

Nota Bene Podcast Ep. 128

What Managers Need to Know About the Changing Employment Landscape with Adam Rosenthal

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The employment landscape has been forever changed because of the COVID-19 pandemic. As employers, managers, and human resources professionals learn to navigate the ambiguity of the new workplace, we're diving into some of the short-term and long-term changes and strategies that will help business leaders remain connected and effective.

Joining me to discuss his newly published book, *Managing Employees Without Fear: How to Follow the Law, Build a Positive Work Culture, and Avoid Getting Sued*, is author and labor and employment attorney Adam Rosenthal. Adam and I explore several topics from his book including identifying implicit bias, approaching difficult conversations, and managing remote workers.

Guest:

Adam Rosenthal is a partner in the Labor and Employment Practice Group in Sheppard Mullin's San Diego (Del Mar) and Los Angeles offices. He is an AV Preeminent® (highest honor) rated attorney from Martindale-Hubbell. Adam has also been recognized by BTI Consulting Group as a BTI Client Service All-Star. Adam represents a broad spectrum of employers in all areas of employment law before federal and state courts, the American Arbitration Association and JAMS. Adam represents national and international clients in retail, transportation, high-tech, manufacturing, healthcare, biotech, financial services, hospitality, food services and non-profit organizations.

In April 2020, along with Sheppard Mullin partners Richard Simmons and Brian Murphy, Adam co-authored the *Employer's Guide to COVID-19 and Emerging Workplace Issues* book (Castle Publications, LLC; ISBN: 978-1-940747-61-3). Adam's second book was released in May of 2021, *Managing Employees Without Fear: How to Follow the Law, Build a Positive Work Culture, and Avoid Getting Sued* (Society for Human Resource Management; ISBN: 1586446649).

Transcript:

Michael Cohen:

Welcome to Sheppard Mullin's Nota Bene, a weekly podcast for the C-suite, where we tackle the current national and international legal headlines affecting multinationals doing business without borders. I'm your host, Michael PA Cohen. Let's get started.

Michael Cohen:

Welcome to episode 128 of the Nota Bene podcast. And thank you so much to all of our listeners in myriad nations all around the world for your continued participation in our ongoing conversations, as well as your feedback, please keep it coming. It continues to influence our programming on a weekly basis. My guest today is Adam Rosenthal. He is the author of a newly

minted book, *Managing Employees Without Fear*, great title. Adam received his undergraduate degree from the University of California, Los Angeles, UCLA for short, if you are domestic and a California. Adam received his Juris Doctorate degree from the UC Davis. He practices labor and employment law from the firm's Del Mar office, which for those of you who may be outside of California, would want to know it is in the San Diego area in real Southern California to San Diegans, I might say.

Michael Cohen:

But Adam also practices from Los Angeles, not to leave the majority of the population of the state out of the mix. As I said, he's an avid author and writer. And I'm so glad that he has opted to accept my invitation and join us here on the Nota Bene show to talk about his new book. Adam, welcome to the podcast.

Adam Rosenthal:

Thank you, big fan, and really excited to be here and talk to you about the book and just the legal landscape that employers are facing right now in this unique time and a world history and country's history.

Michael Cohen:

Super excited to hear about it. I mean, I don't think there's anything more top of news, than employment right now. I mean, if there's one consistent story across every major media paper that I read, and I'm an old fashioned guy who, when I started my adult life, I lived in Dupont Circle in Washington, D.C., and I would walk to the Q St Entrance to the subway, and there were literally 100 newspaper machines in a semi-circle, around the entrance to that subway. And I probably purchased about half of them at 5:00 a.m. each day, and that I was loading more things across the subway than most folks.

Adam Rosenthal:

I share with you, I still receive the actual paper copy of the New York Times every morning, and my neighbors look at me like I'm a bit crazy coming out at 6:30 in the morning to retrieve a paper copy of a newspaper.

Michael Cohen:

Yeah, I particularly enjoy reading the Foreign Press to Americans, but the domestic press to those who are in various regions. Until the pandemic for most of my life, I spent a pretty good chunk of it each year outside of America, which I valued greatly, because there's nothing like getting up, say, in Bangkok and reading both the international Tribune for your US feed, but also the local Bangkok, English paper. Just the tidbits of what's going on in Thailand in that moment are never going to be covered like they are outside of the local media.

Michael Cohen:

I'm a huge fan of print and I'm a huge fan of books. And you've written a book that I do want to get to. But before we did that, I thought you might take a minute, Adam, if you don't mind, and share with our listeners how you got to your current spot there in beautiful Del Mar, California on the Southern Pacific Coast of the United States of America.

Adam Rosenthal:

Sure. Thank you. Well, the short answer is I got married. Well, my wife is a native of San Diego and I'm an Angeleno. And although they're only two hours away, they could be in different time zones. But I came to employment law somewhat of a circuitous route after college. You mentioned I went to UCLA. I taught middle school in Oakland, California as part of a Teach for America program, which is often called been the Domestic Peace Corps. My mom's a teacher, my dad's a lawyer. So I think I wanted to hit both of those on the head.

Adam Rosenthal:

I realized early on that probably my true calling is the law. And so, I went to law school thereafter. I was doing general business litigation here in San Diego with a little employment for my first two years of practice, and I kept on gravitating toward employment law. And then we had the great recession in 2009 and I realized, what's the value add as a lawyer in that I saw for me and my career trajectory, and that was representing employers and providing advice and counseling to employers on compliance issues. And that's where what I've done at Sheppard Mullin since 2016.

Adam Rosenthal:

And pre-COVID, I was on a plane probably twice a week in LA, on the train to LA. If you've ever taken the train between Solana Beach in San Diego and downtown L.A., it's my happy place. I probably do my best thinking on those trains. Unfortunately, with COVID, that's been stalled, but it will resume soon. That's a little about me. Three kids. My wife is a marriage and family therapist, half the family are therapists. The other half are lawyers. It's unique whenever we all get together.

Michael Cohen:

That's a perfect mix, because the lawyers need the therapy. So if there's some way that that works out in an even basis, that couldn't be any better.

Adam Rosenthal:

We complement one another in some way. I'm not sure how, but yes.

Michael Cohen:

Yeah, that's terrific. Lots of thinking has been done on trains and lots of novels have been written on trains. I think John Grisham wrote his first novel on a train in and out of New York City from somewhere north of the city. I could have gotten that wrong, but if he didn't, many people have. But you have cracked out something, you've cracked out a wonderful novel. Thanks so much for sharing that path to where you sit, Adam. You've cranked out a significant book, I should say, *Managing Employees Without Fear: How to Follow the Law, Build a Positive Work Culture, and Avoid Getting Sued*.

Michael Cohen:

And it's quite a piece. Just flipping through the Table of Contents is itself, to me, an invaluable exercise that would readily cause any executive understand this is a book they may want to have on their desk. And it doesn't matter if you're in human resources. In fact, this is a book that is probably intended, I would say, Adam, for my own glance, much wider audience than just

human resources managers, because you are really talking about corporate culture and employment in a time where employment is changed.

Michael Cohen:

I mean, I'm looking just look at the American landscape, there are plenty of people who are not employed and there are plenty of jobs and they're not necessarily matching up. In other words, a lot of people have decided to look at life and how they work differently than they did before, what I'll call the great pandemic, for lack of a better word, only because of its change in world history here forward. And that's why I say, employment seems to be the hottest topic in the news in every part of the world. It has, for the most part, changed dramatically. Let me just get started with you, if I might, Adam, and say, hey, what caused you to write this book?

Adam Rosenthal:

Yeah. I was at a conference up in Silicon Valley with lecturing to general counsels, some executives, HR, as well as your C-suite folks. And one of the questions I was asked by one of the participants was, to a panel that I was on, is how do we stop the onslaught of litigation, employment litigation? And everyone had their own take on it, some said, "Well, you got to hire better." One Silicon Valley disrupter who we're all well aware of, household name, I won't say who they are, their in-house lawyer said just don't have employees, independent contractors.

Adam Rosenthal:

That's obviously taking its own path. And others said, offshore outsource. It got to me and I looked around the room, and I said, "The answer is actually much simpler and we don't have to revolutionize who have AI, bots running our companies. It's about training. It's about training managers, training leaders on how to comply with complicated employment laws." The response I got was mixed at first. And so, well, there's trepidation. It's too complicated. Managers can't get it done.

Adam Rosenthal:

We need HR to really play that role, and I think I prevail on most of the audience, making the argument that your managers are really smart people, very capable. That's why they run your companies. They also have a significant responsibility in making sure that they have a compliant workforce, and they have a self-interest here. There's philosophical view of, are we all out here for our own self-interest? I don't know. I'm not going to solve that answer, Hobbes Locke dilemma, but I will say that, I do believe that there should be self-interest.

Adam Rosenthal:

Because if you're a manager, and I represent companies and managers every day, if you get sued, whether or not you did anything wrong, you end up spending a lot of time explaining yourself. And if you didn't do things the right way, you explain yourself more. And if you've stepped in it, so to speak, you're likely going to end up without a job. So there's a real self-interest, let alone the side of doing right by your employees and being compliant, which is all extremely important. That was the initiation of the idea. That was the seed.

Adam Rosenthal:

And then I said, alright, I'm going to write this book. I came to my wife, and she said, "Alright, I don't know when you're going to do it. You work a lot of hours and we've got young kids." I'll

figure it out. A lot of late nights, a lot of time on trains. And just slowly, but surely, I took that idea and created the book.

Michael Cohen:

With a discipline, it takes to write a book like this can't be understated. I'm the king of 85% finished fiction. I've got more 85% finished fiction. I can't let go. And so, I have been told by folks that's why I don't finish because I don't want to let go of the creation, so to speak. And there's some truth to that, but you did. And this is not a fiction. This is a real manual in many senses. Talk to us a little bit about how you've organized this book for executives and what your intent is for how to use it.

Adam Rosenthal:

Sure. Great. Yeah. I, too, love to travel. Before I had kids, I traveled much more internationally than I have, of late. And I always like to pick up a Rick Steves' tour book on my way out the door. And particularly, before Rick Steves became hugely popular. And now, every little cafe you go to is a bunch of people holding yellow books. I pushed the book somewhat like Rick Steves as a tour guide through the employment landscape, with the understanding that there are a lot of complicated areas.

Adam Rosenthal:

But if my readers are going to appreciate the book, so non-lawyers, non-HR professionals, executives, managers, everything from your frontline manager, your restaurant manager to a C-suite level executive, it needs to be relatable and readable. And so, that was my North Star here. And it was a tour guide through the employment process, the lifecycle from the beginning, so recruiting and hiring, all the way through how employment relationship sometimes end, or always end, either resignations or layoffs or separations. That was the way I approached the book as a tour guide. And I guess, we'll see it publishes today. We'll see what the response is.

Michael Cohen:

That's so fantastic. I didn't know we were doing the podcast on the publication date. That is such an honor, Adam. Thank you so much for doing that with us. That's great. You have some other things in here that I thought were interesting as well, if I might just touch on them. You do take folks through the whole lifecycle of employments, but you start on page one with title, what type of manager are you? So, that indicated to me that you're intending this for people who manage others, as you articulated at the outset. And talk to me just a little bit about that topic and why it matters.

Adam Rosenthal:

I approached it from the perspective of a cynical manager. So, I trained thousands of leaders in HR compliance issues, harassment, discriminations required in California and other states have required trainings, many companies do. And I often walk into a room and I have a lot of manager sitting with their arms crossed, basically not wanting to listen to the lawyer, the guy in the stiff suit. And so, I wanted to approach the book initially to say, look, there are different types of managers.

Adam Rosenthal:

We all wear different hats as managers, I tried to be a bit whimsical, comparing the types of managers to TV shows and movies that I grew up as an adolescent in the '90s, so Beverly Hills,

90210, and The Breakfast Club, and just fictional American high school. And so, you have a student council president, you have the popular job, the championship debater, and those are different manifestations of a manager. But really, the idea was, what do you, whatever type of manager you are, what are you going to get out of the book?

Adam Rosenthal:

I guess, like any lawyer, you have to make your case first. And so, in some way, I needed to make my case initially as to why someone should spend the time reading this and hopefully get them to accept that there was a value add in the book.

Michael Cohen:

Does Ferris Bueller come in there, does that count as a '90s era? I don't know. I don't remember, but I just remember Ferris was a righteous dude. And it breaks down to some of these other categories as well.

Adam Rosenthal:

Yes, Ferris. Yeah, I think I'm a big fan of Bueller. I think he would probably be somewhere between the championship debater and the jerk, depending on where he was in the movie.

Michael Cohen:

Right on. Alright, got you. But I do love that, high school breakdown, so to speak, and particularly with the American experience, but also the California experience, which is always a little bit different. And I didn't realize it until I look back at this now that I have to ask myself that kind of question, what kind of manager am I? I think I'm a bad one. My style is management by non-management, and that's probably because I was the kid who was never at school or the kid running up to the city to buy liquor and sell it to everybody who have his truck at the football game.

Adam Rosenthal:

Highly doubt that that's the case, Michael.

Michael Cohen:

Yeah, I don't know where that comes in here, but I love that you would start with that. Look, what's your fabric? And how you lead is what you're really saying, and why does that matter? Well, we can talk about the employment implications that come out of that, rather than trying to be somebody else. Let's talk about who you are, and how we might help you accepting everything that you may be. That's a fascinating place to start a book, and I'm really glad we started there today, Adam. It's one of those insights that you can only get from the author.

Michael Cohen:

And I'm so glad you shared a little bit of that with us. You have a chapter in here making the most of the first three months. I was super intrigued by that. Can you tell us a little bit about that chapter and where it falls in your own thought as an author and why it matters?

Adam Rosenthal:

Sure. Appreciate that. We, employers, managers, spend a lot of time recruiting, interviewing, hiring employees. And then there's often somewhat of a breakdown during this, what's often

referred to the preliminary stage, I called the fusion stage in the book as to how you onboard employees. And again, I'm an employment litigator. Often times, I'll get to a case. I'll be hired by a company, they're being sued in an employment dispute. And I'll sit down with the manager, the hiring manager, and I'll say, "Well, when did you first realize that this employee wasn't working out?"

Adam Rosenthal:

And it's more often than not, the response is, in the first few months. Then the next question is, well, why did you wait for years to separate the employee? And the answer goes back to the title of the book is, well, we were scared and we didn't really handle it appropriately, a lot of Monday morning quarterbacking. Looking at the first few months, I want to equip managers and leaders to say, what are things that you should be looking for, both things that you should do positively? How do you onboard?

Adam Rosenthal:

How do you build camaraderie and culture and instill a sense of ownership that the employee has in the organization? So, very positive things, always start the positive. But also, what are some red flags to look out if you have this new employee? Did they overstate what their abilities? Are they not team players? Are they problematic? And what do you do and catch that early on before it infects the culture of the team and eventually, often leads to litigation? That's why that's my mindset of looking at the first three months.

Michael Cohen:

Yeah, that's super important. I mean, I think we're guilty of that as a profession as well in some respects. I'm not sure it's the first few months, but it often could be, if people were really honest about it, Adam, in big law, call it. That's why this stood out at me, I have always felt those are formative years, just looking back in my own career, those first three months, shook us all out in different ways. And I'm not saying that it was done by merit or anything else.

Michael Cohen:

But people felt and followed their passions in ways that manifested themselves in their first three months of employment that ultimately ended up at the end of the day being where they shook out, but oftentimes takes a lot more time to do that. You have a chapter that I shouldn't skip on implicit bias. Tell us a little bit about that topic. It's a big one. What does it mean? And in your words, as an author, why is it a conundrum?

Adam Rosenthal:

I appreciate that. So I'll say this, of all the chapters that I wrote, this was the most difficult to write. I spent, by far and away, the most time researching, went to the library here at UC San Diego, and really thinking about implicit bias and what I call decluttering implicit bias. To answer your first question, it's a conundrum. Because being implicit, it means we don't see it. We talk a lot in employment circles about overt discrimination. What should your manager do to prevent and what should companies do to prevent discrimination in the workplace?

Adam Rosenthal:

So, policies and procedures around that. Those are tangible things. When it comes to implicit bias, because we're talking about heuristics, so what are the power minds are wired, what information we've taken on since the day we first opened our eyes on this planet, is much more

difficult nut to crack, so to speak. So, there's been a lot of research. As I said, I spent a lot of time reading the academic literature. And there was a disconnect between, in my mind, what academicians opine as to heuristics and implicit bias and how we make decisions that are unfortunately based on biases, again, from our childhood on that have ingrained into our thought process with, so on one side, complexities on the other side.

Adam Rosenthal:

What do we do about it? And there, in my mind, at least in the employment law landscape, there's a dearth of good training and writing on how do we spot implicit bias and how do we deal with it. And so, that was what I try to attack in this book. If I ever write another book, I probably could write an entire book just on this topic, because it is such a complicated area. Which is why, when I challenged the reader on three different scenarios, so rather than just talking about implicit bias and how our minds form thoughts, wanted the reader to really go into the mind of a manager facing bias.

Adam Rosenthal:

One scenario focuses on your manager, and you have two employees, who both tell you that they're expecting a baby, one is a male manager, and he's already had a kid before and what are your expectations of him, versus a female superstar, who tells you she's pregnant and having a baby on her own. And what are your biases that you would have? We all bring biases to the workplace, because we're human beings. And how do you overcome them? Another scenario I talked about is a bias against overweight people.

Adam Rosenthal:

What are some reactions one would have if they thought that the employee they're about to hire looks a certain way? Maybe because they have an outdated LinkedIn picture or whatnot. And then they meet this employee in person or virtually and, well, he looks differently. How do you make sure that your implicit bias, if you have implicit bias toward certain people because of their weight or your perceived views of how healthy they are? How does that impact your decision making and how it shouldn't impact?

Adam Rosenthal:

And the last one is probably the most difficult, is looking at how do we build diversity through breaking down implicit bias in hiring decisions? And I tell a story, fictional story of a manager, a consultant who has a choice between hiring a young associate, what one would be a fraternity brother of his who's all around a nice guy, charismatic, and whatnot, and then a hypothetical superstar first generation college student who's bilingual, but maybe doesn't have the same cultural connections that the manager does. And how do you unwrap that implicit bias?

Adam Rosenthal:

That's how I approached it. I want to look in real world applications, and then see how we can answer the question, can we declutter implicit bias? The social scientists are split on that decision. I come down to, I think we can, but it takes a lot of work.

Michael Cohen:

Such an important area in an inclusive society. And it is so important to be, at least in my own view, an inclusive society. I have found it in my own experience to be one of the hardest challenges in the professional life. I feel grateful and fortunate early in my partnership years, so

25 years ago now, and a senior woman partner came into my office one day and sat down, and I did not like her. I knew she had opposed my partnership because she didn't think my collections were high enough on the build value of my work and the percentage basis, they were much higher than hers.

Michael Cohen:

So, that kind of hypocrisy leads me to bound by logic and reason be upset. And nonetheless, she plopped herself down right in front of me. And she said, "Michael, your case teams look like your fraternity, and that word there struck me." I was recalling that story, and when she left, though she was somebody who I found to be a challenging personality, I also had an enormous amount of respect for her. And I thought about what she said, and she was 100% right.

Michael Cohen:

I was naturally gravitating towards people I had, in essence, as a young person been surrounded by as friends over my limited life span at that time. I hadn't been exposed to a lot of people right outside of friends my age. And so, I was looking for people like me. And because of her, I started looking for the opposite of me and colleagues, if you will, and I'm not saying that was a success in any way. I mean, it was. I did find not hire my fraternity, but I'm not sure. That was, in any way, disciplining out implicit bias. It was just behaving or adopting a habitual behavior in a way that tried to safeguard against it, but didn't really address what it may be.

Adam Rosenthal:

I guess I'll take a different view on that. You're obviously a leader within the law, you're certainly a leader here at Sheppard Mullin. What you did, and that by being very intentional about diversifying and not allowing what's referred to as affinity bias, we tend to like people who are like us, who we want to have a beer with. But we shouldn't be making hiring decisions as managers based solely on, although that could be a factor, and maybe an important factor, but not certainly shouldn't be the factor of making hiring decisions on who is most like us.

Adam Rosenthal:

Because then, we will only have, as you said, a team full of me's. And that is not, not only as a social value of inclusivity and diversity, but there's been plenty of studies that diversity in the workplace and your workforce creates better outcomes. There's a bottom line of putting aside the moral imperative and the legal imperative. There's a business reason for it. The fact that you noticed it 25 years ago, well ahead of time. Nobody was talking of implicit bias 25 years ago. I'm not even sure that term was probably coined in employment law context. You set a course to right the wrong. And so, I would commend you and say, you're out front on that by making that decision.

Michael Cohen:

Well, thanks. I credit that senior partner who dropped into my office. It was hard to break legal glass ceilings in big law for women attorneys coming up in the '70s and '80s. I mean, heck, there were law schools in this country that were male only well into the mid-70s. And I put that in perspective. And so, and she was a person who had wholly on merit, and I should express some thanks to her for that insight at the time.

Adam Rosenthal:

Absolutely.

Michael Cohen:

I'm not sure I would have ever corrected course, but I am grateful that there was some course correction because I have benefited from all of those things over the years that you just mentioned, Adam. I have certainly been able to experience wonderful outcomes and results that would have never come from a bunch of me's, and so, terribly important chapter. I do want to hit on a couple more of these, if you have time to stay with me just a little bit, Adam. The difficult conversations, tell me about that. I don't like to have them.

Adam Rosenthal:

The approach as chapter nine in the book is actually not on difficult conversations with employees about their performance. I actually covered that in other chapters. It's when an employee comes to their manager with a difficult conversation, and what's a manager supposed to do. I know, just because this is the playground that I occupy, the most times when an employee has a concern, maybe they feel they're being discriminated against or they're being harassed or they're being unfairly treated, they often go generally to their frontline manager first.

Adam Rosenthal:

That's someone they trust. They have a relationship with. Usually, they don't run to HR. They don't call the anonymous hotline. We need to prepare managers on how to intake that information. Because a manager is not a friend. A manager has a legal responsibility. When an employee comes to his or her manager and says, I feel that so and so is crossing boundaries. Where a friend may say, alright, tell him to shut up or take him behind the woodshed and whatnot. A manager doesn't have that drop some advice and run away.

Adam Rosenthal:

A manager has an affirmative duty to bring that up the chain and investigate and do it properly. That's the M.O. of that chapter, is preparing managers on how to intake, how to be the listener when an employee comes to them, wearing both their manager leader hat, their friend hat, their mentor hat, and then their legal compliance hat.

Michael Cohen:

I thought that was a little bit of a different twist, which is why I wanted to ask you about it, and I'm so glad you flesh that out a little bit for our audience. Not the difficult conversations that you have to have as the manager, but the ones that you get as the manager. And I've had a few of those over my career. And I remember being caught like a deer in headlights, just frozen. And of course, subsequent time and deliberation bring a clearer head to it. But at the moment is one that is not easy, as you properly frame the chapter.

Michael Cohen:

I'd be remiss if I had you on the show and didn't ask about the chapter, managing remote workers. So oppression to end perhaps even more important now than ever, Adam, talk to us a little bit about what our audience might need to know in that sector.

Adam Rosenthal:

Sure, yes. So, just a little background here. This is a podcast. We can be a little more a little more personal. I was writing this book. I started in earnest in December of '19. And I was getting making my way through, and then we all know what happened in February, late February and March of 2020. And I actually had to put the book down for a couple of months and I worked with two of our partners, Richard Simmons and Brian Murphy, to write another book on COVID-19 and it's a guide for employers on COVID-19.

Adam Rosenthal:

And when I went back to the book that I had originally writing, I thought, well, how do we do this. The world changed in March of 2020 in drastic ways, and how do we prepare managers for this change? It's not the deep dive that the other book that I co-authored and then continuing to update, even as we speak, I was working on it this morning, as employment law, regulations, and requirements change due to COVID. But big picture, what does a manager do now that we have this return to work and we have a situation both during the pandemic and still, to this day, where you have remote workers?

Adam Rosenthal:

And then what do we know is going to happen after the pandemic? All the reports that come out, the Gallup reports, and reports from the publisher of my book, SHRM, the Society of Human Resource professionals, is that after the pandemic, as we're coming out of it and been starting now, and really, for the next few months, at least in the United States, we're going to have this hybrid workforce. We'd have employees who are working from home, all the time employees that are working coming in one or two days a week.

Adam Rosenthal:

Not necessarily for health and safety considerations, but because the world is changing, and maybe we don't want to have long commutes. People don't want to spend two hours getting to their office when they can be working and being with their families more. I haven't missed one of my kids literally games all year. I can't say last year that I have such a great record. I mean, that's just, again, the changing nature of our work. I had a trial entirely an arbitration entirely on Zoom. I mean, this is whole new world.

Adam Rosenthal:

With managers, you have a challenge, because you still have legal compliance issues that hasn't changed. But you also have the imperative that you're building a safe work environment, a psychologically safe work environment for employees. How do you do that when you have some employees remote, equitably, and some in person? And so, those are challenges that I wrote about in the book.

Michael Cohen:

I'm glad you wrote about them, because I couldn't agree with you more on the hybrid workforce, but it doesn't really matter what I think. Every serious business survey and prediction is that you are going to have not just a hybrid workforce, but a hybrid workforce waited to work remote work. I mean, if you can reduce your fixed real estate cost and improve efficiency, which is what has been proved over the pandemic and have happier people, why would you not go in that direction?

Michael Cohen:

I mean to do, otherwise, as I read recently, I think, in one important business publication would be getting your chicken wire canoe and start swimming upstream. The American workforce has already relocate. If you look at the growth of mid America cities they're extraordinary. What do you think is going to happen? In one month in August, all those people are going to completely uproot the better lives they have now, and it turned to X, Y, or Z. That is not going to happen.

Michael Cohen:

And that's why there's a mass mismatch right now between employment and the number of jobs that are available than people have essentially discovered, I think, at least in substantial part that they can chart their courses, mass competition for employees right now. And there's competition for remote workforce, and people are competing on that ability. And I've seen the government do it now. And that's when I know something's really changed. Like I have friends in government agencies that are managers, senior managers.

Michael Cohen:

They're my year, if you will, my age, but in agencies where they have been for 30 years and could retire a good pension, but have reached senior ranks and feel real public service obligations to their departments. And they are allowing this to continue. They have employees who normally would be on the bus or subway coming into Washington D.C. on a 20 or 30-mile commute, even a 10-mile commute in Washington, D.C. You're an Angeleno, you know what that means. That could be a 90-minute commute.

Michael Cohen:

And now these people have returned to their homes, to their families, whether it's Jackson, Mississippi, or whether it's Pismo Beach, California or San Luis Obispo. There was a remote government workforce that is no longer needed to be centered in the nation's capital, doesn't really diminish what's going on in the nation's capital, which itself is growing for other reasons. But this has got to be to me that there seems to be some acceptance that needs to occur around this issue, because it's being a braised and used to by those who are moving forward. And otherwise, it just feels like, my God, man, are you from the '80s?

Adam Rosenthal:

It's going to be the biggest challenge of employers have coming out of the pandemic, second to none. Because I will say this, very few companies have figured it out, and those that have probably don't really know it yet. And what I mean by that is, I think during the pandemic and crisis mode, almost think of it like the whole economic system, a whole country has been in shock. Politically, obviously, with the pandemic, the election, we were running on adrenaline.

Adam Rosenthal:

We're going to slow down, and life is going to get back to normal, whatever that means, whatever that looks like. People will travel again. And there'll be certain expectations around that managers will have, leaders will have to create innovation and value for their organizations. Doing that post pandemic in a remote workforce is a challenge that's very different from how it's been during the pandemic. And so, managers and companies in your audience, your C-suite audience, there's a thought, questions that they're having right now to find that mix.

Adam Rosenthal:

My general advice to employers is listen to your employees, but really think critically on this and take baby steps. Because I think in certain industries, you're going to find particularly hard. We talked about onboarding new employees. Well, onboarding new professionals, so recent college graduates, I have two nieces are graduating from college this week from Tulane. Shout out to them, heading to New Orleans tomorrow. They are entering a very different workforce, had they graduated two years ago. But they still need all the training that we did.

Adam Rosenthal:

If you remember, when you're a baby lawyer, I certainly do. Being in the office really mattered, darkening the door of a senior partner to get insight on a case or how to deal with an opposing counsel who's obnoxious. It's harder to do that in a remote environment. We need to figure that out. There's technological solutions, but they're also real world implications. And companies that figure that out are going to be much better in the next decade than those who don't.

Michael Cohen:

Yeah. That's really super important. I'm so glad you flagged that. I tend to see the world through my own eyes, meaning I'm 55 years old, and much of my career has been an international career. And so, I've, in part, learned to be remote, probably before people talked about it as remote. I remember carrying around Macintosh laptops that were like just a brick.

Adam Rosenthal:

20 pounds, right?

Michael Cohen:

Yeah. I mean, if I could get them the battery to last, like 90 minutes on the plane, I was like, psyched, that I was 90 minutes ahead of being grounded somewhere on. But over time, I guess, I have involved in some ways, because it's gotten so much easier for me to work around the world through technology and devices. And the executives that I tend to work with are similar. They're multinational executives that aren't necessarily that maybe in their offices 20% of the time, wherever those headquarters may be. And I've just seen those folks.

Michael Cohen:

I've seen that C-suite start to change. I've seen senior executives in companies for major brands, based in Southern California, pick up and move to Texas, because there's a better program in gymnastics or ice skating, or whatever it is for their family and their daughter in that particular Texas location than there was in Southern California. They spent three quarters of their time on an airplane anyway, so what difference does it make? They might as well have that family situated somewhere that's better for them. But if you're just starting a job, what a different lens that is?

Michael Cohen:

And how important is it that the other folks be there, so that they can't evolve in that way? I mean, I do remember relying on each other as a young person coming into the workforce. We had a class of people, so to speak, those people you started with, and I remember relying on each other in a way that I can't imagine doing remotely. Yup, young people have grown up in the 21st century. I grew up in the late 20th century. Can't ignore that those could be different

things. It is going to be interesting and challenging. I really liked your advice that, look, man, take baby steps. Let's figure out what's going to happen and go with the flow. You don't necessarily have to predict the future and try to jump through hoops that may or may not ever apply to you.

Adam Rosenthal:

Couldn't agree more. I think leaders need to keep their ear to the ground, but on this issue in particular. And see not only what market says, but what their employees say, what their managers say. I mean, we have to listen to our managers and who may say, yeah, this is working in my area of the company in my business and we figured out, and other managers who are struggling and how to manage them. There's no one size fits all approach on this issue. Some issues are an employment law. This one, I think, really needs to be unique to the circumstances, the organization, and the business needs.

Michael Cohen:

Adam, it's so hard to say goodbye, which is not my way of signing you off the podcast yet. I think I still have a little bit of time with you. But it is Chapter 15 of the book near the end, talk to us a little bit about what our audience ought to know here in the executive and manager realm about saying goodbye.

Adam Rosenthal:

Yeah. Look, every manager needs to be prepared for saying goodbye to employees. We hope, and a big part of the book is and really the outcome that I want, is that when you say goodbye to the employee, if you've done everything right and it is a breakup, that the employee goes on and is maybe unhappy, but is not disgruntled enough to go to a lawyer. Or if they do go to a lawyer, the lawyer says, you don't have a case, move on with your life. That's a successful outcome that your company, your employer treated you right.

Adam Rosenthal:

You're an at will employee, it didn't work out, or there were layoffs, it happens, and launch your next career. I write in the book, in that chapter, really focusing on not only how to have those conversations with the logistics, but we're looking at it critically, kind of the last check marks that an employer or a manager should go through, kind of the last list to make sure that they're doing it right. Because, again, back to being an employment litigator, most disputes come out of terminations.

Adam Rosenthal:

And so, there's that final check before you make the ultimate decision to separate employee, to make sure it's legally compliant. And they're doing it with respect and deference to, here's someone who devoted part of their career and showing people respect and pay it forward. Not every job works for every employee. That's okay, but being civil about it as well.

Michael Cohen:

Adam, your final chapter is a few parting words. So, if you wouldn't mind sharing a few with us, and in those parting words, don't limit yourself to the chapter, if there's something you haven't covered.

Adam Rosenthal:

Well, I'll say this, being a fan of your podcast, obviously, your audience, much of your audience international, you may be telling me how many different countries tune in, so to speak, on a weekly basis. It's a lot, I know. For your international audience, I want to say, I do a lot of work for several multinationals, including several very large, well-known companies based in India. And they, as often the case, their leaders will come out on visa to the United States to lead a team.

Adam Rosenthal:

I wrote the book, certainly, for an American audience, but well aware of the fact that I hope a lot of my readers will be international. That when they manage employees in the US, either remotely like we spoke about, or in-person stateside, that they're mindful of the unique culture of the employment relationship in America, which is vastly different than that in Europe. That whole notion of an at will employment relationship, much of Latin America, and even Canada. The idea is for your international audience.

Adam Rosenthal:

I think I would say just a little sell of the book, but to initiate your employees, there's, I'd say, a necessity. If you're going to have a manager work with employees based in the United States, it's important that that manager understands his or her legal obligations, because there is no defense to, oh, he was Italian or she was from Pakistan. And therefore, ignorance is a defense. Certainly, that doesn't exist in the United States. They're expected to know the law, which is daunting, particularly if they're learning a new culture, new language, just a new way of doing business that's uniquely American.

Adam Rosenthal:

The book, again, part of my goal in the book was to write in such a way that's very user friendly. I will say an added benefit to a foreign audience is there are a fair amount of Americanisms in the book. For example, when I talk about how to discipline employees, I write about two interesting characters Bill Belichick and John Wooden. As a UCLA alum, John Wooden holds a special place in my heart. I don't have any love for Bill Belichick, but I talked about their managerial style, as if they were managers. And they, certainly, in their different ways, they are and were managers.

Adam Rosenthal:

So, for an audience who may not know those two names and never heard of them, that's okay. I've been teaching a little America along the way, because orientating yourself to someone who's coming from a different culture and a different country, to our way of doing business, I think it's helpful. So, there's a little value add there for your listeners who have American based employees, US based employees, and maybe also interested in learning more about American culture.

Michael Cohen:

Yeah, I think that's a fascinating point. I'm so glad you added it. This isn't a manual for American managers. This is a manual for anybody who is managing American employees, and that is a vastly different audience and what is still the world's most dynamic marketplace, and as you said, one with distinctly different employment, contracts, and relationships than many places, if

not, almost all places around the world. Adam Rosenthal, thank you so much for your time today and being on the Nota Bene podcast. It was such a gift to have you on the show the day the book releases. Thanks so much for being with us.

Adam Rosenthal:

My pleasure. Thank you, Michael.

Michael Cohen:

Well, that's it for this week, folks. As always, thanks so much for listening, and I look forward to being with you next week. Until then, take care.

Resources Mentioned:

Adam's Book - Managing Employees Without Fear: How to Follow the Law, Build a Positive Work Culture, and Avoid Getting Sued - <https://www.amazon.com/Managing-Employees-Without-Fear-Positive/dp/1586446649>

Employer's Guide to COVID-19 and Emerging Workplace Issues, Year 2 - <https://castlepublications.com/product/employers-guide-to-covid-19-and-emerging-workplace-issues-year-2/>

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Adam's Sheppard Mullin attorney profile - <https://www.sheppardmullin.com/arosenthal>

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