**Archbright™**

**Insights Newsletter**

**April 2020**

**Archbright Offers Support with Employee Separations**

This is a challenging time for many members as they face difficult decisions about the future of their workforce. We know your options may be limited during the Covid-19 outbreak. In addition to HR, safety, and legal advice, Archbright can provide outplacement support should you need to transition employees out of your organization.

We make employee separations easier in a couple of ways:

* Our Outplacement Coaching service pairs your exiting employee with an experienced Archbright consultant. Through 4 one-on-one coaching sessions, your employee will complete 6 modules to help establish a clear career direction, create a personal brand—including a polished resume and LinkedIn profile—and finalize a job search strategy.
* Our all-new public class Off Work to Offer Letter: Strategies to Help You Land Your Next Job will help participants prepare for their job search. This is a lower cost opportunity for your separated employees to learn the processes and tools to independently craft an effective resume, optimize their LinkedIn profile, develop a job search strategy, and prepare for the interview process. It is a 4-hour virtual class that is also available as a virtual onsite.

Our first public session is scheduled for Wednesday, April 15th, 8:30am to 12:30pm. Registration is now open on Archbright.com.

To learn more about the above options, please reach out to your Account Executive, visit our website, or connect with us at info@archbright.com, 206.329.1120, or 509.381.1635.

**Resources to Help Navigate the Outbreak**

The Covid-19 outbreak continues to challenge us here in the Pacific Northwest. We are working hard to deliver content and resources to keep you informed during this time. I wanted to take this opportunity to remind you what’s currently available:

* All of our Covid-19 related resources from the HR Toolkit are now accessible to all members (see sidebar). Simply log-in to the website and locate the Covid-19 Resource page under Member Home to download them. Our Content Team is regularly updating these resources as new information is released.
* We have made the following recordings available from our recent virtual events on the Covid-19 Resource page as well. They include:
  + Our March 19th Virtual CoffeeTalk Paid Family and Medical Leave: The Employer Role in 2020 and Beyond, featuring Erin Jacobson, Director of Legal & HR Advice, and Joy Sturgis, Content Manager.
  + Last week’s webinar Managing a Reduction in Force During Covid-19: What Employers Need to Know, featuring Rita Carson, Senior Archbright University Consultant and Kellis Borek, our VP of Labor & Legal Services and Corporate Counsel.
  + Our April 1st webinar Employer Obligations Under the Families First Coronavirus Response Act (FFCRA), once again featuring Kellis Borek, VP of Labor & Legal Services and Corporate Counsel.

Our HR and Safety Hotline is answering more member questions than ever before, and we will continue to send eAlert updates to keep you apprised of any new information that will impact your organization and your employees.

You can access all Toolkit resources, register for classes or webinar recordings, and schedule an appointment with our HR Hotline through our app, Archbright Mobile.

It is during times like these when we are reminded about the strength we draw from our community. From all of us at Archbright, we thank you for your continued membership.

**More Toolkit Resources for Covid-19 Support**

If you haven’t accessed these already, we wanted to call your attention to them:

* **Employer Response to Health Outbreaks KeyNote.** This FAQ will help employers prepare to respond to absenteeism and implement plans to continue essential business functions. We are reviewing this daily and updating as applicable with new developments due to the current crisis.
* **Employer’s Guide to Layoffs KeyNote.** This resource offers a structure for a layoff plan that considers both legal and practical issues, including employee experience and management communications.
* **Furloughs and Pay Docking for Exempt Employees KeyNote.** This gives you guidance on the various reasons and complementary laws that permit appropriate salary deductions or require full payment of wages for exempt employees.
* **COVID19 Employee Screening Questionnaire.** This is a sample health screening survey that may be implemented as a screening method for employees and visitors entering the workplace during an international pandemic as declared by the World Health Organization.
* **Remote Work Policy.** This sample policy outlines the criteria necessary for a successful telecommuter in light of the current outbreak and community restrictions.
* **Managing COVID-19 and Your Injured Employees KeyNote**. This FAQ gives guidance on how to effectively manage workers’ compensation claims, including light duty, during the COVID-19 outbreak.
* **Employee Request Forms** for employees requesting **Emergency Paid Sick Leave** and/or **Emergency Paid Family and Medical Leave**.

All members can access these resources on our Covid-19 resources page under Member Home once you have logged in to Archbright.com.

For more information on how membership can help your company during the current health crisis and beyond, please contact us at info@archbright.com, 206.329.1120, or 509.381.1635.

**New Virtual Class**

**Managing the Layers: Protected Leaves and the Law**

On January 1, 2020, the Washington Paid Family and Medical Leave (WAPFML) law went into effect, a new benefit for Washington workers. Employers have spent the last year preparing for the roll-out of the program. Now that it’s here in the midst of the COVID-19 pandemic, there is even more to understand.

Effective March 25, Governor Jay Inslee issued a Stay Home & Stay Healthy proclamation ordering “all non-essential businesses in Washington State to cease conducting all activities and operations except minimum basic operations.” This changes a lot of things for our members and their families. And it leaves HR professionals everywhere asking even more questions about protected leave in our state.

To help you navigate the many protected leave laws, both at the federal and state level, Archbright has created a new class **Managing the Layers: Protected Leaves and the Law**. This virtual class will outline employer responsibilities for handling the go-live of the WAPFML law. It will identify legal obligations when managing absences, taking into consideration the many types of protected leaves such as sick leave, FMLA, ADA, and domestic violence leave, to name a few.

Facilitated by our Archbright HR Consultants, this interactive class will provide a wealth of information, as well as access to our experts to answer your leave law questions.

Registration is now open on Archbright.com for these upcoming sessions:

* Tuesday, April 21 | 9am to 11am
* Tuesday, May 19 | 9am to 11am

These are uncertain times and we enter uncharted territory on a daily basis. Archbright is here, by your side, to help you navigate. We look forward to seeing you in our virtual classroom very soon.

**Register now for any 1/2-day or full day class in April and get 50% off the registration fee. Use the code VIRTUALCLASS at checkout.**

**National Labor Relations Board Continues Rollback of Employee-Friendly Decisions**

In February 2020, the National Labor Relations Board issued its final rule regarding when joint employment exists under the National Labor Relations Act. The rule reinstates and clarifies the standard the agency had followed for many years prior to a 2015 Board ruling. It narrows the situations in which joint-employment exists, requiring that the condition is met only where the two employers share or codetermine the employees’ essential terms and conditions of employment.

This joint employer rule is the latest in a series of Board decisions issued over the past year decisively undoing changes made during the prior administration. During President Obama’s administration, the Board issued numerous employee-friendly decisions upsetting long-standing precedent and having direct impact on union and non-union employers. The pendulum is swinging in favor of employers due to the current majority of the Board, all of whom are likely to make decisions that benefit employers as opposed to previous Board members who made union favorable decisions.

Some of the recent Board decisions:

**Use of Employer’s Email System during Non-Working Time.** In December 2019, the Board ruled in Caesars Entm’t, 368 NLRB No. 143 (Dec. 16, 2019) that employers may prohibit employee’s from using the employer’s information-technology (IT) resources to send “non-business information.” This decision impacts every employer that allows even minimal employee use of employer email. It directly overturns the 2014 ruling in Purple Communications and Communication Workers of America, 361 NLRB No. 126 (2014), which had held that employees could use an employer’s email system for, among other things, union organization on non-working time. In Caesars, the Board recognized that employers have property rights in their IT resources and employees have no statutory right to use employer equipment, including IT resources, for Section 7 purposes. It carved out an exception to this rule for situations where the employer’s email system is the only reasonable means available for employees to communicate with each another.

**Confidentiality Instruction During Investigation.** In December 2019, the Board ruled in Apogee Retail, LLC d/b/a/ Unique Thrift Store, 368 NLRB No. 144 (Dec. 16, 2019), that employers have the right to require employees to maintain confidentiality during workplace investigations. This again marks a return to a standard that existed prior to the previous administration. Apogee Retail overturned a 2015 decision in Banner Health System d/b/a Banner Estrella Medical Center, 362 NLRB No. 137 (June 26, 2015), which held that a confidentiality instruction interfered with employees’ Section 7 rights to discuss terms and conditions of employment and could only be issued if a specific finding was made that the situation warranted such an instruction (e.g., there was potential harm to a witness or fabrication of testimony). With the Apogee Retail decision, employers can instruct employees during an investigation that they may not discuss the investigation itself or interviews conducted during that investigation, provided the instruction does not prohibit employees from discussing the events giving rise to the investigation. Importantly, the ruling declined to limit confidentiality only to open investigations, meaning there are situations in which an employer can insist that confidentiality be maintained even after the investigation is concluded.

**Mandatory Dues Deductions upon Expiration of CBA.** Also in December 2019, the Board ruled in Valley Hospital Medical Center, Inc., 368 NLRB No. 139 (Dec. 16, 2019), that when a collective bargaining agreement (CBA) expires, so does an employer’s obligation to deduct union dues from represented employees. The Board made clear that its ruling applies even where a contract does not have a union security provision, which is a clause requiring, as a condition of employment, that employees become union members or, at a minimum, pay union dues.

Archbright attorneys bargain dozens of labor contracts each year and provide advice and counsel in all areas of labor law such as grievance administration, NRLB charges and contract interpretation. Eligible members are encouraged to contact an attorney with specific labor questions regarding current NLRB decisions and/or your company’s collective bargaining agreement.

Source: Ami De Celle, Attorney

**Oregon Employers Must Provide Notice and Display Poster   
Regarding Employees’ Rights to Pregnancy-Related Accommodations**

By June 29, 2020, Oregon employers with six or more employees must post signs and notify employees of their rights under the new Employer Accommodation for Pregnancy Act (EAPA). Effective the beginning of this year, the EAPA made it an unlawful employment practice to deny employment, fail to make reasonable accommodations, or take certain actions because of an employee’s or applicant’s known limitations due to pregnancy, childbirth, or related medical condition.

The EAPA covers medical conditions related to pregnancy, including childbirth and lactation. The Act also expanded protections against pregnancy-related discrimination by making it unlawful for an employer to: deny employment to an applicant based upon the need for a reasonable accommodation; refuse to make a reasonable accommodation, unless it would result in undue hardship; take adverse action against an employee for inquiring about, requesting, or using a reasonable accommodation; require an applicant or employee to accept unnecessary reasonable accommodations; or require use of leave provided under the Family and Medical Leave Act (FMLA) instead of offering a reasonable accommodation.

Suggested reasonable accommodations are defined in the new law and include:

Acquisition or modification of equipment or devices

More frequent or longer break periods or periodic rest

Assistance with manual labor

Modification of work schedules or job assignment

A reasonable accommodation constitutes an undue hardship to an employer only if it requires “significant difficulty or expense.” Generalized conclusions do not support a claim of undue hardship. In determining whether significant difficulty or expense exists, an employer must consider objective facts such as the nature and cost of the accommodation, the financial resources and size of the facility providing the accommodation, the financial resources and size of the employer as a whole, and the type of operations conducted by the employer.

While the law has been in place since January, employers were given 180 days (or until June 29) to comply with its posting and notice requirements. Now the time is near for employers to: 1) provide written notification of the EAPA to existing employees and to new hires at the time of hire; 2) provide written notification within 10 days to an employee who has informed their employer of a pregnancy; and 3) post signs in a conspicuous and accessible location on their premises informing their employees of the protections under the Act. A sample notification is available from the Oregon Bureau of Labor and Industries.

Eligible members are encouraged to contact an Archbright HR Advisor with any questions regarding the new notice requirements or other questions regarding reasonable accommodations for pregnant employees.

Source: Erin Jacobson, Director, Legal and HR Advice

**HR FAQ**

Question:Is a Governor’s “Stay Home” order considered a qualifying event under the FFCRA’s Emergency Paid Sick Leave Act (EPSLA)? Does this mean we have to provide 80 hours of paid leave to all employees?

Answer: A Governor’s “Stay Home” order may meet the definition of a self-isolation or quarantine order. However, an employee’s eligibility for EPSLA sick leave depends on whether the employer is considered an essential or non-essential business. Non-essential businesses were ordered to close unless telework is available. Employees are not eligible for leave under EPSLA (or Emergency FMLA) if they are no longer employed or scheduled to work by the employer. This is true whether the employer closes the worksite for lack of business or because the employer was required to close pursuant to a Federal, State, or local directive. Employers who close the worksite while an employee is on EPSLA sick leave (or Emergency FMLA) must only pay for any EPSLA sick leave or Emergency FMLA used before the employer closed. Employees who are laid off or on temporary furlough would instead be eligible for unemployment insurance benefits.

In contrast, a business determined to be “essential” or an employee working from home for a non-essential business is not subject to the Governor’s business shut down order. Therefore, an employee could not request EPSLA paid sick leave under reason #1 (subject to a federal, state, or local quarantine or isolation order related to COVID-19) of the FFCRA. They could, however, be eligible for paid sick leave for one of the other 5 reasons.

If an employee works for an “essential” business or works from home for a non-essential business, they could be entitled to EPSLA under reason #1 if the employee themselves were ordered to quarantine or isolate. For example, if the State Department of Health ordered certain individuals to quarantine or isolate, then they might be entitled to take EPSLA sick leave under reason #1.

Of course, an employer could be more generous than the law requires and provide paid leave to employees during a furlough or business closure; however, in this situation, the employer may not be eligible for the tax credits.

Source: Joy Sturgis, HR Content Manager

**Compensation Practices during the Pandemic: Lessening the Impact**

During these early stages of the global pandemic, employers must rethink their compensation practices and strategies, and remain flexible with their pay programs where possible. As companies evaluate their current financial situation and prepare for the months to come, compensation is a significant part of that assessment.

While businesses in the travel, hospitality, and restaurant industries have been hard hit, the pains have been felt mostly by workers. If schedule cuts haven’t already occurred, thoughts of impending layoffs have been on many workers’ minds and fueling the fears of uncertainty and financial hardship. Hourly employees are bearing the brunt of layoffs, reduced hours, and limited shifts compared to their salaried peers.

**Employer Flexibility**

Despite these challenges, there have been many examples of employers doing their best to be flexible with their pay and benefits programs to keep their employees and their families as financially stable as possible during this economic crisis. Some organizations have committed to helping their employees by offering additional financial support or making exceptions to their current compensation programs to ensure employees can endure difficult times ahead.

Large players that can afford to do so have opted to continue to pay their workforce despite not being able to have them come into work. Starbucks is offering “catastrophe” pay for up to 14 days for those employees diagnosed with or directly exposed to the coronavirus. Facebook announced they would send $1,000 checks as well as alter performance ratings to enable maximum performance-based pay increases for every one of their employees.

We recognize that not every organization is as large or as financially capable of pivoting to these types of methods. There are other ways an employer can be flexible by looking at their compensation programs to help lessen the negative financial strain on their employees, their families, and their communities.

**Compensation Examples of Lessening the Impact**

* Repurpose annual bonus program budget for employee emergency funds;
* Subsidize office equipment for employees that can work remotely;
* And/or implement a PTO donation program for those who can help others that need the extra time off.

Each employer’s burden is unique during this unprecedented time. We can help you explore your options for lessening the impact. Eligible members can contact the HR Hotline and access these resources in our Toolkit: the Employer’s Guide to Layoffs KeyNote and Furloughs and Pay Docking for Exempt Employees KeyNote.

We are committed to keeping you up-to-date and informed during the outbreak and beyond. Please continue to reach out to us with your questions and concerns. In addition, all outbreak-related Toolkit resources are available to all members during this time. Simply log-in and find the Covid-19 Resources page under the Member Home section of the website.

Source: Joe Padilla, Compensation Consultant

**Survey Reminders:**

The Regional Pay Survey will be available to all members at the end of April. If you participated this year, thank you! Please check your inboxes in the coming weeks for information on how to access your copy.

Our Regional Benefits Survey opens for participation on May 11th. Mark your calendars! More information to come on how to participate to receive the report for free when published in July.

Questions about participation? Email our survey team at [regionalsurveys@archbright.com](mailto:regionalsurveys@archbright.com).

**Pandemic Illness Response as Part of an Emergency Action Plan**

All employers are required to create a healthy work environment for their employees by establishing methods to control safety hazards in the workplace. Methods include safety programs and plans which are designed to educate employees on workplace hazards, as well as to how to keep themselves and fellow employees protected. An Emergency Action Plan is one example of a program and is intended to facilitate and organize how an employer will safeguard their employees during an emergency, such as a pandemic.

The Emergency Action Plan is a written plan outlining at a minimum, emergency evacuation procedures, rescue/medical teams if applicable, how to respond to fires, and how employees should respond in company-identified emergencies. When developing this plan, we recommend that employers conduct a vulnerability assessment. This assessment pinpoints what emergency events could happen based on geographic location and type of risks associated with a business operation. Based on this assessment, employers can then determine where they may need to allocate resources preparing for emergencies. Each event identified and its corresponding response should be included in the Emergency Action Plan. Emergency events such as earthquakes, volcanic eruptions, flooding, catastrophic weather, civil disruption, and pandemic illness are examples that may need to be part of this action plan.

When developing an Emergency Action Plan that addresses a pandemic response, employers should understand that the plan is living, meaning that it may change during the response to the event as guidance from federal, state, local, tribal, and health agencies may be updated regularly. We recommend that part of the plan includes monitoring updates and determining how to communicate any changes to employees.

A Pandemic Illness Response plan may include:

Addressing HR issues, including sick leave and flexible work policies

How to help prevent the spread of illness at work

What infection-control supplies can be supplied

Identifying planning team/resources

Gathering reliable pandemic information

Guidelines to modify frequency and type of in-person interactions

When to suspend work travel or events

Educating employees on how to prepare at home

Encouraging annual influenzas vaccinations for employees

Evaluating employee access to health and social services during a pandemic event

Identifying key-contacts with backups

Prioritizing critical functions for a reduced workforce

Developing internal and external messaging

Determining what work will continue, be reduced, or suspended

Cross-training employees

Evaluating interdependencies

Anticipating supply-chain issues

Verifying suppliers’ pandemic illness plans

Creating partnerships

For questions, more information, a sample Emergency Action Plan or Vulnerability Assessment tool, please contact the Safety Team at Archbright at 206.329.1120 ext. 4, 509.381.1635 ext.4, or email safety@archbright.com

**Monthly Safety Webinar**

**Summer Preparedness**

Time off, Temperatures, & Teens

Thursday, May 21st, 2020 | 2:15 p.m.

After a long gray winter, Pacific Northwesterners are often looking forward to warmer summer temperatures. Unfortunately, we often don’t think about how the summer months can impact safety. Summer vacations can mean a reduced work force, teens looking for summer jobs can mean a need for additional safety training, and elevated temperatures can mean that precautions for heat related illnesses are considered. Join us this month as we explore what summer safety looks like. 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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