

Speaker 1: You're listening to the HR Bartender show, a casual place to talk about all things work. Here's where you get practical advice about how to be a better employee, manager, and leader in today's workplace. So grab your favorite beverage, pull up a stool, and join us in the conversation. The bar is always open. Now, here's your host, Sharlyn Lauby.

Sharlyn Lauby: Hi everyone. Thanks for being here. I'm your host, Sharlyn Lauby, author of the blog HR Bartender. Before we get started today, I want to take a moment to thank our founding sponsor, Ultimate Kronos Group, also known as UKG.

Speaker 3: To be a powerfully productive business, you need powerfully happy people. Two, leaders in workforce management in HR have joined forces to become UKR, Ultimate Kronos Group with comprehensive HR solutions, they'll help you create more meaningful connections within your workforce that will make your people smile. UKG: our purpose is people.

Sharlyn Lauby: Season two of the HR bartender show is focused on change, and I am thrilled to speak with today's guest. Kate Bischoff is human resources professional and employment law attorney. She consults with organizations to find solutions that meet business needs as well as the loss requirements. Prior to starting her own business, Kate served as the HR officer for the Consulate General of the United States, Jerusalem, and the US Embassy Lusaka, Zambia. Kate has been recognized by the New York Times, CNN, the Wall Street Journal, USA Today, NPR, and other journalistic sources as a leading authority on harassment technology in the workplace and employment law. On a personal note, I am always so grateful that Kate is willing to share with us her expertise when it comes to reader questions on HR Bartender. In fact, one of the most popular and interesting was when Kate answered a question about an HR representative who posted a racist comment. And I will be sure to leave a link in the show notes for that one if you definitely want to check it out. So Kate, thanks so much for being here. I am delighted that we're getting a chance to chat.

Kate Bischoff: I am, too. I'm so happy. Thank you for having me.

Sharlyn Lauby: In this season of the podcast, we're talking about change. So tell us one change that you've experienced recently that turned out really well.

Kate Bischoff: Well, I would say the best change that I've helped facilitate has been a non-profit organization that I did a workplace investigation for related to gender discrimination and bias, potentially by a leader. This organization navigated it wonderfully. A really difficult, hard thing to do, but everyone who was involved in the decision was clear minded about what they needed to do, how they were going to handle things, and I am so pleased and happy that they're making good decisions that really reflect what they want to be, not what they currently are. So I'm just impressed. Pleased as punch.

Sharlyn Lauby: One of the reasons that I wanted us to chat was to have a conversation about compliance. Compliance is important. It's not optional, but as an HR pro, many people don't want compliance to be the only thing that defines them. They don't want compliance to be the first thing that they think of when they think of HR. So how can human resources professionals help the organization understand that we do compliance? Yes, but we do some other things too.

Kate Bischoff: Yes. You mean we're not just the department of no? Really, we're not? So I completely understand this mindset because people come to HR and they want to do all these crazy things like hiring their second cousin and really weird things. And we have to say no to those in a lot of ways, and that's okay. We should be willing and ready and able and excited to say no when we're supposed to. When it comes to compliance, it's a little bit more challenging because you're right, it's not optional. But when we think about what is happening, if the answer to the organization is what is both a win for the organization and the employee that is likely to get you 90% of the way to compliance in nearly every situation, whether it is I need a leave, I need a reasonable accommodation. If it's a request coming from an employee, what is the win-win for everybody?

And that is likely to get you to compliance. So I think of it as where can we be ahead of the curve of changing new laws, for example, posting salary requirements in the job announcement. If we're not in California, Connecticut, Maryland of all states, Maryland. If we're not in those states, then we're not necessarily required to do it, but why don't we get ahead of the curve and show that we want what's best for employees? We understand the reasoning behind these laws and be ahead of that curve. And if we can be ahead of that curve and showing why we are a good employer, because we treat people right, we're not afraid of hiding things from you. I think that is the way we get out of that mindset. In a lot of ways, it's that combination of knowing where the law is going based on trends and what is the win-win for everybody.

Sharlyn Lauby: I really like that you were talking about getting ahead, and one of the things that I think about, I'll admit it, I've been around long enough to remember when I used this thing called a typewriter, and I don't like admitting that on a regular basis, but when we talk about today's compliance, technology can help us. Technology can play a role in that, so talk a little bit about how organizations can use technology to become more compliant and maybe if there are some things that they should watch for when they're thinking about technology and compliance.

Kate Bischoff: Well, I love working with a client who is looking to purchase technology because not only am I pointing out to them where the risks of the technology are, particularly around super cutting edge technology, if we're going to be using AI and everything, why there's potential risk involved in those things, but also where you can get some feelers as to where the compliance issues could be, like getting that data that comes behind. If you're purchasing a new ATS and you see

where all the decision points are and you see where their holdups are, and you can see where, "Oh, we lose all of our diverse candidates when we're talking about this hiring manager." Well then that gives you an idea that maybe we have an issue with this hiring manager to identify some biases. Or if it's payroll, we're going to outsource our payroll to a new technology and they are setting up our pay checks like this, and this is what the pay stubs look like.

Were we missing some things before? Can we ask questions about why we're seeing this on the piece? And because those technology companies understand and need to understand the role of compliance in the products that they are producing, they might be ahead of some issues that we didn't know about yet. For example, in Minnesota, we have what's known as a wage theft notice that has to go out to all employees that sometimes can be on the offer letter. Sometimes it's a standalone document that the candidate gets on their first day. But we can meld those two things together and the technology can help us do that. It can pull the information from other sources so that it's easy for us to do. So there's lots of ways that technology can help us be compliant. It's just always a question about are we analyzing the technology appropriately to both see the benefits and potential risks.

Sharlyn Lauby: I'm glad you brought up some of the classic things. When you think you think about some of the documents or the information that HR typically generates, one of the big decisions we have to make is, can technology help us with this part? Or is this something that we need to, I guess for lack of a better way of putting it, kind of go old school and it needs to be produced a different way. Well, I know that you have done a video series on talking through this concept of technology and compliance because you did that video series on the employee handbook. So tell us a little bit, I want to know what all of a sudden made you think about employee handbooks and a little bit about the video series?

Kate Bischoff: Sure. So I was really excited to do this series for a couple of reasons. One, I read a lot of handbooks. I read a lot of really crappy handbooks, like really crappy. One time a client gave me one from 1965, and they hadn't updated it since then. So much has changed since 1965, so much had to go out of the handbook. But I love reading handbooks and getting a sense of what these handbooks mean for the organization and what the handbook does to define what the organization is. And so as I was thinking about how can I help organizations understand that part of a handbook, I thought, Well, let's see if video works. And so I did, I think there's 15 of them. They're all on my website. You can go through them. I go through all the policies that are really critical, make up the core of a handbook, I think, and not all of them obviously, but I talk about what I'm looking for, how they could be different for each organization. And that compliance lens to each of them I think is how I cover most of them. They're, they're very fun. I really enjoyed doing them. I don't know if I'll do another one, but I had a lot of fun with them.

Sharlyn Lauby: Well, we'll leave a link so that listeners can go over and they can check them out in the show notes. One of them that jumped out to me was one where you talked about social media policies years ago, we all wrote a social media policy as part of our technology standard operating procedures and said, "This is what you can and cannot do on social. This is what you can and cannot say." And we kind of went through all of that and you had a different approach to this, and it was really interesting to me. And so talk a little bit about from a... I know organizations are trying to still... I think they know that social media isn't going away, but I think that they are trying to figure out how they can use it, they can make sure that their best branding is coming forward.

Kate Bischoff: So when we first started crafting social media policies, I will admit that I joined Twitter and Facebook because I had a case based on Twitter and Facebook. And so I felt I needed to go know what those things were to advise my clients on them. And now I am a very active Twitter user and less so on Facebook. But those are the reasons I got into them in the first place was to be able to help a client. And now social media is so ubiquitous that it feels like it's not something new necessarily. It's not something that we haven't had any experience with. I think every organization has had some experience negative with social media. And so it's come to the point where if we create a social media policy, we need to think about how it is different than the policies we already have.

And in many ways, the social media policy is just a regurgitation of your harassment policy, your confidentiality policy, your fair use policy if you have one for your logos and things like that. And for that reason, why would we have duplicate language in more than one place? Instead, put in your confidentiality policy that you can't share confidential information, whether it is in a conversation on social media, via email, et cetera. And to wrap social media into our normal processes in our normal policies makes it easier for someone to understand. And it's just an accurate reflection of how we use it. It's another communication tool. And those policies that have to address communication tools should address social media rather than it having a standalone policy.

Sharlyn Lauby: There's something to be said about not creating more policies.

Kate Bischoff: Oh, absolutely. YES.

Sharlyn Lauby: I think as an HR pro, one of the things of the best things that I learned early in my career was that the first question you should ask is, do we really need to have a policy? There's this tendency to go, "Oh, let me just write a policy or write something."

Kate Bischoff: Yeah. My favorite is if I can identify who the policy was written for, we shouldn't have one, right? If somebody is engaging in this kind of behavior, and that's why we're adding it to the discipline policy, we shouldn't add it to the discipline policy because I can identify who did that. So my philosophy is we should treat our employees like adults. Even if you're hiring a 16 year old, we should still

treat them like an adult and respect that they are going to make decisions. And so you're hoping that you're hiring people who are going to use good judgment at all times, like the Neiman Marcus handbook, which remains one of my favorites, and expect them to do that. But if we policy our way out of every potential behavior, we're not trusting our employees anymore.

Sharlyn Lauby: Now the flip side of that is sometimes some things happen and you need to develop a policy. We really do. As much as I think that this is a skill that HR people, business people in general need to think about when do we need to have policies and when do we not need to have policies? But one of the things that I hear sometimes is in organizations, they'll be like, "Eh, when they come to inspect us, we'll just pay the fine." Or, "They're never going to come to inspect us. So there's no need to write a policy, and in the off chance that they do, we'll just pay the fine." How, as an HR person do we talk with the organization about we don't want to take the let's just pay the fine.

Kate Bischoff: Yeah. Well, okay, so I do old school cost benefit analysis. If it's going to be, "Can I fire the black woman because she's a black woman?" Well, the cost of that decision is phenomenally high. If I forgot to get the I-9 in the first three days for this single employee who brought their passport to the first day of work, well, the cost to that is relatively minimal if we ever get caught in the first place, and we're likely to fix it in general. So I understand the mindset of we'll just pay the fine, but being able to articulate the cost versus the benefit of this, I think is where HR really should focus their time and attention on, and not just the cost of non-compliance. The cost of being perceived for that non-compliance is often significantly higher than the actual cost. Because if I fire the black woman and she gets a better paying job the next day, she has very little damages.

And so the cost of that is probably very small, but how people perceive us for firing the black woman is going to cost us forever. And that is going to be a reoccurring, horrible employee recruitment and retention problem for the foreseeable future. So the idea, "We'll just pay the fine." Okay, but you also have to understand the perception of that paying that fine, and HR needs to be able to articulate that and what it means for us to be able to keep employees, for us to be able to recruit employees and to make us an employer that people want to come to. I realize that kind of is recruitment and retaining, but it's also something that people want to aspire to, too.

Sharlyn Lauby: You're so right. If you think about it, if employees see you not being compliant over here, they're going to go, Well, what else are they not being compliant about?

Kate Bischoff: And how else are they not going to treat us fairly? Right? I don't want to say equally because I don't believe that apples and oranges should be treated equally. That doesn't mean that I want people to be treated unfairly. I think if you have a master's degree in 18 years of experience, you should be paid differently than the new college graduate. Those are apples and oranges. Those

are different. But the idea of what is fair and how I can articulate that fairness is really where when we do compliance work, it's the most important part. Yes, there are technical pieces. One of the laws, it's the most technical, is the FMLA with that cadence of how the forms all go. But if we gave the employee the leave, even if we didn't get the form back when we were supposed to, even if we didn't get the form out on the right day, if we gave the employee the leave, they felt comfortable. They felt like they had the time to recover or to take care of a loved one, were doing the right thing. The technical compliance can always come second.

Sharlyn Lauby: Your comment about doing the right thing sort of leads us into the last question. I know that organizations right now are trying to figure out how to respond to employee requests to get more involved in social issues. We hear conversations about employees asking organizations to get involved in issues that have to do with human rights and with voting rights. I remember going to a Great Place to Work conference several years ago, pre pandemic where business leaders, CEOs of Fortune 500 companies were saying things like, "We didn't get involved in these conversations. And now our employees are looking at us saying, "Why aren't you saying something? Why aren't you doing something?" So I know that companies are trying to think about what they want to say and what they want to do, and I'm sure that legality, legal stuff is part of the conversation. From an HR perspective, from a compliance perspective, from an organizational culture perspective, where can we be a part of this conversation?

Kate Bischoff: This is a big question. There are lots of things that are changing on rights feels like every moment these days, but I want to step back and answer this question a little bit differently. I promise I'll answer it. I promise. When I talk to HR students who are in college, they are ready to go out and ready to be in HR, I ask them, Why do I want to be in hr? And more than anything else, I hear the answer, "I love people." And it both makes me cringe, and it makes me laugh because if you spend enough time in human resources, you start to really hate people because people will do some stupid things. They will do some awful things, and you will see them at their worst and at their best and most often at their worst.

And then that will persuade you that you might not love people very much. And I love the answer that "I love people" because if you love people, that means you love people that come to you in all shapes and sizes, colors, religions, et cetera. And that means you want people to succeed, which I think everyone in human resources wants is that they want people to succeed not only for our own benefit, because if people succeed, the business succeeds and we will be able to get paid. But also because when somebody succeeds, it makes everybody feel really good. I helped make that person succeed. So when it comes to societal issues, whether it is abortion, whether it is race. I live in Minneapolis. I'm the center of the race conversation for the past couple of years, deservedly so. We certainly have issues and people who live here want to

know that their employer is doing the right thing on race issues, that we are ahead of the curve.

We are working hard. We're building communications and relationships with communities so that we can make sure that they come and want to work with us and work for us in many situations. So we are demanding that of our employers because it's the right thing to do and it's what we want to feel good about. You don't always necessarily just feel good about making the widget, but if you know that you're making the widget and it's having a positive impact on your community, that's great. That's what ties that person to the organization. Whether they are very activist or not activist at all, they know what they're doing is good for their community, the better they will do it, and the more, I hate to use this word, but loyal and tied to the organization, they may be. So I don't think it's bad for an employee to ask for these things.

Now, there are certainly things that you can ask for that might not align to the organization's values, and then you have to describe that. I don't think you should be afraid to describe that. But when it is for the benefit of people and our communities, I think that is a great thing, and the organization should not be afraid to step into those conversations. I think it's really hard right now to make that mind shift from, "We don't talk about anything political," to now this is what we're doing. But if you want to have your people stand up and feel proud to work for you, knowing that you're doing the right thing in your community is important to them. They want to know that that's where you're going to be. In fact, I get client questions all the time of, "What should we do now that Roe v. Wade has been overturned?"

What benefit should we provide? Even if we provide those benefits and there's employees in states where by providing the benefit, we could be challenged in court for providing that benefit. We know that's the right thing. The next problem for them is how do you make sure that employee can come talk to you about this? Because I don't want to share the fact that I need an abortion with my employer. That's really challenging. So it's making sure that we are listening to employees on these issues and where the societal issues match the organization's values. We're okay talking about them. We're okay being out in front of them and saying, "This is why it is important to us and how it is helping our communities."

Sharlyn Lauby: And I think that's what it all gets back to. How do we use our abilities to make the organization better?

Kate Bischoff: The other piece of this that I think is going to be even more challenging for employers is to understand that this is where the National Labor Relations Board is. So Jennifer Abruzzo, who is the general counsel for the NLRB, recently gave a talk where she said that social activism issues are likely to be considered terms and conditions of employment. Meaning when an employee complains about this or talks to coworkers, it will be considered protected activity. So you

can't just dismiss it. This is really something that is a term or condition of employment because it might bring me to an organization and it might turn me away from that organization. There's been lots of discussion about whether Amazon employees who are complaining about climate change and the impact that Amazon is having on the environment, that's really important to them. It might turn them away if Amazon doesn't take more action on this issue. The same is true for other organizations struggling with diversity, inclusion, equity, and belonging issues. It's the same is true for those organizations that assist in whether it's mailing abortion pills across state lines or providing the benefit for it. So all of those things are, we have an impact on how our people are treated. We should speak about those issues when it's important to our values and to our communities.

Sharlyn Lauby: I would love to dissect that whole conversation, but I know that we're running out of time. So I just want to say thank you so much for being here and sharing your knowledge with us. Listeners, I know you're going to want to connect with Kate, so be sure to check out her contact information in the show notes and don't leave just yet. I'm looking forward to sharing some of my takeaways from my conversation just after a quick break. So thanks so much for listening.

Speaker 3: To be a powerfully productive business, you need powerfully happy people. Two leaders in workforce management in HR have joined forces to become UKG, Ultimate Kronos Group. UKG Creates comprehensive HR solutions designed to make employees happier and build more meaningful connections within your workforce. They've even done that for themselves, being recognized as one of the top places to work and UKGs 12,000 employees help thousands of businesses build better cultures every day. When you're ready to make your people happier, UKG is ready to work for you. UKG: Our purpose is people.

Sharlyn Lauby: Welcome back. I hope you enjoyed this conversation with Kate as much as I did. It reminded me of a conversation I had very early in my career where I was talking with my boss, and the conversation was about supporting the people who support you and remembering that there are many different people that refers to, it might be the employees that work for the company. It could be your clients or your customers that buy your products or services. It could be the vendors or suppliers that help you make your product or your service go to market, and it's the community around you. It's the city. It's the county. It's the place where you are located and making sure that you take care of them as well. When we're thinking about our role in HR, we're thinking about the communities that we serve. Not only do we have to think about compliance, but we have to think about in general just doing the right thing and what does that look like in our organizations.

So I think that Kate really brought it home when she was talking about not only doing the proper thing as defined by the law, but doing the right thing by the people that are around you, your employees, your customers, your vendors, your community, to make sure that they know that they can count on you,



because when that happens, the organization is better. We're better as people, the organization is better, the community is better. I know we don't like to always talk about, Oh, everyone wins, but hopefully everyone wins. But there's a lot of change going on right now, and we need to be conscious of the fact that the changes that are happening, whether there are changes from a business perspective, changes from a customer perspective, changes in our community, changes in our society, will want to look at how do we do the right thing? How do we remain in compliance, and how do we change to be better with the society and the community around us? Thank you again for listening. We'll drop a whole bunch of information in the show notes for you, and please again, thank our sponsors, UKG for being a supporter of this podcast. Until next time, I'm Sharlyn Lauby. Stay safe and cheers.

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