

# LEAP Symposium 2019 highlights: The top 10 employment law lessons

Hundreds of HR professionals gathered in Las Vegas on April 3-5 for the HR Specialist's 15th annual Labor & Employment Law Advanced Practices (LEAP) Symposium. Here are some of the bits of employment-law wisdom from the 30 speakers:

## 1. Hiring: The legal risk of high-tech screening

"A lot of algorithms that screen out applicants were created by white, young men, so they can sometimes favor applicants who are young and white. That's why it's best to have humans review decisions, too, not just artificial intelligence." – *Carrie Hoffman, Foley Lardner, Dallas*

## 2. Lawsuits: Settle a lawsuit or fight it?

"Never think that your attorney's suggestion to mediate or settle a case means they're not doing their job. That's probably the best big-picture financial decision for your company." – *John Doran, Sherman & Howard, Phoenix*

## 3. Marijuana: For many, testing policies go to pot

"With the confusing patchwork of federal and state laws on the marijuana issue, a lot of employers are just giving up. They're throwing up their hands and not drug testing anymore. It's a real challenge for employers." – *Dan Kaplan, Foley Lardner, Madison, WI*

## 4. Arbitration: Why Google changed its policy

"At Google, when we did away with forced arbitration, it lifted the veil to allow employees to feel safe and to get a fair shot at having a full investigation." – *Nami Russom, HR Business Partner, Google People Operations, Mountain View, CA*

## 5. Terminations: Firings shouldn't be a surprise

"You don't want people being surprised by terminations. If they are, they may think it's because of the FMLA leave they took or the safety complaint they made. That's why you should give people plenty of opportunities to improve, and then document those efforts." – *Dick Brann, Baker Botts, Dallas*

## 6. Immigration: Don't get burned by ICE

"ICE wants employers to fear them the same way that employers fear the IRS. And the way ICE is doing that is with a huge increase in I-9 audits the past few years." – *John Fay, LawLogix, Phoenix*

## 7. Policies: Say no to 'no pay talk' rules

“You can’t make blanket policies saying employees aren’t allowed to discuss their pay. That’s something I still get a lot of questions about. Employers want to make rules like ‘You’re not going to get your bonus unless you agree not to talk about it.’ You can’t do that.” – *Jennifer Trulock, Baker Botts, Dallas*

## **8. Employee leave: How much is too much?**

“There’s no magic number about how much leave you have to offer employees. It depends on the employee, the position and your business. But most courts agree that indefinite leave is not reasonable.” – *John Doran, Sherman & Howard, Phoenix*

## **9. Harassment: It’s time for a culture check**

“It doesn’t matter how much you pay employees. If you have an environment that is hostile and toxic, they’re not going to stay. And that’s especially true today when jobs aren’t hard to find ... We’ve got to stop just talking only about the liability side of harassment and start talking about changing the cultural side.” – *Jared Pope, founder, Work Shield*

## **10. FMLA: Accept ‘early’ FMLA requests**

“Don’t shut the door on people who come to you before they’re eligible for FMLA. Employees can request FMLA before they reach the year or the hours limit. They just can’t start the leave until after.” – *Suzanne Martin, Ogletree Deakins*

## **2 more pieces of advice**

### **MeToo 2.0: More equal-pay complaints**

“Most people think about the MeToo movement in terms of sexual harassment. But the next major impact is going to be about how it impacts equal pay. I would put that on your radar. Review what people are making in similar jobs and then ask the difficult question of ‘Why is it different?’” – *Randy Freking, Freking, Myers & Reul, Cincinnati*

### **Have the tough conversations early**

“You sort of know within a few months whether someone is going to work out. That’s why it’s important to have conversations early like ‘Do you need more training?’ and ‘Here’s what we expect from you.’ ... And if it doesn’t work out, cut ties sooner rather than later. The longer employees stay on without feedback, the more legally dangerous it is.” – *Jennifer Trulock, Baker Botts, Dallas*