



Insights

FEBRUARY | 2022 Newsletter



Supreme Court Ruling on OSHA's Emergency Temporary Standard

With changes happening every day, it can be hard to keep track of the latest rules and regulations. Especially now, as employers face other hurdles, including the rapid spread of the Omicron variant, the Great Resignation, and the challenges of recruiting new employees.

The latest update may come as a relief to employers. The US Supreme Court decided to block OSHA's Emergency Temporary Standard (ETS), which would have required all private employers with 100 or more employees to mandate the COVID-19 vaccine or require weekly testing for their employees.

Yet, the Supreme Court also ruled to uphold the vaccine mandate for employers who receive funding from the Centers for Medicare and Medicaid Services, which applies to hospitals, nursing homes, and other healthcare providers.

The Supreme Court's action on the ETS would have sent the matter back to the Sixth Circuit Court of Appeals to consider whether to block the mandate permanently. However, effective January 26, 2022, OSHA withdrew the ETS on vaccination or testing, making further judicial review unnecessary. Although OSHA is withdrawing the vaccination and testing ETS as an enforceable temporary standard, it is using the ETS as a model for proposed permanent COVID-19 standards.

So, what does all this mean for private employers? In addition to monitoring the situation as changes may still occur, employers have an obligation under OSHA's General Duty Clause to provide a safe work environment for their employees, including taking proper precautions to prevent COVID-19 exposure and spread. Employers are encouraged to review OSHA's General and Industry-Specific COVID-19 Guidance, as well as any state or local health department requirements. State-run OSHA plans, including Washington and Oregon, may still adopt additional COVID-19 standards that are more restrictive than federal OSHA requirements.

Archbright will continue to monitor the situation and update members accordingly. In the meantime, eligible members should visit mozzo to reference our Resource Library and past Compliance Alerts, chat with an HR or Safety Advisor, and much more.

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LOOKING AHEAD

CEO Corner



**Shannon
Kavanaugh**

President and CEO at Archbright

Get mozzo on the go!

It is hard to believe we introduced mozzo just one year ago. We are thrilled with the response it has received from members! Did you know you can also access mozzo's HR and safety resources through your smartphone? If you haven't downloaded it yet, mozzo Mobile is available anytime through the [App Store](#) and [Google Play](#).

The app includes the following features, although the availability of some functionality is dependent on your membership level and permissions:

- mozzo's **Community** offers a place to interact with other Archbright members. Join the conversation and ask questions, share experiences, exchange advice, and build your professional network.
- **Advisor Chat** helps you get answers to your questions right away. You can directly message our experienced team of HR and Safety Advisors every business day from 8:00 AM-5:00 PM.
- The **Video Training Library** contains a wide range of courses, available to you 24/7. Most videos are under 10 minutes long, making it easy to fit into the workday. And we recently launched new features that allow you to create custom training tracks and assign individual trainings and tracks to groups of learners!
- mozzo's **Resource Library** contains hundreds of HR and safety forms, sample policies and programs, training materials, and legal guidelines. All resources are vetted by our experts and are available to download and share at any time.
- The **Claims Tracker** is an incredible resource. If we manage your workers' compensation claims, you can track their progress here. Search by employee name, claim number, injury type, claim type, or claim status.

To access mozzo Mobile, you must have an active mozzo user account. If you aren't sure about your status, please reach out to your Account Executive or contact info@archbright.com for assistance. We are ready to help!

On-Demand OSHA 300 Webinar

We launched a new webinar on the latest OSHA 300 requirements in mozzo! This is on-demand, so it can be assigned to your employees and viewed at any time. This course will breakdown the OSHA reporting and recording requirements, recordkeeping forms, work from home injuries, how to address COVID-19 cases, electronic reporting, and more. To get started, check out the Webinar Library in the Video Training Library.

Register for the Washington State SHRM Employment Law & HR Conference

Join over 500 HR and business leaders at this year's WA State SHRM Employment Law & HR Conference on March 11, 2022. This year's conference is in person at the Hyatt Regency Bellevue. There are many informative and timely sessions in store where attendees will learn from and with one another on relevant HR and employment law topics.

Archbright's Erin Jacobson, Director, Legal and HR Advice, and Ben Eckhart, Attorney, will be speaking at the conference to share their expertise on these two important topics: religion in the workplace and remote leadership.

Archbright is a sponsor of this conference, and we'll also have a booth—make sure to stop by! We have an exciting offering in the works. Stay tuned to find out more! But first, [save your spot at the conference today](#).



**Business
driven,
people
focused.**

Take a Proactive Approach to Training in 2022

As an educator for over twenty-five years, I have seen the world of training ebb and flow depending on society's current interests. I have also created a vast amount of curriculum as a learning and development professional for organizations across the Pacific Northwest. During that time, a lot has changed, yet I am continually amazed at how much has stayed the same.

When I began my career in corporate education, it was apparent that there was a significant lack of training for supervisors and managers. In addition to a scarcity of resources, often organizations had a limited budget to invest in the desperately needed training. Either training didn't happen, and the new generation of leaders inherited the poor practices from their predecessors, or leaders grew frustrated with their lack of resources and left organizations for greener pastures with more robust training budgets.

Fast forward to 2022, there is now a strong awareness that management training is a crucial part of an organization's success and a key component of leadership retention. There is also a wealth of training resources at our fingertips.

However, there is still one commonly missed component: **a proactive approach**.

So often, organizations make **reactive** budgeting decisions to offer 'training' because of difficult situations. This reactive approach can fill a hole, but it is not beneficial for the organization in the long term. A proactive approach consists of a comprehensive learning and development plan, so managers learn new skills and develop into better leaders. Providing managers with the tools and skills to be effective leaders will allow them to set a positive example for others and grow within the organization.

Archbright University is ready to assist with proactive, comprehensive training plans for employees at all levels of an organization. For more information, reach out to your Archbright Account Executive or email info@archbright.com.



Amy Bachmann | Director of Sales and Training

Upcoming Classes

For the complete course schedule, please go to [Archbright.com](https://archbright.com).

- February 23 - [Diversity and Inclusion in the Workplace \(Virtual Class\)](#)
- February 23 - [Managing FMLA \(Virtual Class\)](#)
- February 23 - [Stay Connected: Managing Virtual Teams \(Virtual Class\)](#)
- February 28 - [Delegating and Setting Expectations \(Virtual Class\)](#)
- February 28, March 1, & 2 - [Supervisory Skills \(Virtual Class\)](#)
- February 28 - [Understanding Legal Issues for Supervisors and Managers \(Virtual Class\)](#)
- March 2 to April 6 - [APHR Certification Exam Prep \(Virtual Class\)](#)
- March 3 - [Leadworker Effectiveness \(Virtual Class\)](#)
- March 4 - [Hiring Practices for Equity and Excellence \(Virtual Class\)](#)
- March 7, 14, & 21 - [Supervisory Skills \(Virtual Class\)](#)
- March 7 - [Emotional Intelligence at Work \(Virtual Class\)](#)
- March 8 - [Delivering Extraordinary Customer Service \(Virtual Class\)](#)
- March 9 - [Understanding Wage and Hour Law \(Virtual Class\)](#)
- March 10 - [First Aid/CPR/AED Certified Training \(Seattle\)](#)
- March 11 - [Workplace Harassment Awareness \(Virtual Class\)](#)

How to Register:

Register online anytime at [Archbright.com](https://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 **Sign In** button, then select **Sign up now** and follow the prompts.

If you have any questions, please contact us at **206.329.1120, 509.381.1635, or info@archbright.com**.

HR ADVICE AND COUNSEL

Labor Shortages Drive Some Employers to Consider Bonus Pay

With the growing US labor shortage, many employers have turned to sign-on, referral, or retention bonuses to attract and retain talent. Two years into the pandemic, the labor shortage reaches across many industries, from manufacturing to healthcare, childcare, retail, restaurant, and office workers. For employers thinking about offering bonus pay in 2022, there are several factors to consider.

Types of Bonuses to Attract and Retain Employees

- A **retention bonus**, also known as a stay bonus, retention pay, or a retention package, is typically a one-time payment made to retain a current employee. These bonuses usually occur during times of transition, such as a merger, acquisition, or critical production period. However, in today's tight labor market, retention bonuses are more common—and not just during transition periods or due to high production.
- A **sign-on bonus** is a one-time payment used to attract new employees. Sign-on bonuses may come with a clawback provision requiring the employee to repay the amount if they leave the company. One downside in a tight labor market is that the employee may join the company only to receive the bonus and not stick around once paid.
- A **referral bonus** is paid to a current employee for referring a successful applicant, typically after the new hire has remained at the company for a specified amount of time. Referral bonuses can help bolster recruiting efforts in an otherwise tight labor market.

Legal Considerations

Retention bonuses are considered “non-discretionary,” which means that employers have promised they will pay the extra compensation if employees meet identified criteria, and employees can rely on this promise. A non-discretionary bonus is considered wages, and failure to pay it when due exposes employers to damages under wage payment statutes. Employers should establish a clear written policy, including when they will pay the bonus, how much it is, and what an employee must do to receive it. In addition, employers should prepare a written agreement for both the employer and the employee to sign, outlining the terms of the bonus plan.

For retention bonuses paid to hourly, non-exempt employees, employers must factor in the bonus amount with their regular rate of pay to calculate overtime. Employers should know what workweek(s) (or period of time) the employee achieved the bonus. If it was earned and paid in the same workweek, it is relatively easy to calculate the employee's pay rate. Suppose the employee meets the bonus criteria over a longer duration, such as several pay periods. In that case, employers can temporarily disregard the bonus when calculating the regular pay rate (and overtime) and then retroactively calculate any additional overtime owed.

On the other hand, referral bonuses can be considered “discretionary” for employees who meet specific criteria. They can't be primarily engaged in recruiting activities, their participation in a referral bonus program must be voluntary, the recruitment efforts may not involve a significant amount of time, and they may only recruit their friends, relatives, neighbors, or acquaintances after regular work hours. Since the bonus is discretionary, it is excludable from the normal rate of pay (and therefore overtime).

Sign-on bonuses may also be excludable from overtime calculations under certain circumstances. For example, they may be a “gift” (whether or not they have a clawback provision) if no policy or other agreement requires that the employer pays them. However, sign-on bonuses paid according to a collective bargaining agreement, an ordinance, or a policy with a clawback provision cannot be considered a gift. Therefore, employers cannot exclude it from the regular pay rate and must factor it into overtime calculations.

Finally, it is imperative to administer bonus programs uniformly and equitably to all individuals who meet the criteria to avoid potential discrimination or retaliation claims.

Implementing a bonus program and determining its impact on exempt and non-exempt employees can be complicated. Eligible members should contact the HR Hotline for additional questions and consultation regarding best practices.



Beth Touschner | Attorney

Seattle's Ordinance for Independent Contractor Protections: Pay Transparency

Passed by the Seattle City Council on June 14, 2021, Seattle's Independent Contractors Protection Ordinance, SMC 14.34, requires covered "Hiring Entities" to provide independent contractors with disclosures before entering a contract and at the time of payment for work to be performed in Seattle. This law will go into effect on September 1, 2022. See below for disclosure requirements.

In addition to the required disclosures, the ordinance requires timely payment. Employers must compensate independent contractors on or before the date compensation is due under the terms of a contract, the terms of the pre-contract disclosure, or within 30 days.

Who is covered? A "hiring entity" is defined as any individual, partnership, association, corporation, business trust, or any entity, person, or group of persons, or a successor thereof, that hires an independent contractor to provide any service to the hiring entity or a third party. This definition includes not-for-profit businesses. The ordinance covers contracts with proposed or actual compensation of \$600 or more.

"Independent contractor" means a person or entity composed of no more than one person, regardless of corporate form or method of organizing the person's business, that is hired by a hiring entity as a self-employed person or entity to provide services in exchange for compensation.

Exceptions include lawyers, situations where an independent contractor's relationship with a hiring entity is limited to a property rental agreement (e.g., a hairstylist renting a booth at a salon), and other independent contractors defined by the Office of Labor Standards (OLS) rule. The rule-making process, where additional ordinance details are to be fleshed out, is anticipated to happen early to mid-2022.

Disclosure Requirements. OLS will be releasing model notices for both pre-contract and time of payment disclosures in the "coming months."

Pre-Contract Disclosure Requirements. Hiring entities must provide the following information in a single document, which may be in the form of a pre-contract disclosure, contract offer, counteroffer, application, or other documents that meet the disclosure requirements: Date, independent contractor name, hiring entity name & contact information, description of work, pay basis, location of work, rate or rates of pay, tips and/or service charge distribution policy, expenses of job and which are reimbursed by hiring entity, deductions, fees, or charges, and payment schedule.

Time of Payment Disclosure Requirements. Each time the hiring entity provides a payment to an independent contractor, the hiring entity must provide certain information in a single document. This may be in the form of a payment disclosure notice, paycheck stub, or an independent contractor's invoice accompanied by supplemental information as necessary. The required information includes: Date, independent contractor name, hiring entity name, description of services covered by payment, location of services covered by payment, rate or rates of pay, tips and/or service charge distribution policy, pay basis, expenses reimbursed by hiring entity, gross payment, deductions, and net payment after deductions.

Notice of Rights. Hiring entities shall provide a notice of rights, including the right to pre-contract disclosures, timely payment, payment disclosure, protection from retaliation, and the right to file a complaint. The hiring entity must provide the notice in English, and any language that the hiring entity knows or has reason to know is the primary language of the independent contractor. The OLS will release a model notice of rights by September 1, 2022.

Eligible members may contact the HR Hotline with questions.



Ben Eckhart | Attorney

HR FAQ

Question: Is workplace harassment awareness training mandatory in Washington State?

Answer: Unless you work in hospitality, retail, security, or contracted property services, the short answer is no. SB 5258 mandates harassment prevention training for any janitor, security guard, hotel or motel housekeeper, or room service attendant who spends most of their working hours alone. However, even for employers outside those industries, mandatory harassment training is very likely coming down the pike for all employers. California requires employers with five or more employees to train their employees in harassment prevention. And, when it comes to developments in employment laws, California often sets a precedent for other state laws.

There are still compliance-based reasons for all Washington, Oregon, and Idaho employers to provide workplace harassment prevention training. The US Equal Employment Opportunity Commission (EEOC) has issued guidelines, which apply to employers in all states, stating that employers periodically "should provide [harassment prevention] training to all employees to ensure they understand their rights and responsibilities." Further, the EEOC's 2016 Report from the Select Task Force on the Study of Harassment in the Workplace noted that "[t]raining should be conducted and reinforced on a regular basis for all employees."

In 1998, the Supreme Court of the United States gave employers a powerful tool in defense of sexual harassment cases in the decisions of *Faragher* and *Ellerth*. In those cases, the Supreme Court ruled

that an employer could escape liability for "hostile environment" harassment committed by a supervisor if it could prove that: (1) the employer took reasonable care to "prevent and correct promptly" any harassing behavior; and (2) the harassment victim unreasonably failed to complain.

Training employees is an essential component of the first prong in any *Faragher-Ellerth* affirmative defense. In other words, employers can't argue they took "reasonable care" if employees know nothing of the organization's commitment to preventing harassment or how to bring complaints to the organization's attention. Training is the most widely accepted vehicle to impart that information to an employee population. It's simply not enough to rely on an employee's signed acknowledgment of receipt of an employee handbook containing a harassment policy. And as harassment prevention training has continued to become more common, so have expectations by the EEOC and federal courts across the country that employers offer it to employees to assert the *Faragher-Ellerth* affirmative defense.

Thus, even if an organization is not legally required to mandate harassment training for their employees by state law or other industry requirement, it is still best practice to do so. To get started, go to [mozzo](#) where you can take and assign [Workplace Harassment Awareness training](#).



Mark Nelson | Sr. HR Advisor

ARCHBRIGHT NEWS

The OFCCP Launched its Contractor Portal: What Does This Mean for Members?

The Office of Federal Contract Compliance Programs (OFCCP) announced they are activating a Contractor Portal for current and future federal contractors to upload proof of compliance. The launch of the portal may not affect all organizations. However, known federal contractors and subcontractors for supplies and services and university federal contractors must register and certify they have developed and maintained Affirmative Action Programs (AAP) at each establishment, as applicable to 41 CFR chapter 60.

Registration opened on February 1, and contractors that meet the criteria are required to submit and certify their AAP by June 30.

With the Contractor Portal launch this week, time is ticking to submit your AAP. If you're a federal contractor and meet the required categories, we talked to Archbright's Francheasca Roberson, Program Manager, DEI, to outline the key things you need to know.

The Contractor Portal launched this week. What should a member organization do now?

If the organization has determined that they are a federal contractor that meets the categories noted, we recommend they take the following actions:

- Verify they have an active and updated AAP in place. If the member does not have an AAP, they will need to develop a plan. *The OFCCP requires federal contractors to have a current year and the previous two years plan available in the event of an audit.
- The member should evaluate their EEO-1 report structure in relation to their AAP plan structure and confirm they align with the term (establishment) as noted in their EEO-1 report. The OFCCP has access and may reference this.
- Register on the Contractor Portal, starting February 1.
- Certify their compliance during the open certification period, which is March 31-June 30, 2022.

What other things does a member organization need to be aware of?

Their organization's status. If the member has a larger organizational structure with a parent company and multiple locations, we recommend their legal team take the single entity test to evaluate and confirm how they will need to register this information in the portal. If the member is a new contractor, they have 120 days from the commencement of the contract to establish a plan.

What are the key benefits of an AAP?

If they are a federal contractor and have 50 or more employees and receive 50,000 dollars or more in federal contract dollars, the key benefit is compliance. Federal contractors that meet the qualifiers mentioned above must create a written Affirmative Action Plan as part of their compliance guidelines. However, it is also a data-driven resource tool that can support recruiting and DEI efforts within any organization. It will also outline many critical steps organizations should commit towards providing equal employment opportunities.

Why should members consider working with Archbright on their AAP?

Archbright does the heavy lifting to verify member data and ensures their plan includes the updated version of CFR verbiage. Our goal is to ensure that members who utilize our service will receive the most accurate representation of their organization's Affirmative Action efforts. This is accomplished by working with professionals who are well versed in AAP preparation. They also benefit from not having to manage and navigate the process on their own, which often saves them the time and resources that would go into researching the frequently changing federal regulations and paperwork involved.

Ultimately having an AAP can benefit any organization; even members who are not required to submit their AAP to the Contractor Portal can benefit. Contact Archbright at info@archbright.com for help getting their AAP started or revised.



Francheasca Roberson | Program Manager, DEI

What's on Your Reading List? Maybe you've made a New Year's resolution to read more this year, or you're already an avid reader looking for book ideas. We asked some members of our Leadership Team what books are currently on their reading list and here is what they said:

Carolyn Harvey | Vice President, Member Services

- "The Book of Hope - A Survival Guide for Trying Times" by Jane Goodall and Douglas Abrams
- "Workquake - Embracing the Aftershocks of Covid-19 to Create a Better Model of Working" by Steve Cadigan

Natalie Roberts | Sr. Director, Marketing, Sales, & PMO

- "The Obstacle is the Way: The Timeless Art of Turning Trials into Triumph" by Ryan Holiday
- "Taste: My Life Through Food" by Stanley Tucci

Julie Piazza | Vice President, People & Culture

- "Binti" series by Nnedi Okorafor
- "Where You Are Is Not Who You Are" by Ursula Burns

Kellis Borek | Vice President, Labor & Legal Services General Counsel

- "Emperor Series" by Conn Iggulden

Mac MacKellar-Hertan | Chief Financial Officer

- "Cloud Cuckoo Land: A Novel" by Anthony Doerr

SAFETY AND LOSS CONTROL

PNW Drivers Still Face Winter Road Conditions February Through April

Due to the COVID-19 pandemic, most face-to-face business has gone virtual, but there are times when meetings still take place in person or supplies must be delivered or picked up. When possible, eliminate the hazards associated with winter driving by scheduling video conferences, phone calls, or emails rather than meeting in person. If feasible, reschedule in-person interactions when storms are not forecasted. However, when driving during inclement weather is still required:

- **Prepare yourself by being well-rested and alert.** Check current weather and road conditions on your route, and make sure to charge your cell phone and GPS. Dress for the conditions in the event that you encounter long delays due to accidents or road closures. Consider packing extra shoes, socks, and a jacket. If possible, take winter-driving training to learn how to control your vehicle in poor conditions.
- **Prepare your vehicle** by completing a pre-trip vehicle inspection and ensuring the vehicle is caught up on maintenance. Check if your tire tread is appropriate for the conditions and tires are properly inflated. Carry a winter kit with chains, jumper cables, flares/road beacons, spare tire/tools, flashlight, gloves, snacks, and water in the vehicle. If snow is present, remove it from the vehicle, allow the windows to defrost thoroughly before traveling, and fill up the gas tank and windshield fluid.
- **Drive for the conditions** by paying full attention to your driving and the road ahead. Allow for extra time to get to your destination and slow down. Posted speed limits are for ideal road conditions—not winter conditions. Drivers should be alerted to hazards such as standing water, snow, black ice, or fog, as well as the capabilities of other drivers and vehicles on the road. Give semi-trucks and trailers extra room to accommodate the extra braking distance needed on slick roadways. Always look and steer where you want to go. Avoid using cruise control when wet conditions are present, and avoid distractions such as phones, tablets, computers, and eating while behind the wheel.



Tiffany Knudsen | Content Manager

Don't forget to use your seat belt every time you get into your vehicle. Taking these small steps might save your life or someone else's. For more information on inclement weather safety, eligible members may contact the Safety Hotline at safety@archbright.com or through the mozzo chat feature.

Did You Know?

- 17% of all vehicle crashes happen in winter conditions
- 1,836 people die annually due to snowy and icy pavement
- There are 156,164 crashes annually due to icy roads
- About 70% of accidental fatalities that occur during the winter happen in cars

Statistics provided by Federal Highway Administration

Keep Your Home Prepared for the Unexpected Too

- **Keep the cold out**—Research how to keep your pipes from freezing. Ensure your home has proper insulation, caulking, and weather stripping.
- **Maintain smoke and carbon monoxide detectors**—You should regularly be swapping out the batteries.
- **Gather supplies to last a few days**—Besides food, water, and emergency supplies, other key things to remember are pet food, medications, even toilet paper.
- **Heat your home safely**—Do not use gas ranges, generators, or grills to heat your home.

Information provided by the American Safety & Health Institute



Consumer Price Index

US Cities Average—December 2021

CPI-W: 273.925 + 0.323% (1 month change) + 7.810% (1 year change)
CPI-U: 278.802 + 0.307% (1 month change) + 7.132% (1 year change)

Seattle/Tacoma/Bellevue—November/December 2021

CPI-W: 301.139 + 1.096% (bimonthly change) + 7.816% (1 year change)
CPI-U: 304.856 + 0.580% (bimonthly change) + 7.568% (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.**

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We welcome your comments and suggestions.

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