

SPEAKER_01 0:06

Hi everybody, my name is Mark Mitford with HR Catalyst. And today I've got the pleasure of uh talking to a good friend of mine, Adam Doherty. And Adam is with uh Ogletree Deacons, and we'll get into their law firm. And they are a nationwide law firm, but Adam is based in Dallas. So with that, Adam, how are you doing this afternoon?

SPEAKER_02 0:27

Man, I'm doing okay. Um, as you know, I've been a little bit under the weather, so hopefully my voice will hold out, but uh I'm I'm confident that it will.

SPEAKER_01 0:36

There you go. Thanks, Adam. I know I think there's just this time of year, there's just a lot of a lot of things going on going on around here, but no, no worries if you need to grab some water along the way. But uh so tell me, so Ogletree Deacons, um, how long um how long have you actually been with the firm?

SPEAKER_02 0:52

Yeah, so I've um I've been with the firm about 10 years. Uh just had that anniversary, I guess, back in May. Um, so I've been practicing for about 25, I guess going on 26, which is just really, really hard to believe. But yeah, so I've been here for uh 10 years, and it's just been um a really great ride. Um, you know, we were actually international. So I I think when I started here, I don't know that we had any international offices at the time. And I think we were about half the size that we are now, and we're we're basically around 1,100 attorneys um in about 65 different offices, um, pretty much every major city in the country. Um three up in two or three up in Canada, um, Mexico City, and then a number uh throughout Europe as well.

SPEAKER_01 1:47

Wow, that's great. So I didn't even know that you were, I know that you were international, but that's great to hear. So um so tell me a little bit about your um your exact specialty area in the legal field.

SPEAKER_02 1:58

Yeah, so I mean, just kind of consistent with our firm because we're we're very unique in that all we do is represent companies on their employment law issues, you know, whether it's compliance or advice or litigation. And so I'm personally uh board certified in employment law. Uh Texas is pretty unique in that the bar has um what's called a specialization, and there's any number of areas that you can get board certified in. It's um quite a cumbersome process to do

so. And I think about 7% of attorneys um in the state of Texas are board certified in in one of the areas.

SPEAKER_01 2:38

Interesting.

SPEAKER_02 2:39

Yeah, so you know, I personally focus at at this point in my career um mostly on providing advice and counseling. Um, and that can range from you know difficult uh termination uh terminations that might arise for my clients. Um, I do a lot of drafting, whether it be separation agreements or employment agreements. And then I also um spend quite a bit of time on helping my clients on um any sort of government complaints, whether it be with the EOC or Department of Labor. And so I would say with my client base, um any given time I'd probably have about um I would say 25 to 40 pieces of individual litigation. Um, but I typically get my colleagues uh across the firm to help with that. Um just kind of the nature of my practice and also you know, managing a lot of clients, it it's pretty hard to be away from the phone or my desk, you know, for an all-day hearing or an all-day deposition. Um, so that that kind of precludes me from doing that. But we we just have a really great firm where we do work hand in hand with each other, not only in the office, but in between offices. So um we we get a lot of support.

SPEAKER_01 4:02

Right, right. And I know a couple of times I've actually um I've had to reach out to Adam regarding some clients that we have at HR Catalyst a couple of times that Adam and his firm has done have done a nice job in supporting. So uh so I appreciate that. So um, so with employment law, because I'm I'm sure there are people out there who don't don't clearly understand, so they understand the basics of it, but is employment law from from your perspective, Adam, is it really there to protect the business, the employee, or both?

SPEAKER_02 4:35

Yeah, I I would say I think that's an interesting question. And I would say almost all the employment laws are um you know written to protect employees. And and to me, and and you'll probably agree, you know, employment law really kind of came out of the fact that there used to be little to no protections, right, for just your average worker. And so slowly but surely, you know, employment laws were put in place to protect them, you know, whether it relates to just employee safety or you know, working too many hours in a day or a week. Um, and then with respect to discrimination, I think most of those laws were put in place to protect the employee. And then, you know, what's what's really been unique, especially over the course of my career, is over the years, all of the states have kind of gotten into the business of

employment law, where it used to be primarily a federal uh body of law. Um, we still have the federal, but now every other every state really has their own, what I call kind of state framework. And, you know, the the most obvious comparisons of states are California and Texas. And so, you know, California being on the one side, where all the laws almost across the board are drafted very pro-employee. And then you have the opposite on where we have Texas, where where I wouldn't say that our laws are drafted to be pro-employer, but I would say we don't have nearly as many on the books as as California does. And then the framework we have designed um to protect employees aren't nearly as punitive against employers who might violate them compared to our our our friends over there in California.

SPEAKER_03 6:30

Right. And interesting.

SPEAKER_02 6:32

Yeah, and and one of the most obvious ways just to look at this is that, you know, on under Title VII, say, which when most people are thinking of employment law, can't discriminate against somebody because of their sex, you know, sexual harassment isn't allowed. Well, under Title VII, which is the federal framework, um there's caps on the damages that are available. And a lot of companies, a lot of just you know, your day-to-day people don't realize that to where for Title VII, worst case scenario for the two most common types of damages that typically can get you know pretty high, the the caps were at 300,000. And it's based on the number of employees. And so if you have employees under, you know, for say 50 to 100, the the damages caps were even lower. But Texas's state framework, what our legislature basically said is, hey, we're just gonna follow Title VII. So our our laws are pretty identical to the federal. Compare that to California, where under their state framework, there's no caps on damages whatsoever. So you could have a company that might have one or two employees, and if a if one of the employees gets terminated, files a lawsuit, under California's state framework, if a jury awards 10, 20, 30, 40, 100 million dollars, the company is effectively going to be on the hook for that. So that's just one of many examples, Texas versus California, on how the laws have uh been drafted and have developed.

SPEAKER_01 8:19

That's that is so fascinating. I I want to imagine probably a topic for a different day would be um you just look at the migration of how many employees and how how many employers are just moving out of California simply because the the the framework, as you mentioned, is so pro-employee that in some cases just it's just simply hard to do business in California. And the and this the state legislature doesn't really help matters there because they're looking at it from a from a governmental perspective and not from a a business perspective.

SPEAKER_02 8:57

Exactly. So yeah.

SPEAKER_01 8:59

So how have you seen, and I would imagine with your experience over 25 years, Adam, how have you seen how have you seen employment law just broadly, how have you seen employment law change over those uh over those multiple years?

SPEAKER_02 9:13

Yeah, that's a great question too. And I I think I can use kind of the present-day California, Texas kind of juxtaposition on that. And and one way is um definitely with respect to independent contractors. So when I first started practicing over a couple of decades ago, um, especially here in Texas, it used to be if you if you're an employer and you have a written independent contractor agreement with a worker and the person signs it, you know, doesn't sign it under under duress or anything like that, you could be very confident that a court or one of our agencies would would deem that person to be an independent contractor based on basically two independent parties meeting of the mind saying, hey, we want this person to be one. Um fast forward it now. Um, you know, compare it in California, and and it seems like I have this um conversation, you know, many times throughout the week with um either clients or new clients that are thinking about having independent contractors there. And and California has basically done away with independent contractors. They've they have pretty much set up their framework to make it as difficult as possible for an independent contractor to exist out there. And and kind of like you you mentioned, I I think it just goes to the mindset that the people running California have versus the mindset that people running, say, Texas have. And and the mindset here is, you know, maybe for lack of a better way of describing it, we're adults, we have free will, we can contract versus California. I I think the powers that be there really view companies as existing to exploit workers. And so from that perspective, you know, California has adopted what's called the ABC test, and it's basically a three-prong test, and and the company has to satisfy every prong. And if the company doesn't, the person's automatically misclassified as an employee and or as an independent contractor, I should say. And then in California, when that happens, it it seems like there's hundreds of violations that arise immediately for having misclassified somebody, you know, really going down to you know the the check that you would have given them is inappropriate. And so um, you know, part of the ABC prong is, and I think it's the the B one, you know, do you have any employees that are effectively doing the same job duties as the independent contractor? And if you do, that person with very few exceptions is going to be misclassified. Whereas in Texas, it it yeah, where where it's kind of developed over the years, I wouldn't say that here just having the independent contractor agreement is enough.

Um, the way I describe it now, even here in Texas, if you have that agreement as the employer, it it really means you don't lose automatically, right? So it's kind of the first line of defense. And then what our agencies or courts are going to do is do a very fact-specific analysis that effectively comes down to how much control does the company have over the worker. But at the end of the day, I think our agencies or in courts are still gonna give kind of a fair, reasonable analysis of that relationship. And I don't think they're going to approach it like California will, where hey, we're we're just gonna give basically every benefit of the doubt to the worker. But that's definitely one way that I've seen everything change over the years.

SPEAKER_01 13:09

Right. No, that's fascinating. And like you said, it's amazing how many organizations have have independent contractors at some level. Right. And before we started HR Catalysts about 13 years ago, you know, I worked for some large companies and they had multiple thousands of into independent contractors. And it was just kind of this of the back of the day of the 90s. And it'd be interesting just to see, you know, if how many if they were in, if they had some, you know, that they might have had significant legal exposure because of what was being done there and their classification of some people. So, but uh no, this is interesting. So we're gonna take a short break right now, folks, and um, then I'll be back in just uh just a couple of minutes with Adam Doherty from Oakletree Deacons, and we'll continue the conversation then. Thanks so much.

SPEAKER_00 13:59

You want to grow your business, but people issues are getting in the way. Managing the people side of your business is complex and can feel overwhelming. Does this sound familiar? At HR Catalyst, people strategy is our business. We create and implement a people strategy with you so you can get back to growing your business. HR Catalyst was founded in 2013 with the goal of bringing the best-in-class HR practices to small and middle market companies. We are your outsourced strategic people experts. We help you solve the people issues in your business that are slowing you down. If you have HR concerns, you can schedule a complimentary call on our website at [HR Catalyst Consulting.com](https://www.hrcatalystconsulting.com).

SPEAKER_01 14:42

Hi, this is Mark Mitford again. So we're going to continue the conversation now with Adam Doherty from Oakletree Deacons. And um, so and fascinating conversations so far, Adam. So I think one of the big things we um everybody has heard about, know about, maybe they're using utilizing uh this uh technology and this wave of changes, but artificial intelligence and AI. So how, and I'm sure it has some legal ramifications for the work you do, but what is your from an

expert perspective, what are you saying about how this is really starting to change things from an employment landscape with the whole AI and the everything it brings to the table?

SPEAKER_02 15:28

Yeah, I I would say it really entered into my world about six months ago or so. Um, and and like I said at the beginning of our conversation, I I spend most of my day advising clients on terminations or you know, you usually before a lot and lots of times afterwards too, where maybe the employee is unhappy and is then you know sending a demand letter or making complaints following that. And so um, you know, for this one in particular uh situation, you know, just kind of sitting at my desk, uh client reaches out, and you know, not an uncommon situation where they say, Hey, you know, we we were working with this employee for a number of months, just wasn't working out. And so we terminated the individual and uh terminated them the day before. And then early this morning, we we got you know a complaint from the person uh effectively saying, Hey, um, if we can't reach some sort of monetary resolution, I'm going to bring a lawsuit against you. So the client forward me the individual's email. I read it. And you know, the way we help a lot of clients is we we help ghostwrite responses for them. And so, you know, I think the initial call with the client, just going over the background, what was probably about 30 minutes to an hour, you know, and then I studied the email and then drafted a response. So I would say it took about maybe two or three hours, soup to nuts, to help draft this initial response. And then the client reviews it, client sends it out. And um within about later that day, within about 30 minutes or so, the employee has a response already. And so client sends it back over to me, and and it's it's a detailed response, right? So my my initial thought was and as I'm reading it, I'm like, okay, the formatting's a little off. The response is good, but I I couldn't really put my finger on it. Something just seemed a little bit off. So I said to my client is I said, I bet you he has a friend or maybe a cousin who's an attorney who does a little bit of employment law, but not day to day, right? So take that response, and I think it was maybe the next day, you know, take another couple hours, respond to it. And you know, what what I tell my clients when when you're doing these responses to the employee or the ex-employee, a lot of times why it's so important is because your responses are becoming evidence, right? That's going to be used if there's an EOC charge, or even if there's a lawsuit, it effectively becomes evidence. So there's you know a lot of strategy that goes into it. It's kind of an art. And so again, takes a couple of hours, give the client the response. She sends it over to this ex-employee again within 20 minutes, four pages. And and you know, so I mean it's coming back to where it's like three or four times as long as my response. Well, then in this one, the person finally laid out, here are the statutes that I'm gonna sue you under. And and like the first four, it's like, okay, that makes sense. And then like the fifth, sixth, and seventh didn't make any sense at all. The eighth was, okay, that makes sense, tile seven. And then it was like OSHA, um, the OSHA Minds Act, and then and then it just immediately dawned on me, this guy is using AI,

right? To to put together how he's gonna come after the client. And and then what once it dawned on me was just blatantly obvious because at that point I'm like, man, is his attorney or the cousin or whatever, like literally sitting there over his shoulder? Um, but and then it kind of went back to the formatting, which again, this is about six months ago. I think probably everybody who works in this space now is very familiar with it. You know, the formatting for the AI, if if if the individual is literally kind of cutting and pacing and not reformatting it, you can kind of just tell there's some weird spacing, there's weird bolds to it. And and then again, where this person, um, you know, five of the statutes were on point, and then the five had literally no connection to this individual. Wow. Um, so that so that was very eye-opening. And I would say now, I mean, it it it's more surprising when I'm helping clients with this, where they're not using AI with the employees, that is, or the ex-employees, or where it's just not obvious, like like almost always now it is, um, which is is good and bad, you know, there's any number of goods and bads that come with it. But what we've seen over the last six months, which is very, very eye-opening, and and there's good and bad with this too. So every day, you know, my firm has a service, and and we typically use it as a benefit for our clients, where we get a report of all the lawsuits filed every day in the state of Texas. And so we we kind of scoured every day, okay, if our clients are um hit with lawsuits, whether it's employment related or not, we can kind of give them the heads up because we're we're kind of getting notified before our clients are. And so what's been really, really interesting, and and the way this service sets it up for us is we get employment lawsuits that are kind of at the top of the list, so to speak, when we're seeing them. And and so, you know, six months to prior to that, we have what are called pro se lawsuits. Well, these are lawsuits that are filed by the individual and not by an actual plaintiff's attorney. And and I would say, you know, here in Dallas, we have state courts, we have federal courts. We used to see maybe one a week, maybe two pro se lawsuits prior to the rise of AI. And you know, part of the reason why that is is because you know, plaintiff's attorneys operate on contingency fees. So very rarely are ex employees who want to see. Companies having to shell out any money. So uh, and and this comes up quite a bit, especially with you know, companies that are maybe on the smaller side or that haven't really been through this process before, you know, a lot of times they'll say, Why I can't imagine a plaintiff's attorney taking on this case. And I'm like, Well, you'd you'd kind of be surprised. Like it has to be a really bad case for all of the plaintiff's attorneys in town to say, all of them, hey, we're not going to take your case.

SPEAKER_01 22:30

Right.

SPEAKER_02 22:31

Um, and and and the the part of the reason why with that too is that it's very hard as a company to get your attorney's free fees awarded in litigation, even if you win. Like our our system unfortunately isn't designed for that. If if our system was 50% of employment lotus fees would go away because plaintiffs' attorneys wouldn't bring them if if there was a real fear that, hey, I'd have to, I'm gonna have to pay the company's attorney's fees.

SPEAKER_03 23:04

Right.

SPEAKER_02 23:05

So because of that, most individuals can find plaintiff's firms to represent them, and then especially in states like California, where the plaintiff's bar is probably, I don't know what the numbers are, but I would say 10, 20, 30 times bigger than it is here in Texas. But getting back to the AI, so with these pro se claimants, again, representing themselves, what I think is probably happening is AI, when they're going in and saying, here's my claims, I think people aren't realizing that a lot of times AI is telling you what you want to hear. So AI is telling these individuals, hey, you have a really good claim. And I think what's happening is I think a lot of individuals are doing AI first. Maybe they're talking to an attorney afterwards, maybe not. But let's say that they are. AI tells them, hey, you've got this really good claim. Well, they go in and they talk to a plaintiff's attorney, and the plaintiff's attorney is then gonna tell them, well, you know, there's two sides to every story, which is typically the case in employment law. And then, oh, I can represent you, but I'm gonna take 30% of any recovery, if not more in some cases, I think probably in the majority. And I think what's happening is the these pro se plaintiffs, individuals, are then are going through this analysis in their mind, and they're like, Well, I I've got a law firm at my hands with Chat GPT or whatnot, so I'll just file the lawsuit on my own behalf. Right. Well, so it's turned into where we used to see one or two a week. We might see six or seven in a day. So it in literally one day where these individuals are filing these lawsuits on their behalf. And I fortunately for like my specific clients, I've only had one who's been hit with this. And we're we're we're kind of working through the process now because the individual is not doing the correct really basic things to kind of get the lawsuit out the gate, so to speak. So that's been a good thing. I know from talking to my colleagues, it's become very cumbersome because a lot of these pro se litigants really don't know what they're doing, even with AI's assistance.

SPEAKER_03 25:42

Right.

SPEAKER_02 25:42

And and kind of on the unfortunate side, they're filing things, filing things, filing things where they're not appropriate. Our clients are so having to go to the time and expense of fighting it and trying to get it kicked out of court, which sometimes is easier said than done for any number of reasons. So it's been absolutely fascinating to follow it. And and I'll just say too, where I'm seeing it and just doing daily advice from my clients, is even over the last six months, it was really after the time of termination where we were seeing the pro se or I'm sorry, the AI responses where the employees were sending them. Now we're seeing it just on reprimands, where it's like, hey, you know, your performance hasn't been great, gave you a reprimand, here's a final warning. What what I call them is the books. It's like the AI book where the employer is getting the response, where it's like eight paragraphs on why I'm challenging this reprimand, you know, and and where where I've seen this go just over the last six months is again where where your response is as the employer, you're kind of building your evidence, so to speak. You're challenging the employee just in case it gets into litigation. I've now seen employers where they're they're making the strategic decision where they're basically saying, we're not responding to you anymore because we could, you know, it's honestly not worth the time or effort. And and with the AI, you could go on indefinitely with the he said, she said, or the back and forth, because all they're doing is putting it in a chat GPT, taking two minutes, and then sending it back to you. Yes, we have and and and where you're you have other stuff to do. So it's right again. Um and this is very unique. Like it, I've never really counseled a client to say, hey, just stop responding to the employee, again, for any number of reasons. But we're getting to the point where I think employers are just gonna stop doing it right because it's just sucking up too much time and effort.

SPEAKER_01 27:59

Sure, sure. I would I would imagine that's yeah, but like you said, with just your analysis there, just the amount of claims that are coming up from that are probably employee or former employee driven, it's just and it we it could just bog down the court system too, and the and the due process you would have to go through. So it's exactly yeah, it's it's this huge double-edged sword. But um, yeah, I'm gonna I'm gonna move on here, Adam. But thank you for that response. It was great. So um, so probably one of the biggest struggles, and I would say even for myself and the work I do with clients, is what is your advice, you know, when you are talking to a business owner, when should so there's a complex employee issue they're dealing with, when typically, when would you recommend that a business owner or the HR leader who you may work with closely, when should they be contacting an employment attorney? Because they know there's obviously you have a billable rate. So when when do you when do you still recommend that it's better you get a little more proactive here than reactive regarding getting your counsel and advice in in a situation that could be a fairly um complex employee grievance?

SPEAKER_02 29:16

Yeah, uh, you know, uh I'll just use my own experience. It seems like most of the advice I give, and this is like pre-termination, you know, a lot of times I call it a gut check where a client will call. Excuse me. A lot of times it's just a 20 or 30 minute call, if that. And and there we're just kind of talking through, hey, am I missing anything here? But I would say like the most complex area of terminations that makes them risky is when you have the interplay of the Americans with Disabilities Act, the ADA, the FMLA, you know, Family Medical Leave Act, and then sometimes you might even have a workers' comp claim in there. And so that you know, that that triple-headed um um creature there is to me very challenging. And and it's challenging for any number of reasons because you have you know three different statutes, kind of going back to your initial question, all really designed to protect individuals. And so if you have somebody who's maybe out on a medical leave, they could be receiving an accommodation with respect to that leave under the ADA. If the employer is covered by the FMLA, they might be covered, the employee might be covered by the FMLA. Maybe they were injured on the job to where they fired, uh, filed a worker's comp claim. And so what might happen in that situation is hey, despite all that, they are just not objectively performing. And so, with respect to that situation, what a lot of companies don't realize that are maybe not um, maybe they've never experienced this issue before, maybe they've never thought it through, is how does an individual prove discrimination or retaliation under any of those statutes? And it's typically done by circumstantial evidence. So very rarely is there an email saying, hey, we're firing you because you're sick, we're firing you because you took leave.

SPEAKER_03 31:24

Right.

SPEAKER_02 31:24

Well, then how do they have to prove it? And that goes into the the the burden of proof. Well, in most of these statutes, it's a motivating factor statute. So in other words, the the motivation for why am I terminating you only has to be five, ten percent of the decision. It almost always doesn't have to be 100% of the decision. So because of that, when you have somebody who's on leave, who's receiving accommodation, maybe somebody who's pregnant, um, it's very easy for them to kind of have a minimal showing that, hey, the employer's taking this adverse decision with respect to my employment because of one of my what we call kind of protected categories. So, in other words, it's a very minimal, easy showing for the employee, which increases the risk for the employer. And and so a lot of times, like I said, I've I I mean, I've never had an employer come to me and say, we're terminating this employee because they're on leave or they're coming back from leave. But then when it comes to, well, why are you

terminating them? Oh, it's because of X, Y, and Z with their performance. Okay, well, let's kind of talk that through.

SPEAKER_03 32:45

Right.

SPEAKER_02 32:45

You know, what why is their performance so bad? And a lot of times it's objectively true that the performance isn't bad, but how does your documentation look? How is the individual who might be called as a witness to testify about the issues? How is that how do we think that person's gonna do under oath? And then the the one of the key facts for employment law is how have you treated similarly situated employees in this in in a very similar type of situation? And and that's where a lot of employers get caught up, is that and and in this area of law, that's a lot of times how discrimination is is shown by the employee. And and a lot of times the employers, you know, are just not thinking it through from this legal perspective. That's where individuals like yourself and I can help is like, hey, let's really look at how how is the EOC going to analyze this? How is um a court going to analyze this? And then kind of the natural outgrowth from that analysis might be okay, maybe we need to postpone the termination, maybe a written reprimand is better for this situation. Or if if if the client's like, no, you know, we need to, for whatever reason, this person really doesn't need to be here. Let's talk about is it worth getting a separation agreement with a release?

unknown 34:14

Right.

SPEAKER_02 34:14

Right. And then that that's a whole other kind of analysis on objectively speaking, you know, what's the amount of risk here? Whereas we talked about with say the damages caps under Title VII, what's our worst case scenario? What's this person like? A lot of it's psychology, a lot of it's an art. What do we think they might take to sign a separation agreement? What do they have going on in their life? To where what what dollar amount might make them more apt or not to sign the separation agreement? So that's a very long um answer, but that's that's kind of what I do on a daily basis. And there there really is, I mean, as you know, for having done this for so long, you you can almost kind of spot the more challenging ones.

SPEAKER_03 35:03

Right.

SPEAKER_02 35:03

And so, like I said, some of these, it's a 15-minute call. Others might be a little bit longer, others might be, okay, well, let's look at some of this documentation you have, let's look at some of the emails out there, and then it becomes kind of a partnership on talking it through, analyzing it, how are we going to handle this particular situation? With the idea being, you know, perhaps we want to eliminate the risk of litigation altogether, or we want to just kind of create our defenses if that ESC charge or litigation is going to come.

SPEAKER_01 35:34

Right, right. No, that's in no, it is fascinating because there's like you said, it it I loved when it's when you said it's as much it's psychology, it's a little you you have the law, which sometimes is a very broad framework, then you have the psychology, you have the art form, you have the specific employee, and what their history is, and it could be how long they've been with a company, it could be are they going through some trying times? Are they financially in a bad situation? So it's it is fascinating just in this conversation. I I always love this when I interview people because I learned some things along the way. So um, do you think um a couple of last questions for you, Adam? But do you think I again this one's gonna be much more of a general statement? But do you find, and again, with your experience, do most employers contact you or HR people, do they contact you too late in the process? And they think you almost have this magic wand where you can make this thing go away? Or do you find that quite a few of them are actually a little more proactive and they and they want to do that 30-minute kind of a gut check with you um before things uh become a little bit too uh too complex?

SPEAKER_02 36:52

Yeah, I you know, I think I think most employers are are pretty conscious of the employment loss. And um, so I would say, you know, especially the clients we work with routinely, I think they really see the value in that 30-minute to one hour call. And then just, you know, even generally speaking, like the companies that I get referred to, um, I I think most companies in this day and age, and and maybe that's kind of the benefit of Chat GPT, where it's not unusual, especially for for new clients that are referred over, where they'll say, Hey, we we kind of ran this through AI, and we're seeing that we do have some risk. So we would like to get you know a real thinking attorney's you know thoughts on that. And so I think that's that's a more positive side of the AI. And and um, so I I think most employers are are pretty conscious, and and like I said, it's you know, especially earlier in my career, I think a lot of clients were like, you know, law be damned, we're just gonna terminate this person, then we're gonna fight it to the death. I I think it's very rare to see a client do that or a company do that nowadays. And maybe that's because they've seen these kind of verdicts over the years, but I think it's also that you know, so many clients have HR internally, legal internally, or outside support, that I think clients do a good job nowadays of weighing risks and and trying to avoid that litigation where possible.

SPEAKER_01 38:28

Right. Okay, that's great. So um, so what other besides obviously an employee situation where there might be litigation or there is litigation or possible limit litigation and uh some of the things you talked about earlier, are there other things that you do within your practice or in a you know in a general employment practice that that is a little bit beyond the scope of what we're talking about today?

SPEAKER_02 38:53

Yeah, you know, I draft um a lot of employment agreements and um you know a lot of times the employment agreement will have non-compete provisions in there, whether they might be confidentiality protections or non-solicitation of employees or customers, or what I call the pure non-compete, where you're restricting or limiting um an employee to go work for a competitor. And, you know, going back to one of your earlier questions just on how that's kind of changed over the years, well, you know, going back 20 years, we we used to basically just have one kind of form agreement. We would give a client, even if they were in multiple states, California, Texas, and and fast forward now, um, really every state has their own non-compete framework. And and again, Texas and California are are the perfect kind of juxtapositions where a number of years ago, um, California basically said no non-competes, no no even non-solicitation restrictions are allowed here. Um, you can still have protections in California for your confidential information, and that could be the hook for maybe limiting somebody from soliciting your clients. But really, that's it. Versus here in Texas, non-compete agreements are still very enforceable in Texas. Um, we have an interesting framework. I won't get into the details where there's a number of hoops you have to jump through to show that your non-compete is enforceable. Um, the flip side of that, though, we have a lot of judges in Texas, even though the agreements are very valid on their face, even though adults sign them, where a lot of judges are just very inclined not to enforce them. Um, and and judges have a lot of discretion, again, not getting into the weeds on how it plays out.

SPEAKER_01 40:58

Right. Interesting.

SPEAKER_02 40:59

Yeah, so that that's one area where we still draft multi-state employment agreements, but when we do, we basically have addenda that are attached for each state. I think I think the addenda we have are up to about 20 to 25, you know, for for different states that have all these different hoops you have to jump through. You know, some you have to give the employee the agreement, I think like a week or two before they start. Um, others you have uh you know, thresholds for how much money they earn to where that's only when they become effective.

Texas, again, hasn't done that. Um, and I and I don't think Texas will anytime soon because I think the framework we have is good. But that's definitely another way that I spend you know quite a bit of time helping companies. And then the same for drafting separation agreements, where when I first started separation agreements, maybe a page or two, our kind of typical form is up to about seven or eight pages just for Texas. And again, when you get California and other states in there, um, they can even become longer than that. And it can be if you give a separation agreement out that doesn't have the bells and whistles in it, that you're effectively creating a claim for the employee in and of itself just with respect to the separation agreement.

SPEAKER_01 42:19

Interesting. Wow. Fascinating. So so if there are if there are business owners that are watching this podcast and they don't have an employment attorney in there, you know, with with as part of their team already, and they're outside counsel and advisory groups, um, why should they contact one now, do you think?

SPEAKER_02 42:41

Well, I I think um, you know, even with a more pro employer executive that we have now in Trump, there there's just so much risk with with so many laws out there, there's any number of ways, just from an employment perspective, that companies can trip up. So I think it's always good to have somebody like yourself or me on speed dial. Um, you know, you and I do a lot of the same, but then there's a lot of things that we we kind of do differently too. Um, and I you know, I'd say for us, in in working with us, we do have the attorney client privilege that will cover almost all of the communications. So especially when when you have really dicey issues, I think that's always a good reason to um talk to an employer. And then um, you know, most of the employment laws kick in, not all of them, but most of them kick in when you have 15 employees. So, and we represent companies of all sizes here. Right. Um, so for the smaller companies, when you're getting into that 15 employee threshold, you know, that's when the laws are kicking in. And then when you get into that like 50 employee threshold, that's when I tell you my clients, like, okay, you're you're getting Getting to that size where you really do have a target on your back. And so with respect to AI and employee knowing their rights, that's when you're kind of in that danger zone, especially for when you have these statutes where there are caps, that 50 employees, that's when the caps start really increasing. So that's when the risk really starts to kick in to where I think it's good to have somebody like yourself or me on speed dial. And I know you're the same as me, where we really pride ourselves on being very responsive. And so having that person that you really trust that's going to drop what they're doing, because a lot of times, like, hey, we need to make this decision today or or by the end of the day tomorrow, where you really want a trusted partner, you know, who's who's there to

help. And that's what we really pride ourselves on on doing me, me personally, and the firm too.

SPEAKER_01 44:53

Right. Oh, that's great. That's great. So um, yeah, thank you so much, Adam. This has been really insightful. So um what I want why I kind of when I whenever I do a podcast with a guest, I always, you know, always want to ask you a couple of other um, always want to ask you a couple of things that are, you know, a couple of couple of things a little that are a little more fun in nature. So um so how about if you are, I'm not sure if you're a book person or a podcaster, but do you have any recommendations on books you'd recommend to our audience or podcasts that you'd recommend to our audience?

SPEAKER_02 45:28

Yeah, sure. So I um I very rarely listen to HR podcasts or legal books. Same with TV shows. It's kind of like you live it. I don't need to, you know, have any more of it. Um, I need to take a break. So I've I've got a number of interests, and and I know I've I know you're somewhat aware of this too. So I I love um religion. I I study it for fun, kind of a dork that way. Um, I also love military history, and then I also love uh the Razorbacks. Um and then I I've got another love too of electronic music. And so with respect to books, um, there's a great book called The Infinite Way, which is written by this guy uh named Joel Goldsmith, who's no longer with us, and it's basically a book on Christian mysticism, which is just kind of a fancy word for you know, how can we just kind of realize that God is here 24-7, you know, internally and externally. And that's that's a book that really changed my life. And I think it's a a very interesting deep read for people that are of a religious or spiritual bent. Um, from a military history perspective, um, a book that really changed my life, and I you know, unfortunately didn't serve, wish I did, um, is a book called With the Old Breed, um by a gentleman named Um Eugene Sledge. And I I I've recommended that book to people who don't read military history, and I think every person that I've given it to has finished it within a week. Um he fought in the Pacific, he was a grunt, fought in some of the most uh bloodiest battles in the Pacific and World War II. And then um, you know, he was he was a young man at the time, um, turned out to just be a very gifted writer. And so most military historians will say it's like the best military history book ever written to just give you kind of the day-to-day feel of what it's like to fight in the front lines, right? So um he really turned if you ever heard the uh the the phrase meat grinder, he really coined that based on what he experienced. And then if you've ever watched um the Pacific on HBO, which is kind of the um Band of Brothers, um if if you I'm I'm sure you've probably seen that. The Pacific is kind of the um Pacific take uh battles on on Banda Brothers, and so the Pacific is based on his book and then another book, and he actually appears not himself, but Eugene Sledge is a character actually in the Pacific.

SPEAKER_01 48:13

Wow, interesting.

SPEAKER_02 48:15

Really recommend that too. Um, as far as podcasts, I I spend way too much of my time following the Razorbacks. There's a great podcast called Inside Arkansas, okay, that uh every day you know at noon, um, I'll be listening to that. And then I also love uh electronic music, which I listen to throughout the day. And there's a podcast called The Boiler Room, where you can get all of the latest and greatest uh DJ sets if if you're so inclined. Oh my god, look at you.

SPEAKER_01 48:46

You're you're a man with many layers, Adam. So um so final question for you is so what what advice would you give your 16-year-old self?

SPEAKER_02 48:55

Um, that's a great question, too. Um, and you know, I I would say I'm I'm kind of late into the game on traveling. And and part of it was just being so busy earlier in my career. But um I I I definitely would have said to travel more because it's been such a great thing that my family and I have done, especially over the last you know, 10 to 15 years, where it, you know, my wife and I ended up having a competition on who could go to all 50 states first.

SPEAKER_03 49:25

Okay.

SPEAKER_02 49:26

And um, she ended up beating me, but I I hit 50 states, I think it was about four years ago.

SPEAKER_03 49:31

Okay.

SPEAKER_02 49:32

My last one uh was Minnesota, and I I always thought business travel would take me there, so it never did. So I ended up taking my oldest daughter there for a four-day uh weekend about four years ago. But and then um we as of this summer, we're gonna go to South Africa. And once we do that, we'll have hit six continents with um only Antarctica left. So yeah, it's been it's just been really, really fun doing that with my two daughters and my wife.

SPEAKER_01 50:02

That's fun. Good for you. That's that's that's great to hear. So uh so how if people want to continue the conversation with you or talk to you about uh about you as an attorney and your background and your expertise, how can they how can they reach you online?

SPEAKER_02 50:16

Yeah, so I I try to keep a fairly active presence on LinkedIn. So you know, shoot me a LinkedIn request or you know, feel free to reach out via email or um by my you know my phone, which is on our website. Um I'm like I said before, I try to be responsive 24-7.

SPEAKER_03 50:34

Yeah.

SPEAKER_02 50:35

And um also I too, you know, our our firm really prides ourselves on all of the free content that we provide. And so um you could go to our website and sign up for it. There is no obligation. And um, yeah, we're we're continuously putting out free content, whether it be articles or blogs. Um if there's any sort of breaking news, yeah, we really strive to have something out with our opinion and a summary of it within 24 hours. And then we also have um just a ton of webinars that we put out on all the latest, greatest topics for all of our clients that are free. Um, for non-clients, there's just a small fee associated with it. But I think that's a great, great outreach that we have. Sure. And then then for clients too that sign up, I think we're one of three law firms where we have what's called a client portal. And in that client portal, we have all sorts of uh free content, whether it be state law summaries, all sorts of forms, you know, great things is just uh a thank you for our clients once they retain us.

SPEAKER_01 51:39

Right. Oh, that's great. And I and I am uh, you know, I have used some of your services. I've heard I've heard you, um, you and a colleague of yours, Sean. I've actually I've actually listened to you guys live a couple of times in an audience. And you and and trust me, if you haven't, they are you know attorneys with a sense of humor and attorneys who come across who make um hearing about the legal landscape exciting and fun. So by all means, you know, for Adam Doherty or his uh or his colleague Sean, you know, but highly recommend that uh if you ever get a chance to listen to them or take advantage of some of the other Ogletree Deacon uh resources, uh, I would highly advise that that you do. But um, thanks so much, Adam, for your time. This has been a pleasure catching up with you. And as always, I learned something new about every guest that I have on board, and we've known each other for multiple years. So I appreciate your time again. Thanks so much and take care. Bye bye.

SPEAKER_02 52:32

Okay, thank you, Mark. Bye bye.

SPEAKER_01 52:33

Bye.