

That's What They Said: Quotable Wisdom from LEAP 2018



When it comes to employment law, hope isn't a strategy. And rather than sitting back and hoping the spinning wheel of legal trouble (*Lawsuits! EEOC claims! Agency fines!*) won't land on their organizations, hundreds of HR pros each year get updated on their HR compliance duties at the Labor and Employment Law Advanced Practices (LEAP) Symposium.

The 14th annual event was held April 11-13 at Caesars Palace in Las Vegas and was hosted by Business Management Daily and The HR Specialist. LEAP 2019 will be at Paris Hotel & Casino in Las Vegas, April 3-5, 2019 (see www.LEAP2019.com).

Here is quotable wisdom from America's finest employment law minds at LEAP 2018:

1. **ADA** Avoid the 'D' word with employees

"Don't ask employees if they have a disability or any other question about specific medical conditions. You only need to know the kind of job modifications the employee wants or needs." — *Tony Martin, Ogletree Deakins, Las Vegas*

* * *

2. **Liability** Lawsuits aren't about the law

"The more I go along in my law career, the more I realize that employees' lawsuits are less about laws broken and more about feelings being hurt and people feeling excluded. And employers need to guard against that." – *Deborah Adams, Frost Brown Todd, Cincinnati*

* * *

3. **Retaliation** Why countersuits can backfire

"Counter claims against employees who sue you may feel good when you're filing them. But they will be viewed

as an 'adverse action' in court almost every time." – *John Doran, Sherman & Howard, Phoenix*

* * *



4. Pay equity Say 'no' to salary questions, 'yes' to a pay audit

"Figure out how to set your compensation without relying on asking applicants about their prior pay. It's a sea change for a lot of companies, but more states and cities are prohibiting employers from asking about salary history. Remember, you can still ask employees what their salary expectations are ...It also makes sense to do a gender-equity pay audit to find out where you fall on the risk scale, and then take steps to fix the problems you find." – *Fred Plevin, Paul Plevin, San Diego*

* * *

5. Discipline Be specific, be consistent

"Be clear and consistent with your discipline. Reasons like '*He just didn't seem to be a team player*' aren't specific enough for a termination. The more unable you are to explain why you took an action, the more vulnerable you are to a lawsuit." – *Gary Moss, Jackson Lewis, Las Vegas*

* * *

6. FMLA Your weapon against leave abuse

"If you have employees abusing intermittent leave, consider getting them to do a recertification based on changed circumstances. That can be your legal friend." – *Jennifer Trulock, Baker Botts, Dallas*



* * *

7. Termination One step before erasing laptops

"If you have any thought than a departing employee may file a claim, consider 'imaging' their laptop before wiping. In fact, consider doing that for all departing employees. When you're cleaning off a laptop, you're cleaning off employment records." – *Rick Roskelley, Littler, Las Vegas*

* * *

8. Free speech Don't try to stop political talk

"Can you outlaw all political speech at work? Most employers don't because it's hard to determine what political speech is and because everybody is doing it. But you can still require all discussions to be respectful." – *Rich Paul, Paul Plevin, San Diego*



9. Harassment #MeToo is an opportunity, not just a risk

“Don’t look at the #MeToo movement as a negative. It’s an opportunity for you to make needed changes in your workplace because, for this one brief shining moment, you’ve got the C-Suite’s attention. You’ll have a good shot to get those extra dollars in your budget approved to do more training and improve your policies.” – *Deborah Adams, Frost Brown Todd, Cincinnati*

* * *

10. EEOC Soft talk in DC, but not in local offices

“Enforcement is not dead ... Even though we’ve seen a more conciliatory tone at the top of the EEOC in Washington, at the local offices they’re still very aggressively imposing their view about discrimination on the workplace.” – *Joseph Clees, Ogletree Deakins, Phoenix*

* * *

11. Immigration Why your I-9s must be kept separate

“Remember to always keep your I-9 forms separate from your other HR files. Government agencies do talk to each other. And if you give unrelated files to ICE, those files can also be examined by the DOL or any other agency.” – *John Fay, LawLogix, Phoenix*

* * *

12. Compliance Audit your practices before feds do

“As HR, your ultimate goal is to protect the company. So self-audits are a good tool to identify problems before they become an issue. When lawyers get involved, it will become a hornet’s nest.” – *Andrew Cook, The Claro Group*