

HR Mixtape: Episode with Shari Simpson featuring Rachel Shaw, President and Principal Consultant of Shaw HR Consulting

Announcer:

You're listening to the HR Mixtape. Your podcast with the perfect mix of practical advice, thought-provoking interviews, and stories that just hit different so that work doesn't have to feel, well, like work. Now, your host, Shari Simpson.

Shari Simpson:

Joining me today is Rachel Shaw, president and principal consultant of Shaw HR Consulting and a nationally recognized leader in disability compliance, leave management, and accommodation programs. Rachel, thank you so much for joining me today.

Rachel Shaw:

Oh, it's great to be here, Shari. So glad to be on your pod.

Shari Simpson:

So we are talking about kind of all things reasonable accommodation, ADA today, and I find this topic honestly so fascinating, because when I started my HR career, you know, kind of the narrative around this was very tactical, very process-oriented, very compliance, check the box. And throughout, you know, my 20 plus years, I've really seen an evolution in this space on how we think about this. So I want to start here. How have you seen that definition of reasonable accommodation evolve, you know, over that time? But, you know, specifically, I'm thinking since the pandemic, because the pandemic had a huge impact on how we think about this.

Rachel Shaw:

Yeah, for sure. I mean, I think that the biggest thing that came out of the pandemic is just this awareness of how broad of a range a disability can be. And so we've seen a lot more requests for workplace accommodations, people asking for accommodations to continue working, but also a lot more leave-based accommodations. And the way that I like to tell employers is the big change that I'm seeing on our end is we need to stop thinking about the idea of accommodation of if they can't do their whole job, it's not reasonable. And now we really look more at, we're looking at job families. We're looking at, I think, work units, like we think about families. And I tell HR departments, look, Does everyone in your home, unless you live alone, does everyone in your home do everything exactly the same? And does everyone do all the same duties? And the answer is no. And so when we're looking at work groups, when we're looking at what might be possible within a work group, it used to be they have to do everything in that job description the same or else it's not reasonable. And now we're looking at, can the whole job get done? Can we look at really looking at the whole work group doing the things that needs to get done so that work group is successful, but maybe different humans do different things, which is the way non-disabled people do their work anyways. We're not all the same. We don't all have the same talents. But we're definitely seeing this push for employers to be, you know, more understanding of difference in the workplace and not see every position as a one-size-fits-all.

Shari Simpson:

When that really leads into what you've talked about, you know, in general about this, is that being creative instead of looking at it from being constraining, how does that look in practice? So, you know, maybe walk me through how a creative approach to that looks.

Rachel Shaw:

Right. I think it all comes down to the intent of the person who's managing the process. So under the ADA, there's two obligations, right? The interactive process obligation and the decision making. Is it reasonable or not? And HR is uniquely tasked with the first obligation of the law, which is the interactive process. And if you start the interactive process with the idea of how is this

not going to work, right, or how do we protect ourselves, that's the compliance piece. And instead, HR's job is to really say, like, how do we make this work, right? How do we make this work? That creativity, that willingness to sort of look for what if, what's possible, it's all approach. Under the law, they call it good faith. And I believe it's the idea that HR is doing the work to gather the data, to seek out a yes if a yes exists. And if it exists, making sure that organization says yes, even if it doesn't want to. And that's really that power of, how do we find a yes? And yes doesn't mean that person's doing less. Yes just means, how do we find that solution? And to me, it's all attitude. It's the whole premise, I think, of the law, which is the good faith obligation of HR. It's what we bring to the table. You know, and a lot of times these employees asking for accommodations, there's a real excitement around it. There's like, how do we help this person? But sometimes people who are in need of accommodation, sometimes there is a belief from the supervisor or manager that they're not as worthy or they're more difficult or they weren't a very good employee before they had the accommodation need. And what HR needs to do is get all that noise outside of the process and instead come to every interactive process as, you know, what's possible? How can we be creative? How can we find a way to find a yes? And if the yes exists to make sure it's implemented.

Shari Simpson:

You know, I love that concept around finding the yes. I once had an accommodation request come through, and this was pre-pandemic, actually. And the person was really requesting, you know, some time to work remote. And what they had talked about in their request is, you know, really related to some of the anxiety that they were experiencing on the job. And the role that they were in could be executed remotely, but really probably would not have been the best opportunity, the best role for that. And so, you know, we went into that conversation and I just started with like, hey, tell me what's going on. Help me understand, you know, what about the job is creating the anxiety because for me, you know, maybe there was a work thing we actually had to change, not necessarily accommodation. And what was great, because we really took that interactive approach, is we came to the conclusion that the anxiety was being driven because the employee did not feel like they were

trained properly to execute the job. So instead of even saying, hey, we're going to offer you remote, you know, our accommodation, and I'm using that term kind of loosely here, was we're going to actually put you through training again. And then we're going to reevaluate this. The employee felt seen, they felt heard, and the manager felt like, okay, that's a good solution.

Rachel Shaw:

I mean, you just demonstrated exactly what I think is the core of the interactive process. The interactive process, the code does not say a meeting. It says an informal dialogue. And what you just demonstrated is the unbelievable concept that an employee is an equal partner in the process, right? Like that their ideas and opinions would matter. And by having that conversation and saying, talk to me, and the other thing you kind of demonstrated by your action, which you may or may not have even been aware of it, is you led with, here's what success looks like. We want you to be here. We believe this is the best way. Help us figure out how to get you there. You were seeking out, how do we support you to be successful? And I think that for employers who go into every process with that mindset of you're valuable to us as an employee, how do we help you be successful? It's easy. The problem is in a lot of industries, not every industry needs an interactive process that's robust. Some industries say yes to everyone and they don't, or they get very few requests. But in industries where there is, you know, you're not going to be able to accommodate everyone in every industry. You're just not, you're going to fire really good, hardworking people who are too disabled to do their job or another job fully and safely. That is a reality. And so what if employers enter into the process, with the idea that, you know, you're asking for something you don't need, especially work from home is so emotional right now for employers that are in person, or at least hybrid, if we will enter into this process with the mindset of this is a fake request, or you don't really need this, or you're trying to manipulate the system, or we don't value you. And if you're not, if you come into it kind of with that sort of feeling, it permeates your process. And so just the idea of like, the first step of my interactive process is what you just did. I call it the intro conversation. And it's that first step where you say, talk to me. You're important. I want to understand. Because sometimes you can fix something super informally

without needing medical documentation, without going through something or implementing an accommodation that the employer may not prefer.

Shari Simpson:

Talk to me about those scenarios where the employee is difficult. And I don't really love using that term to describe employees as difficult. You know, I think it's more humans and humans are complex and everybody shows up differently. So there's complexities there. There is a reality, though, for some HR leaders and some managers who are dealing with a complex individual who might have, you've had performance conversations, and, you know, we have talked about things like FMLA in conjunction with performance conversations, and you do kind of have to treat them separately, right? Like, you don't ignore the performance, but you also don't link it to, you know, an FMLA request, those types of things. You know, I'm cognizant that we're obviously going to approach some of our ADA stuff the exact same way. That being said, how do we, as HR people, coach our managers on really stepping back from that view of ADA accommodations as exceptions instead of part of an inclusive environment that can really benefit us as an employer and the employee?

Rachel Shaw:

Well, I think you've got to train supervisors to even understand what the ADA is and what the requirement is and what the risk is to the organization. I think supervisors need to understand the data behind diverse workforces. They're more profitable, they're more sustainable, retention is better. But I will also say there's a reason why you should not have supervisors managing your disability interactive process unless you're going to say yes. That is why HR exists. That's why there's hybrid models where you have third party companies who come in as well. You just, I can't get in a company, let's say a company has 50 supervisors, a thousand supervisors. All of those supervisors are going to come into the interactive process, not as trained professional HR folks, and they're going to bring in their preferences, their biases, their opinions, their emotion. You know, I would love all supervisors to be in good faith and to come in and want a yes, but that's not the reality. And so sometimes the role is to simply tell a supervisor, you don't get to talk. Like, I understand you have

feelings and emotions, but HR is taking over. And that's where, when you have complex issues, where you have an employee, you know, who has, I often say you get the employees you deserve. And so if an organization has not either taken care of that employee or that there's been, you know, difficulties in that employee, you know, supervisor relationship, you're going to feel that, that noise, that drama, that emotion in the interactive. And what we need to do in HR, especially when you have complex requests, stuff you can't just say yes to, stuff that you may want to find an alternative, or it may be a no, you've got to use a standard process so employees are treated similarly, at least in process, and you've got to go after data. So you're not allowing a supervisor or manager to decide whether or not someone needs remote work, or what does heavy mean, or what does forceful mean, where they might define that in a way that leads more towards their opinion as opposed to an actual data point. And so, you know, the bottom line is you can't leave the interactive process up to your supervisors and managers because asking them to come in and be like, I know you've called me terrible names and you don't like me, but I'm going to treat you with, you know, happiness and purity. It's just not realistic. And your workplace will be at risk. You're going to put yourself at greater risk as an organization, and you're going to accommodate less people. So that would be my recommendation is you've got to really get this over to someone. And even if you have a third party, which I think is very strategic for some companies, you've got to have someone in-house that is managing that relationship, that intake conversation, Shari, that you mentioned, that first talk. And that person really has to care. Like, I don't care that you're our best or worst employee. I don't care if you have zero work comp claims or 50. I don't care if you miss every Friday unless Friday's a holiday and then you call out sick on Thursday. I don't care about that stuff. You know, I'm looking at you as someone who's claiming you have a need, or you brought me a note. Let's go figure out what it is you're looking for. Help me understand what the issue is. And let's go see if we need more data to support, because here's what we need from you. Here's where you are. You think this is an accommodation. We might think it's performance. Let's figure out how we get you to here, because that's a joint goal we have. So that's really the HR role

that I think we need to really make sure that all organizations, small or large, have.

Shari Simpson:

You touched base a little bit on risk, and I want to talk about documentation in that space. You know, I think that role of what to document, how to document, where to document it can be both a strength and a liability. What are some recommendations that you've given to HR professionals to navigate that kind of that documentation compliance piece?

Rachel Shaw:

If you don't document it, you didn't do it, even if you did. So you got to document. Now look, on the short term, when someone has temporary restrictions, it's going to resolve. Whatever your organization is defining as temporary, someone who's got limits for six months, four months, three months, 12 weeks, whatever. I train organizations, you have one piece of paper you need. It's called the Temporary Modified Light Duty Agreement. You need one piece of paper. You're going to have conversations, you're going to have emails, but you're going to document with one documented piece of paper. But when you're making long-term decisions, either on long-term intermittent leave, leave past FML, someone who has permanent work restrictions where they're asking for workplace modifications for a chronic condition or a permanent need, then I train clients on ideally a fourth piece of paper process. You have your intro call, Shari, that you discussed earlier. There's a piece of paper that comes after that so that you're documenting what was and was not discussed. There's a medical supplemental questionnaire that's typically needed. And then there's a meeting invitation letter and meeting notes. Those four pieces of paper are, I believe, the minimum. Now, you're going to have phone calls and emails and notes taken. But those are the pieces of paper when I've seen, because look. We don't do the interactive process so that we can win a lawsuit. That is an outcome that some clients need. But you're using the interactive process and your documentation to educate and inform. And you can't just all be verbal, because some people don't process verbally. But also, a lot of times, you're not sued or challenged by the person you're talking to. It's the union

representative or the family member in their 17th year of law school or whatever. It's the people around. And so if you can talk to someone with good faith, look, I need you to perform and this is performance. And you're saying that what needs to get you there is a disability accommodation. Great. But what I want to do is not only have that verbal conversation, but make sure that I'm documenting the narrative because it makes the process more efficient. It helps the people around the employee be educated. So you're not having 27 phone calls, which can be time-consuming, maybe even impossible, but also can be frustrating for a very competent HR professional to have to continue to relive what you said. And at the end of the day, you're, if you do have someone who challenges, who goes above your head, or if there is litigation or a grievance or any of those things, you've got paper because you can't defend yourself based on what you said you said. And so it makes the process so much more efficient. I always tell clients, if you're not doing four pieces of paper, I always say, try. Try my four pieces of paper. Email me and I'll send them to you for free. And if your life doesn't become more efficient, these processes don't get shortened, and you're not actually touching them less. I will buy you a steak dinner, or a vegetarian dinner, or a vegan dinner, anywhere in the United States, because it just won't happen. Our lack of documentation might be less time on the short end, but it makes our processes less efficient on the long term. And who's actually hurt is the employee most, applicant most, and then, of course, us secondarily. So you need paper, but you don't need 100 pieces of paper. You need one if it's short term, four pieces if it's long term. That would be ideal.

Shari Simpson:

How do you see technology playing a role in this process? You know, as you were talking about those four pieces of paper, I was thinking about the use of AI in a lot of things that we're doing. And we're not there yet, but I could definitely see, you know, a future where there is a preliminary AI chatbot that you can have a conversation with about your job before you even go to HR. You know, so I guess the question is, like, how is technology helping now? And then maybe, you know, what are some things in the future that it might be able to do for us?

Rachel Shaw:

Right now. This very minute, every HR professional needs to understand that their brain is being expanded by AI. They could literally go into like a chat GPT and say, I have a custodian who cannot lift more than 20 pounds over their right shoulder, and they need to throw garbage into the trash can, which requires they lift overhead. How do I accommodate them? and literally they will get emailed links and options. I always used to say, if you're not Googling, you're not in good faith, right? And now, I know it doesn't sound as good, but if you're not using AI, you're not in good faith, because no one, not even me, I've been doing this full time for 18 and a half years. I've been in the disability space for 26 years, before most people even knew the ADA existed, right? And I don't have all the answers. I'm gonna get a disability or an accommodation need or someone who has, a particular disability type, and I'm not going to know. And yes, there's the Job Accommodation Network. And yes, I have an amazing experience. But I will tell you, just throwing it in and having one more resource, especially for things where there's a technological solution. I had a client who they actually lost the use of their hands and their feet. So if someone is high computer use, we usually give them a foot mouse. If someone has a job where there's a lot of spreadsheets, a lot of databases, it's really hard to use voice to text. It almost doesn't work. So I'm on the internet and I'm on chat GPT and I'm saying, how do I help someone who needs high level mouse use with no arms and no legs and needs to be able to use a mouse click function and a spreadsheet? And there, what popped up was It's called a mouth pad. It is a mouse that you wear as a retainer in your mouth and it's in protocol stage. And I reached out to the company and they're able to just start distributing right now when there's need. I mean, I would, I didn't even know that. And you know, it just came out, they're not even full to market. That's the kind of thing where is, is if you really do want to find a yes, if you are an HR professional that is willing to ignore the stuff that your organization may want from you. They may want to know. They may want a yes. They may want something else. But if you're like, look, I just want to find the right answer based on data, and if you're not going in there and checking to see all your resources, then AI is one of those. So that's something you can do right now to find more yeses. The other thing, I do think

long term, there will be opportunities. A lot of people feel very insecure about their writing. So I can give them these amazing templates, but there's such insecurity about writing and tone. And so I do believe that over time, just like there's databases now where you can have templates and you put the data in and it creates a letter. I think that what we will do is be able to have kind of a trusted HR partner with kind of a chat GPT function. But I don't see it ever replacing us, just enhancing it because that human connection, I mean, I know a lot of people are saying there's amazing therapy you can get with a chat bot. But I do think that we will never be replaced, but it'll give us the opportunity, I think, to show our best. So if we're wanting to draft a letter or we put information in, it will kind of prep that for us so that we're going from maybe spending 30 minutes on an activity to maybe 5 minutes and still having it be our voice and still having it be with our cultural intent of our organization. So I do think it's going to make the work a lot easier, a lot more efficient, but I don't think we're going to get replaced. So don't worry, HR folks, your heart and soul is going to still matter and especially how you communicate.

Shari Simpson:

Oh, I love that. And you know, the empathy that HR brings to the table, you know, there's not a robot out there that can do that for us. So I completely agree. It's an enhancement opportunity for sure. You know, as we wrap up our conversation, I want to ask you one last thing around something that I think HR has unique to them in a way is like, we, we often have to quantify the work we do. And ADA is one of those areas where, you know, we have to have some metrics around it so that we can report back to the business how these types of accommodations are, one, coming in and we're tracking them and two, the impact that they have. What are the right metrics that we should be capturing and reporting out to our businesses?

Rachel Shaw:

Yeah. I mean, I think it's very industry specific, but for industries that have leave, they should be capturing what kind of, what is our leave usage? What's our lost days from work? They should be looking at, you know, their, their light duty or temporary duty programs to see how they can be reducing. Leave is one of those things that if you have leave used in your organization and most

organizations that have any in-person component are seeing high levels of leave. But it's one of the few things where we can show our return on investment as HR professionals. It's one of the few areas where we can show that our programming and our process actually reduces leave, reduces the length of work comp claims, reduces the length of off work. It supports people to find ways to return sooner than they might have found on their own. So I always recommend to employers to really look at one of the numbers, which is the lost time. So looking at, you know, what or how are our programs reducing people? Because when you're at work on light duty, you might be doing 50, 60 percent. But when you're off work, you're doing zero, right? And right now it's very hard for employers to find replacements. And so are you able, are you actually reducing the cost of workers comp? Are you reducing the cost of substitutes? Are you reducing the impact on the workplace? So for leave, I think that's a really good matrix. The other thing I think HR should be doing more is the soft matrix. They should be doing confidential surveys to employees. We shouldn't be afraid of the feedback we might get regarding certain supervisors, certain work groups, certain programs we have, because employers really need to understand where are we impacting our culture, where are we improving our culture, where are we creating You're going to lose the employees you want to keep because they have mobility options. And you're going to keep the employees you want to lose forever. And if you don't really have a good feel for how your organization is doing in responding to the needs of your employees. So I think in terms of actual accommodation metrics, leave is a great one. You can get numbers and start seeing your value and reducing costs. But I also think we need to not be afraid to ask employees in a truly confidential survey, what are we doing well? What's not working? What would you do if you were us? And they're going to get feedback they're going to ignore. Some employers are going to get feedback they're not going to want to implement. It's just not important to them. But at least you know and you can start responding and really showing employees that you do care. And here's why we can't give you these things you may want. Here's what we may be able to do. And you can measure that improvement over time with surveys.

Shari Simpson:

I love that. Such good advice, Rachel. Such a great conversation and some really important key takeaways for us to think about in the HR space about being more interactive as we approach ADA accommodations in our organization. So thanks for sitting down with me for a few minutes.

Rachel Shaw:

Thanks. It was super fun. Have a great one.

Shari Simpson:

I hope you enjoyed today's episode. You can find show notes and links at thehrmixtape.com. Come back often and please subscribe, rate, and review.