



Insights

JANUARY | 2021 Newsletter



Virtual & Onsite HR Support During the Pandemic

As the COVID-19 crisis stretches into 2021, HR continues the hard work of ensuring compliance, supporting their organization's people initiatives, and navigating pandemic-related complexities such as managing leaves, returning employees to work, and ensuring safety requirements are met.

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, and 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.**

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LOOKING AHEAD

CEO Corner

**Shannon
Kavanaugh**

President and CEO at Archbright

**Mental Health in
the Workplace**

Before the pandemic hit, the Centers for Disease Control and Prevention (CDC) reported job-related anxiety as the leading workplace health problem in the U.S. And now, as we bid goodbye to 2020, the rates of employee burnout and depression are soaring across the country.

As a leader, I have asked myself (and I am sure you have too), "How can we support employees (and ourselves) during this time?" A recent [HR Executive article](#) featured several ways employers can step up in response to the current crisis:

- **Talk openly about mental health.** Encourage employees to be more open with their managers or with HR about how they are feeling and where they are struggling. This open dialogue begins at the top! As leaders, we must take every opportunity to share our struggles and be human. At Archbright, weekly one-on-one meetings between managers and their employees start with an on-camera personal check-in.
- **Conduct regular surveys.** Create a safe space for employees to share concerns. At Archbright, we conduct regular online pulse surveys to see how employees are coping personally and professionally with the pandemic. Sometimes the results surprise us. The feedback allows us to focus our efforts where they are needed most.
- **Offer an EAP (Employer Assistance Program).** If you offer an EAP, make sure you are communicating how employees can access it. Recent research says even though available, EAPs are not widely used, so over-communicate, if necessary. An EAP is an invaluable way for employees to get support from a trusted resource. If you don't yet offer one, consider Archbright member and partner [Wellspring EAP](#).

It is worthwhile to note that experts predict mental health issues will far exceed the duration and impact of the pandemic itself. If you'd like to learn more about our pulse survey, available to Bronze, Silver, and Gold members as part of your membership benefits, or our EAP partner Wellspring EAP, just reach out to info@archbright.com.

**Webinar: Managing OSHA
300 Logs Like a Pro in 2021**

OSHA 300 recordkeeping can seem daunting, especially when there is so much to follow. Join us to learn more about managing your log, including new COVID-19 and remote work considerations. Together, let's take some stress out of this important task!

In this webinar, Tiffany Knudsen, Content Manager, and Korin Judge, Safety Consultant, will review the following topics:

- Required Recordkeeping Forms
- Annual Requirements
- Retention and Updating
- Recordable and Non-Recordable Criteria
- Electronic Reporting in 2021
- COVID-19 Illnesses
- Remote Employee Concerns
- Frequently Asked Questions

Registration is now open at [Archbright.com](https://www.archbright.com). Please limit to one attendee per organization. Also, please note that a recording of the webinar will be available for download on our website within 2 days after the live event.

When: January 21 | 9 am to 10:30 am

Where: Webinar - WebEx

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

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.



**SEATS ARE LIMITED, SO REGISTER NOW
TO RESERVE YOUR SPOT!**

Management Fundamentals Needed to Succeed in Our 'New Normal'

Happy New Year! During this time of year, we typically recite resolutions and plan for the year's successes. In 2021, however, it's difficult to know where to begin. With COVID-19 dominating our daily lives, there are so many unknowns.

According to Upwork's ["Future of Workforce Pulse Report"](#), 1 in 4 Americans will be working remotely in 2021. And research shows this number is only going to increase. "By 2025, 36.2 million Americans will be working remotely, an 87% increase from pre-pandemic levels."

Numbers as staggering as these require far more than an arsenal of IT hardware. The situation requires manager training like never before. A recent article on Indeed.com outlines [11 tips to effectively manage remote employees](#). The top three skills that managers need come as no surprise:

1. Set immediate and clear expectations
2. Document a communication strategy
3. Engage as often as possible

These skills are crucial to a manager's success under any circumstances but are more important than ever when managing remote workers. Communication, documentation, and engagement become a manager's best friend when looking to increase employee connection and productivity in a virtual environment.

Archbright University's [Management Fundamentals](#) course provides interactive training in these top three areas, all taught virtually by a live instructor. Course modules include:

- Improving Communication
- Giving Feedback
- Coaching
- Delegating & Setting Expectations
- Documenting & Progressive Discipline
- Promoting Teamwork

Setting leaders up for success early can have profound effects on the resilience of teams throughout the next year. Managers have the opportunity to gain the skills they need to succeed beginning with our first 2021 session on January 22.

For more information on this three-day virtual series, please visit [Archbright.com](#).

Amy Bachmann | Director, Archbright University

Upcoming Classes

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

January 20 - [Crucial Conversations® Focused 1-Day Class \(Virtual\)](#)

January 20 - [Leadworker Effectiveness \(Virtual\)](#)

January 21 - [Diversity and Inclusion in the Workplace \(Virtual\)](#)

January 21 - [Managing the Layers: Protected Leaves and the Law \(Virtual\)](#)

January 22, 29, & February 5 - [Management Fundamentals \(Virtual\)](#)

January 25 - [Change Management for Leaders \(Virtual\)](#)

January 25 - [Discipline and Documentation \(Virtual\)](#)

January 26 - [Conducting Effective Internal Investigations \(Virtual\)](#)

January 27, 28, & 29 - [Supervisory Skills \(Virtual\)](#)

January 28 - [Workplace Harassment Awareness \(Virtual\)](#)

February 1 - [Building Interpersonal Awareness with Disc® \(Virtual\)](#)

February 2 to March 9 - [aPHR/SPHR Certification Exam Prep Program \(Virtual\)](#)

February 3 - [Forklift Train-the-Trainer \(Virtual\)](#)

February 3 - [Leadworker Effectiveness \(Virtual\)](#)

February 4, 11, & 18 - [Supervisory Skills \(Virtual\)](#)

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.**

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



HR ADVICE AND COUNSEL

Job Descriptions in the Wake of COVID-19

COVID-19 has transformed how we work, from the spike in remote work arrangements, to physical distancing in production work. In other words, very few of us are performing work the same way we did roughly a year ago. Related to that transformation is the need for HR to revisit who is doing what and how—namely, by auditing their job descriptions. Updated job descriptions not only clarify evolving performance expectations, but can also have ADA (Americans with Disabilities Act) implications for employees requesting accommodations. And because no job description is complete without a review of the employee's exemption classification, there may be significant wage and hour implications as well.

Job descriptions should always distinguish between essential and nonessential functions. Not only should employees understand the most critical functions of their jobs, but essential functions also define the parameters for what employers must do to reasonably accommodate employees under the ADA and state law. In general, if employees can't perform the essential functions of their jobs, with or without reasonable accommodations, those employees are no longer qualified disabled individuals and lose some protections under the law. The problem, of course, arises when third parties like the EEOC (Equal Employment Opportunity Commission) or plaintiff's counsel challenge what truly is an essential function. There's no worse way to lose credibility with such an agency than to list as essential job functions tasks are no longer even being performed.

In light of workplace changes over the past year, ask yourself the following questions:

- Have you redirected employees to work remotely who worked previously onsite?
- As a result, have those employees shed job duties that can't be performed remotely?
- Are those abandoned tasks essential functions?
- Alternatively, have employees had to pick up new responsibilities not yet identified on their job descriptions?
- Are those tasks now essential functions?
- Has the requirement to remain six feet apart changed how you assign work or when employees perform those tasks?
- Have you modified workdays or work schedules because of physical distancing requirements?
- Have you added to or subtracted from job responsibilities for those same employees?
- Do you see any or all of these changes outlasting the end of the COVID-19 health crisis?

As for the section of your job description addressing exemption, be mindful of how a transformation in work responsibilities may have impacted exemption classifications. For example, to meet the executive exemption, employees must supervise two or more individuals and spend a majority of their time in activities related to the supervision of those individuals. If restructuring has left an exempt employee with only one direct report, however, that supervisor no longer meets the duties test for the executive exemption and must be paid on an hourly basis, unless the position qualifies under a different exemption. And while employees can qualify for an outside sales exemption if they spend more than fifty percent of their time away from the worksite, COVID-19 has impacted how the outside sales function is performed for many employers. If you've transformed your sales team accordingly, you may need to revisit everything from commission agreements to the exemption classification of your sales team.

Even if your response to COVID-19 envisions changes in job functions to be of a more temporary nature, it's important to note what those temporary changes are for those employees who may request accommodations before you return to the new normal. And if at any time you suspect employees' job functions do not satisfy the criteria for exemption, we recommend consulting legal counsel as soon as possible. For general HR questions, eligible members are encouraged to contact the HR Hotline. For information about determining exemption status, including salary threshold requirements under federal and state law, eligible members are encouraged to review the Keynote OT Exemption Checklist, available on the HR Toolkit on the Archbright member website or mobile app.



Mark Nelson | Senior HR Advisor

Employers' Obligation under the Jones Act During the COVID-19 Pandemic

During the current pandemic, we have learned that a person transmits COVID-19 by respiratory droplets that spread during social interactions or when in close contact with individuals who may be symptomatic or asymptomatic. As the reported number of coronavirus COVID-19 cases continues to rise, maritime employers must consider their potential liability and obligations to employees. This article discusses those issues under the Jones Act.

What is the Jones Act?

In 1920, Congress passed the Jones Act, also known as the Merchant Marine Act of 1920. Under the Jones Act, an employer of a "seaman" has a duty to provide a reasonably safe place to work and adequate medical care to the crew. A seaman is defined as a person – from crew member to captain – who performs a significant amount of their work on any kind of ship or boat.

One of its most important functions is to protect mariners injured at sea, since they are not qualified for state workers' compensation under maritime law. Those covered by the Jones Act include masters, captains, officers, and crew members who spend at least 30 percent of their work time on a "vessel in navigation." A vessel in navigation is one that is afloat, operational, capable of moving, and on navigable waters. For instance, a ship tied to a dock would be considered "in navigation."

Under the Jones Act, an employee can recover damages if the employer's unreasonable acts or omissions cause or aggravates an injury to the employee. COVID-19 will likely not be an exception to the employer's Jones Act responsibility to make the workplace COVID-19 safe and provide medical care to employees exposed to COVID-19. In fact, there is at least one pending case where a deckhand's widow sued her husband's employer alleging wrongful death and survival action under the Jones Act because the captain and vessel were not "fit" and a "safe place to work" as both were contaminated and COVID-19 positive.

A Jones Act employee who successfully proves that they contracted COVID-19 while working for their employer can recover their "full damages," which includes the following: 1) food and lodging; 2) medical expenses; 3) lost wages; 4) pain and suffering damages; and 5) punitive damages.

To avoid potential COVID-19 liability, a Jones Act employer must take reasonable precautions, give warnings, treat any illnesses, and remediate and/or clean after an illness is discovered. The Centers for Disease Control and Prevention (CDC) and the US Coast Guard have special reporting requirements for the COVID-19 virus. Specifically, the CDC has provided the following guidance for employers:

- [Maritime Resources](#)
- [Maritime Pilots](#)
- [Cargo Ship Guidance](#)
- [Specific Industries and Occupations](#)
- [Dept. of Transportation Maritime Administration Coronavirus Guidance](#)

Because of the uncertainty surrounding COVID-19, including the latency period of the disease and the potential long-term injuries, we urge eligible members to mitigate their risk by contacting an Archbright attorney for professional guidance.

Kevin Rainge | Archbright Attorney



HR FAQ **Question:** As we begin a new year, what are HR tasks I need to be thinking about completing or getting started?

Answer: From COVID-related compliance requirements to changing labor laws, employers faced a lot of new challenges in 2020. As we enter 2021, here are a few things HR professionals should consider addressing:

1. Review employee records and encourage employees to update or verify personnel information, including mailing addresses, contact phone numbers, emergency contacts, and beneficiaries for 401k and life insurance.
2. Review OSHA records and update your OSHA log, including days missed and total hours worked by employees. The OSHA log must be posted February-April.
3. Check your legal posters and ensure they are up to date. If you have multiple locations, designate someone to review the posters at their location.
4. "Scrub" your HRIS or other systems to make sure EEO information, including race, gender, and job categories are complete and up to date. Due to the pandemic, the EEOC announced that 2019 and 2020 EEO-1 filings would be due in March of 2021.
5. Have managers review and update job descriptions. Utilize our "OT Exemption Checklist" Keynote to review job descriptions and exemption status. Consider having job descriptions with exemption status questions reviewed by an Archbright attorney.
6. Double-check the salary threshold for exempt employees to ensure it meets federal and state minimum requirements. Ensure hourly pay for non-exempt employees meets the minimum wage threshold.
7. Review paid sick leave requirements, including audit of accrual and rollover requirements for employees subject to a state or local paid sick leave law.
8. Review any forms or documents you are using. Are they up to date; are they actually being used; should they be revised? Have you had your employee handbook reviewed recently?
9. Review any applicable sales commission plans and make adjustments if needed. Address when commission is "earned" and what happens if an employee is on leave or terminates from the organization. Consider having legal counsel review your commission plan and ensure employees sign new agreements.
10. Review and verify deadlines have been met for healthcare reporting, and wrap up any year end reporting on turnover, recruiting, promotions, etc.

Eligible members are encouraged to contact an Archbright HR Advisor with any questions or to seek specific guidance.

Katherine Kummerow | Senior HR Advisor

ARCHBRIGHT NEWS

Speak Up, Speak Out: Get into Good Trouble, Necessary Trouble **2021 NW Diversity Learning Series**

Archbright is a proud sponsor of the NW Diversity Learning Series (NWDLS). Celebrating its 23rd year in 2021, it continues to provide relevant, substantive, thought-leading, and cost-effective educational programming on diversity, equity, and inclusion (DEI) for managers and employees in the Puget Sound region and beyond with virtual delivery of powerful, impactful and results driven sessions, led by world-class presenters and thought leaders.

The 2021 series is dedicated to Congressman John Robert Lewis, 1940-2020, and his call to action to getting into “good trouble, necessary trouble” by:

- Digging into the roots of inequities in organizational systems that have been held in place by privilege and power.
- Excavating the ecosystem—the structure—that surrounds the roots so that we understand exactly how inequities are held in place.
- Identifying the elements in the ecosystem to transform into systemic equity — NOW!

Here is a preview of this year’s sessions:

January 27, 2021 | Hiding in Plain Sight: Examining the Values that Drive Disparity

Participants will get into “good trouble and necessary trouble” in this session by examining organizational values and behaviors that may diverge from the values we espouse, what may be keeping those values and behaviors entrenched, and a framework that allows for productive and reflective critique.

March 17, 2021 | Leveraging the Roots of Resistance for Inclusive Transformation

Not everyone views a more diverse, equitable, and inclusive workplace as positive. Resistance to change is not unusual—it’s part of the landscape. Getting into “good trouble and necessary trouble” in this session involves learning about and engaging resistance to systemic equity—on the part of individuals and organizations.

May 19, 2021 | Negotiating with Power

When social advocates approach people in power for support, resources, or sponsorship, how prepared are we to listen for clues, discover interests, or enlist their involvement? Getting into “good trouble, necessary trouble” in this session involves engaging people in power in creative ways.

June 30, 2021 | Being an Anti-Racist Organization

Getting into “good trouble, necessary trouble” in this session means being an advocate, an accomplice, for “anti-racism”—NOW! As an advocate/accomplice, you learn how to analyze and discover racial disparities in systems, policies, practices, processes, and preferences. You learn how to communicate your findings and hold your organization accountable for abolishing racial disparities.

September 29, 2021 | Walking the Equity Talk: Development & Advancement

Getting into “good trouble, necessary trouble” in this session involves employees engaging with managers. Participants will be part of a negotiation between real managers and real employees about development and advancement of diverse employees.

November 10, 2021 | Belonging in Organizations - Elusive or Achievable

Getting into “good trouble, necessary trouble” in this session means hearing from real people—their stories. We’ll invite participants to join in—what are their “lived experiences” when it comes to that feeling of Belonging?

Registration for all NWDLS sessions are now open at i4sdi.org/2021-nwdls-series. We hope to see you there!



ISDI

**INSTITUTE FOR SUSTAINABLE
DIVERSITY & INCLUSION**

SAFETY AND LOSS CONTROL

Recording COVID-19 Cases on OSHA Logs

Many employers are aware that if they have more than ten employees or fall into a high-risk industry, they must keep an OSHA 300 Log. OSHA 300 Logs are a written record of serious work-related injuries and illnesses. The Federal OSHA Log rule requires employers to record serious work-related injuries and illnesses within seven (7) days of the incident; minor first aid injuries do not need to be tracked. With the introduction of SARS-CoV-2 in the workplace in 2020, many employers may be wondering if they need to record confirmed COVID-19 cases on their Logs. The answer is - possibly.

The Occupational Health and Safety Administration (OSHA) released a memorandum to update the interim guidance for OSHA Inspectors on enforcing the requirements of 29 CFR Part 1904 (OSHA Recordkeeping regulation) concerning the recording of occupational illnesses, specifically COVID-19. The guidance is intended to be time-limited to the current COVID-19 pandemic. Under OSHA's recordkeeping requirements, **COVID-19 is a recordable illness**, and employers are responsible for recording the case if:

- The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC)
- The case is work-related as defined by 29 CFR 1904.5[3], and
- The case involves one or more of the general recording criteria outlined in 29 CFR 1904.7[4]

OSHA has also stated that although they will enforce the recordkeeping requirements of 29 CFR 1904 for employee COVID-19 illnesses, the recording of a COVID-19 case does not, of itself, mean that the employer has violated an OSHA standard. OSHA has also said that employers with ten (10) or fewer employees and employers with no recordkeeping obligations only need to report COVID-19 illnesses that are work-related and result in a fatality, in-patient hospitalization, amputation, or loss of an eye, which falls under standard all-industry reporting requirements.

Work-relatedness is defined as an event or exposure in the work environment that either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. The **work environment** is an establishment and other locations where one (1) or more employees are working or are present as a condition of their employment. The work environment includes physical locations and the equipment or materials used by the employee during their work. A **confirmed case** of COVID-19 means an individual with at least one respiratory specimen that tested positive for SARS-CoV-2, the virus that causes COVID-19. General recordkeeping criteria requires employers to record work-related injuries or illnesses that result in death, days away from work (including kept on salary), modified work (including job transfer), medical treatment beyond first aid, specific medical diagnosis, as well as needlestick and sharps injuries.

Employers may still have questions about reporting COVID-19 cases as well as injuries that may have occurred while employees were working remotely. 2020 has brought us new injury and illness situations, and eligible members are encouraged to contact our HR and Safety Hotlines as questions arise. Employers are also invited to join us virtually on Thursday, January 21st, as we present [Managing OSHA 300 Like a Pro in 2021](#), where we will be covering these topics and more in addition to general recording criteria. Please note that a recording of the webinar will be available for download on our website within two days after the live event. For questions, please email info@archbright.com.

Tiffany Knudsen | Content Manager



New Toolkit Resource:

Employers Guide to Workplace Injuries

Any employer's primary goal is to keep employees health and on the job; however, accidents and injuries do occur from time to time.

When someone becomes injured or ill in the workplace, the focus should be on getting the employee prompt medical attention and ensuring that all responsible equipment, materials, or practices are immediately addressed to avoid further harm. Understanding the roles that the employer and ill or injured person should follow can help aid in recovery and speed the claim process.

Our new toolkit resource, the **Employers Guide to Workplace Injuries**, assists employers in better understanding how to handle workplace injuries, including HR, safety, and legal considerations, as well as best practices.

Eligible members can access the guide in our **Online Toolkit**, found under Member Home on Archbright.com, or through our mobile app, Archbright Mobile, available on the [App Store](#) or [Google Play](#).



Consumer Price Index

U.S. Cities Average—November 2020

CPI-W: 253.826 - 0.098% (1 month change) + 1.270% (1 year change)

CPI-U: 260.229 - 0.061% (1 month change) + 1.175% (1 year change)

Seattle/Tacoma/Bellevue—September/October 2020

CPI-W: 280.152 - 0.348% (bimonthly change) + 2.112% (1 year change)

CPI-U: 284.505 - 0.140% (bimonthly change) + 2.089% (1 year change)

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

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