

## Trust Your Gut: Essential Advice for HR Professionals from Jim Reidy

Shari Simpson: Joining me today is Jim Reidy, employment lawyer, public speaker, writer, and artist.

Shari Simpson: Jim, thank you so much for jumping on the podcast with me.

Jim Reidy: Oh, it's great to be here.

Shari Simpson: So we are talking all things legal. And I want to start with what's the most bizarre case you've handled in HR law?

Jim Reidy: I would say this. I've been practicing for 35 years. So to say the most bizarre, how long do we have?

Shari Simpson: Right? Only 20 minutes. Okay.

Jim Reidy: So I thought of this quickly this morning, I thought of a couple of quick ones. And one would be an employee new to a company, and I think it was a bank, who said, I've got an environmental allergy. So could you not have candles or things like that? Like they asked the staff and they said, Would you mind suspending that? Yeah. And she said, How about no perfume or lotions? begrudgingly, the staff said, Okay, And they said, and she said, when people come to the counter, so would you mind? They said, all right, how about this? We'll put you on the teller window for the drive up. It's too cold. OK, we're going to put you back on the window. All right, but if you put in the teller line, but if you put me back on the teller line, can you put a sign up at the lobby that says all customers can't wear deodorant, fragrance, or other lotions?

Shari Simpson: Have that go over.

Jim Reidy: This is as one of my clients once said when they fired someone said, we encourage you to find your happiness elsewhere. So she left. She sued for disability discrimination. We prevailed because and I think there was another one, too, where there was a bizarre case. And this was just funny and bizarre. But the employee claimed they fired an employee for sleeping on the job. He said, okay. And he sued for discrimination and said, I have narcolepsy. Okay. So could be accommodated. It's a seizure like disorder. It turns out he didn't have narcolepsy, but that's not the funny part or the most bizarre part. The initial investigators said narcolepsy. Ooh, he likes to have sex with dead people. Oh, no. No, that's necrophilia. That's something else. Let's go with narcolepsy, the seizure. Okay, proceed. Well, had to take a breath before you could proceed from there. But that was bizarre as well.

Shari Simpson: Yeah, I am sure everyone listening has their, we talked about this before, their HR book that they're writing in their head of all the just wild things they've seen. So we all have encountered many different things in the HR space, which kind of leads me to think about the next question. You know, one of our jobs is obviously managing risk, legal compliance. If we don't have an internal, you know, counsel that falls on us and we partner with people like you, employment lawyers, to stay ahead of that. How do we marry that with creating great company culture? You know, how do we make sure we're staying compliant, but also, maybe we have a culture like Google or

Netflix or Zappos or something like that, that's pretty progressive and modern and new. You can do both, right? How do we do that?

Jim Reidy: Yeah, I think, well, first of all, compliance is compliance. I mean, it's understanding the rules and being compliant, following the rules. But the other part of it is creating that culture. I think the most important thing is, one, having a culture, two, proper messaging, and three, walking the walk. Because you can have these great posters and the great vibe, but if you don't walk the walk, it's not real. So I think people can pretty much see through that. I love this expression. Don't tell me what you know, until I know that you care. So I think that that's important. So I think messaging and truly walking the walk.

Shari Simpson: What are some of the biggest misconceptions you've seen around HR law that that people think?

Jim Reidy: Well, the biggest misconception, I think, is that it doesn't apply to us or the investigator won't, they'll understand what we're doing. Investors come in, they come in with a predisposition to enforcing the law. They're not a part of your company. They don't really care if you make a profit or not. They're just so being prepared for the investigator who's not going to know who you are and understand where you're coming from and staying in compliance.

Shari Simpson: I think that's a really good point. You know, we've talked before about different types of regulatory bodies that come into organizations like OSHA. That's that's a pretty common one. Right. And how do you prepare for an OSHA investigation and how do you make sure that you're complying in all the things that you need to be complying in. And there can be a lot of fear of that, but the reality is if you are prepared, if you know the boxes that you need to check, then you can handle those kind of requests as they come in the door and it won't be as dramatic. Have you encountered, I'm sure you've encountered, but has there been legal cases that you've worked that you have seen it completely transform an organization, the outcome of that case?

Jim Reidy: Yeah, it goes both ways. On, you know, on the one hand, if things went really bad in the case, that it could be catastrophic, financially catastrophic and otherwise, or divisive within the company. It can go another way to where it's like, all right, we had a good experience here. And we're better for it. And we can grow from it. And you know, think about the case of the bad acting supervisor or the bad acting CEO that was let go. And then ding dong, the witch is dead and things get better. Yeah, but I mean, the transformation really, truly depends upon the groundwork, like you said, at the outset, preparing, following through. And when you're dealing with an investigator, be authentic, deal with them, get the job done, but also not be afraid to speak to the C-suite and speak truth to the C-suite. And that requires courage.

Shari Simpson: And that's a good point. If you are not involving your C-suite in your, or you're not making sure they're completing their required training, that's important. You need to make sure that, and you might even extend that out to your board if you have a board,

right? You want to make sure that they're completing compliance training as well. How have you helped HR professionals stay on top of legal changes? You know, I asked this question to our previous guest because there's, you know, if you're in multiple states, let alone multiple countries, and you're trying to balance both state and federal guidance, what's your advice on how to wrap your head around it all?

Jim Reidy: It's a lot because, you know, gone are the days where HR just worked in one town, one state. Now it's not only multi-states, but it might be global. So I think you tap into resources. I work with clients coast to coast. Even though I'm in New England, I work coast to coast with clients and sometimes internationally as well. To all the resources available, everything from Sherm, Paylocity has been a great resource, BLR, Thompson, just there's so many, but I think the answer is you gotta stay up to date, you gotta pay attention, because the worst thing that can happen is, is a compliance audit, and the C-suite says to you, wait a minute, why didn't you tell us about this New York law? Why didn't you tell us in California we couldn't do this or that? Now we're facing a pretty substantial civil penalty.

Shari Simpson: Yeah. How do you help HR deal with those legal risks when they come across them?

Jim Reidy: Um, you get after it. I think what I do is I partner, I get into the, I get into the foxhole with the client. Um, I don't basically say you're on your own. Uh, it's, it is your company. I'm here to advise you, but I give you practical advice. Um, I understand the company. I understand the culture. I understand the problem and I share the law. And then I help them navigate. I don't outline. You've got three options. Best of luck. I'm out of here. I can't terminate the employee. I can't make certain decisions, but I can recommend if this is the course you're going to take, this is what you're going to face. And I'm here to assist you.

Shari Simpson: Yeah. I am sure that you have clients that you've developed good relationships with, people in HR. I know that when I was in my practitioner role, I had an employment lawyer that I just absolutely adored and became good friends with. And there were plenty of times I would reach out to that person where I knew we were making a bad choice. I wanted their direction and guidance to either affirm what I was saying or correct me. But I found myself in a situation where the leadership I was reporting to was like, yeah, we know we don't care. What is our role in HR in that? Is that our moment as an HR practitioner to say, okay, this company is no longer for me? Is there a role to get really passionate about the company and double down? What have you seen with the people that you're close with? I know that's a big question.

Jim Reidy: It is a big question, but the answer is what we learned the first day of law school. It depends. It depends on the issue. It depends on your interest in salvaging the company and your relationship with the company. It depends on the stakes. If it's something like this is really bad and I might be personally liable or my reputation could be at risk, then you might have to say, I'm best

to vote with my feet. But if it's look, I can fix this and let me, so it's, it matters. Courage and fortitude standing up and saying, look, let me be clear. And sometimes it says, can we bring in counsel to discuss with you? So that's what my job is to is to back up support and provide that information. So you're not in the wilderness. You're not alone.

Shari Simpson: What do you think is going to change when it comes to HR law? And I don't mean non-compete or overtime, because we know that that's out there right now. But as you think forward, what are some things that you're anticipating you're going to see?

Jim Reidy: I can sum it up in one word. Change. It's constant change, you know, from being in the field. Yeah. You know, from being with paleocity, it's constant change. Who would have thought 15 years ago, 43 states would have legalized marijuana? Who would have thought two years ago we'd be talking about two states that legalized therapeutic use of mushrooms? Who would have thought non-competes would be outlawed generally? And so on and so on. It changes all the time. Paid family leave. Just think of all the changes. So the future of HR is just change.

Shari Simpson: What advice do you have for smaller businesses who are navigating some of those complex HR laws?

Jim Reidy: I think tap into every resource you can, chamber of commerce. So if they're not big enough to have a dedicated employment lawyer or, but HR associations, the local HR associations, chamber of commerce and so on, the business and industry associations provide great information. And I think that's the best for the small companies and also just the network of HR professionals. Talk to someone more senior who's got some advice.

Shari Simpson: I have shared this before, but one of the resources that I really appreciate that SHRM has is they have for their members a multi-state law tool that you can basically go in and say, hey, I'm functioning in these three states, give me all the laws. I would not say use that as your end all be all, but it's definitely a good place to start to wrap your head around what's out there in the states that you are supporting. What are you seeing from a global perspective that you think is going to impact legislation either here in the States or we're going to see more organizations adopt it because of how organizations are becoming more global?

Jim Reidy: Yeah, I think that what we're seeing is already influences from Western Europe. Four-day work week, you know, reduced work hours. We saw that in France. We're seeing that now in the US. Massachusetts tried a tax program. Even in little New Hampshire, there was a proposal for four-day work week. There's one in Congress that Bernie Sanders recommended. Those are sort of European concepts. Garden leave. is a European concept. And we're seeing that as a part of the end of before non-competes ended and so on. So I think more and more, you'll start to see some of those things, but there are still cultural disconnects too. You think about somebody coming from another country, trying to understand our laws and our workplace issues. There is still some divide in that regard.

Shari Simpson: Well, it's, you know, I worked for somebody many, many years ago, and the parent company was in the Netherlands. And our CHRO at the time was pregnant. She was going out on maternity leave. And she was talking to one of the leaders who was located in the Netherlands. And he was like, Oh, what are you going to do for your year off? She's like, my year off? What are you talking about? She's like, I'll be gone like 10 weeks. And he's like, what? He's like, how can you bond with your baby? And he was such a surreal conversation for both of them, because they were like, it was their experience. And that it was hard wrapping their mind around what each other was experiencing. So I definitely hear that.

Jim Reidy: Yeah. And but now we're seeing that influence here in the US from California, to Massachusetts, there are extended more, it's almost half a year or more of family leave. Yeah. And parental leave, which was never the case before. So it's while there's still differences, we're getting more homogenized in that regard.

Shari Simpson: So California's always been a state to watch when it comes to employment law. What other states are kind of popping up that we should watch a little bit closer, maybe besides just California?

Jim Reidy: Certainly California's leading edge, Colorado, Oregon, Washington, those are the ones, New York, I think those are the sort of leading edge, Massachusetts too, that you see more progressive.

Shari Simpson: That's good to know, I just think it's good to keep an eye on some of those things. As you think about, flexible work. How do you see us being able to support that in a way where we don't put ourselves in trouble when it comes to things like compensation and different plans and fairness and all the things that I kind of foresee HR having to deal with when we talk about gig economy, flexibility, fractional workers, whether you're a contractor or not, right? We saw that kind of come up in this last year as well.

Jim Reidy: Yeah, I think flexibility is going to be the new normal. You know, you think before COVID, 6% of the US workforce worked remotely. At the height of COVID, it was 65%. We're now about 30%, but there's a pushback going on right now. A lot of layoffs since last year, and they continue rolling layoffs and adjustments, expensive commercial real estate. And, you know, you've got CEOs saying, I think that people that work remotely lack hustle. And if we have a rift, they're the first to go. Well, you're losing talent in that regard too, in many regards. So I think being flexible means, you know, having a company, again, it goes from top to the first employee, the company, you know, the most recent employee and it's job one is doing the job, whatever the job is, but how the job is done, that's evolving too. So being flexible, as long as the job gets done, that gets to reasonable accommodation that gets to a whole bunch of other issues. But again, it's a leadership issue. It comes from the very top. They have to embrace it. Because HR, if you're left alone working with these accommodations and then the C-suite doesn't buy in, you're going to have a pretty serious disconnect.

Shari Simpson: Well, and we recently talked about reasonable accommodations. They are, I think, much broader than we have given

them credit for. Maybe you could elaborate just on that a little bit, because I think it's a really fascinating concept that I don't know all HR people have heard.

Jim Reidy: So at the beginning of the ADA, which was effective 1992, the estimate was one in every 36 Americans could be considered to be disabled. When it was amended in 2009, one in every four to six could be considered to be disabled. So that's a disability. But then the second part of the analysis is the person a qualified individual with a disability and could they perform all the essential functions with or without reasonable accommodation? What's a reasonable accommodation? It's reasonable until it's not. It's like, what does that mean? Well, that means that unless it represents an undue hardship or direct threat, undue hardship being cost and effect to the organization, that's tested all the time. So it really is. It gets to be the point where it's the burden is on the employer to show it's not reasonable or it represents a direct threat to the employee or someone else. And it's, you never focus on cost because if you say we can't afford that, then let's say really open the books and show me all the other things we spent money on. But it really is going to be that balancing act. It's job specific. It's it's individual specific because not every back injury is the same. Not every carpal tunnel is the same. The most important thing to mention, though, is because this is where each guy gets caught up in it is, is there such a thing as an indefinite accommodation? And generally speaking, the answer has been no. But that may be changing, too. Wow. So it really gets to be it's it's very specific, very unique, but it is ever changing. Like you said, it tends to broaden in time, but ultimately go back to common sense. Is the person performing the job as required?

Shari Simpson: Yeah, absolutely. Well, as we wrap our discussion, what is maybe one thing that you really wish all HR professionals would know or think about when it comes to HR law?

Jim Reidy: I would say this. Trust your gut. Because all too often, the swirling notions of when I read this in the law, or I heard about that, or I'm concerned about this, and you get really confused, or you're just worrying about, I'm afraid of our CEO or CFO, what he or she might say, and so on. It's like, trust your gut, because ultimately, it really should go back to common sense. There are bizarre laws out there. There are bizarre interpretations of the law, but you can't go wrong when you trust your gut and treat people decently.

Shari Simpson: I love it. Trust your gut, treat people decently. Thank you so much for sitting down and chatting with me. My pleasure.