**Archbright™**

**Insights Newsletter**

**May 2019**

**Training your staff to prevent and respond effectively to workplace harassment just got easier!**

The Archbright HR/Legal team recommends that all organizations train their staff in anti-harassment when they are onboarded with a refresher at least every 2 years. Your company is at risk if managers and employees are not trained to be sensitive to comments, gestures, behaviors, or mannerisms that may be construed as harassment.

**On-Demand Training**

Our new on-demand Workplace Harassment Awareness course makes that easy! Simply purchase the course online for each employee, and they can take it any time— day or night—with a desktop computer and high-speed internet connection. If you wish to purchase the course for 20 or more participants, contact your Account Executive or email info@archbright.com.

**Virtual Instructor-Led Training**

Do you prefer an instructor-led training option but need to include remote employees? Our virtual-led Workplace Harassment Awareness class allows real-time interaction with our experts without the travel. Each participant logs in through their computer or mobile device and uses their speaker, microphone, and the chat feature to participate.

**Classroom Training**

Yes, the in-person Workplace Harassment Awareness training you’ve known and loved for years is still available and has been updated with the latest legal changes and new case studies. An instructor will come to your location and train groups up to 25 at a time, incorporating your organization’s anti-harassment policy. Contact your Account Executive or email info@archbright.com for more information.

**Preparing for the Upcoming Recession**

By now you know that a recession is coming. It’s not really a matter of if, but when, how deep, and what response should be taken to weather the ‘winter’ storm. This month’s ITR Economics (https://www. itreconomics.com) reports “US Industrial Production will contract during the latter half of this year.” ITR Economics has forecasted economic conditions, including the Big Recession, with remarkable accuracy so we need to pay attention.

When slowdowns happen one of the first defensive maneuvers we leaders tend to make is to cut labor costs. THIS time, however, that’s not your best strategy because the recession is expected to be mild and the labor market is fierce, particularly in the PNW! In fact, Washington and Idaho employment growth rates during this time are predicted to be among the strongest in the country, while Oregon is not far behind. Also, 2020 and 2021 are expected to be good for the economy. You will need that labor force then!

So, THIS time you would be wiser to focus on RETAINING not trimming your best talent. Make sure your compensation and benefits packages are in line with market, offer your employees training and development, assess and work on your cultures. And be sure to call Archbright if you need help! Also, increase your value proposition during a tighter economy by sharpening your marketing message for any cost or efficiency gains your products may provide. The recession IS coming….but you can weather this storm!

**Are You Struggling to Find Talented Candidates?**

In today’s job market, companies are struggling to find not only candidates, but the time to focus on recruiting. If you are a hiring manager, it can feel like you have to post your opportunity everywhere and then monitor responses 24/7 in order to connect with just a handful of qualified candidates. In fact, recent Glassdoor research shows:

* 51% of workers/job seekers say their preferred source for finding a relevant new opportunity is an online jobsite
* 45% prefer to hear about a job from a friend
* 35% prefer to find opportunities on a company’s careers site
* 32% prefer to find a new job via social media

With so many channels to manage, creating a quality candidate pool may seem like an overwhelming task. Archbright can help.

For 60 days and a flat fee, Archbright’s recruiting consultants follow our proven methodology to source the best candidate pool possible for your open position. We work closely with you to create a plan that supports your company’s culture and management style. From job posting to phone- screening applicants, we have you covered.

For help finding your next hire, call us at 206.329.1120, 509.381.1635, or email info@archbright.com.

**Registration Now Open for the Upcoming Management Academy in Spokane**

The Management Academy is a 6-week cohort learning program designed to further develop workplace leaders and encourage a more dynamic, collaborative, and supportive learning environment.

“This is the best management class I’ve had. I have much more confidence when I’m interacting with the executives and those with ‘suits on.’ I owe a lot to this class.”

Participants move through six key leadership courses with a consistent peer group:

* Communicating for Leadership Success May 21, 9 am to 1 pm
* Building and Sustaining Trust May 28, 9 am to 1 pm
* Addressing Poor Performance June 4, 9 am to 1 pm
* Driving Change June 11, 9 am to 1 pm
* Maximizing Team Performance June 18, 9 am to 1 pm
* Adaptive Leadership June 25, 9 am to 1 pm

**The Management Academy may be right for you if:**

* You lead a team
* You are experienced and comfortable with the basic management skills of feedback, coaching, and delegation
* You can commit to the follow-up assignments, prep work, and peer coaching calls (1-2 hours between each class)

Registration is now open on Archbright.com.

This program is powered by Development Dimensions International.

**U.S. Department of Labor Muddies The Water On FMLA Designation**

In an opinion letter dated March 14, 2019, the U.S. Department of Labor Wage and Hour Division (WHD) explicitly stated that once an employee communicates a need to take leave for a FMLA-qualifying reason, neither the employee nor the employer may decline FMLA protection for that leave. Further, the employer may not delay designating leave as FMLA-qualifying, even if the employee would prefer that the employer delay the designation. In a footnote within this Opinion, the WHD specifically challenges existing law in the Ninth Circuit, which is the federal appeals court with jurisdiction over Washington, Oregon, and Idaho, among other states.

The Ninth Circuit case at issue states that an employer must allow an employee to decline to accept the designation of the leave as FMLA-protected. Escriba v. Foster Poultry Farms, Inc., 743 F.3d 1236, 1244 (9th Cir. 2014) (“…an employee can affirmatively decline to use FMLA leave, even if the underlying reason for seeking the leave would have invoked FMLA protection.”). Some legal and HR advisors and courts in other circuits have downplayed the importance of this statement in Escriba, arguing it is a passing comment by the court that is not entitled to have binding authority on future decisions.

It is important to note, however, that no court in the Ninth Circuit has disagreed with the reasoning in Escriba. For this reason, employers must be mindful that relying on the DOL opinion letter presents significant risk. It is recommended that employers require employees to provide written confirmation of their desire not to accept the protections of FMLA during leave. Additionally, employers should seek legal counsel before unilaterally designating leave as FMLA over the employee’s objections or taking action against an employee who declines FMLA protection, particularly since the leave may be protected by a law other than the FMLA.

Eligible members are encouraged to contact an Archbright HR Advisor with any questions and/or review Archbright’s comprehensive FMLA KeyNote from the HR Toolkit or Mobile app.

Source: Ami De Celle, Archbright Attorney

**Retaliation Still Top Charge in FY 2018, Sexual Harassment Up 13.6%**

The EEOC took in 76,418 charges of workplace discrimination in fiscal year 2018, according to data released by the agency on April 10. Notably, the EEOC resolved 90,558 charges of discrimination and secured $505 million for victims in private sector, state and local government, and federal workplaces, the agency highlighted in a release.

Retaliation still at the top. As has been the case since 2009, retaliation claims accounted for the greatest percentage of total charges filed in FY 2018—51.6%. Back in 2009, there were 33,613 retaliation claims alleged and 33,579 race discrimination claims, both coming in at 36.0% of total charges filed.

Sexual harassment charges up. The EEOC also noted that in FY 2018 it received 7,609 sexual harassment charges—a 13.6 percent jump from FY 2017. The agency obtained $56.6 million in monetary benefits for victims of sexual harassment.

“[W]e cannot look back on last year without noting the significant impact of the #MeToo movement in the number of sexual harassment and retaliation charges filed with the agency,” Lipnic said.

Lawsuits. EEOC legal staff filed 199 merits lawsuits in FY 2018, which included 117 individual suits and 45 suits involving multiple victims or discriminatory policies, and 37 systemic discrimination cases. At the end of the fiscal year, the EEOC had 302 cases on its active docket. The agency said it achieved a successful outcome in 95.7 percent of all district court resolutions.

Source: CCH

**If managers and employees are not trained on workplace harassment, your company is at risk. Contact us or visit Archbright. com for more information about our harassment awareness training options.**

**New Washington Legislation Strengthens Paid Family & Medical Leave Program**

A bill to provide updates to Washington’s new Paid Family and Medical Leave program was signed into law by Governor Inslee on April 3. House Bill 1399 makes several technical corrections to the new program, and clarifies a key provision related to supplementing wages while an employee is out on leave.

Beginning January 1, 2020, family and medical leave will be available through a State administered plan to all employees employed by an employer in the State of Washington. Funded by premiums paid by both employers and employees, family and medical leave insurance benefits will be payable by the Employment Security Department (ESD) to employees during a period in which they are unable to perform their regular or customary work because of the need for family and medical leave. When benefits become available in January 2020,

Paid Family and Medical Leave will provide partial wage replacement to all eligible workers in Washington state for leave to bond with a new child through birth, adoption or foster placement, to care for themselves or a family member during a serious illness or injury, and for certain military related events.

The law states that “an employer may allow an employee who has accrued vacation, sick, or other paid time off to choose whether: (a) to take such leave; or (b) not to take such leave and receive paid family or medical leave benefits.” Under the original law, employers would not be allowed to supplement the pay of an employee out on Paid Family and Medical Leave with other forms of paid leave, including vacation or sick leave. H.B. 1399 changes this, essentially allowing an employee the option to top-off their Paid Family and Medical Leave benefit with available company provided paid leave. However, employers may not require an employee to supplement benefit payments; the choice to receive supplemental benefit payments lies with the employee.

The bill also makes some technical corrections to the law, including clarifications related to employer-run voluntary plans, appeal rights for employees covered by a voluntary plan, disclosure and privacy provisions, and some definitions within the law.

The State is still in the rulemaking process of this law, which means they are still developing the scope and content of the rules for the Paid Family and Medical insurance program. Archbright will continue to monitor the rules and update members as more information is available. 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, Senior HR Advisor

**HR FAQ**

**Question:** We have an employee that has a medical condition that he says may, on rare occasions, cause him to lose consciousness. He has asked us not to call 911 if that happens, but to wait for a few minutes to see if he regains consciousness. Do we have to honor his request?

**Answer:** The employee can ask you not to call 911; however, you should not agree to their request. Most of us are not licensed physicians or EMT’s,

which limits our ability to make accurate medical assessments. If an employee is unconscious or even injured at work, and in your judgment 911 needs to be called – then call 911. If the employee chooses to reject the services of the EMT’s once they arrive, that is their choice, but then you as the employer have taken appropriate steps to protect the employee and the company.

If the employee does reject the services of 911 but you have specific and objective concerns about their ability to safely work, you can still require they see a physician and obtain a fitness for duty prior to resuming work duties.

**Archbright Awards 200K to Local Non-Profits that Provide Health and Wellness Service**

In 2014, Archbright endowed $1.8 million to be awarded over 10 years via the Seattle Foundation in the amount of $200,000 each year. The mission of Archbright’s Health and Wellness Fund is to encourage healthy lifestyle outcomes of Pacific Northwest residents by providing the promotion of health and wellness education, research, and services.

Grants were awarded this year to support these organizations:

* Bloodworks Northwest (www.bloodworksnw.org) saves lives through research, innovation, education and excellence in blood, medical and laboratory services in partnership with our community.
* FareStart (www.farestart.org) helps people overcome the barriers to employment by developing the work and life skills they need to have lifelong careers through social enterprise restaurants, cafes, catering, and community meals programs.
* Little Bit Therapeutic Riding Center (www.littlebit.org) improves the bodies, minds, and spirits of children and adults with disabilities through equine-assisted therapies and activities.
* Neighborcare Health (www.neighborcare.org) is the largest provider of primary medical and dental care in the Seattle area for low income and uninsured families and individuals, serving the community for almost 50 years.
* Northwest Kidney Center (www.nwkidney.org) is the world’s first dialysis organization, promoting the optimal health, quality of life, and independence of people with kidney disease through patient care, education, and research.
* CHOICES Education Group (www.choices.org) empowers teens to make positive choices to increase their life opportunities and support their health and wellbeing.

We are proud to support these organizations and hope you will too!

**Benefits of Return-to-Work Program**

As an employer you may already know that returning workers to a light-duty capacity can benefit your bottom-line. It can control the costs associated with Workers’ Compensation premiums and help maximize your Retro refunds – if you participate. Knowing who is eligible and how to recoup wages can be the difficult part of the equation.

One financial incentive employers’ are given to bring their workers back at a modified capacity is the Stay-At-Work Program (SAW). Every state insured employer already pays for this through up-front composite premiums. To be eligible for the SAW reimbursement program you must meet the following criteria: Be paying workers’ compensation premiums to L&I; be the employer at the time of injury; or for an occupational disease claim, either a) be an employer whose experience rating is impacted by the claim because the worker was once employed by your company, or b) be the last employer to employ the worker when the allowed claim was filed.

The workers’ health-care provider must be given a description of the available light-duty work which indicates the physical requirements of the job-functions.

This light-duty job description must be approved by the workers’ healthcare provider to qualify. Archbright recommends having three light-duty job offers on file (back, upper extremity, and lower extremity) to help speed up the process and qualify quicker, recouping more reimbursements.

Once you have met the above criteria you can start the application process for reimbursement. Members of Archbright’s Workers’ Compensation program qualify to have Archbright file this on your behalf. Participants are eligible to recoup 50% of an employee’s wages while they are performing this approved modified job, for up to 66 days or $10,000, whichever comes first. The direct fiscal savings this provides can be quantified. However, there are many more indirect benefits to bringing someone back at a light-duty capacity that you may not immediately correlate to return-to-work.

For an employee, there are many benefits of returning to work at a light-duty capacity. For one, they continue to earn full-wages. If they rely on being paid out Time-Loss benefits from the state, the employee only qualifies for 60-75% of lost wages. Many studies have shown that employees who return to work at a light-duty capacity recover faster than those that collect Time-Loss benefits. Also, there is much less of a chance of compounding that injury further. Lastly, employees help instill a sense of trust with the employer and increases their job security. The longer they are off work, the harder it is to get back to their original job and wages.

Beyond the measurable savings that employers can recoup by bringing an injured worker back at a light-duty capacity, there are other benefits from Return-to-Work. It positively impacts employee engagement and company culture. High levels of employee engagement lead to increased retention, quality, safety, productivity, revenue, and profits. It also creates opportunities for cross-training and sharing of institutional knowledge. If your longest tenured machinist is the injured worker, ask them to help mentor and train employees that are newer to the company. This will strengthen teams, increase skills, and spread knowledge throughout the organization. All the while, your employee will earn the same income and your organization will recoup 50% of those wages, control up-front Worker’s Compensation costs, and maximize your Retro refunds (if in a Retro program).

As you can see, understanding the benefits of properly managing a workers return- to-work can be worth its weight in gold for your organization.

For questions or more information, please contact your Safety & Loss Control Consultant at 206.329.1120, 509.381.1635, or email safety@archbright.com.

**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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