider,” 29 C.F.R. § 825.125 (b)(1) says “…chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist)…”. On recertification, the same obligations apply.

So, a chiropractor may be considered a healthcare provider for back conditions – but only if several requirements are met. First, the chiropractor must have taken x-rays of the employee’s back and the treatment must be for subluxation (misalignment). If both of these requirements are met, then the chiropractor is considered a health care provider and the time off for treatment/care would be protected under FMLA.

**Question:** We have an employee who has been serving as a foster parent for over a year and is now adopting the child. Are they eligible for bonding leave under FMLA?

**Answer:** Under the federal FMLA, an eligible employee may take up to 12 weeks of FMLA for the birth or placement of a child. This time off must be taken within 12 months of the birth of placement of the child. The placement and the adoption are not treated as separate events. So, if it has truly been over a year since the child’s placement, the employee is not due any protected FMLA.

This eligibility requirement also applies under Washington’s Paid Family and Medical Leave (PFML program and Oregon’s Family Leave Act (OFLA).

Source: Katherine Kummerow, Senior HR Advisor at Archbright

**Washington Paid Family & Medical Leave - Top 5 Questions**

Washington’s Paid Family and Medical Leave (PFML) program is now available and creating many questions from both employers and employees. Below are questions and answers to the top 5 questions our HR Advice team has been receiving from our members.

Do FMLA and PFML run concurrently or consecutively?

The best way to look at this question is first understanding that FMLA (Family Medical Leave Act) is a federal law and PFML is a State law – FMLA does not administer PFML and PFML does not administer FMLA. Therefore, each law should be administered independently. If the employee is eligible for both, and applies for PFML, an employer may designate the time as FMLA, and FMLA and PFML may run concurrently. If the employee requests FMLA, but elects not to apply for PFML, employers cannot force an employee to apply for PFML – so therefore, the employee could first exhaust FMLA and then apply for PFML, meaning the leaves would run consecutively. The same could also be true if an employee applies for PFML, but affirmatively declines FMLA. If an employee is not eligible for FMLA (i.e., hasn’t worked enough hours or takes leave for a family member not covered under FMLA), the employee may apply for PFML and still have their FMLA entitlement for a later time.

Do employers have to maintain health benefits during PFML?

The law is clear that employees are only eligible for benefits protection if required under the federal FMLA. The interpretation of this has varied in recent rule-making. In December, the Employment Security Department (ESD) interpreted this to mean that if an employee is eligible for FMLA and FMLA and PFML overlap for even one day, benefits must be protected for the length of the PFML leave, even if FMLA is exhausted. Current guidance simply states that ESD “is continuing to develop administrative rules around this topic and will have information soon.” So, for now, employers must protect and continue benefits only if required under FMLA; however, employers should be mindful of ESD’s differing interpretations and be prepared to make a change if new information is released. If an employer wants to maintain benefits during PFML, and the employee is not on FMLA, employers should check with their benefits broker or carrier to determine if their contract allows an employee to maintain benefits if not specifically required to under FMLA or other law.

Can an exempt employee be docked pay when using intermittent PFML?

Under the FLSA and state wage and hour law, exempt employees may be paid less than their weekly salary in very limited situations – e.g., on FMLA, exhausted a sick leave bank, etc. The PFML law does not specifically address this question, but this question is addressed in the former Washington Family Leave Act law. The Family Leave Act expired at the end of 2019 and was superseded by Paid Family and Medical Leave. Since the legislative history reflects that Paid Family and Medical Leave is the successor leave program to the Family Leave Act, the Department of Labor & Industries (L&I) interprets any deductions that would otherwise be allowable in relation to the Family Leave Act as being similarly authorized if made in relation to Paid Family and Medical Leave. So, simply put, yes – but keep in mind that employees may only request PFML in increments of 8 consecutive hours.

How does the waiting period work and can an employee take paid time off during the waiting period without jeopardizing PFML payments?

The “waiting week” is the first week the employee is approved to file a weekly claim and the employee will not be paid for that week (leave to bond with a new child does not have a waiting period). ESD considers the “waiting week” a calendar week. If the qualifying event occurs after Sunday in the first week you need to take leave, the waiting week may be less than seven days. For example, if the qualifying event occurs on a Friday, the employee may be eligible to receive PFML the following Monday. During the waiting period, employees may use paid time off from the employer, including paid vacation or sick days, without jeopardizing PFML payments (even if the employer does not allow supplemental paid time off during PFML). Outside of the waiting week, employees cannot use employer provided paid time off at the same time as Paid Family and Medical Leave, unless the employer chooses to offer a “supplemental benefit.”

If an employer wants to allow use of vacation, PTO or other fringe benefit as a “supplemental” benefit during PFML – do they need to say this in their policy?

The PFML law doesn’t require a policy, so the decision to include this in a policy is up to the employer. However, at a minimum, this should be included in the “Statement of Rights” employers are required to give to employees within 5 business days after the employee’s seventh consecutive day of absence due to family or medical leave, or within five business days after the employee has received notice that the employee’s absence is due to family or medical leave, whichever is later. Eligible members can access a sample Statement of Rights on the HR Toolkit on the Archbright members only website or mobile app.

Archbright will continue to monitor this new law and will update our resources as more information is provided. Eligible members may access Archbright’s comprehensive KeyNote and FAQs on the Archbright HR Toolkit located on the Members Only website and mobile app.

Source: Joy Sturgis, HR Content Manager

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* Consider requiring employees to report if they have traveled to a CDC reported restricted area and if the employee has had contact with an infected contagious person to stay home and self-quarantine.
* Review your work from home policy and if you don’t have one consider creating one that responds to the likelihood of a quarantined employee and meets your business needs.
* Distribute your anti-discrimination policy reminding all employees that discrimination based on assumptions about employees who come from countries most seriously impacted is prohibited; do not make determinations of risk based on race or country of origin and be sure to maintain confidentiality of people with confirmed coronavirus infection.
* Check the CDC or World Health Organization (WHO) websites, or your state public health website, for Travelers Health Notices for the latest guidance and recommendations for each country to which employees will travel.

As with any emergency situation, employers must be prepared to respond to absenteeism and implement plans to continue the essential business functions. Employers are encouraged to seek guidance from the CDC, World Health Organization (WHO), or local health departments for up-to-date information. Eligible members are also encouraged to contact the HR Hotline with questions, or reference Archbright KeyNote Employer Response to Health Outbreaks in the HR Toolkit for additional information.

**HR Hotline: Frequently Asked Questions about Coronavirus Outbreak**

Q: May an employer require employees to stay away from the workplace if they are experiencing symptoms of acute respiratory illnesses, or if they are caring for someone with those conditions?

A: Yes. People are contagious at the onset of these symptoms.

It is critical that an employee experiencing symptoms, or who is known to be exposed to the conditions, stay home for a medically recommended period. Employers may also wish to require that an employee can return to work only upon release from a medical provider. Of course, the employer must enforce this consistently among the workforce to avoid claims of discrimination and inconsistency.

Q: Are employees entitled to be paid if they are required to stay home due to the coronavirus?

A: The actual issuance of pay will vary from employer to employer, and depends upon the full circumstances of the employer’s particular workplace, i.e., the availability of job benefits like sick leave, PTO, vacation, whether the employee is exempt or non- exempt, short-term disability plans, etc. Wage and hour laws only require payment to non-exempt employees for actual services and time worked; this applies even when the employer unilaterally keeps the employee from coming into work. However, an employer may be obligated to pay an exempt employee for time missed if the employer unilaterally and affirmatively requires the individual to stay at home.

Q: What if an employee refuses to come to work based on fear of contracting the coronavirus?

A: Employees have a right to refuse to report to work if they reasonably fear doing so would present danger to their safety and health. The employer may not retaliate against the employee under these circumstances. However, there is no requirement to pay the employee for the absence unless the employee is working remotely and/or paid time off is available.

Q: What if one of my employees contracts the coronavirus?

A: Contact the CDC or local health department immediately. Clean and disinfect the workplace (you may wish to contact a professional cleaning service). Inform your employees of potential signs and symptoms, offering employees the option to expense their medical test for the virus.

Q: May an employee file a worker’s compensation claim if they contract the virus at work?

A: Determining whether an illness is compensable under workers compensation laws will depend heavily on the facts of each specific case. However, in general, illnesses are not covered by workers compensation laws unless there is a direct connection between the employee’s work activities and the exposure to the illness.

Q: Should an employer designate FMLA when an employee is unable to work due to the virus?

A: If you are a covered employer, clearly eligible employees with the coronavirus and those with a child, spouse or parent infected by the virus are entitled to FMLA. However, if an employee has no symptoms, but only was exposed to the coronavirus, an employer should not charge any of work missed against the employee’s FMLA entitlement.

Q: Should an employer require an employee unable to work due to the virus to use their paid sick leave?

A: Employers should follow their paid sick leave or PTO policies. Employers in Washington should be mindful that the Department of Labor & Industries (L&I) states that paid sick leave is a worker’s right under the State’s paid sick leave requirements, which only an employee may authorize the use of. Under this interpretation, an employer may not force or automatically apply an employee’s accrued paid sick leave. If the employee requests the use of accrued paid sick leave, then the employer could apply it.

**Sudden Cardiac Arrest**

Every 40 seconds in America, someone has a heart attack. A heart attack is when the blood flow to the heart is blocked and although people can die from a heart attack, it’s rarely fatal. Typically, the blockage is caused by a buildup of fat, cholesterol, and other substances that can create plaque

in the arteries that feed the heart. Although not everyone experiences the same symptoms or severity during a heart attack, the more common signs and symptoms a person experiences, the more likely the person is experiencing a heart attack. According to the Mayo Clinic, these symptoms can include:

* Pressure, tightness, pain, or a squeezing or aching sensation in your chest or arms that may spread to your neck, jaw, or back
* Nausea, indigestion, heartburn, or abdominal pain
* Shortness of breath
* Cold sweat
* Fatigue
* Light-headed or sudden dizziness

Sudden cardiac arrest (SCA) is a condition where the heart suddenly and unexpectedly stops beating. Circulation to the brain and other vital organs cease and usually causes death if not treated within a matter of minutes. The condition usually results from an electrical disturbance in the heart which is different than a heart attack that is caused by a blockage.

However, a heart attack can sometimes trigger an electrical disturbance that can lead to SCA. Signs and symptoms of a SCA event are sudden and drastic including:

* Sudden collapse
* No pulse
* No breathing
* Loss of consciousness

Although about 25% of sudden cardiac arrest events occur with no warning, patients can experience similar signs of a heart attack before the SCA event – chest discomfort, shortness of breath, weakness, or heart palpitations.

According to the Resuscitation Outcomes Consortium data collected by the American Heart Association, more than 356,000 out-of-hospital SCA events occur a year in the U.S., and only about 10% of patients survive. Interestingly, survival rates are over 39% if the patient was in a public place when the SCA event occurred. This is perhaps due to an early bystander call to 911, early bystander cardiopulmonary resuscitation (CPR), and early bystander use of an automated external defibrillator (AED). In fact, according to the American Heart Association, survival from sudden cardiac arrest doubled when bystanders stepped in to apply an AED before emergency responders arrived.

Many companies are choosing to purchase AED’s for their workplace and train their first-aid responders in use. There is very limited liability for having an AED on-site, the cost of the unit has significantly decreased in recent years, maintenance is low, AED’s are easy to use, and survival rates of sudden cardiac arrest patients are significantly higher with use over solely waiting for EMS to arrive. Washington State and Idaho require some medical and education facilities to have an AED onsite and in addition to these locations, Oregon requires at least one AED at swimming pools, health clubs, and in gathering areas for businesses with 50,000 or more square feet, and at least 25 people who congregate a day.

Archbright includes AED training and practice in all of our First Aid and CPR classes. For questions, more information, 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

Hearing Loss Prevention

The day the music died

Thursday, April 16th, 2020 | 2:15 p.m.

Most people are aware that exposure to loud noise cause hearing loss, but did you know that once damaged, the auditory nerve and cilia (the inner nerve that can cause hearing loss) cannot be repaired? Do your employees have to raise their voices to be heard in the workplace? If so, chances are you could be required to have a Hearing Prevention program. In this webinar, we will cover how to determine the noise levels in the workplace, the requirements if it’s determined to be a noisy environment and how to protect your employees properly. Visit the Safety Webinars page at Archbright.com for registration information. Reserve your seat today!

**Please Notify Us of Staff Changes.** Please take a moment to contact us to correct any staffing changes for your organization, including email addresses. Email us at info@archbright.com.

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We welcome your comments and suggestions.

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