

May 21 & 22, 2012
St. Paul RiverCentre

The 2012 Upper Midwest

Employment Law Institute

100+ Sessions = Customized Learning

New Regulatory Update Track

Extensive, High-Quality Materials

News from EEOC Commissioners

Valuable New Bonus Items



co-sponsored by Minnesota CLE,
the MSBA Labor and Employment
Law Section and the Twin Cities
Human Resource Association

And Much More!

Delivering the Latest News, and Tips so You Can Better Pressing Client Matters

The Simple and Effective Way to Keep Up on All the Important New Developments.

Get both high-level summaries and opportunities to drill-down into the details of the most talked-about employment law issues today. The Annual Upper Midwest Employment Law Institute covers all the important and timely topics facing employment law professionals. The Institute keeps you on the cutting edge of both new legal developments and new practice tips.

One of the main purposes of this Institute is to provide thorough updates (in both oral and written form) on all new law developments impacting those involved with employment law. The conference features sessions updating attendees on the ADA, Title VII, wage and hour, the EEOC, Eighth Circuit cases, the FMLA, and much more. And on top of first-rate presentations, you'll return to the office with extensive new written materials that will be a reference resource for you all year long.

Skilled Faculty Are All Charged with the Same Goal: Provide the Most Practical Education.

The Institute features an outstanding faculty committed to providing the best possible (and most practical) education for you. The conference faculty is drawn from in-house, private and government practice. Our faculty mix leverages diverse insights, experience and perspective. Together they create a roster of talent that provides unmatched education – spotting and analyzing the oftentimes complex legal and business issues, and offering real-world advice and practice tips for tackling those issues. And with government enforcement activity a particularly hot topic for attendees, we are including on the faculty numerous national and local government agency representatives to discuss the latest agency initiatives and priorities.

National EEOC Leaders Join this Year's Faculty.

Instead of you traveling to Washington, D.C., we are bringing D.C. to Minnesota. EEOC Commissioner Chai Feldblum, Commissioner Victoria Lipnic, and EEOC Legal Counsel Peggy Mastroianni will each present two sessions at the Institute. It's your chance to get the "inside story" concerning EEOC initiatives, enforcement plans, investigations and more. Each is an excellent presenter, candid, and willing to discuss the current emphasis of the EEOC. Don't miss this very special opportunity.

Customize Your Learning – You Select from More than 100 Diverse, On-Point and Well-Designed Session Topics.

The Institute offers more than 100 session options. The Institute line-up tackles all of the important employment law topics from numerous angles – all designed to provide you with practical information and practice tips to make you better at what you do. The number and wide range of topics allows you to tailor a program to your specific needs – one of the many features that makes this program an outstanding investment in your professional development.



Don't miss out – Register to enjoy two great

Analysis Handle

1850 Pages of New Materials in the 2012 Employment Law Handbook – Easily Searchable, High-Quality.

Every Institute attendee receives the *Employment Law Handbook*, which contains the written materials that accompany the oral presentations. These materials are prepared in full-text outline form for easy and organized referencing. This course book is provided on a searchable CD-ROM. (Note that we also provide materials in hard copy for every session you attend, so you can follow the session outline and take notes as you go.) These materials will be a valuable reference tool both at – and long after – the program.

A Special Bonus – The New FMLA Handbook – Prepared for Rollout at the Institute!

In addition to the *Employment Law Handbook*, we are publishing the all-new *FMLA Handbook* prepared especially for rollout at the 2012 Institute. Every attendee will receive, at no extra charge, this comprehensive, “how to” guide. It is sure to be a constant help to you in navigating the often complex issues surrounding FMLA leave. We are confident this book will prove extremely valuable for anyone whose practice requires FMLA knowledge.



The Best Employment Law Conference in the Nation.

The Upper Midwest Employment Law Institute is a nationally known, highly regarded program. It has become a “go-to” educational and networking event for employment attorneys and human resource professionals year after year.

There is no other conference that offers so many great topic choices, outstanding faculty, useful resource materials, and such an opportunity to learn. Take these two days to invest in your professional development – two days of great learning in both the classroom and the hallways – and a networking opportunity unlike any other. Whether listening to an excellent lecture, hearing an engaging panel discussion, reviewing one of our Legal QuickSheets™, visiting with colleagues in the hallway, or spending time at our “Ask the Faculty” booth – there is no other conference that provides so much value.

*day and make plans to
days of learning and fun in May.*

Institute Benefits & Bonuses

1. The Brand-New *FMLA Handbook*

A comprehensive, “how-to” guide that helps you navigate the issues surrounding FMLA leave and enforcement.

2. 4 New Legal QuickSheets™

Helpful “cheat sheets” that provide ready answers to your questions. This year’s new Legal QuickSheets™ address wage and hour, hiring, OSHA and credibility assessment in investigations.

3. Dozens of New Sessions on Important Topics

Dozens of valuable new topics are integrated into helpful tracks for advisors, in-house counsel and litigators.

4. Newly Updated Summary Guide™ on Religion in the Workplace

Our Summary Guides™ are popular for a reason – distilled information in a well-organized format.

5. 1850 Pages of High-Quality, New Materials

A wealth of helpful reference materials in the *Employment Law Handbook*.

6. A New Regulatory Update Track

Covering important enforcement developments coming out of D.C. and the local agencies.

7. 100 Session Choices

With the numerous and diverse offerings, you can customize the agenda that best suits you.

8. EEOC Commissioners Chai Feldblum and Victoria Lipnic

Two commissioners plus EEOC Legal Counsel Peggy Mastroianni will speak at the Institute, bringing the D.C. office of the EEOC to Minnesota.

9. A Special “Ask the Faculty” Booth

A chance for you to ask our faculty your toughest questions.

10. Rapid-Fire Plenary Updates

Making sure you’re completely up to date when you leave the Institute.

11. Networking Galore!

Your chance to spend two days with faculty, friends and more than 1400 colleagues in the employment law field.

12. Ethics and Bias Sessions

An opportunity to fulfill your specific credit requirements right at the Institute.

13. Reception, Lunches, Prize Drawings and Other Amenities

Two days of great education in a fun conference atmosphere.

More Special Features...

Attend 2 Post-Institute Webcasts Free!

As another special bonus of attending the Institute, you may attend 2 of the 3 webcasts listed below for free! A coupon code, along with instructions on how to register for free at www.minncle.org, will be distributed at the Institute. These webcasts will be approved for CLE credit. We are confident you'll enjoy your bonus webcast experience.

JUNE 19, 2012 (12:00 – 1:00 P.M.)

1. Exempt or Non-Exempt? Classify Your Workers Correctly

Using real-life case studies, our faculty will discuss classification of employees to protect against expensive wage and hour claims. What are the rules, how are they applied and what should you do if you think a mistake was made?

Tracey H. Donesky, Mary M. Krakow & Laura A. Pfeiffer

JUNE 25, 2012 (12:00 – 1:30 P.M.)

2. Non-Competition Agreements in Action – TROs, Litigation and Negotiation Strategies

This 1½ hour webcast will examine the alleged breach of a non-competition agreement and the resulting strategies of both employers and employees. How does the ex-employer protect itself? How does the employee move on? What should the new employer do? What language in the contract is at issue? Is there a way out for the parties?

Daniel R. Kelly & Jeffrey B. Oberman

JULY 10, 2012 (12:00 – 1:30 P.M.)

3. Important Recent Developments in Employment Law and Practice

A review of some of the most important law, policy and practice developments in employment law including developments in retaliation claims, the implications of the *Walmart* decision, the impact of the social media revolution on employers, religious discrimination issues in the workplace, the impact of recent NLRB rulemaking and decisions on union-free employers and much more.

Robert C. Castle, Susan M. Coler & David M. Wilk

A One-of-a-Kind Bonus Benefit – The New FMLA Handbook Free to Every Attendee

The FMLA Handbook: A Practical Guide

(May 2012)

Editors:

Steven R. Anderson

Mary M. Krakow

Penelope J. Phillips



Table of Contents

1. Overview
2. Coverage Issues
3. Posting, Recordkeeping and Other Administrative Requirements for Employers
4. Qualifying Reasons for FMLA Leave
5. Employee Notification and Employer Response
6. Certifications – Gathering Medical and Other Information
7. During the Leave – Pay, Benefits, Tracking Hours and Other Leave Management Issues
8. Return from Leave – Job Reinstatement, Pay, Benefits
9. Enforcement
10. Interplay with Other Laws and with Company Policies
11. Common Employer Mistakes: A Plaintiffs'-Attorney Perspective

INDEX: Find the topics you're looking for and the breakout session(s) that address them!

Here's just a small portion of the index:

ADA

2008 amendments case and regulation update.....	H-710
Accommodation and discrimination issues.....	D-310
FMLA impact.....	H-702
Law and cases updates.....	A-006
Leave/reassignment as accommodation.....	F-506
Mental disabilities, employer response.....	B-102, J-902
Physical and mental disability case approaches.....	Alt. Plenary Day 2
Pregnancy issues.....	E-401

ADEA, updates..... Reg. Plenary Day 2

AFFIRMATIVE ACTION, OFCCP enforcement..... D-307

AGE DISCRIMINATION, reduction in force..... C-206

ARBITRATION

Effective advocacy.....	D-311
Federal law updates.....	Reg. Plenary Day 2

ATTORNEY FEES, ethical issues..... D-306

ATTORNEY-CLIENT PRIVILEGE

Ethical issues.....	D-306
Federal law violation investigations.....	A-007
In-house counsel.....	H-708
Public sector vs. private sector cases.....	F-509

BACKGROUND CHECKS..... F-501

BREAK TIMES..... F-503, J-904

BULLYING

Cause/effect and ramifications.....	A-003
Employer response.....	B-103

CALIFORNIA, wage and hour issues..... I-808

CANADA, employment law..... H-706

CASE LAW ANALYSIS

Law and procedure.....	B-109
Recurrent and new questions.....	C-204

CASE LAW UPDATE

ADA 2008 amendments.....	H-710
EEOC.....	Reg. Plenary Day 1
Eighth Circuit Court of Appeals.....	D-309, J-906
Federal District Court.....	D-309, J-906
Federal law.....	Reg. Plenary Day 2
Harassment.....	H-705
Policy and practice.....	Webcast 3
Public sector client.....	B-110
State law.....	Reg. Plenary Day 2
Title VII.....	Reg. Plenary Day 1

CASE PREPARATION

Arbitration.....	D-311
Computer forensics and electronic data.....	G-608
Defamation and tortious interference claims.....	I-809
Discipline and discharge.....	I-804
FMLA.....	I-802, I-810
Mediation.....	H-709
Non-compete agreements.....	Webcast 2

CHURCHES, worker protections..... H-703

CLASS ACTIONS, EEOC litigation post-DUKES..... F-508

COLLECTIVE BARGAINING, choosing union representation..... I-805

CULTURAL SENSITIVITY..... I-801

DEFAMATION, case preparation..... I-809

DIGITAL EVIDENCE..... G-608

DISCIPLINE AND DISCHARGE

Case studies.....	D-304
Documentation.....	I-804
Employee misconduct.....	I-806

Non-compete agreements.....	G-605
Problem employee process.....	H-701
Public sector employees.....	H-711
Salespersons.....	A-005
Social media.....	G-604

DISCOVERY

Attorney-client privilege.....	H-708
Computer forensics and electronic data.....	G-608
Ethical issues.....	D-306
FMLA.....	I-802, I-810
Mobile device issues.....	B-104

DISCRIMINATION

Age discrimination.....	C-206
Genetic information.....	E-402
Micro inequities.....	E-403
Pretext case proof.....	G-609
Religious discrimination.....	A-004, J-903
Responding to government agency charge.....	G-601, J-901
State enforcement agencies.....	C-207
Title VII case law update.....	B-105, Reg. Plenary Day 1

DIVERSITY

Religious discrimination.....	A-004, J-903
Working with diverse cultures.....	I-801

DODD-FRANK, investigations..... A-007

EDUCATIONAL INSTITUTIONS, worker protections..... H-703

For the entire index visit
www.minncle.org/2012index.pdf
or scan code from your
mobile device.



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Special thanks to the Institute planners. Their efforts have helped shape an outstanding conference.

At-A-Glance: Day 1

PLENARY SESSIONS

7:00 – 8:00 a.m.

CHECK-IN & CONTINENTAL BREAKFAST

8:00 – 8:10 a.m.

WELCOME & INTRODUCTION

8:10 – 9:50 a.m.

MAIN PLENARY SESSION

1. New Title VII Developments

The important recent cases and what they mean to your practice.

*Katherine L. Butler
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2. An EEOC Update

New developments, directions, and enforcement initiatives.

*Peggy R. Mastroianni
Legal Counsel
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3. The View from D.C. – The Government Regulatory and Enforcement Agenda

An important look into the changes coming out of the D.C. agencies – including new regulatory and enforcement initiatives and shifts in policy by the DOL and the NLRB.

*David S. Fortney
Fortney & Scott, LLC
Washington DC*

8:10 – 9:50 a.m.

ALTERNATE PLENARY SESSION

10 Expensive Mistakes Employers Make in Handling Employee Complaints

When an employee complains to their employer, they are beginning a process that can end in increased trust and engagement at best, or litigation at worst.

How employers respond to employee complaints determines whether the complaint will be an opportunity for growth or an expensive drag on organizational resources. This session will focus on the ten most expensive missteps employers typically make in the face of an employee complaint.

Fran A. Sepler

10:20 – 11:15 a.m.

BREAKOUT SESSION A

11:25 – 12:20 p.m.

BREAKOUT SESSION B

Basics	001 OSHA Basics <i>Karasov</i>	101 Screening Practices Under Attack – What Can Employers Use to Make Hiring Decisions? <i>Bremer</i>
	002 Back by Popular Demand! Leave for Military Personnel and Their Families <i>Wood</i>	102 Repeated at #902 Mental Disabilities in the Workplace: How Does an Employer Respond Under the ADA? <i>Huntrods</i>
Advisors & In-House Counsel	003 Toxic Assets: How Bullies Impact the Workplace <i>Stenmoe & Strauss</i>	103 Bullies in the Workplace, Part 2 – How an Employer Can Effectively Respond <i>Clowser, Strauss, Wittenberg Stenmoe (moderator)</i>
	004 Repeated at #903 Religious Beliefs, Conflict, and Accommodation: Keeping the Peace <i>Schanfield</i>	104 The Perils of Using Smart Phones, iPads and Other Mobile Devices in the Workplace <i>McGuire</i>
	005 Salespeople – Can't Live With Them – Can't Live Without Them: Managing, Disciplining and Firing the Salesperson <i>Raphan & Schaefer</i>	
		105 Title VII – An In-Depth Update <i>Butler, Schmitt</i>
Regulatory Update	006 The ADA and the EEOC <i>Mastroianni</i>	106 The View from D.C. – A More In-Depth Look at the Regulatory, Enforcement and Policy Changes <i>Fortney</i>
In-House Counsel	007 Internal or Government Investigations – Where the Stakes Are High <i>Favo, Gerhan, Rolfs D'Aquila (moderator)</i>	107 For In-House Counsel Only In-House Benchmarking – Social Media and the Virtual Workplace <i>Eng, Mortensen, Yechout Miller (moderator)</i>
Litigators	008 The Retaliation Claim Conundrum: Where We Go From Here <i>Duddleston, Engelmeier, Halunen O'Brien (moderator)</i>	108 Plaintiffs and Defendants at Risk: How the Unemployment Compensation System Impacts Litigation <i>Engdahl, Harris</i>
	009 2012 FLSA Case Update – In-Depth <i>Lukas, Parlo</i>	109 It's Your Turn – Ask Federal Court Judge Bennett Your Toughest Questions <i>Bennett Reinhart (moderator)</i>
Public Sector		110 The Public Sector Practitioner's Essential Case Law Update <i>Befort, Edwards, Luger-Nikolai</i>

COLOR KEY:

Basics
Advisors & In-House Counsel
Regulatory Update
In-House Counsel
Litigators
Public Sector
Ethics
School

12:20 – 1:30 p.m. INSTITUTE LUNCHEON (provided to all registrants)

1:30 – 2:30 p.m.
BREAKOUT SESSION C

2:45 – 3:45 p.m.
BREAKOUT SESSION D

4:00 – 5:00 p.m.
BREAKOUT SESSION E

201
Wage and Hour Basics – Getting It Right
Pecoraro, Sosna

301
Workplace Investigation Basics From Start to Finish
Segal

401
Top 10 Mistakes Employers Make When Dealing With Pregnant Employees
Smith

FMLA School

202
When Does the FMLA Apply? Real-World Hypotheticals and Answers
Anderson, Raddatz

302
The Price of Miscommunication – When Employee Notification or Employer Response Don’t Meet FMLA Requirements
Papacek-Kovach, Sampson

402
FMLA Leave – Medical and Other Certifications
Thomas

203
The Social Media Revolution on Steroids – Meet Google+, Shocking Facebook Apps, and Unusual Social Media Sites
Martin, Sheih

303
The Top 7 Mistakes Made by Employers in Drafting Handbooks and Handbook Policies
Harris

403
Subtle Discrimination and Micro Inequities
Sepler

204
20 More Bothersome Employment Law Questions – From New Law to Tough Everyday Issues
Mrkonich

304 **2-hour session**
How to Discipline and Discharge Without Disaster
Boisvert, Lawler, Raphan

205
The Immigration Compliance Trifecta: I-9 Audits, SSN No-Matches and E-Verify
Myers, Wright

305 **Back by Popular Demand!**
Hiring an Employee With a Non-Compete Agreement – Including the Latest Cases, Trends, Traps and Strategies
Oberman

404
Are They Really Independent Contractors? Enforcement Trends and Best Practices to Avoid Misclassification
DaCosta, Mick

206
Age Discrimination Issues That Arise From Reductions in Force
Brandt, Snyder

Ethics

306 **2-hour session / 2.0 ethics credits applied for**
Real-World Ethics Issues and Answers for the Employment Lawyer
Conley, Cooperstein, Drake



207
Inside the Agencies: Charges, Investigations, Future Plans and More
Frias, Korbel, Lindsey Langevin (moderator)

307 **2-hour session**
Update on OFCCP’s Aggressive Regulatory and Enforcement Agenda
Goldstein, Horvitz

208
The Contingent Workforce and Alternate Staffing Models – In-House Counsel Perspectives
Ballard, Delmuth, Fokken Mick (moderator)

308
Recognizing and Responding to Federal Whistleblower Complaints
Ludgate, Thompson

405
How to Think Like an IP Lawyer: What Every Employment Lawyer Needs to Know About Intellectual Property
Thorson, Rolfs

209
FLSA “Off the Clock” Litigation – The Hottest Issues in the Hottest Cases
Hanson, Lukas, Parlo Reinhart (moderator)

309 **Repeated at #906**
8th Circuit and Federal District Court Update
Bremer, Smith

406
What Do You Mean I’m Not Disabled? The Long and Short of Handling Short and Long Term Disability Claims
Bolter

210
“I Object” – The Tough Evidentiary Questions and Rulings
Bennett

310
Thorny ADA Issues
Schaefer, Schmitt, Thome O’Brien (moderator)

407
Mistakes the Other Side Makes – Avoiding Litigation Blunders That Can Cost Your Client Dearly
Ho, Tanick

211
Public Sector Employee Speech: Whistle-blowing and the First Amendment
Shannon, Vander Pol

311
Top Ways to Persuade the Arbitrator: Making Your Arguments More Persuasive
Jacobs

5:00 p.m. Reception

At-A-Glance: Day 2

PLENARY SESSIONS

7:00 – 8:00 a.m.
CONTINENTAL BREAKFAST

8:00 – 8:10 a.m.
WELCOME & INTRODUCTION

8:10 – 9:50 a.m.

MAIN PLENARY SESSION

- The Minnesota Update**
New Minnesota legislation, regulations and cases.
Ellen G. Sampson
- EEOC Investigations and the Current Use of Subpoena Power**
Commissioner Victoria Lipnic updates you on the EEOC's current use of its subpoena power – why, when and how subpoenas are used and how to raise objections to a particular subpoena.
*Honorable Victoria A. Lipnic
Commissioner
U.S. Equal Employment Opportunity Commission
Washington DC*
- EEOC Action in the Area of Religious Discrimination**
Commissioner Chai Feldblum updates you on EEOC activity in this area, including key cases.
*Honorable Chai Feldblum
Commissioner
U.S. Equal Employment Opportunity Commission
Washington DC*
- Other Important New Federal Developments**
Other new developments in federal employment law including new U.S. Supreme Court cases, new ADEA regulations, arbitration developments, NLRB developments and more.
Paul J. Zech

8:10 – 9:50 a.m.

ALTERNATE PLENARY SESSION

Real-Life ADA Case Studies

A panel of experienced management attorneys discusses practical approaches for dealing with challenging real-life workplace disability cases, including both physical and mental disabilities. Topics will include assessing whether an impairment is a "disability," conducting the interactive process, and exploring reasonable accommodations.

Robert C. Boisvert, Jr., Katherine A. Lawler & Penelope J. Phillips

COLOR KEY:

Basics
Advisors & In-House Counsel
Regulatory Update
In-House Counsel
Litigators
Public Sector
Elimination of Bias
School

10:20 – 11:15 a.m.

BREAKOUT SESSION F

11:25 – 12:20 p.m.

BREAKOUT SESSION G

Basics	501 The Basics of Hiring <i>Ellingstad</i>	601 Repeated at # 901 How to Respond When the Government Serves a Charge of Discrimination <i>Tarkow</i>
	FMLA School 502 Out of the Frying Pan and Into the Fire: Managing the Leave Process After FMLA Leave Is Granted <i>Clark, Clowser</i>	602 Get Back to Work: Reinstatement Rights Under the FMLA <i>Lehmann</i>
Advisors & In-House Counsel	503 Repeated at #904 Give Me a Break: Nettleome Problems With Meal, Rest, and Other Break Times <i>Krakow</i>	603 Repeated at # 803 Employees Gone Wild! <i>Esckilsen, Michael, Omodt, Shaheen Ginsburg (moderator)</i>
	504 Negotiating Separation Agreements: A Mock Negotiation <i>Noecker, Outten</i>	604 Social Media Workplace Cases Studies: A Panel Discussion <i>Burgess-Peel, Phillips, Vasichek Boisvert (moderator)</i>
	Int'l. School 505 Global Employment Law Update – An Entertaining Look at the Unusual, Surprising and Difficult Legal Developments in the Countries in Which Your Company Does Business <i>Garofalo, Sarchet, Symecko</i>	605 The 15 Most Important Non-Compete Cases – What Every Employment Lawyer Should Know <i>Hammell, Roe</i>
Regulatory Update	506 2-hour session EEOC Update In-Depth – Insights on ADA Leave Complexities and Other Hot Topics <i>Feldblum, Lipnic Langevin (moderator)</i>	
In-House Counsel	507 The "Inside Scoop" – What In-House Counsel Wants From Their Outside Employment Counsel <i>Lee, Mahoney, Rowader Schmitt (moderator)</i>	607 For In-House Counsel Only Performance Management – In-House Counsel's Role – A Benchmarking Session <i>Bolden, Branch, Wong Mjannes (moderator)</i>
Litigators		608 How to Obtain the Digital Evidence You Need to Win Your Case <i>Lanterman</i>
	508 Deciphering <i>Dukes v. Wal-Mart</i>: The Status of EEO Class Action Litigation Post-<i>Dukes</i> <i>Mrkonich, Sellers, Vasichek Kaster (moderator)</i>	609 Is It Mere Pretext? The Key to Many Discrimination Cases <i>Fox, Pearson, Sellers Kaster (moderator)</i>
Public Sector	509 1.0 ethics credit applied for Attorney-Client Privilege in the Public Sector <i>Greene, Mills</i>	610 Handling the High-Profile Public Sector Case <i>Madden, Micko, Moore, Shannon Beety (moderator)</i>

12:20 – 1:30 p.m. INSTITUTE LUNCHEON (provided to all registrants)

1:30 – 2:30 p.m.
BREAKOUT SESSION H

2:45 – 3:45 p.m.
BREAKOUT SESSION I

4:00 – 5:00 p.m.
BREAKOUT SESSION J

<p>701 Discipline and Discharge Basics <i>Merley</i></p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Elimination of Bias</p> <p>801 2-hour session / 2.0 elimination of bias credits applied for Understanding Diverse Cultures and Working With Diverse Lawyers, Clients and Employees <i>Campbell, Fondungallah, Humayan, Saavedra Ginsburg (moderator)</i></p>	<p>801 2-hour session / 2.0 elimination of bias credits applied for Understanding Diverse Cultures and Working With Diverse Lawyers, Clients and Employees <i>Campbell, Fondungallah, Humayan, Saavedra Ginsburg (moderator)</i></p>
<p>702 Practical Guidance on the Intersection of the FMLA With Other Laws and Company Policies <i>Phillips</i></p>	<p>802 How to Prepare and Prove an FMLA Case <i>Fabian, May</i></p>	<p>901 Repeat of #601 How to Respond When the Government Serves a Charge of Discrimination <i>Tarkow</i></p>
<p>703 Employment Law as Applied to Churches, Educational Institutions and Religious Organizations <i>Melton-Meaux</i></p>	<p>803 Repeat of #603 Employees Gone Wild! <i>Esckilsen, Michael, Omodt, Shaheen Ginsburg (moderator)</i></p>	<p>902 Repeat of #102 Mental Disabilities in the Workplace: How Does an Employer Respond Under the ADA? <i>Huntrods</i></p>
<p>704 Repeated at #905 The Subtle Art of Investigative Interviews – Techniques and Strategies to Improve Yours <i>Sepler</i></p>	<p>804 Back by Popular Demand! The 4 Rules of Disciplinary Documentation <i>Boisvert</i></p>	<p>903 Repeat of #004 Religious Beliefs, Conflict, and Accommodation: Keeping the Peace <i>Schanfield</i></p>
<p>705 30 Years of Harassment Law – The Critical Concepts and Nuances Every Employment Attorney Needs to Understand <i>Langevin</i></p>	<p>805 Union Organizing 2012 <i>Cummins, Seaton, Zech</i></p>	<p>904 Repeat of #503 Give Me a Break: Nettlesome Problems With Meal, Rest, and Other Break Times <i>Krakow</i></p>
<p>706 7 Key Issues in Canadian Employment Law <i>MacDougall, Noecker</i></p>	<p>806 Employee Theft, Embezzlement and Fraud – Investigations, Terminations, Asset Recovery and More <i>Egan</i></p>	<p>905 Repeat of #704 The Subtle Art of Investigative Interviews – Techniques and Strategies to Improve Yours <i>Sepler</i></p>
<p>707 Labor Law Issues in the Non-Unionized Workplace <i>Seaton, Zech</i></p>	<p>807 The Government Speaks – The Independent Contractor Issue <i>Buysman, Crassweller, Nelson Ross (moderator)</i></p>	<p>906 Repeat of #309 8th Circuit and Federal District Court Update <i>Bremer, Smith</i></p>
<p>708 1.0 ethics credit applied for Hot Topics in Attorney-Client Privilege for In-House Counsel <i>Greene, Gassman-Pines</i></p>	<p>808 Except in California...What to Watch Out for in Dealing With California Wage and Hour Laws <i>Goldsmith, Semrow</i></p>	
<p>709 Improving Your Mediation Advocacy Skills in Employment Law Cases <i>Fox, McGrane, Outten Reinhart (moderator)</i></p>	<p>809 Litigating Workplace Defamation and Tortious Interference Claims <i>Ella, Tanick</i></p>	
<p>710 The ADAAA Cases Applied: Updated Lessons for Employment Lawyers <i>Cummins, Mrkonich-Wilson</i></p>	<p>See #802 above How to Prepare and Prove an FMLA Case <i>Fabian, May</i></p>	
<p>711 "Due" and "Don't" Process: Test Your Knowledge on Discipline, Termination and Layoffs <i>Bloom, Krishnik</i></p>		

Session Descriptions: Day 1 – Monday, May

7:00 – 8:00 a.m.

CHECK-IN & CONTINENTAL BREAKFAST

8:00 – 8:10 a.m.

WELCOME & INTRODUCTION

8:10 – 9:50 a.m.

MAIN PLENARY SESSION

1. New Title VII Developments

The important recent cases and what they mean to your practice.

Katherine L. Butler
Butler & Harris
Houston, Texas

2. An EEOC Update

New developments, directions, and enforcement initiatives.

Peggy R. Mastroianni
Legal Counsel
U.S. Equal Employment Opportunity Commission
Washington DC

3. The View from D.C. – The Government Regulatory and Enforcement Agenda

An important look into the changes coming out of the D.C. agencies – including new regulatory and enforcement initiatives and shifts in policy by the DOL and the NLRB.

David S. Fortney
Fortney & Scott, LLC
Washington DC

8:10 – 9:50 a.m.

ALTERNATE PLENARY SESSION

10 Expensive Mistakes Employers Make in Handling Employee Complaints

When an employee complains to their employer, they are beginning a process that can end in increased trust and engagement at best, or litigation at worst. How employers respond to employee complaints determines whether the complaint will be an opportunity for growth or an expensive drag on organizational resources. This session will focus on the ten most expensive missteps employers typically make in the face of an employee complaint.

Fran A. Sepler

10:20 – 11:15 a.m.

BREAKOUT SESSION A

001 OSHA Basics

Federal and state governments are expending significant funds on investigation and enforcement of workplace safety, and agency budgets are increasing so that more resources can be dedicated to protecting employees. This session will provide an overview of the Occupational Safety and Health Act under Minnesota and federal law. We will discuss an employer's obligations under state and federal law, record-keeping requirements, and the defenses an employer can raise to a citation.

Phyllis Karasov

002 Leave for Military Personnel and Their Families



Back by Popular Demand!

This session provides guidance for employers providing leaves of absences for military personnel and their families under the FMLA, USERRA and Minnesota state law.

George R. Wood

003 Toxic Assets: How Bullies Impact the Workplace

Bullying is not only in the news; there is a chance it is very real in your company. This session will give you a better understanding of bullying in the workplace – its causes, its effects, and its legal, economic and emotional ramifications.

Gregory B. Stenmoe & Susan Strauss

004 Religious Beliefs, Conflict, and Accommodation: Keeping the Peace



Repeated at #903

Claims of religious discrimination increased more than any other claims filed with the EEOC in 2011. Successfully navigating this difficult and often contentious area can be one of the greatest challenges faced by employers, particularly as workplace diversity increases and public debate focuses on issues with religious overtones. This session will explore the rights and responsibilities of employees and employers with an emphasis on practical tips for minimizing disputes and resolving conflicts.

Karen G. Schanfield

005 Salespeople – Can't Live With Them – Can't Live Without Them: Managing, Disciplining and Firing the Salesperson

What is it about these revenue generators that make them so invaluable and such potential liabilities? How do you manage persons who are rarely in the office? How do you change their territory without conflict? How do you resolve commission disputes? When must you fire and how do you do it? Get the plaintiff and defense perspective on those thorny issues that come back time and again.

Melissa Raphan & Lawrence P. Schaefer

006 The ADA and the EEOC

An in-depth session with Peggy Mastroianni including perspective on recent ADA law changes, ADA cases and more.

Peggy R. Mastroianni

007 Internal or Government Investigations – Where the Stakes Are High

This session, designed especially for in-house counsel, focuses on both internal and government investigations – investigations that could trigger severe civil and even criminal liabilities – stemming from claimed breaches of Sarbanes Oxley, Dodd-Frank, the False Claims Act, SEC violations, the Foreign Corrupt Practices Act or other federal laws. How do you structure the internal investigation – who does it, how do you handle disclosure to the government while maintaining attorney client privilege, etc. – and how do you respond when it is the federal government doing the investigating? How should your client respond to government agents if they come unannounced? How should subpoenas be dealt with? What are the very best practices? Our panel will discuss the preparations you should implement now – before the federal agents come knocking.

Christopher M. Favo, Daniel C. Gerhan & Jacqueline R. Rolfs
MODERATOR: *Barbara Jean D'Aquila*

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008 The Retaliation Claim Conundrum: Where We Go From Here
The U.S. Supreme Court loves them. The Minnesota Supreme Court hates them. And the NLRB can't get enough of them. What's a practitioner to do when prosecuting or defending a retaliation claim? A panel of savvy litigators offers lively insight on the recent twists and anticipated turns of retaliation jurisprudence. In addition, they will grapple with some of the thorniest legal, tactical and practical issues posed by retaliation litigation.
David J. Duddleston, Sheila A. Engelmeier & Clayton D. Halunen
MODERATOR: *M. William O'Brien*

009 2012 FLSA Case Update – In-Depth
Learn the latest cases and Department of Labor activity on important wage and hour issues from both plaintiff and defense perspectives.
Paul J. Lukas & Christopher A. Parlo

11:25 – 12:20 p.m.

BREAKOUT SESSION B

101 Screening Practices Under Attack – What Can Employers Use to Make Hiring Decisions?
Enforcement agency initiatives, legislative and regulatory efforts, and employee lawsuits have placed a spotlight on the use of criminal background checks, credit checks, and other “tried and true” employee selection criteria. Recently, claims that employers refuse to hire the long-term unemployed has become the cause du jour. The criteria for hiring and promotion decisions long believed to be lawful, and the methods used to garner such intelligence, are now under attack. Will your practices and policies withstand this scrutiny?
Cynthia A. Bremer

102 Mental Disabilities in the Workplace: How Does an Employer Respond Under the ADA?
Repeated at #902
Whether it's depression, learning disability, or other mental conditions that impact an employee's performance, employers are often presented with possible mental disabilities in the workplace. Learn how to respond under the ADA when you believe an employee may have a mental condition that could be a disability. A step-by-step method to respond will be presented through case studies.
R. Ann Huntruds

103 Bullies in the Workplace, Part 2 – How an Employer Can Effectively Respond
Part II of this series will include a panel of experts who have studied bullies, their impact and effective responses to them. They will provide practical tactics and techniques for dealing with bullies and difficult people you encounter in the workplace. You'll learn tips that you can put into practice immediately, making your workplace a healthier environment for everyone.
Ann Mennell Clowser, Susan Strauss & Elizabeth L. Wittenberg
MODERATOR: *Gregory B. Stenmo*

104 The Perils of Using Smart Phones, iPads and Other Mobile Devices in the Workplace
Technology usage by employees is a current issue of great concern for employers. This session will provide tips and techniques for avoiding the legal liability traps that mobile devices create – including issues of privacy, data security, trade secret protection, wage and hour issues, record retention, e-discovery and more.
Michael J. McGuire

105 Title VII – An In-Depth Update
A closer look at the newest cases and their meaning.
Katherine L. Butler & Joseph G. Schmitt

106 The View from D.C. – A More In-Depth Look at the Regulatory, Enforcement and Policy Changes
With special attention to the Department of Labor initiatives, David Fortney will take you inside the agencies and describe the most important developments including those impacting wage and hour issues, independent contractor status, the newest regulations, enforcement initiatives, important policy positions found in amicus briefs and much more.
David S. Fortney

107 In-House Benchmarking – Social Media and the Virtual Workplace
For In-House Counsel Only
The virtual workplace seems infinite with the intersection of technology, the Web, social media and the law. What is an employment lawyer to do? This benchmarking session for in-house lawyers will explore how companies and government agencies are addressing the explosive impact of social media. All of these words have new meaning: recruiting, hiring, marketing, monitoring, enforcement, concerted activities, confidentiality, company culture and privacy. Join us for an interactive session using “electronic polling” to learn from each other as we consider the impact of the virtual world of cyberspace on our workplaces.
Holly S.A. Eng, Michael T. Mortensen & Paul J. Yechout
MODERATOR: *Michelle A. Miller*

108 Plaintiffs and Defendants at Risk: How the Unemployment Compensation System Impacts Litigation
The case is closed. Plaintiff recovers damages, but – months later – calls: “DEED demands that I repay my unemployment benefits.” In an era of extended unemployment benefits, the repayment can be staggering. In litigation, how can we intelligently accommodate the UC system? How can settlement agreements be crafted to protect our clients' interests? What are the mechanics behind the mystery? Recently the Minnesota Court of Appeals has shed some light on this dilemma. But questions remain: What is the standard for determining the appropriate period of ineligibility? What are means by which settlement proceeds will not trigger benefits repayment? An experienced plaintiff and defense litigator will unshroud the mystery and provide practical suggestions for addressing these issues proactively.
Kathryn M. Engdahl & Pamela M. Harris

109 It's Your Turn – Ask Federal Court Judge Bennett Your Toughest Questions
Judge Bennett, one of the stars of the Employment Law Institute, opens up this session to your toughest questions – whether legal, procedural, experiential or other. Having presided over dozens of employment law cases featuring many different claims, attorneys, and tactics, Judge Bennett is in a unique position to field anything you can throw at him. Take a break from the lectures and participate in a fun and interactive session with one of the best teachers around.
Honorable Mark W. Bennett
MODERATOR: *Robert R. Reinhart, Jr.*

110 The Public Sector Practitioner's Essential Case Law Update
A discussion of the significant new Minnesota and federal employment cases – the facts, the holdings, and the practical implications for your public sector clients.
Stephen F. Befort, Anthony G. Edwards & Margaret Luger-Nikolai

1:30 – 2:30 p.m.

BREAKOUT SESSION C

201 Wage and Hour Basics – Getting It Right
Complying with all the technical rules to make sure your company is not sued. Learn how to properly designate employees as exempt or non-exempt, correctly handle “off the clock” issues, flex time and more.
Jessica S. Pecoraro & Jeremy D. Sosna

202 When Does the FMLA Apply? Real-World Hypotheticals and Answers
Attend this session and learn the rules determining what absences are covered by the FMLA and how to apply those rules in common, real-world scenarios. The presenters will tackle a wide range of hypotheticals, from situations with easy answers to more complex cases where it's not so clear whether the employee has a qualifying reason for FMLA leave.
Steven R. Anderson & Alissa M. Raddatz

203 **The Social Media Revolution on Steroids – Meet Google+, Shocking Facebook Apps, and Unusual Social Media Sites**

WARNING! UNCENSORED! If you think you've seen it all, please fasten your seatbelts as we tackle the newest generation of social media such as Google+, racy Facebook applications (sex, gambling, drugs), and unusual social media sites. This cutting-edge, interactive session features the exciting adventures of employee Sam Elliot with YouTube videos and discussion concerning the impact of these hottest social media trends on employment law. Although you fired Sam at last year's conference, he is up to new tricks in this engaging experience! For our faithful followers that can't wait, here is some "leaked" information on some of Sam's upcoming adventures: NLRB "Friends" Social Media!... Twitter Followers Stolen!... Social Media Replaces Traditional Employee Performance Reviews!

Patrick R. Martin & Gene Sheih

204 **20 More Bothersome Employment Law Questions – From New Law to Tough Everyday Issues**

Some questions seem never to go away – and new law creates new issues. This is a chance to have an expert's analysis of how to deal with both recurrent and new questions and apply practical analysis to keep you in full legal compliance.

Marko J. Mrkonich

205 **The Immigration Compliance Trifecta: I-9 Audits, SSN No-Matches and E-Verify**

To avoid gambling on potential liability, employers can hedge their risk by learning from the experts what to expect in the field of immigration compliance for 2012. Sam Myers and Scott Wright will discuss the recent Supreme Court decision in *Chamber of Commerce of the United States v. Whiting* allowing states to enforce federal immigration laws by requiring E-Verify as a condition to business operating licenses and will provide practical tips on how to be best-prepared in the event of an ICE site visit or I-9 audit; guidance on how to lawfully address SSN no-match notices; and helpful insight into the latest developments with the government's E-Verify program.

Howard S. (Sam) Myers & Scott W. Wright

206 **Age Discrimination Issues That Arise From Reductions in Force**

Topics include the impact of the U.S. Supreme Court *Gross* decision on the way that ADEA cases are being decided by lower courts, and a comparison of the standards for state law age claims – a valuable session for advisors, in-house counsel and litigators alike.

Craig A. Brandt & Stephen J. Snyder

207 **Inside the Agencies: Charges, Investigations, Future Plans and More**

Judy Langevin moderates a panel of Minnesota agency representatives responsible for enforcing laws prohibiting discrimination. This panel, comprised of Minnesota Department of Human Rights, the Minneapolis Department of Civil Rights and the St. Paul Department of Human Rights & Equal Economic Opportunity, will describe how charges are being handled, which charges have priority, how investigations are being conducted, and explain any new initiatives.

Luz Maria Frias, Velma J. Korbel & Kevin Lindsey
MODERATOR: *Judith Bevis Langevin*

208 **The Contingent Workforce and Alternate Staffing Models – In-House Counsel Perspectives**

Our panel of in house counsel will offer real-world experience and practical insight into issues faced by companies considering alternate staffing models in today's challenging business and legal environment. This session will provide an overview of potential staffing models, a discussion of risks and benefits associated with different approaches, and practical considerations involved in integrating temporary employees, temporary agency/third-party workers, or independent contractors into your workforce.

Shalanda D. Ballard, Jennifer A. Delmuth & Heather C. Fokken
MODERATOR: *Ryan E. Mick*

209 **FLSA "Off the Clock" Litigation – The Hottest Issues in the Hottest Cases**

"Off the clock" cases may now be the most common and problematic of all FLSA claims. Our panel will discuss the difficult substantive and procedural issues facing both plaintiff and defense counsel and their response to these thorny problems. Learn from some of the nation's best in this can't miss session.

George A. Hanson, Paul J. Lukas & Christopher A. Parlo
MODERATOR: *Robert R. Reinhart, Jr.*

210 **"I Object" – The Tough Evidentiary Questions and Rulings**

What is admitted into evidence and what is excluded has a major impact on every trial. Judge Bennett examines those tough evidentiary issues and rulings that impact the conduct and outcome of every employment law case. Using an electronic voting system, you'll get to test your knowledge (confidentially) on the answer to each of the evidence questions posed. You'll leave this session better prepared to lay the proper foundation for getting your evidence admitted or in arguing in opposition to your opponent's proposed evidence. Don't miss another fast-paced, fun and information packed session led by Judge Bennett.

Honorable Mark W. Bennett

211 **Public Sector Employee Speech: Whistle-blowing and the First Amendment**

Rights, privileges, and responsibilities can give rise to a complex analysis of whistle-blowing in the context of public employment. What may be an employee's exercise of her right to engage in free speech may or may not limit the employer's right to terminate employment. On the other hand, an employee's responsibility to engage in certain speech in the context of public employment may create a bar to certain whistleblower claims. Includes a practical look at recent cases addressing First Amendment and various whistleblower protections for employees in the public sector.

Adrianna H. Shannon & Katherine M. Vander Pol

2:45 – 3:45 p.m.

BREAKOUT SESSION D

301 **Workplace Investigation Basics From Start to Finish**

Whether it be an investigation of a sexual harassment allegation, an investigation relating to an EEOC charge, or an investigation of a problem employee, you need to be prepared before you begin. This session will provide a step-by-step guide to conducting a workplace investigation including such critical issues as who should be informed of the investigation, how is the investigation started, who should conduct the investigation, who should be interviewed and in what order, what questions should be asked, how to ask the critical questions, what records should be maintained, and how to document your conclusions.

Leonard B. Segal

302 **The Price of Miscommunication – When Employee Notification or Employer Response Don't Meet FMLA Requirements**

The FMLA notification process can be difficult to navigate. This practical session guides you through the requirements for both employees and employers, points out the common errors made, and discusses the repercussions for lack of compliance.

Elizabeth A. Papacek-Kovach & Ellen Sampson

303 **The Top 7 Mistakes Made by Employers in Drafting Handbooks and Handbook Policies**

Handbooks should be complete, understandable and internally consistent. Drafting them is easier said than done. This session will focus on the biggest errors made in formatting, organizing and distributing handbooks, and common legal errors in specific policy content. Your presenter will identify policies that should be included and those that are optional.

Pamela M. Harris

304 **How to Discipline and Discharge Without Disaster**
2-hour session

Winding your way through discipline and discharge issues is never easy. What better way to learn how to avoid problems and pitfalls than to have a panel of experienced management attorneys who have seen these issues play out in the workplace and the courtroom walk through four case studies and help you spot the issues, work through the challenges, and avoid lurking disaster.

Robert C. Boisvert, Jr., Katherine A. Lawler & Melissa Raphan

305 **Hiring an Employee With a Non-Compete Agreement – Including the Latest Cases, Trends, Traps and Strategies**



Back by Popular Demand!

One of Minnesota's most experienced non-compete lawyers will review the legal risks, potential defenses and tough decisions facing employers who want to hire an employee with a non-compete agreement. He will provide suggestions and successful strategies to help employers accomplish their goals while minimizing their risks and share the latest and developing cases, trends, traps and strategies in the non-compete world.

Jeffrey B. Oberman

306 Real-World Ethics Issues and Answers for the Employment Lawyer**2-hour session**
2.0 ethics credits applied for

In this session, audience members will watch short videos and the presenters will discuss how they would handle the hypothetical situation. Topics will include: Inadvertent receipt of e-mails and documents, discovery of privileged information on an employee's computer, giving gag orders to employees, handling attorney fee awards in contingency cases, and more.

T.J. Conley, Eric T. Cooperstein & E. Michelle Drake

307 Update on OFCCP's Aggressive Regulatory and Enforcement Agenda**2-hour session**

Over the past year OFCCP has issued proposed regulations regarding the employment of veterans and individuals with disabilities that will require contractors to implement and maintain expanded affirmative action programs and which include expansive new recordkeeping obligations; substantially modified the way in which it evaluates pay practices; issued an advanced rulemaking notice for a new Internet-based compensation evaluation tool to help it target government contractors for compensation audits; obtained a favorable ALJ decision giving it (practically) carte blanche to investigate even small compensation differences; and revised its audit process and forms so as to substantially increase the amount of information that contractors must provide to the agency as part of an initial desk audit. At the same time, OFCCP has developed policies and successfully pursued enforcement actions in order to expand the set of employers over which it has jurisdiction. This session will review the implications of these and other significant developments and provide our top ten compliance action-item list for 2012.

David J. Goldstein & Alissa Horvitz

308 Recognizing and Responding to Federal Whistleblower Complaints

Identifying federal whistleblower laws and what protections they provide; avoiding procedural and substantive pitfalls; developing a standardized process for responding to whistleblower complaints; preventing retaliation claims while responding to the complaint.

Kristen M. Ludgate & John D. Thompson

309 8th Circuit and Federal District Court Update**Repeated at #906**

Learn all of the important new cases in the Eighth Circuit and from Minnesota federal district court and their practice implications.

Cynthia A. Bremer & Steven Andrew Smith

310 Thorny ADA Issues

Four experienced ADA litigators discuss the most difficult accommodation and discrimination issues arising out of the ADA. The panel will consider both advisory and litigation issues, including special ADA problems presented by new technology in the workplace, the impact of the ADA amendments on the MHRRA, and how employers and employees address accommodation issues when jobs change.

Lawrence P. Schaefer, Joseph G. Schmitt & Joni M. Thome

MODERATOR: *M. William O'Brien*

311 Top Ways to Persuade the Arbitrator: Making Your Arguments More Persuasive

Learn the do's and don'ts of effective advocacy from Jeff Jacobs – an active arbitrator, administrative law judge and hearing officer. Attendees will learn: effective ways to prepare your case; the proper elements of an opening statement; how to make direct and cross examination the best possible; what should and should not be included in oral arguments and post-hearing briefs; and more.

Jeffrey W. Jacobs

402 FMLA Leave – Medical and Other Certifications

What kinds of medical and non-medical certifications can employers require for FMLA? What happens when employees don't comply? What are the rules for re-certifications and second/third opinions? What kinds of certifications can be required for military-related family leaves? How does GINA affect FMLA certifications? This session will discuss the FMLA's detailed provisions regarding medical certifications and insights into how employers can manage leave consistent with those provisions.

Mary B. Thomas

403 Subtle Discrimination and Micro Inequities

What happens when an investigation finds no evidence of unlawful discrimination or harassment, but employees continue to insist that they work in a racially or ethnically hostile environment? Why does the promising female employee leave the professional firm, saying that she feels she does not have the same opportunities that her male colleagues do? Why does a business gain a reputation of being unfriendly to a particular ethnicity or religion, when the principles in the business insist that is not the case? The answer may lie in the examination of subtle, dismissive or hurtful micro-messages, or Micro Inequities. This session will explain what Micro Inequities are, how they can affect morale, retention and productivity, and how employers can integrate preventive and remedial strategies into their existing harassment prevention strategies.

Fran A. Sepler

404 Are They Really Independent Contractors? Enforcement Trends and Best Practices to Avoid Misclassification

The use of independent contractors in the dynamic U.S. workforce continues to expand, and with that expansion, increased focus by government regulators and the plaintiffs' bar on independent contractor misclassification. This session will explore the developing risks and benefits of utilizing independent contractors, including litigation and regulatory enforcement trends, and discuss a variety of "best practice" safeguards for companies to avoid challenges to their independent contractor classifications.

Courtney J.A. DaCosta & Ryan E. Mick

405 How to Think Like an IP Lawyer: What Every Employment Lawyer Needs to Know About Intellectual Property

Bridge the gap between intellectual property law and employment law by learning the key IP concepts that arise in the employment relationship. This session will cover the basic principles for protecting patents, copyright, trademarks, and trade secrets; best practices for using employment policies, practices, and agreements to protect company assets; and what to do when you find yourself holding someone else's (possibly) proprietary information.

Becky R. Thorson & Jacqueline R. Rolfs

406 What Do You Mean I'm Not Disabled? The Long and Short of Handling Short and Long Term Disability Claims

Many employers offer these benefits, but many attorneys are unfamiliar with them. This session will provide valuable information every employment law practitioner should know about short and long term disability claims. An experienced practitioner will explain the process of handling these ERISA (and some non-ERISA) based cases from administrative claim through lawsuit. Learn about which causes of action cover these claims, important time limits, and other practical concerns.

Howard L. Bolter

407 Mistakes the Other Side Makes – Avoiding Litigation Blunders That Can Cost Your Client Dearly

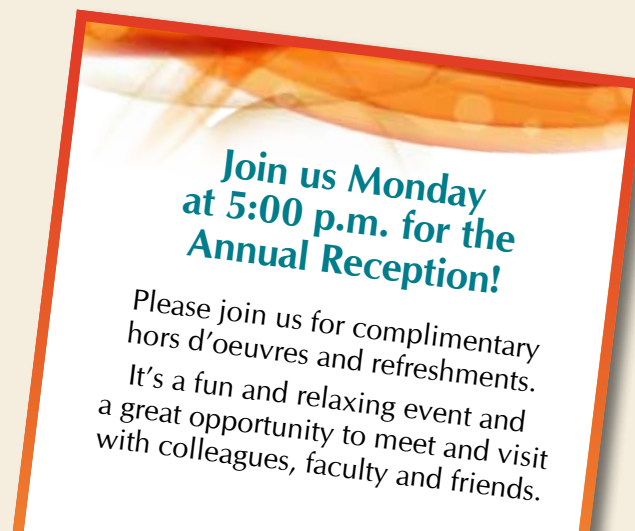
Experienced plaintiffs' and defense counsel tell each other the most common mistakes each side makes, and how to avoid them.

Martin B. Ho & Andrew E. Tanick

4:00 – 5:00 p.m.**BREAKOUT SESSION E****How to Discipline and Discharge Without Disaster (cont.)****Real-World Ethics Issues and Answers for the Employment Lawyer (cont.)****Update on OFCCP's Aggressive Regulatory and Enforcement Agenda (cont.)****401 Top 10 Mistakes Employers Make When Dealing With Pregnant Employees**

Pregnancy-related litigation and counseling issues represent a growing segment for human resource professionals and employment attorneys due to the myriad statutes implicated by the proper or improper handling of the pregnant employee, including the ADA, Title VII, the FMLA, and the state equivalent of each of these federal statutes. Experienced employment counsel will assist you in navigating these often dicey waters, by highlighting the most frequent mistakes made by employers when handling pregnancy-related issues.

Steven Andrew Smith



Session Descriptions: Day 2 – Tuesday, May

7:00 – 8:00 a.m.
CONTINENTAL BREAKFAST

8:00 – 8:10 a.m.
WELCOME & INTRODUCTION

8:10 – 9:50 a.m. MAIN PLENARY SESSION

1. The Minnesota Update

New Minnesota legislation, regulations and cases.
Ellen G. Sampson

2. EEOC Investigations and the Current Use of Subpoena Power

Commissioner Victoria Lipnic updates you on the EEOC's current use of its subpoena power – why, when and how subpoenas are used and how to raise objections to a particular subpoena.

Honorable Victoria A. Lipnic
Commissioner
U.S. Equal Employment Opportunity Commission
Washington DC

3. EEOC Action in the Area of Religious Discrimination

Commissioner Chai Feldblum updates you on EEOC activity in this area, including key cases.

Honorable Chai Feldblum
Commissioner
U.S. Equal Employment Opportunity Commission
Washington DC

4. Other Important New Federal Developments

Other new developments in federal employment law including new U.S. Supreme Court cases, new ADEA regulations, arbitration developments, NLRB developments and more.

Paul J. Zech

8:10 – 9:50 a.m. ALTERNATE PLENARY SESSION

Real-Life ADA Case Studies

A panel of experienced management attorneys discusses practical approaches for dealing with challenging real-life workplace disability cases, including both physical and mental disabilities. Topics will include assessing whether an impairment is a "disability," conducting the interactive process, and exploring reasonable accommodations.

Robert C. Boisvert, Jr., Katherine A. Lawler & Penelope J. Phillips

10:20 – 11:15 a.m. BREAKOUT SESSION F

501 The Basics of Hiring

The fundamentals of hiring: from the application, to the interview, to the offer. The do's and don'ts of background screening, interviewing, accommodation, selection and rejection. How to hire the best applicant without running afoul of any employment laws.

Susan E. Ellingstad

502 Out of the Frying Pan and Into the Fire: Managing the Leave Process After FMLA Leave Is Granted

After employers make their way through thorny issues regarding employee eligibility for FMLA leave, they still face a myriad of additional (and arguably more difficult) considerations in managing employees who are approved for protected leave. This session provides guidance on basic principles and frequent trouble spots in each of the following areas: Accurately calculating and tracking available leave hours; managing intermittent leave to minimize disruption of business operations and avoid potential for leave abuse; determining pay and benefits for employees on leave; and more.

Marilyn Clark & Ann Mennell Clowser

503 Give Me a Break: Nettle Some Problems With Meal, Rest, and Other Break Times



Repeated at #904

When must employers allow employees break time? How much time is required for a meal break; for a nursing mother's break? May employees be required to stay on the premises during their break? Must any of this break time be paid? This session will cover the rules, pitfalls and practical suggestions for providing paid and unpaid, working and non-working breaks under state and federal wage laws for meals, rest, smoking, prayer time, restroom use, nursing mothers and more.

Mary M. Krakow

504 Negotiating Separation Agreements: A Mock Negotiation

Nationally renowned plaintiff's counsel will negotiate an agreement with a local defense counsel. In the process, you'll learn how to gain tactical leverage when you have little or no legal leverage; what provisions to seek beyond the standard clauses; the economics of the deal; and how to handle sticky provisions such as non-disparagement clauses, references, restrictive covenants, liquidated damages, ADR cooperation or "gag" clauses; and more.

Kathlyn E. Noecker & Wayne N. Outten

505 Global Employment Law Update – An Entertaining Look at the Unusual, Surprising and Difficult Legal Developments in the Countries in Which Your Company Does Business

A panel of private practice and in-house attorneys will identify in rapid-fire fashion the most quirky, unusual and sometimes unbelievable employment and labor law developments in the past year from around the world. Practical suggestions for applying the lessons learned from these decisions will also be provided.

Sandro M. Garofalo, Bruce J. Sarchet & Mariana Symecko

506 EEOC Update In-Depth – Insights on ADA Leave Complexities and Other Hot Topics

2-hour session

This session features insight into the latest news out of the EEOC, with a particular focus on current interest in leave and reassignment as a reasonable ADA accommodation. The Commissioners also welcome your questions.


Commissioners Chai Feldblum & Victoria A. Lipnic
MODERATOR: *Judith Bevis Langevin*

507 The "Inside Scoop" – What In-House Counsel Wants From Their Outside Employment Counsel

This session is a chance to hear directly from in-house counsel – they describe their needs, likes, dislikes and discuss those things that are most important to them when hiring and working with outside counsel. Don't miss this opportunity to get the "inside scoop" and learn how to improve your company representation from the outside.

Ronald J. Lee, Kathleen M. Mahoney & James R. Rowader
MODERATOR: *Joseph G. Schmitt*

- 508 **Deciphering *Dukes v. Wal-Mart*: The Status of EEO Class Action Litigation Post-*Dukes***
Dukes v. Wal-Mart, a class case involving approximately 1.5 million female employees nationwide, is perhaps the most significant Supreme Court employment discrimination decision in the last decade. Our panel, including counsel for the plaintiffs in *Dukes v. Wal-Mart*, will debate the impact of this key case and wrangle over the following questions: Does *Dukes* impact EEOC class litigation? Is any employment matter capable of nationwide resolution, and if so, what? Is there a place for social scientists? What statistical evidence is adequate to support preliminary class certification? Will *Daubert* challenges become part of every certification hearing? Does anecdotal evidence have any probative value, and if so, how much is enough? Does managerial discretion always preclude large class certification?
 Marko J. Mrkonich, Joseph M. Sellers & Laurie A. Vasichek
 MODERATOR: James H. Kaster

- 509 **Attorney-Client Privilege in the Public Sector**
 1.0 ethics credit applied for

An examination of scenarios that distinguish attorney-client communications in the public sector from those in the private sector, highlighting the resulting implications for the scope of privilege in the public sector context. Topics will include the impact of the answer to the question, "Who is the client," as well as the effect of the Minnesota Data Practices Act.

Clifford M. Greene & Monte A. Mills

11:25 – 12:20 p.m.

BREAKOUT SESSION G

EEOC Update In-Depth – Insights on ADA Leave Complexities and Other Hot Topics (cont.)

- 601 **How to Respond When the Government Serves a Charge of Discrimination**

Repeated at # 901

Enforcement agencies are busier than ever taking in charges of discrimination. Your organization must know how to respond effectively and correctly to charges and governmental demands for information. All employers regardless of their size must take these complaints very seriously. This session will provide employers with useful practice advice for understanding the administrative charge process, analyzing the allegations, crafting their responses, and asserting their defenses – often under tight deadlines.

Howard B. Tarkow

- 602 **Get Back to Work: Reinstatement Rights Under the FMLA**

Practical guidance on employee and employer obligations when employees return to work following FMLA leave: What it means to be reinstated to an "equivalent position" following FMLA leave; the types of modifications to an employee's job that are permissible; whether pay increases, bonuses and other benefits must be provided; the employer's right to condition return upon fitness for duty certifications; circumstances when reinstatement rights may be limited, including special rules relating to "key employees" and teachers.

Carl Crosby Lehmann

- 603 **Employees Gone Wild!**

Repeated at # 803

Employees, from the most junior to the CEO, occasionally act unpredictably, imprudently and bizarrely. When employees' antics make news, immediate personnel actions may be warranted and criminal prosecution may result. In certain situations, employee conduct may affect a company's stock price or even jeopardize its existence. An interdisciplinary panel examines eight real-life situations where employees' actions have created serious employment, criminal and public relations problems. Learn from the mistakes of others!

Christine N. Esckilsen, William B. Michael, Paul Omodt & Christopher T. Shaheen

MODERATOR: Roy A. Ginsburg

- 604 **Social Media Workplace Cases Studies: A Panel Discussion**

A panel of experienced employment counsel, including attorneys with the NLRB and the EEOC, explore a series of actual workplace social media scenarios and discuss employer responses, missteps, and strategies. Scenarios will include using social media in hiring, disciplining and discharging employees for critical posts, dealing with social media harassment, and drafting legally-compliant employment policies.

Nichole Burgess-Peel, Penelope J. Phillips & Laurie A. Vasichek
 MODERATOR: Robert C. Boisvert

- 605 **The 15 Most Important Non-Compete Cases – What Every Employment Lawyer Should Know**

Our session leaders will review the most important federal and state non-compete cases (whether new or old) and analyze their importance – especially how they impact the real-life practices of employers and employees. How much control does the employer really have over a departing employee? Are there limits to what the agreement can provide? Are some agreements really air tight? Does the former employee have no options? What if the employee is let go? Where will the litigation take place? What idiosyncrasies in state law may change the outcome? These and other questions will be addressed as the leading cases are carefully analyzed in this helpful session.

Joseph W. Hammell & Jessica L. Roe

- 606 **Expatriate Employment Agreements – Strategies and Considerations**

Companies of all sizes are increasingly finding that they must send executives and other U.S. talent abroad for short term and longer term assignments to meet business and customer needs. Expatriate assignments raise a myriad of legal and practical considerations not present in the negotiating and drafting of agreements for U.S.-based employees. This seminar will address the nuts and bolts of expat agreements and strategies for effective negotiation and drafting of such agreements.

Wayne N. Outten & Anne M. Radolinski

- 607 **Performance Management – In-House Counsel's Role – A Benchmarking Session**

For In-House Counsel Only

As in-house counsel have you ever found out about an employee termination after the fact? Have you received a call from a manager asking to terminate an employee for performance reasons but you learn that performance has never been addressed with the employee? This benchmarking session will address these issues among others and foster discussion on in-house counsel's role in performance management and the performance evaluation process.

Sara Bolden, Anthony C. Branch & Timothy Y. Wong

MODERATOR: Reuben Mjannes

- 608 **How to Obtain the Digital Evidence You Need to Win Your Case**

One of the nation's leading computer forensic experts explains the behind the scenes truth about electronic evidence – what is out there and how you can get it. Whether the source is email, iPhone, iPad, social media or other electronic source, it's all available to you. This session will teach you what to ask for, how to ask for it, what excuses to expect, how to confront those excuses and how to get the right amount of digital evidence – not too little and not too much. Whether a small or large case, critical evidence is often hidden electronically. Don't miss this opportunity to gain an edge in finding and using the best digital evidence in your next case.

Mark Lanterman

- 609 **Is It Mere Pretext? The Key to Many Discrimination Cases**

Direct evidence of discrimination is rare, which results in many cases being based on pretext. Our panel will discuss the offering of the defense and the cutting-edge methods of proving pretext, such as offering proof of implicit association, stereotyping, gender norms, etc.

Michael R. Fox, David P. Pearson & Joseph M. Sellers

MODERATOR: James H. Kaster

- 610 **Handling the High-Profile Public Sector Case**

For better or worse, your client is in the news with respect to an employment matter. A panel of experienced plaintiff and defense counsel provide their insights into the significant issues that surround high-profile public sector cases, including strategic considerations, data practices and open meeting requirements and restrictions, and more.

Frank J. Madden, Douglas A. Micko, James A. Moore & Adrianna Shannon
 MODERATOR: Patricia Y. Beety

BREAKOUT SESSION H

701 **Discipline and Discharge Basics**

How to walk step-by-step through the difficult process of dealing with a problem employee or a poor performer. How to deal effectively, document appropriately and handle the termination process without creating legal liabilities. Post-termination issues will also be covered.

Dennis J. Merley

702 **Practical Guidance on the Intersection of the FMLA With Other Laws and Company Policies**

Analysis of the legal questions that arise when FMLA intersects with other laws frequently implicated by employee leaves of absence such as the ADA and workers' compensation. In what situations are conflicts likely to arise? What do you advise your client when the laws are inconsistent? Your presenter will use short hypotheticals to apply legal principles to real-world scenarios involving eligibility for leave, length of leave, reinstatement after leave, medical exams, fitness for duty, and more. In addition, the effects the FMLA has on many common company policies relating to attendance and leave are also considered.

Penelope J. Phillips

703 **Employment Law as Applied to Churches, Educational Institutions and Religious Organizations**

Employment law permeates to every workplace. However, customary worker protections do not always apply to churches, religiously affiliated schools and religious organizations. The law defers to certain workplace decisions made by these entities in an effort to balance workers' rights with the First Amendment's separation of church and state. It is incumbent for counsel to be aware of these complex issues when litigating or providing advice to clients in this unique area of employment law.

Antone Melton-Meaux

704 **The Subtle Art of Investigative Interviews – Techniques and Strategies to Improve Yours**

Repeated at #905

Investigative interviews are far more than "Q and A." The use of vocal tone, repetition, silence and non-sequential questioning are among the techniques that this session will explore to assist investigators in making the most of their investigative interviews. Live interview clips will be shown to illustrate the techniques.

Fran A. Sepler

705 **30 Years of Harassment Law – The Critical Concepts and Nuances Every Employment Attorney Needs to Understand**

This session will analyze the most important legislative and case law developments in the law of workplace harassment over the past 30 years. You'll learn the twists and turns that have marked the development of harassment law and how those changes impact your practice today. Judy Langevin, who has worked with harassment law since its beginnings, will guide you through the rulings and statutory changes that have shaped harassment liability and offer predictions on what's likely to happen in the near future. Don't miss this combination of entertaining history and practical, nuts and bolts tips for practitioners.

Judith Bevis Langevin

706 **7 Key Issues in Canadian Employment Law**

An examination of 7 important employment issues facing every business with employees in Canada. Learn the law, avoid traps and gain practical tips for handling employment law issues in our neighbor to the north.

Shauna M. MacDougall & Kathlyn E. Noecker

707 **Labor Law Issues in the Non-Unionized Workplace**

Myths abound regarding if, when and how federal labor law and NLRB rulings affect the non-union employer. In this panel discussion experts on each side of the issues will give concrete advice on employee rights and employer obligations that all employment lawyers and HR professionals need to be aware of in all workplaces.

Douglas P. Seaton & Paul J. Zech

708

**Hot Topics in Attorney-Client Privilege for In-House Counsel**

1.0 ethics credit applied for

Attorneys have an ethical duty to protect their clients' privileged information. In-house attorneys are increasingly playing a variety of roles within companies, including corporate attorney; personnel adviser to executives and employees; business executive; contract negotiator; personal director; and more. This multiplicity of roles can render more of your communications discoverable than you might think. This session will provide practical guidance on how to distinguish discoverable business communications from privileged legal communications; how to prevent inadvertent disclosure of privileged documents; how to minimize the scope of depositions of in-house attorneys; and more.

Clifford M. Greene & Jenny Gassman-Pines

709 **Improving Your Mediation Advocacy Skills in Employment Law Cases**

We've selected a panel of employment law attorneys with tremendous experience advocating for clients in the mediation process. This session will provide you with ideas, tips and strategies for better representing your clients in mediation – with the goal of getting the best result possible.

Michael R. Fox, Sara G. McGrane & Wayne N. Outten

MODERATOR: *Robert R. Reinhart, Jr.*

710 **The ADAAA Cases Applied: Updated Lessons for Employment Lawyers**

This session will cover the most important case (and regulatory) developments since Congress amended the ADA. Experienced employment litigators will analyze the cases and their implications and highlight national trends under the ADAAA, with discussion of corresponding legal strategies for employee and employer counsel.

Justin D. Cummins & Kathryn A. Mrkonich-Wilson

711 **"Due" and "Don't" Process: Test Your Knowledge on Discipline, Termination and Layoffs**

Take our interactive quiz on the rules covering discipline, termination or lay-off of public sector employees and related issues using practical, real-life examples. Using our interactive responders, see how your answers compare to the other attendees. Don't worry – all responses are anonymous.

Mike Bloom & Anne F. Krisnik

2:45 – 3:45 p.m.

BREAKOUT SESSION I

801

**Understanding Diverse Cultures and Working With Diverse Lawyers, Clients and Employees**

2-hour session

2.0 elimination of bias credits applied for

As Minnesota becomes increasingly diverse it is very likely that you are, or soon will be, working with lawyers, clients and employees from other cultures. In the first hour, a panel of attorneys representing the Asian, African, Latino and Muslim communities will describe the unique features of their cultures and discuss the challenges that people from their communities face in the legal system and in working with lawyers. In the second hour, the panel will discuss the most common legal needs of clients from their communities, and will share practical advice for lawyers who are working with them; including cultural sensitivity considerations and communication tips. The panelists will also answer questions from the audience.

Uyen T. Campbell, Michael A. Fondungallah, Munazza Humayan & Jorge Saavedra

MODERATOR: *Roy S. Ginsburg*

802

How to Prepare and Prove an FMLA Case

Two experienced FMLA plaintiffs' attorneys discuss the FMLA case from start to finish – including evaluating a potential case; determining whom to name as defendant(s); discovery – written and depositions; expert witnesses; opposing a summary judgment motion; and proving your case at trial.

John A. Fabian & Nicholas G.B. May

803

**Employees Gone Wild!**

Repeat of #603

Christine N. Esckilsen, William B. Michael, Paul Ormodt & Christopher T. Shaheen

MODERATOR: *Roy A. Ginsburg*

804

The 4 Rules of Disciplinary Documentation**Back by Popular Demand!**

A legal "how-to" guide for documenting employee problems and failures. A fast-paced session filled with examples of good and bad documentation plus instruction on how to successfully document to improve performance or prepare for litigation.

Robert C. Boisvert, Jr.

805

Union Organizing 2012

The last few years have seen some far reaching developments in how employee groups can choose union representation. Whether viewed from the perspective of the organizer or the organizing target, employer and workers alike need to know and understand their rights under the new rules. In this panel discussion, attorneys on behalf of employers and organized labor will discuss what the organizing roadmap looks like today.

Justin D. Cummins, Douglas P. Seaton & Paul J. Zech

806

Employee Theft, Embezzlement and Fraud – Investigations, Terminations, Asset Recovery and More

What do you do when you discover or think an employee is stealing, embezzling or committing some other type of fraud against the employer? How do you make sure? What does the investigation look like and how do you avoid defaming an innocent person? What steps should be taken after the investigation? How is the termination handled? When should you involve law enforcement? Can you recover money or assets? These and other important issues will be discussed.

William J. Egan

807

The Government Speaks – The Independent Contractor Issue

Representatives from the Minnesota Department of Labor, the Minnesota Department of Employment and Economic Development and the Minnesota Department of Revenue will answer questions from moderator Rick Ross concerning government audits, positions, enforcement procedures, penalties and more. This important session will allow you to hear from those who enforce the rules relating to independent contractor/employee status.

Ann Buysman, Jess Crassweller & Lee B. Nelson
MODERATOR: *Richard A. Ross*

808

Except in California...What to Watch Out for in Dealing With California Wage and Hour Laws

Think you know everything about employment laws? Think again if you have employees in California! We'll explore various wage and hour topics, some that have been around for a long time and some that are brand new, and explain the difference between how they are applied in California and the rest of the country.

Ilyse S. Goldsmith & Paula M. Semrow

809

Litigating Workplace Defamation and Tortious Interference Claims

Defamation and tortious interference claims by disgruntled employees are often plead side-by-side and present a sticky mess for employers. Learn strategies for litigating defamation and tortious interference claims from the plaintiff and defense side. Through the use of hypotheticals, the presenters will address pleading techniques, individual or third party defendants, defamation on the internet, statutory and rule defenses, privilege questions, discovery, motion practice, damages, trial tips, ways to avoid liability, and recent case law developments in Minnesota.

V. John Ella & Marshall H. Tanick

4:00 – 5:00 p.m.

BREAKOUT SESSION J**Understanding Diverse Cultures and Working With Diverse Lawyers, Clients and Employees (cont.)**

901

How to Respond When the Government Serves a Charge of Discrimination**Repeat of #601**

Howard B. Tarkow

902

Mental Disabilities in the Workplace: How Does an Employer Respond Under the ADA?**Repeat of #102**

R. Ann Huntruds

903

Religious Beliefs, Conflict, and Accommodation: Keeping the Peace**Repeat of #004**

Karen G. Schanfield

904

Give Me a Break: Nettlesome Problems With Meal, Rest, and Other Break Times**Repeat of #503**

Mary M. Krakow

905

The Subtle Art of Investigative Interviews – Techniques and Strategies to Improve Yours**Repeat of #704**

Fran A. Sepler

906

8th Circuit and Federal District Court Update**Repeat of #309**

Cynthia A. Bremer & Steven Andrew Smith

Register today!**651-227-8266****800-759-8840****www.minncle.org**

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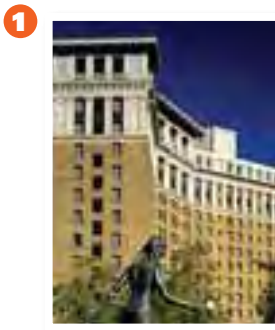
175 West Kellogg Boulevard
Saint Paul, MN 55102

P Parking – Arrive Early!

The Institute begins at 8:00 a.m. each day. We encourage commuters to allow plenty of time for rush hour traffic and for parking. Please take special note of the map which indicates the RiverCentre location and adjacent parking lots.

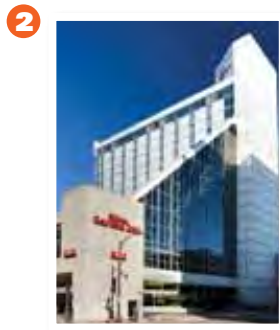
Hotel Accommodations

Minnesota CLE has established special room rates for Institute attendees at the hotels listed below. Make your reservations early to ensure room/rate availability!



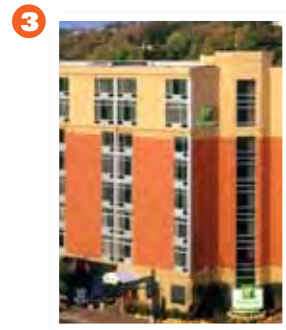
1 The Saint Paul Hotel – \$150

350 Market Street
651-292-9292
www.saintpaulhotel.com



2 Hilton Garden Inn – \$121

St. Paul City Center
411 Minnesota Street
651-291-8800
www.stpaulcitycenter.stayhgi.com



3 Holiday Inn St. Paul Downtown – \$117

175 West Seventh Street
651-225-1515
www.holiday-inn.com/stpaulmn

Course Information

Credits

Minnesota CLE has applied to the Minnesota State Board of CLE for **13.0 hours standard CLE credit** for this year's Institute. Minnesota CLE is an accredited sponsor for Wisconsin and North Dakota. We anticipate this course also will qualify for **13.0 civil trial specialist credits, 13.0 labor and employment law specialist credits** and **13.0 CJE credits for judges**.

In addition, we have applied to the Human Resource Certification Institute for **13.0 recertification credits**.

This course may also qualify for CEU credits. Check with the appropriate accreditation organization to ensure CEU accreditation.

We also anticipate that sessions #509 and #708 each will qualify for **1.0 ethics credit**, that session #306 will qualify for **2.0 ethics credits**, and that session #801 will qualify for **2.0 elimination of bias credits**. If you attend any of these sessions and claim ethics or elimination of bias credit, you must deduct those special credits from the 13.0 hours of "standard" credit. For example, if you attend sessions #509 and #801, you would claim 1.0 ethics credit, 2.0 elimination of bias credits and 10.0 standard credits for a total of 13.0 credits. **In no case may you claim more than 13.0 total credits for the Upper Midwest Employment Law Institute.**

Accommodation

If you have a disability and need an accommodation in order to attend this seminar, please contact us as soon as possible. Contact Minnesota CLE at 2550 University Avenue West, Suite 160-S, Saint Paul, MN 55114 or call 651-227-8266 or 800-759-8840.

Cancellation / No-Show Policy

Paid registrants who cancel their registration at least 72 hours before the program will receive a full credit on their account; if fewer than 72 hours a \$25 administrative fee will be deducted. Paid registrants who fail to attend will receive the *2012 Employment Law Handbook*. Passholders may purchase the course materials at 50% of the full retail price.

Questions?

Please call Minnesota CLE at **651-227-8266** or **800-759-8840** or visit us online at **www.minncle.org**.

The 2012 Upper Midwest Employment Law Institute

Monday & Tuesday
May 21 & 22, 2012
Saint Paul RiverCentre

1 Please "✓" appropriate box:

- \$695 MSBA member
- \$695 TCHRA member
- \$695 paralegal / legal assistant
- \$795 standard rate
- I have a Minnesota CLE Season PassSM.
Pass # _____

New Lawyer Discount:

- I was first admitted to the bar after May 21, 2009, and have deducted \$60 from the registration fee marked at left.

Please "✓" appropriate box:

- Attorney (in private practice)
- Attorney (in-house counsel)
- Other (please indicate): _____
- Government Attorney
- Human Resource Professional

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[507-12 / jhaj / Imp]

2 Choose Your Plenary Session:

- I will attend the "MAIN" plenary session on Monday.
- I will attend the "ALTERNATE" plenary session on Monday.
- I will attend the "MAIN" plenary session on Tuesday.
- I will attend the "ALTERNATE" plenary session on Tuesday.

3 Choose Your Day 1 Breakout Sessions:

A	B	C	D	E
<input type="checkbox"/> #001	<input type="checkbox"/> #101	<input type="checkbox"/> #201	<input type="checkbox"/> #301	<input type="checkbox"/> #401
<input type="checkbox"/> #002	<input type="checkbox"/> #102	<input type="checkbox"/> #202	<input type="checkbox"/> #302	<input type="checkbox"/> #402
<input type="checkbox"/> #003	<input type="checkbox"/> #103	<input type="checkbox"/> #203	<input type="checkbox"/> #303	<input type="checkbox"/> #403
<input type="checkbox"/> #004	<input type="checkbox"/> #104	<input type="checkbox"/> #204	<input type="checkbox"/> #304 (2-hour session)	<input type="checkbox"/> #404
<input type="checkbox"/> #005	<input type="checkbox"/> #105	<input type="checkbox"/> #205	<input type="checkbox"/> #305	<input type="checkbox"/> #404
<input type="checkbox"/> #006	<input type="checkbox"/> #106	<input type="checkbox"/> #206	<input type="checkbox"/> #306 (2-hour session)	<input type="checkbox"/> #405
<input type="checkbox"/> #007	<input type="checkbox"/> #107	<input type="checkbox"/> #207	<input type="checkbox"/> #307 (2-hour session)	<input type="checkbox"/> #405
<input type="checkbox"/> #008	<input type="checkbox"/> #108	<input type="checkbox"/> #208	<input type="checkbox"/> #308	<input type="checkbox"/> #406
<input type="checkbox"/> #009	<input type="checkbox"/> #109	<input type="checkbox"/> #209	<input type="checkbox"/> #309	<input type="checkbox"/> #406
	<input type="checkbox"/> #110	<input type="checkbox"/> #210	<input type="checkbox"/> #310	<input type="checkbox"/> #407
		<input type="checkbox"/> #211	<input type="checkbox"/> #311	

4 Choose Your Day 2 Breakout Sessions:

F	G	H	I	J
<input type="checkbox"/> #501	<input type="checkbox"/> #601	<input type="checkbox"/> #701	<input type="checkbox"/> #801 (2-hour session)	<input type="checkbox"/> #901
<input type="checkbox"/> #502	<input type="checkbox"/> #602	<input type="checkbox"/> #702	<input type="checkbox"/> #802	<input type="checkbox"/> #902
<input type="checkbox"/> #503	<input type="checkbox"/> #603	<input type="checkbox"/> #703	<input type="checkbox"/> #803	<input type="checkbox"/> #903
<input type="checkbox"/> #504	<input type="checkbox"/> #604	<input type="checkbox"/> #704	<input type="checkbox"/> #804	<input type="checkbox"/> #904
<input type="checkbox"/> #505	<input type="checkbox"/> #605	<input type="checkbox"/> #705	<input type="checkbox"/> #805	<input type="checkbox"/> #905
<input type="checkbox"/> #506 (2-hour session)	<input type="checkbox"/> #606	<input type="checkbox"/> #706	<input type="checkbox"/> #806	<input type="checkbox"/> #905
<input type="checkbox"/> #507	<input type="checkbox"/> #607	<input type="checkbox"/> #707	<input type="checkbox"/> #807	<input type="checkbox"/> #906
<input type="checkbox"/> #508	<input type="checkbox"/> #608	<input type="checkbox"/> #708	<input type="checkbox"/> #808	
<input type="checkbox"/> #509	<input type="checkbox"/> #609	<input type="checkbox"/> #709	<input type="checkbox"/> #809	
	<input type="checkbox"/> #610	<input type="checkbox"/> #710		
		<input type="checkbox"/> #711		

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