



# Insights

FEBRUARY | 2021 Newsletter



## Workplace Investigations Conducted by Archbright

There is still much uncertainty for employers as the pandemic continues, yet the need for timely and impartial workplace investigations remains a constant. **In 2020, our team conducted over 30 investigations for members.**

We understand investigations can be challenging to navigate for many reasons. They can be unpredictable, time-consuming, and highly sensitive. Choosing the right investigator is very important. You need someone who is credible, respected, regarded as fair and impartial, and knowledgeable about employer policies and employment law issues.

### Let us help.

After an initial consultation, we assign an attorney-trained, experienced investigator from our team. And within a few days, the process begins. The investigator independently reviews all pertinent documents and interviews all relevant witnesses, following the evidence as it develops and providing regular updates as to how many hours have been spent and how many likely witnesses remain to be interviewed.

When the fact-finding process is completed, you'll receive a verbal and/or written findings report that includes the specific reasoning for the determinations. *Silver and Gold members also have access to our legal team for ongoing advice on the matter.*

If you'd like to learn more about this service, please reach out to us at [hrhotline@archbright.com](mailto:hrhotline@archbright.com) for more information. Our team is ready to help.

## What's Inside

### CEO Corner

- Introducing Archbright Advance

### Archbright University

- Mighty Microlearnings – Now on mozzo!

### HR Advice & Counsel

- Employer Mandated Vaccines and Union Employees
- DOL Publishes Final Rule on Independent Contractors

### Archbright News

- Introducing mozzo, our new, members-only online platform!

### Safety and Loss Control

- New Administration, New Safety Impacts

## LOOKING AHEAD

## CEO Corner

**Shannon  
Kavanaugh**

President and CEO at Archbright

**Introducing Archbright Advance**

At Archbright, we encourage everyone to bring their authentic, best self to work every day. We believe our employees should feel respected and included for their individual identities, backgrounds, perspectives, and passions. Together, through our diverse set of voices, we inspire each other, innovate, and use our influence to support removing systemic inequities at Archbright and in our business community.

As our commitment evolves from its two-year focus on our own diversity, equity, and inclusion efforts, I am happy to announce we are now sharing some of the tools from our own rewarding work with you. We call it Archbright Advance and it is a program to help you move your D&I efforts forward in a purposeful way.

Delivered in 3 phases, Archbright Advance identifies your organization's current state, helps develop your Diversity & Inclusion (D&I) Roadmap, and provides impactful employee training:

- 1. The Spectra Diversity Inclusion Assessment™.** Delivered to all leaders and employees, it is designed to help encourage conversation and facilitate education of diversity and inclusion. Two reports are generated: one for the individual and one for the organization.
- 2. D&I Consulting, Focus Groups, and Planning for Change.** We analyze the assessment results, deliver an Executive Briefing, lead employee focus group sessions, and report out on those findings to senior leadership. We then facilitate a half-day D&I Roadmap Session with leadership to develop a plan of action, and check-in on a quarterly basis.
- 3. All Employee D&I Training.** This full-day training incorporates the individual Spectra Diversity Inclusion Assessment™ into the learning to help employees identify the belief systems that drive their behavior and commit to skill-building with an individual action plan.

To learn more about Archbright Advance, visit [Archbright.com](https://www.archbright.com), reach out to your Account Executive, or email us at [info@archbright.com](mailto:info@archbright.com).

P.S. I've recently signed on with over 1,600 other CEOs nationwide to pledge my support for a more inclusive workplace for employees, our communities, and society at large. You can check out the CEO Action for Diversity & Inclusion at [www.ceoaction.com](https://www.ceoaction.com).

**February Webinar: Developing Your Company's Training Plan**

The nation is reeling from the COVID-19 pandemic, a national election, and civil unrest. Add increasing costs to keep employees safe, and managing employee training can seem impossible. According to Training Magazine's [2020 Annual Training Industry Report](#), organizational training payroll dropped nearly 18% as employees were laid off or furloughed. As a result, employee training has taken a backseat in many organizations.

Yet, organizational leaders need essential workplace skills now more than ever before. Courses in empathy, diversity and inclusion, and staying connected with virtual teams are on the priority list for companies who will pull through this period.

Our upcoming webinar, presented by Amy Bachmann, Director of Archbright University, will cover how the face of organizational training has changed in the last year and best practices to address employee training needs post-pandemic.

Objectives include:

- How organizational training evolved in 2020
- Employee training needs in 2021
- Recommended training track for managers and supervisors
- Providing synchronous (interactive, real-time) and asynchronous (self-paced) training on a budget

Please limit to one attendee per organization. A recording of the webinar will be available for download on our website within 2 days after the live event.

**When:** February 18 | 11 am to 12:30 pm

**Where:** Webinar - WebEx

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

**Registration is now open at [Archbright.com](https://www.archbright.com)  
Click here to Register!**

## Mighty Microlearnings - Now on mozzo!

From LinkedIn to YouTube, computer-based training is everywhere! The way we access and digest information has come a long way from our grandparents' encyclopedias. Online learning is happening at a remarkable pace from kindergarten to college. And, courses are getting shorter and shorter to meet the shrinking attention spans of learners. According to a [Microsoft study](#), the human attention span is only 8 seconds, while that of a goldfish is 9 seconds. How then, can we ever get employees to sit still long enough to learn the leadership skills they need? The answer is microlearning!

### What is microlearning?

Microlearnings are bite-sized learning sessions that are easily digested in under 10 minutes. They are typically organized in 'Training Tracks' to allow learners to build their skills, one microlearning at a time, and can be viewed when it's convenient for the learner. This allows employees to get their questions answered in real time, rather than waiting for the next professional development opportunity to come around.

### What makes microlearning effective?

Because microlearnings are less than 10 minutes long, they are less daunting, especially for employees who do not favor traditional classroom learning. With the birth of electronic microlearnings, employees are not required to read through pages of training documentation to glean what they need. Instead, they are able to view fun, engaging videos that get straight to the point.

Archbright is excited to announce the launch of its very first microlearning Video Training Library for employees to access the skills they need at the click of a button. Microlearnings at Archbright are available on [mozzo](#) and are available in the following Training Tracks: HR Fundamentals, Management, Safety, Workers' Comp Claims Management and General Professional Development. For more information on how to access the mozzo Video Training Library, please contact your Archbright Account Executive.



*Amy Bachmann | Director, Archbright University*

## Upcoming Classes

For the complete course schedule, please go to [Archbright.com](#).

**February 16 - [Leadworker Effectiveness \(Virtual\)](#)**

**February 17, 24, & [Management Fundamentals](#)  
March 3 - [\(Virtual\)](#)**

**February 18 - [Managing FMLA \(Virtual\)](#)**

**February 19 - [Conflict to Collaboration \(Virtual\)](#)**

**February 19 - [Workplace Harassment Awareness \(Virtual\)](#)**

**February 22, 23, [Supervisory Skills](#)  
& 24 - [\(Virtual\)](#)**

**February 26 - [Managing with DiSC® \(Virtual\)](#)**

**March 1 & 2 - [HR Fundamentals \(Virtual\)](#)**

**March 1 - [HR Records: How, What, Where, When, Why \(Virtual\)](#)**

**March 1 - [Stay Connected: Managing Virtual Team \(Virtual\)](#)**

**March 3 - [Employment Law Update \(Virtual\)](#)**

**March 4 - [Diversity and Inclusion in the Workplace \(Virtual\)](#)**

**March 5 - [Safety and Wellness for the Home Office \(Virtual\)](#)**

**March 5, 12, & 19 [Supervisory Skills \(Virtual\)](#)**

**March 8 - [Leadworker Effectiveness \(Virtual\)](#)**

**March 9 - [Supervisory Skills Tune-up: Practice Makes Perfect \(Virtual\)](#)**

## How to Register:

**Register online anytime at [Archbright.com](#).**

You will need to log in to the website to register and see pricing for your membership level.

If you do not have an account on our website, it's easy to set-up. Click on the Login button, then select Create An Account and follow the prompts.

If you have any questions, please contact us at **206.329.1120, 509.381.1635 or [info@archbright.com](mailto:info@archbright.com).**

**Or, download Archbright Mobile to browse the calendar and register!**



## Employer Mandated Vaccines and Union Employees

Employers considering mandating vaccines have much to consider even though the Equal Employment Opportunity Commission (EEOC) recently provided guidance suggesting employers may require their employees be vaccinated as a condition of employment.

Although EEOC guidance provides that certain employees are entitled to a religious or medical accommodation that could limit the scope of mandatory vaccines, the guidance does not address how labor law may restrict requiring vaccinations for union represented employees. Section 8(d) of the National Labor Relations Act (NLRA) requires an employer to bargain in good faith with the union representing its employees concerning “wages, hours, and other terms and conditions of employment ...” Requiring employees to be vaccinated is very likely to be considered a condition of employment.

If an employer is currently negotiating a new collective bargaining agreement (CBA), it may propose a mandatory vaccine program and negotiate it with the other provisions proposed by both sides. However, it’s more likely the current CBA is “closed” and the expiration date is months or years away. Before moving forward with a mandatory vaccine policy, consider the following to determine an employer’s duty to bargain the decision to implement mandatory vaccinations:

1. Are mandatory vaccinations already addressed in the current CBA?
2. Is there a Management Rights article in the CBA granting the employer the right or responsibility to provide for the health and safety of its employees? Or, if silent on safety, this clause may grant management whatever rights it has not given away in the CBA.
3. Is there a Zipper Clause in the CBA also known as the “Complete Agreement” clause with broad waiver by the union of its rights to bargain during the term of the CBA?
4. Is there a Safety Article that creates a method for union and employer to address safety matters?
5. Is there a Labor Management Committee article that provides for a method akin to a mediation, to address issues impacting the union employees?

Even if the CBA gives the employer the right to unilaterally institute vaccines, employers may still want to consider at least consulting with the union when developing such programs in order to foster goodwill with the union and to increase employee buy in. An employer’s proposal for mandatory vaccine or an agreed Memorandum of Understanding with the union should at a minimum contain the deadline by which an employee must be vaccinated, acceptable forms of proof of vaccination, a process for an employee to request a religious or medical accommodation, and whether or not the employer will pay for the employee’s time to obtain the vaccine.

Employers must also be mindful of potential changes in federal legislation or local laws. If legislation is passed requiring COVID-19 vaccines for some or all employees, union employers will need to follow the law. OSHA has a current rule that addresses vaccines at work under the bloodborne pathogen standard, which addresses Hepatitis B. This standard may provide a preview of how OSHA would address COVID-19 mandated vaccines to occupationally exposed employees. Additionally, on January 21, 2021, President Biden issued an Executive Order on Protecting Worker Health and Safety, calling for increased federal enforcement emphasis by OSHA regarding worker safety during the pandemic.

Archbright will continue to monitor this and other developments related to COVID-19. Archbright members are encouraged to contact the HR Hotline or legal team with specific questions or to seek clarification.

**Kellis Borek** | VP, Labor & Legal Services





## DOL Publishes Final Rule on Independent Contractors

Individuals who are paid to work for your organization are generally either employees or independent contractors. Unfortunately, your intentions—as well as theirs—are not determinative. While it may seem easier to classify an individual as an independent contractor, governmental agencies and, ultimately, courts have the final say in whether individuals are truly independent contractors. To make matters worse, there are multiple tests for whether someone is an independent contractor, based on which law is in play. If the IRS is interested in employment taxes, there's one test, and if the EEOC is determining whether an independent contractor should be reclassified as an employee to enjoy Title VII protections, there's another test altogether. In fact, Silicon Valley was recently thrown for a loop by the California Supreme Court, which adopted the little-known ABC test and entirely uprooted the gig economy in the process.

It's in that context that the U.S. Department of Labor recently announced its final regulations regarding independent contractors that are scheduled to go into effect on March 8, 2021. In essence, the regulations reaffirm the Department's commitment to what's known as the "economic realities" test. The test itself focuses on two primary factors that most other tests also prioritize—namely:

1. The amount of control retained over the work performed by the independent contractor, and
2. The independent contractor's opportunity for profit or loss based on how the relationship is structured.

Regarding the first factor, most other tests for independent contractors also consider the amount of control the organization exercises (or retains the right to exercise). In other words, if the organization tells the individual how to do what the individual does—as opposed to simply specifying the standards by which the organization will accept or reject the goods or services—the relationship is more indicative of employment than a deal between two business entities. As for the second factor, if the independent contractor assumes no risk and, further, the organization insulates the contractor from any losses it might otherwise incur by doing business with the organization, that does not bode well for an independent contractor relationship.

There are three additional secondary factors the Department of Labor highlights: (1) the skill required to do the work, (2) the permanence of the relationship between the entities, and (3) whether the work the independent contractor does is part of an integrated unit of production. The more skilled the work, the more compelling the argument for independent contractor status. The more permanent the relationship, the more likely it's employment as opposed to a business partnership. And, of course, the

more integrated the independent contractor's work, the more likely it is that the work is something that would be done by an employee as opposed to being outsourced to an independent contractor. (This was the element of the ABC test which significantly complicated efforts by tech companies to engage coders as independent contractors.)

Any time a governmental agency announces, or reaffirms, a test for independent contractors, employers are wise to conduct an audit of their independent contractor relationships to ensure compliance with that test. Archbright members are encouraged to review the *Legal Issues Involving Independent Contractors* Keynote for additional information, or contact the HR Hotline with any questions or to seek specific guidance.



**Mark Nelson** | Senior HR Advisor

## HR FAQ

**Question:** Due to COVID, we are allowing employees to work remotely. Some employees want to travel or temporarily work out of state, does this create liability for us??

**Answer:** Employers should remind employees that they must notify the company if they change their home address or temporarily relocate to another city/state/country for a period of time. The location of where the work occurs will dictate what state's employment laws apply.

Employees working in other jurisdictions, outside of their assigned work location, subject them to that jurisdiction's employment laws. For example, employees must be paid the minimum wage for the state or locality in which they work, whether this is a satellite office or their own home. It is important to be aware that some cities and counties have even higher minimum wages than the state the employer is located in. If the minimum wage is higher where the employee is working remotely, the employee is entitled to the higher minimum wage. Additionally, meal periods and rest breaks are dictated by state law. Thus, if a non-exempt employee decides to go visit family in another state and live with them while working remotely for 3 months, the company must abide by that state's meal period and rest break rules.

Different states also have different jurisdictional requirements for when individuals become subject to that jurisdiction's withholding requirements for income tax purposes. Even having one employee in another state outside of where the company has work locations could subject the company to the state's business tax obligations and withholding requirements. Employers that have remote workers working in new locations, outside of the state where the work location is located, should contact their payroll provider or tax accountant to determine how to handle any payroll and tax liabilities.

As working remotely becomes the new normal for many employers and employees, employers should consider how to handle employee requests to work outside of the state or local area. Employers should also consider drafting and having employees sign remote work agreements. These agreements should be as detailed as possible in terms of rules and expectations for remote work, including whether working out of the employee's state or local area is permitted.

Members are encouraged to visit the Resource Library for remote work resources, including the *Remote Work Keynote*, *Remote Work Policy*, and sample agreement. Eligible members are encouraged to contact an Archbright HR Advisor with any questions or to seek specific guidance.

**Joy Sturgis** | Content Manager

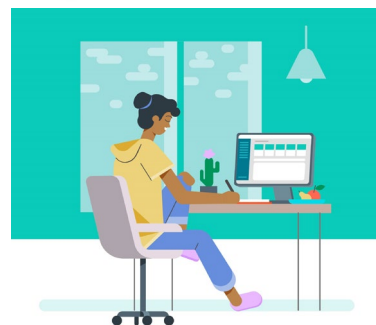
## ARCHBRIGHT NEWS

### Introducing mozzo, our new, members-only online platform!

With over a year in its making, all of us at Archbright are thrilled to at last introduce you to mozzo! Designed to connect members to our expert HR and safety resources, it's a whole new way to experience the benefits of membership.

- Join the conversation in mozzo's **Community**. Ask questions, share your experiences, exchange advice, and build your professional network. You'll discover new ways to make an impact on your peers, your organization, and yourself.
- Engage our experienced team of HR and Safety Advisors with **Advisor Chat**. Available every business day, you'll save valuable time and get the answers you need to quickly move past obstacles and simply get more done.
- Create complete job descriptions with mozzo's **Job Descriptions Builder**. With over 700 jobs in our database, you'll have what you need to develop and maintain your library year after year.
- Ensure your employee handbook is updated and compliant with mozzo's **Handbook Builder**. Simply answer a few key questions to begin building a new handbook or edit your current handbook. Eligible members can then submit it to our expert HR and legal team who then reviews it for compliance before you distribute.
- Grow skills across your organization through mozzo's **Video Training Library**. View, assign, and share micro-learning courses from the following tracks: Management, HR, Safety, Compliance, Workers' Comp, and Professional Development.
- Access HR and safety resources in mozzo's **Resource Library**. Formerly known as the Toolkit, this knowledgebase contains hundreds of forms, sample policies and programs, training materials, and legal guidelines. All resources are vetted by our experts and available to download at any time.
- If you utilize our claims management services, stay updated on the status of your workers' compensation claims through mozzo's **Claims Tracker**. Search by employee name, claim number, injury type, claim type, or claim status to track progress.

If you'd like a quick tour of mozzo, please contact your Account Executive or reach out to us at [info@archbright.com](mailto:info@archbright.com)!



### Update on The Resource Library (formerly the HR Toolkit)

With the launch of mozzo, we have expanded the Toolkit to include our growing collection of safety resources—it is now called the Resource Library and available only on mozzo or on Archbright Mobile, our mobile app.

If you have not yet downloaded Archbright Mobile, it only takes a few minutes to do so. You can find it on the [Apple Store](#) or [Google Play](#):

Archbright Mobile is free and lets you access key benefits of your membership:

- Easily search, favorite, and share key resources from the Resource Library right from the app.
- Browse the Archbright University calendar, and register for classes and events. You can favorite classes to come back to later.
- You can schedule an HR Hotline appointment and have one of our experienced HR Advisors call you directly at a specific time.
- The app also notifies you of important compliance alerts so you keep informed of employment law changes and stay up-to-date. These E-Alerts are listed in the app for you to access at any time.

Note that after you download Archbright Mobile, you'll need your username and password for Archbright.com to log in to the app. If you don't have that information, you can reset it using the [Forgot My Password](#) link.

Questions? Reach out to us at [info@archbright.com](mailto:info@archbright.com)!

## SAFETY AND LOSS CONTROL

### New Administration, New Safety Impacts

OSHA is responsible for assuring safe and healthful working conditions by setting and enforcing standards and providing training, outreach, education, and compliance assistance. During former President Trump's term, OSHA went through an entire presidential administration without a Secretary of Safety and Health who is the Administrator of OSHA. This was a first in the history of the agency! The Biden administration has just appointed Jim Fedrick as OSHA's acting Administrator and the agency's Deputy Assistant Secretary. Loren Sweatt, OSHA's former acting Administrator and Deputy Assistant Secretary, stepped down before Biden's inauguration on January 20th, 2021. Fedrick has previously served as Assistant Director and Principal Investigator for the United Steelworkers' Health, Safety, and Environment Department from 1994 to 2019. He has more recently worked as a Senior Consultant with ORC HSE Strategies, a National Council workplace safety group. Biden has also appointed Joseph Hughes Jr. as OSHA's Deputy Assistant Secretary for pandemic and emergency response. Hughes was the Branch Chief of the National Institute of Environmental Health Sciences' Worker Education and Training Branch.

With these appointments comes an expected shift to a more action-oriented approach to workplace safety. The last four years have been largely focused on reducing regulation. Industry experts believe with the new administration we can expect to see:

- **A new federal emergency temporary standard related to COVID-19.** This could be COVID-19 specific or a formal regulation for an infectious diseases' standard, or both. Many experts also believe there will be an increase in enforcement as part of the overall COVID-19 prevention strategy.
- **A possible advancement of the Protecting America's Workers Act.** A reform to OSHA that would increase civil penalties, increase criminal charge cases for egregious workplace safety failures, and expand the rights and involvement of workers in workplace safety cases.
- **An increase in overall safety enforcement.** This could be an increase in general workplace inspections and targeted inspections for repeat and/or willful safety violations. An increase in OSHA Inspector headcount is anticipated.
- **Restoration of the original Electronic Reporting rule and enforcement of the Anti-Retaliation rule.** In 2016, OSHA added provisions to the existing OSHA 300 Recordkeeping rule that requires most employers to keep records of workplace injuries and illnesses. The new provisions included electronic submission of specific forms to OSHA and prohibiting employers' retaliation against employees for reporting incidents. Although these provisions were not repealed, they were modified, postponed, or not enforced under the previous administration.

### New Federal Mask Requirements


Although it is still up to state and local authorities to dictate mask requirements for residents, President Biden has signed two executive orders mandating mask usage:

- On lands and buildings controlled by the federal government, including federal courthouses, post offices, agencies, state capitols, national parks, and national monuments.
- For federal employees and contractors, including the National Guard and armed forces.
- For public modes of transportation, including airports and on planes, trains, buses, and ferries, as well as ports into the US.

Archbright continues to monitor changes to OSHA regulation and the impacts on state-run safety and health programs in Washington and Oregon. Eligible members are encouraged to reach out to the Safety Hotline with safety-related questions.

*Tiffany Knudsen | Safety Content Manager*





### Consumer Price Index

**U.S. Cities Average—December 2020**

|                |                           |                          |
|----------------|---------------------------|--------------------------|
| CPI-W: 254.081 | + 0.100% (1 month change) | + 2.447% (1 year change) |
| CPI-U: 260.474 | + 0.094% (1 month change) | + 1.362% (1 year change) |

**Seattle/Tacoma/Bellevue—November/December 2020**

|                |                             |                          |
|----------------|-----------------------------|--------------------------|
| CPI-W: 279.308 | - 0.301% (bimonthly change) | + 1.584% (1 year change) |
| CPI-U: 283.409 | - 0.385% (bimonthly change) | + 1.427% (1 year change) |

1982-84 Base; CPI-U = Urban Consumers; CPI-W = Wage Earners & Clerical Workers

**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](mailto:info@archbright.com).**

**Insights** is published monthly for its member companies by Archbright™, founded in 1936. Items in **Insights** are for information only and not intended to render legal advice. Material contained herein may not be reprinted without the permission of Archbright.

We welcome your comments and suggestions.

**Email: [info@archbright.com](mailto:info@archbright.com) | Office: 5601 6th Ave S, Suite 400; Seattle, WA 98108 | Phone: 206.329.1120 | Web: [www.archbright.com](http://www.archbright.com)**