**Archbright™**

**Insights Newsletter**

**August 2020**

**Virtual & Onsite HR Support During the Pandemic**

No matter what happens in the coming weeks and months, HR must continue the hard work of ensuring compliance and supporting their organization’s people initiatives. Add to it the pandemic-related complexities of managing leaves, returning employees to work, and ensuring safety requirements are met, the demands on HR have intensified.

Through this uncertain time, Archbright’s HR Consultants have continued to provide much needed support to members. And we have done so virtually.

During the pandemic, our consultants have helped members by:

* Providing COVID-19 related support, including return-to-work, layoffs, furloughs, leaves of absence, unemployment
* Filling in for an open HR leadership or individual contributor position
* Developing HR-related processes for new businesses
* Creating consistent and accurate job descriptions
* Reviewing and revising member policies
* Resolving employee issues with leaders and line level employees
* Developing and/or facilitating new employee orientation and onboarding
* Administering leaves, from PFML to FFCRA to ADA

Please reach out to your Account Executive or contact us at info@archbright.com if you would like to learn more about how our HR Consultants can support you during this time. There is no project too big or too small. We are here to help.

**HR Leadership 2020—Building Endurance, Agility, and Resilience**

With the unprecedented challenges of the COVID-19 pandemic, social unrest, and economic distress, we’re now at the brink of burnout… All. The. Time. The need for endurance, agility, and resilience has never been greater than it is today.

As HR leaders, it is time to refuel personally and professionally. To help you do just that, we’ve brought together a lineup of presenters to energize and inspire us as we navigate our new reality. This half-day VIRTUAL conference is the dose of focus and encouragement you need right NOW!

4 Actionable Steps to Achieving Long-term, Sustainable Success with Patrick Lencioni. Pat will talk about these difficult times that we’re living in and provide practical advice for leaders and their teams. He will also reveal the four actionable steps to achieving long-term, sustainable success, by tackling a prominent symptom of corporate frustration: silos, the invisible barriers that separate work teams, departments, and divisions, causing people who are supposed to be on the same team to work against one another.

Worthy Leadership with Captain Ron Johnson. Ron will share his own experience of having to lead multiple audiences of people, each with different expectations for how to be led, and motivated, based on their backgrounds, belief systems, and biases. In the early days of the events unfolding in Ferguson, Missouri, Captain Johnson’s leadership was on display while the whole world was watching. He elected to use his moral compass of empathy, compassion, and selflessness to serve as the calming, unifying force amidst a rapidly deteriorating situation. He calls that, WORTHY LEADERSHIP™.

Inspiring Greatness through G.R.I.T. with Robyn Benincasa. Robyn will share her leadership lessons learned as an Adventure Racing World Champion, through her G.R.I.T. model: Guts, Respect, Ingenuity, and Teamwork! Having the GRIT to go the distance in any endeavor isn’t just a matter of mental fortitude. Much of our endurance and drive to succeed when others would quit comes from our connection to something greater than ourselves, the inspiration that comes from mission-driven innovation, the passion we have for our goals and the people whose lives we will touch along the way, and the respect for a team whose success is inextricably tied to ours.

The Infinite Game with Simon Sinek. In his talk, Simon explores how understanding the rules of the Infinite Game is essential if any leader wants to stay ahead and outlast any competitor…forever. In a game with no finish line and no agreed upon rules or metrics it is impossible to “be number one,” “be the best,” or “beat our competition.” In this Infinite Game, there is only ahead and behind. Leaders of organizations must understand the rules of the Infinite Game. Failure to do so dramatically increases the chance that they will set themselves on a path that eventually drains them of the will and resources to play at all. Eventually they will drop out of the game and no one will care.

I hope to ‘see’ you there!

HR Leadership 2020

When: September 1
Time: 9 am to 1 pm PDT
Where: Virtual
Cost: $189.95\*
Learn more and register at
https://hrleadership2020.eventcreate.com/.
\*Archbright Members get $30 off, use **ARCHBRIGHT2020** at checkout!

**August Webinar:**

**“They Said What?”
Political Speech and Activity in the Workplace**

During a presidential election year, Americans engage in more political conversation and head to the polls in greater numbers than in non-presidential election years. And as November 3 rapidly approaches, with the realities of the COVID-19 pandemic and the national reckoning over institutional racism, politics have never been more palpable at work.

*This increased political speech and activity will inevitably impact the workplace.*

Our upcoming webinar, presented by Ami De Celle, Attorney, and Mark Nelson, Sr. HR Advisor, will cover election year tips and topics for employers looking to legally and respectfully navigate through this politically charged time.

When: August 20 | 9 am to 10:30 am

Where: Webinar – WebEx

Cost: FREE for Members; $25 for Non-Members

Register today at Archbright.com!

*This program has been approved for 1.5 (HR (General)) recertification credit hour toward aPHR™, aPHRi™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through the HR Certification Institute.*

**Moving Ahead...While Stuck in Place**

It’s hard to believe that August is already upon us! The months of 2020 have flown by and, though many of us have felt stuck in place, the reality is that we have grown by leaps and bounds in areas we never expected. We are now a largely remote workforce and managers are challenged to find new ways to communicate with and motivate their teams. They are learning new technologies and are being asked to hold meetings in cyberspace, rather than in office space.

At Archbright University, we have converted all of our classes to virtual learning to continue to offer the same great training our members have come to know and love. Peter Drucker once said, “The most important thing in communication is to hear what isn’t being said.” Managing remotely increases our need for highly effective communication. It is important that we listen to our employees through the airwaves to identify their successes and challenges in their new environment.

Archbright University has several upcoming classes to support our members in these challenging times:

* Holding Others Accountable for Great Performance, Monday, August 10. Learn a five-step approach so others can count on you to deliver great team performance and results.
* Communicating for Leadership Success, Tuesday, August 11. Develop strong interpersonal skills needed to mobilize and engage others to get things done.
* Conflict to Collaboration, Wednesday, September 2. Explore the tools for managing conflict effectively and learn practical skills you can start using right away.

Additionally, we are pleased to announce a special member discount for the months of August and September. All new registrations for our ½ day and full day classes will be 50% off. Just use the code **SUMMERSALE** at checkout.

Though we may be working from home and stuck in place physically, 2020 can also be the year of great learning and growth. To sign up for an Archbright University class, go to Archbright.com.

**Why the NLRA Matters to Both Union and Non-Union Employees**

Unless you employ unionized employees, you likely have no interest in the National Labor Relations Act (NLRA) - and for good reason. The statute and cases interpreting it are not easily understood without historical context. Additionally, decisions handed down by the National Labor Relations Board tend to be heavily influenced by political whims of the administration in power at the time. If you don’t agree with the latest decision, wait four years until the next administration takes power and these decisions are often reversed.

Regardless of what might deter you, there are some essential components every employer must understand about the NLRA, union and non-union. Section 7 of the Act guarantees all covered employees, regardless of union affiliation, the right “to engage in…concerted activities for the purpose of…mutual aid or protection….” We often refer to this activity as “Section 7 rights” or “protected concerted activity” – and employers who discipline or discharge employees for engaging in it are in violation of the Act.

As you can easily infer from the term itself, there are two components: (1) protected and (2) concerted.

Protected activity may include conversations about any terms and conditions of employment communicated in ways not so egregious as to lose the statute’s protections. Provided employees are not making deliberately and maliciously false statements, they are given significant latitude in how they speak their minds, even if the tone is insulting or the statements themselves are inaccurate. These protections still apply even beyond the four walls of the office or outside of 8:00 to 5:00, including social media posts.

Regarding concerted activity, we know from case law that concerted means two or more employees acting together (i.e., in concert) or one employee acting on authority from others. Just how much one individual has the endorsement of others, or is seeking to obtain it, is where the Board tends to show its political stripes most baldly. In the past, an employee protesting publicly in a group meeting could meet the concerted requirement, even if the employee had not yet secured the endorsement of others. Most recently, however, the NLRB articulated a multifactor test designed to narrow the circumstances whereby a single actor could still be engaged in concerted activity. Suffice it to say that HR professionals are wise not to summarily discount a single employee raising work-related concerns.

In addition to protected concerted activity, employee committees can also trigger NLRA considerations for nonunion employers. If you read the Act itself, nowhere is “union” defined. Instead, the law references a “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” In essence, employee committees can trigger the protections that “labor organizations” enjoy under the Act, one of which is freedom from domination or interference by the employer. Here’s where NRLA protections only make sense in an historical context. Prior to its enactment in 1935, employers formed employee committees and even de facto unions, in some cases, to discourage independent union organizing efforts. When the law was enacted, legislators wanted to ensure this did not continue and made employer domination of labor organizations an unfair labor practice. Unfortunately, an outcome of that prohibition for contemporary labor relations is the possibility your well-intentioned safety committee could be violating the law. Generally, committees that involve a bilateral exchange of information run a greater risk of “dealing with” employers as opposed to employee committees that simply submit their findings to management. In that vein, committees tasked with brainstorming ideas run less of a risk than committees responsible for submitting formal proposals.

Keep in mind, there are categorical exclusions of employers and employees under the NLRA and their actions implicating Section 7 rights (e.g., objecting to management practices) that afford them no protections under the Act. Supervisors are specifically excluded from protections under the Act, as are government employees, who enjoy collective bargaining protections under a separate patchwork of public sector laws and regulations. Confidential employees, namely those who assist leadership in setting management policy (e.g., administrative assistants, etc.), are also beyond the scope of protections under the Act. Of course, because independent contractors (at least those properly classified as independent contractors) are not employees, they’re beyond the reach of the NLRA.

Employers who want to challenge an employee’s activity as outside the scope of protection should seek counsel before taking action against an employee. Eligible members are encouraged to reach out to our HR Advice and Legal team with any questions or to seek clarification about how the NLRA may affect your workplace.

*Source: Mark Nelson, Archbright Senior HR Advisor*

**Layoffs During a Pandemic**

The Coronavirus (COVID-19) has taken a toll on the workforce, with many employers forced to consider furloughs, layoffs, and workplace closures. Few business decisions involve as many legal, emotional, and practical considerations as the decision to lay off employees. The challenge for management is to reduce the workforce in a legal yet humane way while still achieving the intended cost savings associated with a leaner workforce.

Should your company find it necessary to reduce your labor force through involuntary layoffs or furloughs, do so with caution. Regardless of the size of the layoff, seek guidance from an Archbright HR Advisor or employment attorney and consider these steps:

* Start with a group of decision makers to avoid the risk of individual bias;
* Establish criteria for layoff decisions based on objective and verifiable information. This can include seniority, wage or salary rates, productivity, education, test scores, and demonstrable abilities for the available work. Any subjective reasons must be supported by examples and verifiable history. This criteria is critical to address risk described in #4 below.
* Use caution if relying on job performance as a layoff criterion; ensure pre-layoff performance evaluations are consistent and correspond to management’s historical perspective of the employee. In other words, a negative layoff review that contradicts a history of positive performance reviews may be a recipe for a lawsuit;
* Ensure layoff selections do not violate discrimination laws that protect employees from discrimination in any employment decision. For example, in a layoff, an employee who has asked for an accommodation, is in a high risk category for COVID-19 and/or been diagnosed with COVID-19, is protected from discrimination, or an employee who has complained about safety in the workplace due to COVID-19 is engaging in protected activity. A decision to lay off an employee who is in any of these statuses puts the employer at risk of a discrimination and retaliation complaint;
* Review all policies, employee handbooks, collective bargaining agreements, and employment agreements, if any, to ensure the company follows its own rules for implementing layoffs. Noncompliance with its own written commitments can create additional liability and support the inference of discrimination against a protected group or individual;
* Should you give advance notice of a layoff? The Worker Adjustment and Retraining Notification Act (WARN) requires employers with 100 or more employees must give employees sixty (60) days advanced notice of mass layoffs or a plant closure.
* Create a communication plan for delivering the layoffs that includes how to get unemployment benefits, use of Employee Assistance Plan (EAP) benefits, health and welfare benefits (COBRA), and/or if available, severance and outplacement services;
* Create a communication plan for remaining employees that assists with morale and engagement; and
* Consider alternatives like work share or offering employees to volunteer for lay off first; and
* If providing a severance agreement and/or retention bonus, ensure all agreements are reviewed by legal counsel before presenting to the affected employee(s).
* If any employee chosen for layoff is subject to a non-compete agreement, the employer may be required to pay the employee for the term of the non-compete in order for the agreement to be enforceable.

Eligible Archbright members are encouraged to call with questions or seek clarification when necessary and have an Archbright HR Advisor or Legal Counsel review layoff processes and decisions prior to implementation.

 *Source: Kellis Borek,
Vice President, Labor and Legal Services*

**HR FAQ**

**Question:** One of my employees is refusing to take the COVID-19 daily screening survey because she says it is against her constitutional rights. What should I do?

**Answer:** First, guidance from the CDC and state and local health departments recommend daily screening as a strategy that employers can use to lessen the chance of allowing COVID-19 infected people into the workplace. Typically this includes a written or electronic survey that an employee must take at the beginning of each shift to determine their exposure to COVID-19. During a pandemic, it is legally acceptable and appropriate for an employer to require an employee to take this survey before being allowed entrance into the workplace. Similarly, requiring an employee to wear a mask in the workplace, in accordance with state and/or local law, does not violate any employee rights.

Regarding an employee’s constitutional rights – while it is important to respect the views and opinions of employees, along with the right to engage in concerted activity under the National Labor Relations Act (NLRA), private-sector employees’ constitutional rights generally do not apply at work. Constitutional rights to privacy or free speech, for example, disappear as soon as you walk into the private workplace. Although public employees do have constitutional protections at work, courts have limited these protections. For example, First Amendment free speech rights apply only to speech that is on matters of “public concern,” which generally does not include employee complaints regarding internal employer policies.

Although the Constitution may not be violated, employers experiencing these complaints or protests from employees should address these concerns on a case by case basis. Take time to discuss the employee’s concerns and the importance of keeping employees safe – and keeping employers in compliance with federal, state, or local requirements. Eligible members are encouraged to contact the HR Hotline or Safety Hotline with specific questions.

*Source: Joy Sturgis, Content Manager*

**Frontloading Requirements Under Washington Paid Sick Leave**

Employers may elect to satisfy the Washington paid sick leave requirements through a frontloaded plan as long as the amount is at least equal to, or more than, one hour for every 40 hours worked.

Employers are required to provide employees notification of paid sick leave, which must include:

A statement guaranteeing the paid sick leave rights of your employees,

The rate your employee will accrue paid sick leave,

The purposes for which paid sick leave may be used, and

A statement that retaliation by employers against an employee for their lawful use of paid sick leave, and for exercising other Minimum Wage Act rights, is prohibited.

If providing a frontloaded plan, employers must also:

Have a written policy or a collective bargaining agreement that addresses the requirements for the use of frontloaded paid sick leave, and must notify employees of such policy or agreement prior to frontloading an employee paid sick leave.

No later than the end of the frontloading period, provide notification to employees in a written or electronic form which shows that the amount of paid sick leave frontloaded to the employee was at least equal to the accrual rate of one hour of paid sick leave for every 40 hours worked.

Eligible members are encouraged to review Archbright’s KeyNote Washington Paid Sick Leave and sample paid sick leave policies and notification forms available on the HR Toolkit on the members only website and mobile app. Gold and Silver members are encouraged to contact an Archbright HR Advisor with any questions regarding paid sick leave requirements.

*Source: Joy Sturgis, Content Manager*

**Introducing Our New Ebook From the Hotline: 7 Questions on Washington Paid Family & Medical Leave (PFML)**

Administering PFML, regardless of a global pandemic, can challenge even the most experienced of HR professionals.

We’ve compiled the most common questions we’ve received on the HR Hotline regarding PFML into an all-new ebook, including those involving COVID-19:

* Can an employee take PFML for a COVID-19 related reason?
* Can an employee on PFML also take paid lave under the Families First Coronavirus Response Act (FFCRA)?
* How does “supplemental” pay work
during PFML?
* Do FMLA and PFML run concurrently
or consecutively?
* How does intermittent leave work under PFML?
* Do employers have to maintain health benefits during PFML?
* When does an employer have to hold the original job of an employee on PFML?

Get your copy today at Archbright.com/hrhotline!

**Managing Mask Requirements as Temperatures Rise**

Employers have had to scramble to comply with several new federal, state, and local health directives intended to help combat the spread of COVID-19. In Washington and Oregon, employers must implement and enforce a variety of new rules such as enforcing six-foot physical distance between employees or customers when feasible, reducing building capacity, and ensuring adequate employee handwashing. Quite possibly, the trickiest directive to enforce though has been face covering requirements. Washington, Oregon, and some counties in Idaho require mask wearing in public and at the workplace. Temperatures and humidity are rising, and with current state and local mask requirements in place, employees are starting to feel the heat.

Common employee complaints about face coverings include restricted breathing, glasses fogging, “maskne” or rashes, concerns that face-coverings are not an effective virus control method, or that they cause the wearer to overheat. With summer temperatures rising, mask wearing could become a safety concern if not adequately addressed.

Choosing the Right Mask

When temperatures and humidity rise, wearing a face covering can become uncomfortable, and if wearing the wrong type of covering, the covering can contribute to an employee overheating. When selecting face coverings, look for coverings that can be tied around the head or have ear loops and cover both the mouth and nose. Reusable, adjustable face coverings offer a better fit for the wearer, and cotton is not only washable and lighter than most materials, but it is also more breathable and causes less skin irritation if a person is sweating. Lighter colored face coverings absorb less heat from the sun and stay cooler compared to darker colored face coverings.

Employees should have a few face coverings with them each day, allowing them to change out the covering when it becomes damp or wet from sweat. When swapping a covering, the employee should be more than six feet away from others, should throw disposable coverings away, or store reusable coverings in a resealable plastic bag or other container until they can be washed. Employees should wash or sanitize their hands before putting a new face covering on.

Selecting the right face covering is not enough, though; additional steps must be taken to help keep workers cool when wearing face coverings in hot environments. Archbright has compiled a list of tips and ideas to help keep your people comfortable and safe. To learn more about these mitigation ideas as well as how to manage employee complaints about wearing face coverings and employee requested accommodations, check out our recent blog article, Managing Face Covering Requirements and Overheating, on Archbright.com.

*Source: Tiffany Knudsen, Safety Content Manager*

**Safety & Health Webinars**

**Safety awareness tips, compliance information, and tools to take safety programs to the next level!**

Archbright’s extensive safety & health webinar library is available to all members. Our Safety, Loss Control, and Workers’ Compensation experts record monthly webinars that employers can use to build, or update, required written safety programs and establish best practices.

Topics include:

* COVID-19 Safety Program Requirements
* 8 Essential Elements of Safety Series
* Required Written Programs
* Safety Train the Trainer Topics
* Employee Safety Engagement
* Claims’ Financial Impact
* Retrospective Rating
* And More!

Most webinars are designed in conjunction with sample templates and tools for employer implementation. Contact safety@archbright.com for more information about this webinar library!